

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

223

**CR No.5970 of 2014(O&M)
Date of decision: 16.09.2019**

Lala Ram @ Rampat

...Petitioner

Vs.

Kamla Devi and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Sanjeev Manhas, Advocate
for respondent No.1.

SUDIP AHLUWALIA, J.(ORAL)

1. This revision is directed against the impugned judgment dated 25.07.2014 passed by learned Civil Judge, (Junior Division) Talwandi Sabo vide which the suit, filed on behalf of respondent No.1/Kamla Devi was decreed under Section 6 of the Specific Relief Act, while the counter claim filed on behalf of the petitioner/defendant claiming to be owner by adverse possession was dismissed.

2. It has, however, been brought to notice of this Court that while the original suit was filed under Section 6 of the Specific Relief Act on the plea that the plaintiffs/respondents had been illegally dispossessed from the disputed property within 6 months from the date of filing, but in the replication a specific averment was made to the effect that in case, it was found that the suit had been filed beyond the prescribed period of 6 months, the same may be decreed under Section 5 of the Specific Relief Act based

upon Title. The Ld. Court below while discussing Issues Nos. 1, 2, 4 and 4(a) and observing that the suit was maintainable in view of the replication of the plaintiffs to the effect that it may be considered as one under Section 5 the Specific Relief Act, nevertheless decreed the same only under Section 6 of the Act, without observing as to when actually the plaintiff was illegally dispossessed from the suit property.

3. This, in view of the Court is a manifest error which creates confusion about the particular provision under which the suit was decreed. On this ground alone the impugned judgment and decree are unsustainable in the absence of a clear finding as to since when the defendant/petitioner was determined as having illegally taken possession of the suit property. Such clear finding would also have had the effect of more explicitly revealing whether his plea of ownership by way of adverse possession, which has otherwise been rejected by the trial Court, was sustainable or not.

4. For the aforesaid reasons, this is found to be a fit case for being sent back on remand to the Ld. Trial Court with a direction to decide the matter afresh by specifically spelling out the date on or around which the petitioner/defendant had taken possession of the disputed property, and under what circumstances.

5. Parties are at liberty to approach the learned Court which shall recast issues, if deems necessary, in the light of this direction and, if necessary, to lead any additional evidence from their sides.

6. The parties are directed to appear before Ld. Trial Court

on 29.10.2019.

7. The Ld. Court below is directed to thereafter dispose off the matter on merits as expeditiously as possible and preferably within 3 months from the date of communication of this order.

September 16, 2019
Poonam Sharma

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No