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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Pronounced on: 14.02.2019

+ CM(M)1536/2010

CHAMAN SINGH

.....Petitioner

Through Mr.R.N.Dubey, Adv.

Versus

DEV PRAKASH GOEL & ANR.

....Respondents

Through Respondent No.2-in-person.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This petition is filed under Article 227 of the Constitution of India seeking to impugn the order dated 18.01.2010 by which the suit filed by the petitioner under Section 6 of the Specific Relief Act for possession of the suit property was dismissed.

2. The petitioner/plaintiff filed a suit for possession under Section 6 of the Specific Relief Act, damages and permanent injunction for the suit property being 100 sq. yards of land, Plot No. 20-21 in Khasra No. 39-8/2, 39/7-4 of the Revenue Part, 25 Foota Road in the abadi of Rama Garden, Karawal Nagar, Delhi-110094. The petitioner/plaintiff claims title to the suit property by a long chain of transactions. It is pleaded that the property originally belonged to Sh. Gurdayal Singh, the *bhumidar* who was the owner of the land total measuring 11 Bighas situated at village Karawal Nagar, Illaqa Shahdara, Delhi. Sh. Gurdayal Singh appointed one Sh. Kallu as his

attorney through irrevocable general power of attorney who carved out a colony and sold the said the suit property being plot No. 20 & 21 to Sh. Virender Kumar and Sh.Pawan Kumar Arora by a registered sale deed dated 18.11.1974. The said Sh. Virender Kumar and Sh. Pawan Kumar Arora sold the property to one Sh. Sunil Kumar. Sh. Sunil Kumar thereafter sold the property one Sh.Jagroop Singh. The plaintiff purchased the said plot from Sh. Jagroop Singh on 26.09.2001. The documents which are said to have been executed in favour of the petitioner/plaintiff include Agreement to Sell, General Power of Attorney, etc. which are said to be duly registered with the Sub-Registrar, Delhi. It is pleaded that possession of the plot was handed over to the petitioner/plaintiff. When the petitioner/plaintiff purchased the suit land, there was only one room in the plot. It is further pleaded that shortly thereafter the respondents/defendants came to the site along with their associates on 01.10.2001 and 02.10.2001 and tried to enter into the suit property claiming the property as their own. However, it is pleaded that the defendants/respondents did not succeed in taking over possession. It is stated that respondent No. 1/defendant No. 1 has good connections with the police and in connivance with the police, a *kalandra* under Section 145 Cr.P.C. was got registered. It is further pleaded that the respondents/defendants came along with police on 26.04.2002 with their associates and put building construction material near the site for purpose of construction. On 27.04.2002, it is stated that the defendants/respondents in connivance with the police dispossessed the petitioner/plaintiff from the suit property without the petitioner's consent and otherwise, against the due process of law. Thereafter, the respondents/defendants started constructions on the property.

It is claimed that the police is in connivance with the respondents/defendants. Hence this suit.

3. It is also stated in the plaint that Sh. Jagroop Singh from whom the petitioner/plaintiff had purchased the land filed a suit for permanent injunction against the respondents herein which is said to be pending before the Civil Judge, Delhi. In that suit, the respondent No. 1, in his written statement claims that respondent No.1/defendant No. 1 is the owner of a land which is known as Plot No. 32-31, Rama Garden, Gali No. 2, Delhi. It is stated that as there was a dispute regarding the land, the court hearing the said suit filed by Sh. Jagroop Singh appointed Tehsildar, Seelampur as a Local Commissioner with the directions to demarcate the suit property. The Local Commissioner gave his report that plot in question (presumably of Sh. Jagroop Singh) falls in different khasra no., namely, 39/4 which is not the same khasra number in which the respondent No. 1/defendant No. 1 is having the plot.

4. The respondents/defendants who are husband and wife filed their written statement. It has been pleaded in the written statement that the petitioner/plaintiff in the plaint has concealed that the possession of the suit property was handed over to the respondents/defendants by the area police on 29.10.2001. It is stated that on an illegal attempt made by the petitioner to take over the suit property, the police was called on telephone No. 100 by the known persons of the respondents on 05.10.2001. After verification of the facts, possession was handed over to the respondents/defendants by the police after visiting the suit property and carrying out necessary verification and inquiries from the neighbourhood. It is stated that the present suit is filed by the petitioner/plaintiff in collusion with Sh. Jagroop Singh to harass the

respondents/defendants. It is stated that only one room was lying constructed in the suit property along with full boundary wall. Full construction was carried out by the respondents/defendants after taking possession through the authorities. Defendants/respondents are stated to be in possession of plot measuring 400 sq. yards. out of Khasra No. 5-2/6, 7, 14 , 15 and 17/1 situated at Village Karawal Nagar, Ilaqa Shahdara, Delhi known as plot No. 31-32, Gali No. 2, Rama Garden, Delhi 110094 now new number has been allotted as A-29 and A-30. The plot was purchased by Registered Sale Deed dated 15.6.1974 by defendant No.1 from Shri Munshi and Shri Mohd. Akbar. Further the case of the respondents/defendants is that plaintiff has carried out certain interpolation and manipulations in respect of Khasra No. 39/7. It is stated that the petitioner claims this number to be 39/7/4 whereas there is no '4' in the certified records available with the respondents/defendants. The respondents/defendant also state that they have no objection in case the suit is transferred to the court which is hearing the suit filed by Sh. Jagroop Singh. It is also the case of the respondents/defendants that it was Sh.Jagroop Singh who sought to encroach upon the plot of the respondents/defendants in connivance with the petitioner/plaintiff on 05.10.2001. However, this movement came to the notice of Sh. Bhishm who resides in the neighbourhood who informed Sh.Hridesh who is running a factory at a nearby place. A complaint was made on telephone No. 100 by the residents to the police. The residents also informed the respondents/defendants who reached the site. It was the police who got the premises locked and took away the keys for making necessary inquiries. After achieving prima facie satisfaction on verifications at site, the police handed over peaceful possession to the defendants on 29.10.2001. It is

stated that the respondents/defendants are respectful persons, respondent No.1/defendant No. 1 being a Retired Medical Officer from Kirkari Dispensary.

5. The Trial court framed the following issues:-

“i) Whether the plaintiff was in possession of suit property 100 sq.yards of land in plot No. 20 & 21 out of khasra No. 39-8/2, 39/7-4 of the revenue part of 25 foota road in the Abadi of Rama Garden, Karawal Nagar, Delhi? (OPP)

ii) Whether the plaintiff was dispossessed by the defendants from the above mentioned suit property? (OPP)

iii) Whether the suit is filed within six months as per Specific Relief Act? OPP

iv) Relief.”

6. Parties led their evidence. The petitioner/plaintiff examined six witnesses in support of the suit, namely, PW-1, the plaintiff himself, PW-2 Sh. Mahendera Singh, neighbour, PW-3 Sh.Sahansar Pal, PW-4 Sh. Shau Raj Singh, PW-5 Prem Chand Kangoo, SDM Court, Seelampur and PW-6 Sh.T.S. Joshi, Halqua Patwari, SDM Court, Seelampur. The defendants, examined, namely, DW-1, defendant No. 2 herself, DW-2 Sh. Munesh Kumar, Record Clerk from Sub Registrar-IV, Nand Nagri.

7. The trial court on issue No. 1 noted that the petitioner/plaintiff has filed several documents including Ex. PW-1/7 which is the sale deed executed by Sh. Kallu and Sh.Munshi, power of attorney holders of the original owner of Sh. Gurdayal Singh in favour of the first purchasers, of the chain described in the plaint, namely, Sh.Virender Kumar and Sh.Pawan Kumar Arora. The plot number at that time was 20/21. As per this document, a land measuring 100 sq. yards was sold in Khasra No. 39-8/2 and

39/7, after this number '4' is appearing on the document i.e. 39/7-4. As per the defendants, this number '4' has been added later on fraudulently. The order further notes that the case of the defendants/respondents is that measurement of the road on the east side is manipulated to be 25 feet instead of 15 feet. Along with the sale deed Ex. PW-1/7 no site plan was attached which could have shown the location of this plot 20/21. However in contrast the respondents/defendants in the evidence have summoned the Sub-Registrar with the certified copy of the sale deed dated 15.06.1974. DW-2 produced a certified copy of the sale deed. There is no number '4' given along with khasra No. 39/7. The certified copy also shows that on the east side measurement of the road is 15 feet and not 25 feet as shown in the Ex. PW-1/7. The trial court notes that this piece of evidence has not been successfully challenged by the petitioner/plaintiff. The trial court concludes that Ex.PW-1/7, the title document relied upon by the plaintiff/petitioner has not been correctly produced and has been manipulated.

The trial court by the impugned order also noted that the present suit is filed under Section 6 of the Specific Relief Act and the primary onus was on the plaintiff/petitioner to show his possession of the suit property. The trial court concludes that from the pleadings and evidence of the parties, the parties were more concerned about the title as well as the number given to the suit property. Even if, the number given by the plaintiff/petitioner is presumed to be correct, even then it was for the plaintiff to show that he was in possession of the suit property. Merely filing documents which are GPA and other such documents executed in respect of land under different khasra numbers do not have the effect to show that the plaintiff/petitioner was actually in possession of the suit property which was plot No. 20 and 21.

The trial court also notes that a perusal of the cross-examination of DW-1 would show that it was the stand of the plaintiff/petitioner that he was in possession of the property prior to 05.10.2001 and that defendant No. 2/respondent No. 2 was not in possession of the property from 15.06.1974 to 05.10.2001. This stand, the trial court notes, is contradictory to the plea taken in the plaint where the plaintiff/petitioner has alleged that the police came along with building material on 26.04.2002 with the defendants/respondents. On 27.04.2002, it is pleaded in the plaint that the respondents/defendants in connivance with the police dispossessed the petitioner/plaintiff from the suit property. The trial court also noted that the plaintiff/petitioner has failed to disclose the manner in which he was dispossessed, time taken for the said dispossession, persons present and reaction of any such persons available. The trial court also noted that if the plaintiff/petitioner would have really been dispossessed from the suit property in the manner projected by him then why the plaintiff/petitioner remain silent on the relevant aspects other than stressing upon the so called title documents. The trial court noted that the plaintiff has failed to prove that he was actually in possession of the suit property and that he was dispossessed on 27.04.2002.

On issue No. 3, namely, as to whether the suit was filed within six months, the trial court concludes that from the pleadings of the defendants/respondents, it can be inferred that the plaintiff/petitioner was dispossessed from the suit property on 05.10.2001. Taking the date of dispossession as 05.10.2001, then the suit would be barred by limitation under Section 6 of the Specific Relief Act. The issue was decided against the petitioner/plaintiff.

8. I have heard learned counsel for the petitioner and respondent No. 2 who has appeared in person.

9. Respondent No. 2 has categorically stated that respondent No. 1 purchased the suit property vide sale deed dated 15.06.1974 which sale deed was duly registered with the Office of the Sub Registrar and the respondents are also in possession of the original sale deed. She further pleads that the defendants/respondents are in possession of the property since then. She further states that the petitioner is only a land grabber who is trying to harass the respondents who are an old couple with the object to grab their land.

10. Learned counsel for the petitioner has also filed written submissions wherein he again claims that in terms of the document dated 26.09.2001 executed by Sh. Jagroop Singh, the petitioner came into possession of the suit property. The documents were registered GPA, Receipt, Registered Deed of Will in favour of the petitioner. Reliance is also placed on the demarcation report carried out by the Revenue Authorities. He further states that the petitioner was unlawfully dispossessed on 27.04.2002 with the help of the police and the police filed a false case against the petitioner under Section 448 of the IPC in which the petitioner has already been acquitted. He states that the possession of the petitioner is proved by Ex.PW-16, 17 & 18 supported with the report of the SDM.

11. Section 6 of the Specific Relief Act reads as follows:

“6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover

possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

12. The basis for seeking relief under Section 6 of the Specific Relief Act was elaborated by the Supreme Court in the case of ***ITC Limited v. Adarsh Cooperative Housing Society Limited, (2013) 10 SCC 169***. The court held as follows:

“9. Section 6 of the Specific Relief Act 1963 under which provision of law the suit in question was filed by the Plaintiff-Respondent is pari-materia with Section 9 of the Act of 1877. A bare reading of the provisions contained in Section 6 of the Act of 1963 would go to show that a person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him recover such possession by filing a suit. In such a suit, the entitlement of the Plaintiff to recover possession of property from which he claims to have been illegally dispossessed has to be adjudicated independently of the question of title that may be set up by the Defendant in such a suit. In fact, in a suit under Section 6, the only question that has to be determined by the Court is whether the Plaintiff was in possession of the disputed property and he had been illegally dispossessed therefrom on any date within six months

prior to the filing of the suit. This is because Section 6(2) prescribes a period of six months from the date of dispossession as the outer limit for filing of a suit. As the question of possession and illegal dispossession therefrom is the only issue germane to a suit under Section 6, a proceeding thereunder, naturally, would partake the character of a summary proceeding against which the remedy by way of appeal or review has been specifically excluded by Sub-Section 3 of Section 6. Sub-Section 4 also makes it clear that an unsuccessful litigant in a suit under Section 6 would have the option of filing a fresh suit for recovery of possession on the basis of title, if any.”

13. Reference in this context may also be had to the judgment of the Supreme Court in *Mohd. Mehtab Khan & Ors. V. Khushnuma Ibrahim & Ors.*, 2013 (9) SCC 221, where the Supreme Court held as follows:

“12. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the Plaintiff was in possession at any time six months prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.”

14. It is quite clear from the facts on record that the area which is the subject matter of the disputes is not a regularized colony and hence, there are no proper municipal numbers assigned.

15. In my opinion, the trial court has rightly concluded about the vagueness of the submission and evidence of the petitioner regarding the date of alleged dispossession. In the plaint the plaintiff/petitioner claims that he was dispossessed on 27.04.2002 from the suit property. In cross-examination of DW-1, namely, respondent No. 2, the petitioner projects as if the respondents were put in possession by the police on the suit property on 05.10.2001. Relevant part of cross-examination of DW-1 reads as follows:-

“It is not correct that police had put me in possession of suit property No.A29, A30 Gali No.2, Rama Garden, Karawal Nagar, on 05.10.2001. I have given description of suit property mentioning its number in para No.1 at page No.3, which is at point X to XI. It is wrong to suggest that I was not in possession of this property w.e.f. 15.06.1974 to 05.10.2011. It is wrong to suggest that this property was in possession of plaintiff since 26.09.2001 to 05.10.2011. It is wrong to suggest that documents executed in favour of my husband in respect of aforesaid suit property are forged and fabricated documents. It is wrong to suggest that suit property has the number of A31 and A32. Vol., at the time of execution of sale deed it had the number of A31 and A32 but now it has the number of A29 and A30. I do not know when this number was changed and by whom it was changed. It is wrong to suggest that on 05.10.2011, police had put me in possession of property bearing No.A20 and A21 belonging to plaintiff. It is wrong to suggest that property A20 and A21 belonged to plaintiff.

16. The trial court rightly concluded that the petitioner is taking contrary stands about the date on which he was dispossessed i.e. in the plaint it is claimed that he was dispossessed on 27.04.2002 and in cross-examination of DW-1, he takes a stand that he was dispossessed on 05.10.2001.

17. Further the trial court rightly held that the evidence led by the petitioner about he being dispossessed on 27.04.2002 as stated in the plaint is

very sketchy. In his affidavit by way of evidence, PW-1, namely, the petitioner merely states that on 27.04.2002, the defendants/respondents in connivance with the police dispossessed him. Relevant part of his evidence states as follows:-

“13. I say that on 27.04.2002 the defendant in connivance with police has dispossessed the deponent of the suit property without deponent’s consent or otherwise therein due process of law. The defendants after taking the possession of the suit property on 27.04.2002, as stated above, have started raising the construction in the suit property. The connection of the defendants is visible from the act that she has not even obtained the requisite permission for construction from the concerned Department. Moreover the defendants have no right to raise the construction on the plot of the deponent, who is the exclusive, law owner of the same. Shri Jagroop Singh also filed one application under Order 39 Rules 1 and 2 in the court of Ms.D.Savita Rao, Civil Judge, Delhi for restraining defendant from raising any unauthorized construction.”

18. In his cross-examination, he states as follows:-

“It is wrong to suggest that I was not disposed on 27.04.2002 by the defendants. It is wrong to suggest that Om Prakash, Prem Narian, Raju, Sumer Chand Shali are in possession of the plot No.20 & 21 and New No.A-57 and 58. It is correct that FIR No.404/01, dt. 05.11.01 u/s 451/323/506/34 IPC has been lodged against me for forcibly entering in southern side of plot which is adjoining to the plot in which I am residing today. It is wrong to suggest that there are any litigation pending against me for forcibly taking the possession of the lands belonging to others by making forged documents. It is wrong to suggest that I, Sansar Pal, Mahinder Pal and Sh.Jagroop Singh are land grabbers.”

19. It becomes clear that even if the contention of the petitioner as stated in the plaint is accepted, namely, that he was dispossessed on 27.04.2002, it clear that on being allegedly dispossessed by the police, he seems to have

taken no steps whatsoever. On the contrary, an FIR was lodged against him under Section 448 IPC. He has filed the present suit on or around 27.08.2002 meaning thereby, it took four months to wake up to file a suit under Section 6 of the Specific Relief Act. Other than filing the suit, there is no other reaction to the alleged illegal dispossession from the suit property.

20. Even otherwise the evidence led by the petitioner on his dispossession is extremely sketchy. No names are given of which police personnel have dispossessed the petitioner from the premises. No details are there as to who was present when this dispossession took place.

21. Clearly, the petitioner seems to have completely forgotten to lead evidence regarding his possession of the suit property and his dispossession. The bulk of the evidence led is on his so called title which is itself based on documents like, Agreement to Sell, Power of Attorney and Will. Admittedly, the petitioner does not have any registered conveyance deed in his favour.

22. I may also note that the reliance of the learned counsel for the petitioner on the demarcation report is misplaced. That suit pertains to one Sh. Jagroop Singh filed against Smt. Bhagwati Devi. It is on record that the said suit was withdrawn which is evident from the cross-examination of PW-1 where he states that the suit filed by Sh. Jagroop Singh being Jagroop Singh vs. Dev Prakash was withdrawn on 02.12.2004. Demarcation report does not help the petitioner as it does not prove the possession or dispossession of the petitioner from the suit property.

23. In my opinion, findings of fact recorded by the learned trial court are plausible findings. Petitioner has not been able to point out any material

errors in the findings recorded by the learned trial court. As there is no material illegality and irregularity in the impugned order, I do not see any reason to allow the present petition. The same is dismissed.

24. Pending applications, if any, also stand dismissed.

(JAYANT NATH)
JUDGE

FEBRUARY 14, 2019/rb/v

