

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 26.08.2021

Order Passed on : 26/10/2021

C.R. No. 153 of 2014

1. Thakur Mohan Singh, S/o. Sukhlal Singh, aged about 66 years, Occupation- Business.
2. Rajkumar alias Raju, S/o. Thakur Mohan Singh, aged about 44 years, Both are R/o. Sarangarh, Distt. Raigarh C.G., Civil and Revenue District – Raigarh (C.G.)

---- Applicants

Versus

1. Tarabai, Wd/o. Late Sadanand Bani, aged about 75 years, R/o. Village-Bhojpur, Tah. Sarangarh, Distt. Raigarh C.G.
2. Ramnath, S/o. Late Sadanand Bani, aged about 50 years, R/o. Village-Kelobihar, Near Murgi Farm, Raigarh C.G.
3. Raminbai, W/o. Chinta Bani, aged about 51 years, R/o. Shivrinarayan, Now Distt. Janjgir-Champa C.G.
4. Sarojni Bai, W/o. Bharatlal, aged about 47 years, R/o. Kharod, Now Distt. Janjgir-Champa C.G.
5. Shaodari Bai, W/o. Bharatlal, aged about 34 years, R/o. Bhojpur, Tah. Sarangarh, Distt. Raigarh C.G.
6. Laxmibai, W/o. Surendra Bani, aged about 36 years, R/o. Gharghora, Distt. Raigarh C.G.
7. Govind, S/o. Late Sadanand Bani, R/o. Kutela, Tah. Sarangarh, Distt. Raigarh C.G.

---- Respondents

For Applicants	: Mr. B.P. Sharma, Advocate with Mr. H.S. Patel, Advocate
For Respondents	: Mr. M.P.S. Bhatia, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. This revision petition has been brought against the impugned judgment an decree dated 24.01.1994, passed by the learned Civil Judge Class-II, Sarangarh, in Civil Suit No.24-A/1987, whereby the suit filed by the plaintiffs/respondents has been decreed.
2. The facts in brief are this that the deceased plaintiff Sadanand filed a civil suit under Section 6 of the Specific Relief Act, 1963 praying for relief of restoration of possession over a vacant plot measuring 710 sq.ft.. The applicants/defendants appeared and contested the civil suit. Civil suit was decreed by the judgment dated 24.01.1994 in favour of the respondents directing restoration of possession in favour of the respondents. The applicants preferred an appeal. The appellate Court entertained the appeal and framed three issues and the case was remanded to the learned trial Court, which was directed to consider and decide the additional issues. The learned Trial Court has then passed the order dated 28.08.1998. The issue No.1 on the point of forgery of the gift deed was decided in favour of the respondents. Second issue on the point of maintainability of the civil suit was again decided in favour of the respondents, however, the third issue on the point of limitation was decided holding that the civil suit has been filed specifically under Section 6 of the Specific Relief Act and the suit being filed with delay was not maintainable. The learned appellate Court then decided the civil appeal No.4A/94 dated 27.02.1999 and dismissed the appeal on the ground that appeal is barred under Section 6 (3) of Specific Relief Act, 1963. The applicants then preferred second appeal No.387 of 1999, before this Court that appeal was dismissed as withdrawn on 13.11.2013.
3. It is submitted by the learned counsel for the applicants that after the remand of the case by the first appellate Court, the learned trial Court has decided the additional issues framed by the appellate Court without

recording any evidence. Reliance has been placed on the judgment of Supreme Court in case of **Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (dead) through LRS.**, reported in **(2012) 5 SCC 370**, in which it has been held, that the possession is important, however, if there are documents on record of title, before the Court, it is the title, which has to be looked at first, which has to be given preference. It is submitted that subsequent to the finding of the learned trial Court in order dated 28.08.1998, the civil suit of the respondent was either required be dismissed or remanded to the learned trial Court to decide the issue afresh after giving opportunity to both the parties for bringing evidence as the suit was not strictly U/s. 6 of Specific Relief Act. Reliance has also been placed on the judgment in case of **Krishnadevi Malchand Kamathia Vs. Bombay Environmental Action Group**, reported in **(2011) 3 SCC 363**. Hence, it is prayed that this revision petition be allowed.

4. It is further submitted that the the suit filed by the respondents was not strictly under Section 6 of the Specific Relief Act, 1963. The pleadings clearly shows that the respondents have prayed for title on the basis of the unregistered gift deed dated 01.01.1960, therefore, it was a title suit. It is submitted that it is because of these pleadings the learned appellate Court framed the additional issues and the same were remanded for decision to the learned trial Court. Hence, it was not a plain case for restoration of possession. Hence, it is prayed that revision petition be allowed.
5. Learned counsel for the respondents opposes the petition and the submission made in this respect. It is submitted that the suit filed by the respondents was clearly within limitation. There is clear pleading in the plaint that respondents were dispossessed from the suit property on 27.05.1987. The suit was filed on 07.07.1987. The construction on the

suit property was raised during the pendency of the suit, which is mentioned in the judgment of the trial Court. The appeal preferred against the judgment and decree of the trial Court was not maintainable as Section 6 (3) of the Specific Relief Act, which clearly bars filing of appeal against the judgment and decree passed under Section 6 of the Specific Relief Act 1963. Therefore, the appeal preferred by the applicants was not maintainable. Therefore, any order passed in the appeal as remand order was not existent. The provisions under Section 6 of the Act, 1963 is very specific, which prevent abuse of powers and high handedness of the influential parties. It is submitted that present civil revision is without any substance, which may be dismissed.

6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. On reading of the plaint itself it is found that the suit has titled as under Section 6 of the Specific Relief Act, 1963, although there is pleading present regarding the entitlement for possession in the plaint, but the relief was prayed only for restoration of possession on the ground of illegal dispossession of the plaintiff/respondent. Therefore, in absence of any other relief for declaration of title etc. it can not be said that the civil suit was not restricted to Section 6 of the Act, 1963 and that the question of title was also involved. This being the case, the preference of appeal under Section 6 against the judgment and decree of such Court was clearly not maintainable. Appeal preferred against the judgment and decree was at first remanded with direction to consider and decide the additional issue, which has been decided by the order dated 28.08.1998. These orders passed by the appellate Court for remanding the case and by the trial Court for deciding the issue are non-est in the eyes of law, as this authority was exercised by the appellate Court without any jurisdiction and without any empowerment

from the provision under the law. Therefore, these orders of the appellate Court and trial Court both are non-est and thus non-existent in the eyes of law, which can be ignored. The learned appellate Court has by the appellate judgment and decree dated 27.02.1999 dismissed the appeal on the ground of its maintainability alone.

8. Hence, in such circumstances, the order dated 28.08.1998, which is non-est order, which is ignored. The submissions made by the applicant counsel to bring the civil suit in the category of title suit have no force, which does not affect the judgment and decree dated 24.01.1994 in Civil Suit No.24-A/1997, therefore, the civil revision is without any substance, which is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram