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HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 135 of 2018**

Order Reserved On : 29/10/2021

Order Passed On : 09/11/2021

- Sanjay Bhushan Pandey S/o Brijbhushan Pandey, aged about ____ years Occupation Agriculture, At Present President Janpat Panchayat Sarangarh, Tahsil Sarangarh, District Raigarh, Chhattisgarh.Defendant.

---- **Petitioner****Versus**

- Ramkumar Chaudhary S/o Late Ishwar Prashad Chaudhary Aged About 59 Years Occupation Advocate And Agriculture, R/o Village Jail Para Vard No. 12, Sarngarh, Tahsil Sarngarh, District Raigarh, Chhattisgarh.Plaintiff,

---- **Respondent****CR No. 114 of 2018**

- Ram Kumar Choudhary S/o Late Ishwar Prasad Choudhary Aged About 59 Years Occupation Advocate And Agriculture, R/o Jail Para Ward No. 12 Sarangarh, Tehsil Sarangarh, District Raigarh Chhattisgarh..... (Plaintiff)

---- **Petitioner****Versus**

- Sanjay Bhushan Pandey S/o Brijbhushan Pandey Occupation Agriculture, President (Then) Janpad Panchayat Sarangarh R/o Bademath Para Ward No. 7 Sarangarh Tehsil Sarangarh District Raigarh Chhattisgarh..... (Defendant)

---- **Respondent**

For Petitioner in CR No.135/2018 : Shri Vineet Kumar Pandey, Advocate.

For Respondent in CR No.135/2018 : Shri SN Nande, Advocate.

For Petitioner in CR No.114/2018 : Shri SN Nande, Advocate.

For Respondent in CR No.114/2018 : Shri Vineet Kumar Pandey, Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J**C A V Order**

1. Both the Civil Revisions are being disposed of by this common order, as common question of law is involved for adjudication.
2. For the purpose of disposal, facts mentioned in Civil Revision No.114/2018 are being dealt with.
3. The petitioner has an agriculture holding at Village Sahaspur, Patwari Circle No.24, within Tehsil Sarangarh, District Raigarh. The land bearing Khasra No.90/3 (k) ad measuring 0.085 hectare is in exclusive right, interest and possession of the petitioner. The said land was purchased by the petitioner by a registered sale deed dated 21.3.2002 from one Mohd. Azim, who allegedly purchased the same from the earlier land owner namely, Mohd. Hanif Quereshi by a registered sale deed dated 14.10.1999. However, the defendant/respondent got illegally dispossessed the petitioner from the parcel of land. The petitioner/plaintiff filed a civil suit seeking restoration of possession from the dispossessed part described in Schedule K appended with the plaint.
4. The defendant put his appearance before the Court below denying the case as set-out by the plaintiff/petitioner and submitted written statement stating that the allegations levelled against him with regard to dispossession are not true, as the plaintiff did not have title and possession over the subject land as mentioned in Schedule K appended with the plaint.
5. Considering the rival pleadings, learned Court below framed as many as 6 issues. During the course of trial, the plaintiff and defendant adduced their respective evidence. After hearing learned counsel for the parties and considering the material available on record, the learned Court

below dismissed the suit for want of jurisdiction being barred by Section 257 (Bh) of the CG Land Revenue Code, 1959 (for short 'the Code').

6. From the plaint averments, it is explicit that it was filed on 24.09.2009, for restoration of possession of the suit land, under Section 6 of the Specific Relief Act, 1963. In para 12 & 13 of the plaint and in the cause title it was specifically mentioned that suit was based on for such summary relief. Under Section 6 (3) of the Specific Relief Act, No appeal shall lie from any order or decree passed in any suit instituted under that section, so both the parties challenged the impugned judgment by way of revision. So, in this background contention of the learned counsel Shri Nande that suit may be treated as on the basis of possessory title or otherwise not tenable. Scope of S.5 & S.6 of the Act are different, and it was explained in *Nair Service Society v K.C. Alexander* AIR 1968 SC 1165, holding S.8 & 9 (now S.5.& 6) of the Act are not mutually exclusive. His Lordship observed that S.8 of the Act does not limit the kinds of suit but only lays down that the procedure laid down in the Civil Procedure Code must be followed. This is very different from saying that a suit based on possession alone is incompetent after the expiry of six months. If S.9 of the Act is utilized, the plaintiff need not prove his title and the title of the defendant does not avail him. When, however, the period of six months has passed, question of title can be raised by the defendant, and if does so, the plaintiff must establish a better title or fail. Article 64 of the Limitation Act enables a suit to be filed within 12 years from dispossession, for possession of immovable property based on

possession and not on title, when the plaintiff while in possession of the property has been dispossessed, Article 65 of the Limitation Act provides for a suit for possession of immovable property or any interest therein based on title.

7. In **Nathu v. Dilbande Hussain** {AIR 1967 MP 14}, while answering the reference, it was held that the remedy of a suit under section 9 of the Specific Relief Act for obtaining possession of an agricultural land is not available to a Bhumiswami who has been dispossessed from that land; that such a Bhumiswami, if he wishes to have the land restored to him in a speedy manner and after a summary enquiry, must resort to the remedy given by Section 250 of the Code; and that the view expressed in *Kittu Paramlal v. Jamnaprasad* [1962 MP LJ 738.] , *Santprasad v. Jawaharsingh* [1963 MP LJ (SN) 45.] and *Phattelal v. Nandlal* [1963 MP LJ 292.] that a dispossessed Bhumiswami can file a suit under Section 9 of the Specific Relief Act is not correct.
8. In the aforesaid judgment, it was specifically said that it must be noted that an aggrieved Bhumiswami is not bound to resort to the remedy provided by section 250. This is clear from the provision in section 250(1) that “the Bhumiswami or his successor-in-interest may apply to the Tahsildar for restoration of the possession...”. The word “may” means that the aggrieved Bhumiswami is not bound to avail himself of the summary and speedy remedy provided by section 250 of the Code. He may, if he likes, straightway bring a suit in a civil court for the establishment of his title to the land and to recover possession thereof. The word “may” does not mean that the aggrieved Bhumiswami can at his option launch proceedings in a civil court under section 9 of the

Specific Relief Act or in a revenue court under section 250 of the Code for recovery of possession of the land. But if he wishes to have the land restored to him, then he has two courses open. He can either approach the Tehsildar under section 250 of the Code or he may bring a suit in a civil court founded on title. But so far as the recovery of possession of land after summary enquiry is concerned, the aggrieved Bhumiswami has no option. For that remedy, he must approach the Tehsildar under section 250 of the Code. The remedy of a suit under Section 9 of the Specific Relief Act is clearly not available to him in view of Section 257(x) of the Code.

9. Learned Counsel Shri Nande has referred “Ramgopal Kanhaiyalal vs Chetu Batte 1976 MPLJ 325 (FB), in which the questions were referred that whether the Civil Court can not take cognizance of a suit instituted by Bhumiswami on the basis of his title, against a trespasser; and whether the decision in **Nathu v. Dilbande Hussain** {AIR 1967 MP 14}, is no longer good law. The S.C. while upholding the decision in ‘Nathu’ case reiterated the principle that a Bhumiswami is not bound to avail himself of the speedy remedy provided in S. 250 of the Code. Even if there has been decision under S. 250 by a revenue court, the party aggrieved may institute a civil suit to establish his title to the disputed land.
10. The judgments in the matters of **Rohini Prasad & Ors vs Kasturchand & Anr** {(2000) 2 SCC 668, decided on 03.03.2000), **State of M.P. vs Balveer Singh and Others** {AIR 2001 MP 268 (FB)}, **Nek Parveen and another v Chamaklall** {2000 RN 80 (HC)}, are of no help to petitioner Chaudhary as they are distinguishable on facts.

Shri Pandey relied on a decision in the matter of **Dhudo Bai v BajiRao and another** {2004(4) M.P.L.J. 364} wherein a reliance was placed on **Lal Kunwar and others vs Shivnarain and another**, {1998 RN 89}. It was held that the plaintiff has not sought declaration, but made a casual averment that he was the Bhumiswami of the suit land and claimed possession and mesne profit, the said suit was not based on title, hence not maintainable before the civil Court.

11. Section 257 of the Chhattisgarh Land Revenue Code, 1959 reads as under :--

"257. Exclusive jurisdiction of revenue authorities.-- Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters :

(x) any decision regarding reinstatement of a Bhumiswami improperly dispossessed under S. 250";

12. A bare perusal of Section 257(x) of the Code would show that Revenue Authorities have exclusive jurisdiction against any decision regarding reinstatement of a Bhumiswami improperly dispossessed under Section 250 of the Code and civil Court has no jurisdiction to entertain a suit, which the Revenue Authority by this Code is empowered to determine, decide and disposed off.

13. In view of the law propounded by the various judgments, looking to facts of the case, as the suit is drafted under Section 6 of the Specific

Relief Act, and is agricultural land, therefore, as per Section 257(x) of the Code, such suit is explicitly barred before the civil Court, and the impugned judgment was correctly decided with regard to issue No. 5.

14. When it was found that the civil Court has no jurisdiction to decide the lis as preferred by the plaintiff, the other issues have no significance and not necessary to be gone into, because any finding without jurisdiction have nullity effect.

15. Resultantly, the Civil Revision No. 114/2018 fails and is hereby dismissed. Civil Revision No. 135/2018 is allowed and the findings recorded by the Court of Civil Judge, Class-I, Sarangarh in Civil Suit No.31A/2011 (RamKumar Chaudhary Vs Sanjay Bhushan Pandey), vide Judgment dated 20/08/2018 with regard to issue No. 1 to 4 are hereby set-aside.

16. The parties are directed to bear their own costs.

Sd/-
(Deepak Kumar Tiwari)
Judge

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