

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

CR-2072-2021 (O&M)

Date of Decision: 07.09.2022

Sarabjit Singh

..... Petitioner

Versus

Jaswant Singh Dhiraj and anr.

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.G.S. Virk, Advocate for the petitioner/defendant.
Mr. Ankur Ghai, Advocate for respondent No.1/plaintiff.

HARKESH MANUJA, J.

CM-10276-CII-2022

Application for placing on record copy of plaint and written statement as annexures P-8 & P-9 is allowed as prayed for subject to all just exceptions. Annexures P-8 & P-9 are taken on record.

Registry to tag the same at appropriate place.

CM-2072-CII-2022

This is an application under Order 41 Rule 27 read with Section 151 CPC for permission to lead additional evidence.

After having gone through the application and the documents sought to be produced, I find that this evidence was already available with the applicant/ petitioner at the time of trial and with due diligence he could have easily produced the evidence at the relevant time. Even otherwise, the evidence sought to be led by the applicant/ petitioner may not even help the Court in arriving at a just

decision. Moreover, the application seems to have been filed at the belated stage just to prolong the proceedings.

Thus, the application is dismissed.

MAIN CASE:

Petitioner/defendant herein is aggrieved against the impugned judgment and decree dated 12.12.2019 passed by Learned Civil Judge, Junior Division, Ludhiana; whereby a suit under Section 6 of the Specific Relief Act, 1963, for short 'the Act', praying for recovery of possession of 700 sq. yards of land falling in Hadbast No.261, Abadi Gagan Nagar, Ludhiana, at the instance of respondent No.1/plaintiff has been decreed thereby directing the petitioner/defendant as well as respondent No.2 herein to handover vacant possession of the suit property in favour of respondent No.1/ plaintiff.

In brief, facts pleaded in the plaint are that the suit property was purchased by the wife of respondent No.1/ plaintiff vide registered sale deed dated 06.07.1992 and after her death, mutation No. 23915 was entered in the name of plaintiff. On 23.08.2012, an agreement to sell was executed between respondent No.1/plaintiff and petitioner/ defendant No.1 for a total sale consideration of Rs.37,45,000/-, out of which Rs.6 lacs was paid as earnest money at the time of execution of the agreement. Possession was to be delivered at the time of execution of sale deed on payment of entire balance consideration. It was further pleaded that another sum of Rs.9 lacs was paid by petitioner/ defendant No.1 in favour of respondent No.1/ plaintiff on 08.11.2012 i.e. after the execution of agreement; but before the target date which was 23.12.2012. The

case set-up by respondent No.1/ plaintiff was that while he went abroad, the petitioner/ defendant No.1 obtained forcible possession of the suit property and even entered into another agreement to sell dated 26.09.2012 for plot measuring 100 sq. yards of the total suit property in favour of defendant No.2. Therefore, based on forcible dispossession, respondent no.1/ plaintiff, on 07.01.2013 filed a suit under Section 6 of the Act for delivery of possession.

In response, petitioner/ defendant No.1 filed written statement stating therein that the suit under Section 6 of the Act was not maintainable as the possession of the property was delivered in his favour by respondent No.1/ plaintiff with consent after having obtained additional sum of Rs.9 lacs on 08.11.2012 and as per their verbal understanding. However, no dispute was ever raised regarding the ownership of respondent No.1/ plaintiff as well as about the execution of the agreement dated 23.08.2012.

Learned trial Court vide impugned judgment and decree dated 12.12.2019 decreed the suit filed at the instance of respondent No.1/ plaintiff by holding that delivery of possession by the plaintiff in favour of petitioner/ defendant No.1 was not proved to be with consent.

Aggrieved against the judgment and decree dated 12.12.2019 passed by learned trial Court, the present civil revision has been preferred.

It has been contended on behalf of the petitioner/ defendant No.1 that there is no pleadings or evidence on record to establish the exact date of forcible dispossession of plaintiff by

defendant No.1. He further submitted that, in fact, the petitioner was handed over possession with consent on payment of additional amount of Rs.9 lacs on 08.11.2012 which was also reduced into writing between the parties. Based on this, it was prayed that the suit filed at the instance of respondent No.1/ plaintiff was liable to be dismissed.

On the other hand, learned counsel for respondent No.1 argued that neither the agreement to sell dated 23.08.2012; nor even the writing dated 08.11.2012 records any stipulation as regards the delivery of possession in favour of petitioner/ defendant No.1; rather he referred to para 17 of the plaint to submit that the possession was taken forcibly while the plaintiff was travelling abroad. He further submitted that the agreement in question was dated 23.08.2012; whereas the suit was filed in January 2013, thus, being within the period of six months, was even maintainable from that date too. He also submitted that the present revision petition having been filed under Article 227 of the Constitution of India, this Court was having limited jurisdiction to interfere in a finding of fact arrived at by the learned trial Court, until any perversity was pointed out therein.

I have heard learned counsel for the parties and gone through the pleadings as well as records. Main contention raised on behalf of the petitioner/ defendant No.1 has been that there was no forcible dispossession of respondent No.1/ plaintiff from the suit property; rather he voluntarily delivered the possession in favour of petitioner/ defendant No.1 and that is why no date of dispossession was ever mentioned in the plaint thereby giving no cause of action for

filing of suit. Resultantly, it was concluded that the suit under Section 6 of the Act was not maintainable.

In the facts and circumstances of the present case and as per the evidence available on record, I do not find any merit in the aforesaid contention raised on behalf of the petitioner. A perusal of record shows that neither under the agreement to sell dated 23.08.2012; nor by virtue of writing dated 08.11.2012, the petitioner was ever delivered possession of the suit property. There has been a specific stipulation under the agreement to sell dated 23.08.2012 that the possession of the plot in dispute shall be handed over to the purchaser at the time of registry. Thus, it cannot be presumed merely on the basis of oral statement of DW2 that the possession was handed over to petitioner/ defendant No.1 at the time of payment of additional sum of Rs.9 lacs on 08.11.2012. It may also be pointed out here that once writing was executed specifically and categorically regarding the additional sum of Rs.9 lacs, nothing prevented the parties to make an averment therein regarding delivery of possession, if at all it was ever delivered. All this shows that the possession was never delivered in favour of the petitioner voluntarily or with consent at the instance of respondent No.1. Further the non-mentioning of date or time regarding dispossession of plaintiff/ respondent No.1 from the suit property, in his plaint, would have been of some significance and importance, if at all the suit had been filed after more than six months of the execution of the agreement to sell dated 23.08.2012.

In the present case, the execution of agreement to sell in question is dated 23.08.2012; whereas the suit under Section 6 of the Act has been filed in January 2013. The date of dispossession would have been of relevance in case the suit had been filed beyond six months of the date of agreement. Admittedly and without any dispute, besides the agreement in question dated 23.08.2012, there has been no other transaction between the parties on the basis of which the petitioner/ defendant No.1 could base his possession over the suit property. Therefore, even though, no specific date has been mentioned in the plaint regarding dispossession, suit cannot be held to be not maintainable. However, it is also pointed out here that in para 17 of plaint, it has even been pleaded that the possession was taken forcibly while respondent No.1/ plaintiff had gone abroad.

In the facts of the present case, I also find merit in the contention raised on behalf of learned counsel for respondent No.1/ plaintiff to the effect that the present revision petition being entertained under Article 227 of the Constitution; very limited scope vests with this Court to interfere in a finding of fact based on detailed discussion of the evidence as recorded by the learned Court below. Revisional jurisdiction being exercised under Article 227 of the Constitution, re-appreciation of evidence is not permissible unless there is some perversity pointed out in the impugned order.

Re-appreciation of evidence may not even been possible under revisional jurisdiction in exercise of powers under Article 227 of the Constitution even in case where two views based on the same evidence are possible. Further, the view expressed by the trial Court

cannot even be interfered with in the absence of any jurisdictional error made therein. In this regard, I find support from the judgment of Hon’ble Supreme Court in **Surya Dev Rai Vs. Ram Chander Rai and others**, 2004 (1) RCR (Civil) 147, wherein following relevant observations have been made in para 37 (8) while comparing the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India:-

“37(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

Learned counsel for the petitioner/ defendant No.1 has not been able to point out any such jurisdictional error in the impugned judgment passed by learned trial Court.

In view of the above, I do not find any ground to interfere in the impugned judgment dated 12.12.2019, therefore, the revision petition is thus dismissed.

Pending application(s), if any, shall also stand disposed of.

September 07, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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