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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 08, 2022

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Judgment pronounced on: September 21, 2022

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C.R.P. 121/2017

YOGENDER SHARMA

..... Petitioner

Through: Mr. S. P. Singh Chaudhary and
Mr. Y.R. Sharma, Advs.

versus

GULAB SHARMA @ GULAB NAI AND ORS Respondents

Through: Mr. Uddhav Pratap, Adv. for R-2.

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J.****Background Facts**

1. The present revision petition has been filed challenging the impugned order dated 28.03.2017 passed in counterclaim No.DJ-8554/16 wherein the learned trial court dismissed the counterclaim of the petitioner filed under Section 6 of the Specific Relief Act, 1963. Facts, in brief, are that respondents no.1 to 3 filed a civil suit bearing no.DJ-607733/16 for the partition and permanent injunction alleging that the plaintiffs and defendants are co-owner of property bearing plot No.36-B, Block-H-1 land area measuring 35 sq. yds out of Khasra No.7/14 situated in Harphool Garden, Jai Vihar, Phase-III, New Delhi.



Respondents/Plaintiffs have alleged that the property was purchased by them along with the petitioner on 24.07.2000 and thereafter the construction was raised thereon jointly. The present municipal number of the property in dispute is house no. C-139, Gali no.5, Jai Vihar, Harphool Vihar, Phase-III, New Delhi. The petitioner/defendant before filing the written statement filed a counterclaim which was registered as DJ-8554/2016 stating that the defendant was forcibly dispossessed from the suit property on 12.01.2014 by the respondent/plaintiffs. The petitioner alleged that he along with his wife Suman Devi and her two minor sons and two minor daughters were living in the suit property for the last 13 years and that the plaintiffs no.1 to 3 i.e. respondents herein had never purchased the suit property. The petitioner claimed that he is the sole and exclusive owner of the same. The petitioner also disputed that the respondents herein were never in possession of suit property.

2. The learned trial court consolidated the main suit and the counterclaim and vide separate judgments dismissed the suit of the respondents as well the counterclaim of the petitioner.

Contentions of the Parties

3. Learned counsel for the petitioner has submitted that the learned trial court has fallen into a grave error by rejecting the counterclaim filed under Section 6 of the Specific Relief Act, 1963. It has been stated that the learned trial court did not take into account the various documents showing the possession of the petitioner and his family in the suit property. Learned counsel for the petitioner has further submitted that the duly exhibited documents were ignored merely on the wrong assumptions that the same was not proved in accordance with the law.



It has further been submitted that the learned trial court has committed a material irregularity by entering into the question of title. It has been submitted that proceeding under Section 6 of the Specific Relief Act is 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 the respondents. The court is only required to see whether the petitioner had been illegally dispossessed from the premises in dispute. Learned counsel for the petitioner submits that the learned trial court also did not take into account the fact that all the documents produced on record showed that the respondents were residing at different premises which are around 15-20 kilometers away from the suit property. Sh. S.P.Singh Chaudhary, learned counsel for the petitioner has also submitted that the suit property is actually a small house and it is impossible that three families with their children would live on the same premises. It has been submitted that the findings of the trial court are in violation of the law laid down by the Supreme Court in ***Mohd. Mehtab Khan & Ors. vs. Khushnuma Ibrahim Khan & Ors.*** AIR 2013 SC 1099.

4. Learned counsel for the petitioner has also submitted that the learned trial court has erred in holding that the documents have not been proved in accordance with law. It has been stated that this finding is contrast to the law laid down by the Supreme Court in ***P.C.Purshothama Reddiar vs. S. Perumal*** AIR 1972 SC 608. If the documents are exhibited in evidence without the objection of any party, they are admissible in evidence and are to be considered in accordance with the law. It has also been submitted that the trial court failed to take



into account the various admissions made by PW-1 Gulab Sharma in his testimony.

5. In the written submissions filed by the respondent, it has been submitted that, in fact, the petitioner herein had voluntarily vacated the room in the suit property when the mother of the parties came and started residing there. It has been submitted that the respondent had neither dispossessed the petitioner nor they have possession of the same to date. It was submitted that the counterclaim was filed without any cause of action. It has been submitted that the documents placed on record as Ex.DW/1 to Ex.DW1/12 only proves the place of residence and does not show that the petitioner was in possession of the entire suit property or that he has been dispossessed forcibly from his portion, by the Respondents. It has also been submitted that the learned trial court has rightly discarded the testimony of DW-2 as it is hearsay evidence at best.

Findings and Analysis

6. Section 6 of the Specific Relief Act provides as under:

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.

7. The bare perusal of Section 6 of the Specific Relief Act, 1963 makes it clear that essential pre-requisite for instituting a claim under Section 6 are as follows:
 - (i) Petitioner has been dispossessed without his consent from the immovable property otherwise than in due course of law..
 - (ii) The claim to recover possession is irrespective of the issue of the title, set up in a such suit.
 - (iii) A suit has to be filed before the expiry of six months from the date of dispossession.
 - (iv) Such suit cannot be filed against the government.
8. Thus, the first and foremost condition for filing a suit for recovery of possession under Section 6 of the Specific Relief Act, 1963 is that the petitioner must show that he/she has been forcibly dispossessed without following the due process of law.
9. In the present case, the petitioner has set up a counterclaim alleging that he was dispossessed from the suit property on 12.01.2014 in furtherance off which the petitioner has filed several documents on record showing his residence proof. However, it is pertinent to note thatthe case of the respondent/plaintiff was never that the petitioner and his family were not residing at the suit property. The case of the



respondent was, in fact, that the family of the petitioner was residing along with their own families. In my view, the learned trial court has rightly held in the impugned order that even if the documents of the petitioner are taken on record, they only prove that the petitioner and his family were residing at the suit property and that there is not even an iota of evidence that the petitioner has been forcibly dispossessed on 12.01.2014.

10. It is also necessary to mention that the scope of revisional jurisdiction is very limited. The court can exercise its jurisdiction only in the following circumstances:
 - (i) If the subordinate court did not hold jurisdiction to try the matter;
 - (ii) If the subordinate court has failed to exercise the jurisdiction vested in it; or
 - (iii) If the subordinate court has failed to act correctly in the matter of its jurisdiction but has acted illegally or with material irregularity.
11. In the present case, there is no material on record to suggest that the order of the learned trial court suffers from any perversity and the pleas taken by the petitioner has no substance. The perusal of the record indicates that that FIR No.329/2014 PS Ranhola under Sections 380/448/34 IPC was lodged on 06.05.2014 pursuant to an Order made under 156 (3) Cr.P.C but there is no material on record to show that any complaint was made by the petitioner regarding his alleged forcible dispossession on 12.01.2014. The perusal of the record indicates that



even the first complaint was sent to the Commissioner of Police on 30.01.2014. It does not appeal to reason that if the petitioner or his family was forcibly dispossessed, he would not have made any complaint against the same or even make a call at No.100.

12. In view of the above observations, this court does not find any illegality or perversity in the order of the learned trial court. Hence the present revision petition is dismissed.

SEPTEMBER 21, 2022

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DINESH KUMAR SHARMA, J

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