

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 364 of 2016

TAPAS KUMAR DAS & OTHERS
VS.
SAHAJAHAN MAHAMMAD @ PUTE & ANR.

For the Appellants	: Mr. Sudhakar Biswas Mr. Debraj Das
For the Respondents	: Mr. Amit Baran Dash Mr. Subhrajyoti Ghosh Ms. Ankana Sarkar
Heard on	: 6 th July, 2023
Judgement on	: 12 th July, 2023

Siddhartha Roy Chowdhury, J.:

1. The second appeal challenges the judgement and decree passed by learned 3rd Additional District Judge, Nadia in Title Appeal No. 54 of 2013 reversing thereby the judgement and decree passed by learned Civil Judge, Junior Division, Additional Court, Krishnanagar, Nadia in Title Suit No. 39 of 2012.
2. To appreciate the appeal in its proper perspective it is expedient to narrate the facts in brief.
3. The plaintiffs who are the appellants before this Court filed a suit under Section 6 of Specific Relief Act claiming recovery / restoration of

possession under Section 6 of the Specific Relief Act as allegedly they were dispossessed otherwise than due course of law.

4. Briefly stated, claiming to have acquired right, title. interest over the suit property by purchase from Gafuranechha Bibi on 08.02.1974, Girindra Mohan, the predecessor-in-interest of the plaintiffs, filed a suit for recovery of possession against Gafuranechha Bibi being Title Suit No. 161 of 1979 and Gafuranechha Bibi filed a suit being T.S. No. 78 of 1979 claiming that the sale deed based on which Girindra Kr. Das, predecessor-in-interest of the plaintiffs claimed to have acquired interest over the property for all practical purposes was an agreement for loan in substance and not out and out sell transaction.
5. After trial the suit of Girindra Mohan Das was decreed and an order of eviction was passed while the suit filed by Gafuranechha Bibi was dismissed. Subsequently the decree passed in Title Suit No. 161 of 1979 was put into execution being Title Execution Case No. 10 of 1995 and on 23.11.2009 possession was delivered to the decree holders in the execution proceeding. It is further adverted that on 24.6.2010 the legal heirs of Gafuranechha Bibi dispossessed the plaintiffs of Title Suit No. 39 of 2012 by breaking open the padlock of the suit property. The defendants who are claiming under Gafuranechha Bibi contested the suit by filing written statement, denying all material allegations made in the plaint. According to the defendant no. 2 he has acquired the ownership of the property by purchase under a deed dated 28.02.2011 and the defendants have been possessing the suit property peacefully since purchase. The defendants prayed for dismissal of the suit.

6. Learned Trial Court after considering the evidence on record was pleased to pass a decree in favour of the plaintiff directing thereby the defendants to vacate and transfer of the possession of the suit property in favour of the plaintiffs within sixty days.
7. The defendants challenged the judgement of the learned Trial Court in Title Appeal No. 54 of 2013 and the learned First Appellate Court being the 3rd Court of Additional District Judge, Nadia Krishnanagar was pleased to set aside the judgement of the learned Trial Court, holding inter alia title of the defendants / appellants in the property in question.
8. Aggrieved by and dissatisfied with such judgement of learned First Appellate Court, the appeal under consideration has been filed and the second appeal was admitted to decide the following substantial questions of law;-
 1. Whether it was legally permissible for the lower appellate court to reverse the judgement and decree of the trial court on grounds extraneous to the suit ?
 2. Whether the absence of any challenge to the title of the plaintiffs by the defendants could disentitle the plaintiffs from instituting a suit for recovery of possession on the ground of illegal dispossession?
 3. Whether a decree-holder, who is armed with a decree for eviction and who has obtained possession of the decretal premises by execution, can be dispossessed from the same premises by the judgement-debtors without the judgement-debtors' asserting or establishing acquisition of any title to

the premises subsequent to the passing of the eviction decree.

9. Mr. Biswas, learned counsel appearing on behalf of the appellants submits that the suit property was owned by the predecessor-in-interest of the plaintiffs/appellants by purchase from Gafuranachha Bibi and he inducted one Kalu Mistry as tenant in respect of the suit property.
10. After his demise Gafuranachha Bibi took tenancy in respect of the property and started possessing the same.
11. Girindra Mohan Das filed a suit for eviction of Gafuranechha being T.S. No. 161 of 1979, obtained decree, put the said decree into execution being T. Execution Case No. 10 of 1995. The decree was satisfied and possession was recovered from the successors-in-interest of Gafuranechha Bibi, who passed away during the proceeding.
12. The possession was delivered to the plaintiffs on 23.11.2009. On 24.6.2010, the respondents / defendants who were the judgment debtors trespassed into suit property by breaking upon the padlocks of two suit rooms. Thus, the plaintiffs / appellants were compelled to file a suit by invoking the provision of Section 6 of Specific Relief Act. After thorough trial, learned Trial Court was pleased to pass a decree in favour of the plaintiffs / appellants.
13. The respondents preferred an appeal and learned First Appellate Court ignoring the statutory provision that no appeal is maintainable challenging the order passed in the proceeding under Section 6 of the Specific Relief Act accepted the appeal and thereby exceeded jurisdiction vested in the Court. It is an act of abuse of power.

14. According to Mr. Biswas, the impugned judgement passed by learned First Appellate Court in Title Appeal No. 54 / 2013 cannot be allowed to remain in force and is liable to be set aside.
15. Refuting such contention, Mr. Dash, learned counsel appearing on behalf of the respondents submits that the defendants / respondents have been possessing the property in question which they have acquired by purchase. They did not intrude into the property of the plaintiffs / appellants as alleged.
16. It is further submitted that the plaintiffs since failed to file a suit within six months from the date of alleged dispossession, the proceeding before the learned Trial Court cannot be considered to be a proceeding under Section 6 of the Specific Relief Act.
17. Upon perusal of record I find that it is the specific case of the plaintiffs / appellants that they were dispossessed on 24.6.2010 forcefully by the defendants / respondents and the suit was filed on 30.6.2010. Therefore, there is no reason to hold that the plaintiffs / appellants did not file the suit within six months from the date of dispossession as prescribed under the law.
18. From the attending facts of the case it is submitted that the suit was filed by the plaintiffs / appellants for recovery of possession. Section 6 of the Specific Relief Act, 1963 enunciates that if any person is dispossessed without his consent of an immovable property otherwise a in due process of law either the plaintiff or any person claiming under him may by suit recovered the possession notwithstanding the other title that may be set up in that suit.

19. Section 6 provides a summary remedy to a person while in possession of an immovable property, is ousted therefrom. The person so dispossessed has the liberty to pursue summary and speedy remedy for restoration of possession invoking the provision of Section 6 of the Specific Relief Act.
20. Though Mr. Dash in the defence argues that the defendants / respondents have acquired right, title, interest over the suit property and they have been possessing the same not as trespassers but such disputed question of title cannot be decided in a proceeding under Section 6 of the Specific Relief Act.
21. The persons claiming title over the property in suit may be at liberty to approach the appropriate Court under the appropriate law to decide the question of title. But it is no more *res integra* that peaceful possession of any person even if he does not have the title is to be protected from the trespassers under Section 6 of the Specific Relief Act without regard to the question of origin of possession.
22. The Hon'ble Apex Court in ***Mohd. Mehtab Khan and Others vs. Khushnuma Ibrahim Khan and Others*** reported in **(2013) 9 SCC 221** held:-

“16. 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.”

23. Sub-Section 3 of Section 6 of the **Specific Relief Act** says:-

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

(1) xxxx

(2) xxxx

(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) xxxx”

24. Since law does not permit any appeal to be preferred challenging the order passed in a proceeding under Section 6 of the Specific Relief Act, learned First Appellate Court could not have any reason or jurisdiction to entertain and accept the appeal.

25. The impugned judgement is but nullity and stands set aside.

26. The second appeal is thus accepted and allowed. Consequently the judgement and decree passed by the learned Trial Court stands restored.

27. Copy of the judgement and lower court record be sent down to the learned Trial Court for information and necessary action.

(SIDDHARTHA ROY CHOWDHURY, J.)