

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 2333/2015(O&M)

Date of decision: 31.05.2023.

Jeet Singh

.....Petitioner

Vs.

Harbhajan Singh

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rakesh Chopra, Advocate for the petitioner.

Nidhi Gupta, J.

Present revision petition has been filed by the defendant seeking setting aside of judgment and decree dated 22.4.2014 (Annexures P-1 and P-2) passed by Addl. Civil Judge (Senior Division) Fatehgarh Sahib whereby suit for possession filed by respondent-plaintiff under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') in respect of suit property as described in the head note of judgment (Annexure P-1), has been decreed against the petitioner/defendant.

2. Brief facts of the case are that suit property was owned and possessed by one Hazara Singh son of Partap Singh upto 11.9.1981. Thereafter, suit property was mortgaged in favour of the plaintiff vide registered mortgage deed dated 1.7.1982 for a consideration of Rs.3000/-. Admittedly, possession of the suit property was delivered to the plaintiff at the time of execution of agreement of mortgage. It is case of the plaintiff that he remained in peaceful and continuous physical possession of the suit

property up to 17.8.2009 when the plaintiff was forcibly dispossessed by the petitioner/defendant. In the suit property, even electric connection bearing account no. P35 GF35/0400-YX was in the name of plaintiff. It is plaintiff's case that however, after dispossession, petitioner/defendant illegally and forcibly got the electric meter installed in the suit property in his own name. Though a police complaint was filed in this respect by the plaintiff, however, it is averred that no action was taken by the authorities. It is in these circumstances that the respondent filed the suit under Section 6 of the Act.

3. Upon notice, petitioner/defendant appeared in the said suit and stated before the trial court that he was using the property. It was also submitted that Hazara Singh is real brother of father of the petitioner, and he had no connection with the suit property which was exclusively owned by the Balwant Singh; father of the petitioner/defendant.

4. On the basis of pleadings of the parties, ld. trial court vide order dated 21.5.2010 framed the following issues: -

“1- Whether plaintiff was in possession of the suit property? OPP

2- Whether plaintiff was dispossessed from the suit property by the defendant on 17.08.09 as alleged? OPP

3- If issue No.1 and 2 are decided in affirmative whether plaintiff is entitled to decree for possession U/S 6 of Specific Relief Act? OPP

4. Whether the plaintiff has no cause of action to file the present suit? OPD

5- Relief”.

5. Upon perusal of facts, pleadings and evidence adduced before it, the trial court decreed the suit with costs in favour of the respondent/plaintiff, vide judgment and decree dated 22.4.2014 (Annexure P-

1). By way of decree (Annexure P-2) it was directed that “*the suit of the*

plaintiff is decreed with costs. The defendant is directed to handover vacant possession of the suit property to the plaintiff failing which the plaintiff shall be at liberty to seek possession through aid of the execution agency.” Hence, the present revision petition.

6. It is vehemently submitted by the ld. counsel for the petitioner that under Section 6 of the Act, there are three requirements i.e. (a) plaintiff should be in possession of the suit property; (b) plaintiff should be dispossessed; and (c) civil suit should be filed within six months of dispossession.

7. It is further submitted that the plaintiff's case is only on the basis of mortgage deed. It is submitted that as per Section 68 of the Indian Evidence Act, 1872, the mortgage deed had to be proved by producing at least one witness. It is stated that however, in the present case plaintiff has not examined even one witness.

8. It is further submitted that suit property is in the name of the petitioner and therefore, the possession, as even the dispossession, of the respondent/plaintiff from the suit property is not proved. It is submitted that accordingly, civil suit filed by the respondent/plaintiff under Section 6 of the Act was not maintainable as it did not fulfil the three mandatory ingredients of the provisions.

9. It is further submitted that though respondent appeared as PW1, yet he could not tell the date, month or year of dispossession. It is submitted that accordingly, the suit of the respondent/ plaintiff could not have been decreed.

10. It is further submitted that the Id. trial court has failed to properly appreciate the evidence led by DW2 Rachpal Singh and DW3 Karnail Singh who proved the case of the petitioner and proved that plaintiff was never in possession of suit property.

11. In support, Id. counsel for the petitioner relies upon judgments of this Court in **Pritam Kaur v Ram Chander, Law Finder Doc Id # 266701; Ram Kumar v Subhash Chand, Law Finder Doc Id # 652171**; of Allahabad High Court in **Ram Ratan Misra and another v Smt. Bittan Kaur, Law Finder Doc Id # 155167**; and that of Karnataka High Court in **Syndicate Bank v M. Siyarudrappa (Deceased) by LRs., Law Finder Doc Id # 137043**.

12. No other argument has been advanced by the Id. counsel for the petitioner.

13. Heard Id. counsel for the petitioner.

14. Perusal of the record of the case shows that judgment and decree under challenge is dated 22.4.2014. Present revision petition was filed on 8.12.2014, however, notice has not yet been issued in the matter. Perusal of the Order Sheets show that after filing of the revision petition on 8.12.2014, the matter stood adjourned at the behest of the petitioner on one ground/ pretext or the other, on 4.8.2015, 12.10.2015, 1.2.2016, 9.5.2016, 31.5.2016, 21.11.2016, 8.8.2017, 26.9.2017, 14.5.2018, 30.11.2022, 22.2.2023, and on 24.5.2023; and notice has not yet been issued. It has further been stated by learned Counsel for the petitioner that at present the petitioner is in possession of the suit property.

15. Be that as it may, Section 6 of the Act stipulates 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 [through whom he has been in possession 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.”

16. Thus, as acknowledged by the ld. counsel for the petitioner there are three mandatory ingredients required u/s 6 of the Act:-

- (a) plaintiff should be in possession of the suit property;
- (b) plaintiff should be dispossessed; and
- (c) civil suit should be filed within six months of dispossession.

17. Perusal of the impugned judgment and decree reveals that there is clear finding of the ld. trial court, that the respondent/plaintiff was in possession of the suit property upto 17.8.2009 on which date the plaintiff was forcibly dispossessed from the suit property by the petitioner/defendant. Admittedly, the electricity connection installed in the premises was in the name of the respondent/plaintiff which was subsequently shifted in the name of the petitioner.

18. It is established position in law, that in a proceeding under Section 6 of the Act, ownership of the property is not the main criterion and what has to be established is the possession of the plaintiff over the suit property. In the present case, possession of the respondent over the suit property is established on record by way of mortgage deed Ex.P1, whereby said suit property was mortgaged in favour of the respondent/ plaintiff by Hazara Singh. In fact, even prior to the mortgage deed dated 1.7.1982, a registered agreement of mortgage was entered into between Hazara Singh and respondent/plaintiff on 11.9.1981. Therefore, even before the execution of the registered mortgage deed Ex.P1 dated 1.7.1982, Hazara Singh had also executed a written agreement of mortgage of the suit property in favour of the respondent/plaintiff on 11.9.1981 for which he had received Rs.1000/- in advance. Upon registration of the mortgage deed the remaining amount of Rs.2000/- was paid to Hazara Singh. As such, possession of the respondent over the suit property stands established.

19. As per deposition on oath of respondent/plaintiff, he was forcibly dispossessed from the suit property by the petitioner on 17.8.2009. Though the plaintiff was assiduously cross-examined by the defendant, however, nothing favorable could be extracted by the petitioner/ defendant to dislodge the case of the plaintiff. Case of the plaintiff was supported and corroborated by the evidence led by PW2 Avtar Singh who has affirmed the version put forth in the plaint. Version of Avtar Singh PW2 is reliable in view of the fact that he was stated to be related to both the plaintiff, as well as petitioner/defendant, as such there was no reason to doubt his testimony.

20. Relevant findings of the Id. trial court in this regard are contained in paras 5, 9 and 10 of the impugned order and are extracted hereinbelow: -

“5. During the course of evidence, plaintiff himself stepped into the witness box as PW1 and also got examined Avtar Singh as PW2. The plaintiff further proved on record mortgage deed as Ex.P1, agreement dated 11.09.1981 as Ex.P2, electricity bills as Ex.P3 to Ex.P7, receipt No.532 as Ex.P8, application dated 17.08.09 moved before SDO Gajju Khera as Ex.P9, application dated 24.09.09 moved before SSP Fatehgarh Sahib as Ex.P10. On the other hand the defendant himself stepped into the witness box as DW1 and further got examined Rachpal Singh as DW2, Karnail Singh as DW3. Defendant further proved on record copy of mortgage deed dated 26.08.2008 as Ex.D1 and electricity bill as Ex.D2 to Ex.D4”.

.....

“9.On the other hand the defendant has failed to prove his antecedent possession through the oral and documentary evidence adduced by him. In his examination-in-chief, he has assiduously relied upon mortgage deed Ex D1 but while facing the test of cross examination he has completely disowned the said document and has rather stated that he does not know as to who produced the said document. Even otherwise also it is noteworthy that Ex D1 pertains to property bearing khasra no.1521/48 which is chahi in nature (as mentioned on page no.6 of Ex DI) whereas in para 2 of his affidavit Ex DW1/A the defendant himself has come up with an affirmation that the suit property is within Lal Lakir of the village. Nowhere in his pleadings or during the cross

examination of the plaintiff, it has been stated or suggested by the defendant that the suit property bears khasra nos. or that it is agricultural property. As such it can be duly inferred that Ex D1 does not pertain to the suit property per contra the mortgage documents Ex P1 and Ex P2 produced by the plaintiff pertain to the suit property. Even the testimony of DW2 Rachpal Singh, and DW3 Karnail Singh does not exude credibility as they have outrightly stated in their cross examination that they are illiterate and do not know what is written in their respective affidavits. Both of them have deposed that the disputed site measures 75x60 feet. This measurement is in absolute variation to the pleadings because the suit of the plaintiff pertains to property measuring 24x14 feet only.

10. It can thus be construed that the evidence adduced by the plaintiff is worthy of much more credence than the shaky and inconsistent evidence adduced by the defendant. A strong preponderance of probabilities is thus raised in favour of the plaintiff as he has remained successful in discharging the required onus of proving his possession over the suit property upto 16.08.2009 as well as of proving the factum of dispossession at the hands of the defendant on 17.08.2009. As an upshot of the reasons cited in paras above, issues no.1 to 3 are decided in favour of the plaintiff and against the defendant”.

21. Admittedly, Civil Suit No. 311 of 10.10.2009 was filed by the respondent-plaintiff within six months of forcible dispossession on 17.8.2009 by the petitioner. Accordingly, from the above facts and uncontroverted findings on record, it stands established that all the requirements stipulated under Section 6 of the Act were fulfilled by the respondent in the present case. Though the veracity of the mortgage deed dated 1.7.1982 and the findings of the learned Trial Court have been very vehemently contested by the Ld.

Counsel for the petitioner/defendant, yet, Id. Counsel has shown nothing whatsoever from the Lower Court Records to dispute or disprove the above findings of the learned Trial Court. In my view, plaintiff has validly discharged the onus upon him to prove Issues No. 1 to 3; Whereas petitioner has failed to prove that plaintiff had no cause of action.

22. The scope of a proceeding u/s 6 of the Act has been conclusively adumbrated by the Hon'ble Supreme Court in **Sanjay Kumar Pandey v. Gulbahar Sheikh, (SC) : Law Finder Doc Id # 72837**, wherein it has been held as follows:

“4. A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.”

23. Accordingly, in my clear opinion, in view of the factual and legal position as noted above, there is no merit in the present revision petition. The judgments relied upon by the counsel for the petitioner are totally distinguishable and are not applicable in the facts and circumstances of the present case.

24. In view of the foregoing discussion, finding no merit in this revision petition the same is hereby, **dismissed**.

25. Application(s), if any, stand disposed of.

31.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No