

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR 428 – 2023 (O&M)

Date of decision : 20.1.2023

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Sunaina Devi

.....Petitioners

vs.

Mahinder Pal @ Babbu

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Pratula Sethi, Advocate for the petitioner.

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H. S. Madaan, J.

1. Under challenge in this revision petition is order dated 10.12.2021 passed by the Court of Civil Judge (Junior Division), Ludhiana, vide which an application under Section 6 of the Specific Relief Act, filed by the petitioner Sunaina Devi, who is plaintiff in the civil suit for restoration of possession of the suit property has been dismissed.

2. Briefly stated, facts of the case are that plaintiff – Sunaina Devi had filed a suit against defendant Mahinder Pal @ Babu seeking a decree for mandatory injunction directing the defendant to restore the electricity and water supply to the portion which is in possession of plaintiff as tenant under the defendant, besides seeking the relief of permanent injunction restraining the

defendant from interfering in peaceful possession of the plaintiff over the said portion of house No. 6834/3-D, Street No. 8, Mohal Singh Nagar, Near Maharaja Band, Ludhiana.

3. According to the plaintiff, she has been in possession of the portion of house in question as tenant under the defendant and defendant had been threatening to take possession of the said portion from her illegally and forcibly and on 12.8.2020, he with the help of several other persons dispossessed the plaintiff from the tenanted premises, throwing out her luggage and other house hold items belonging to the plaintiff on road and beating her up and her minor son badly. The matter was reported to the police. The defendant had disconnected the electricity supply to the tenanted portion in possession of the plaintiff and had removed the water tap therefrom.

4. Notice of the suit was given to the defendant, who put in appearance and filed written statement contesting the suit. During the course of proceedings, the plaintiff had filed an application under Section 6 of the Specific Relief Act, 1963, for restoration of possession on the allegations that the defendant has dispossessed her from the tenanted portion without due course of law on 21.8.2020 at 4.30 P.M., by breaking the lock of the suit property in absence of her and her children. Her luggage and other articles were thrown out. The matter was reported to the police. Therefore, the possession having been taken illegally and forcibly the the defendant, be got restored to her.

5. The application was resisted by the defendant contending that on 24.8.2021, the plaintiff was not in possession. The plaintiff

had already vacated the tenanted premises on 20.8.2020 and application has been filed on 10.1.2021 i.e. Beyond the period of six months. The defendant prayed for dismissal of the application.

6. After hearing the arguments, the Civil Judge (Junior Division), Ludhiana, vide impugned order dated 10.12.2021 had dismissed the application. The operative part of the order runs as follows :-

“ This Court is of the view that in the present case the plaintiff has got exparte ad-interim injunction in favour of herself vide order dated 24.08.2020 by the Ld. Predecessor Court. This application is filed U/s 6 of Specific Relief Act read with Section 151 CPC for restoration of possession of suit property. It is alleged by the plaintiff that after she obtained exparte ad-interim injunction, the defendant illegally and forcibly dispossessed the plaintiff from the suit property. Hence, the present application is filed for restoration of possession of the suit property. This Court is of the view that Sec 6 in the Specific Relief Act, 1963. Suit by person of immovable property:-

1. If any person is disposed 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 action 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.

It is a settled law that a separate suit is filed under Section 6 of Specific Relief Act. No application is maintainable under Section 6 of Specific Relief Act if the person is dispossessed without his consent. Hence the present application U/s 6 of Specific Relief Act read with Section 151 CPC is not maintainable and hereby dismissed.”

7. Feeling aggrieved, the plaintiff has approached this Court by way of filing the present revision petition.

8. I have heard learned counsel for the revision petitioner,

besides going through the record and I do not find any merit in the revision petition. Section 6 of the Specific Relief Act, 1963, provides that 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.

9. Here, instead of filing a separate suit, the plaintiff had filed an application for restoration of the possession. According to the petitioner – plaintiff, she had been dispossessed from the tenanted premises on 21.8.2020. The application for restoration of possession was filed on 10.8.2021, after about one year when the suit under Section 6 of the Specific Relief Act, 1963, would have been filed within 6 months from the date of dispossession.

10. The application was rightly declined by the trial Court vide impugned order and no fault can be found with the said order.

11. The revision petition is without any merit and the same stands dismissed accordingly.

20.1.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No