

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1243 of 2020 (O&M)

Reserved on : 12.01.2023

Date of Decision: 17.01.2023

Sukhwant Singh

....Petitioner

VERSUS

Lakhbir Singh @ Lakha & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sarbjit Singh, Advocate for the petitioner

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been preferred against the judgement and decree dated 03.08.2019 passed by the Trial Court dismissing the suit of the plaintiff-petitioner filed under Section 6 of the Specific Relief Act, 1963 along with consequential relief of permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit under Section 6 of the Specific Relief Act, 1963 for possession of House No.136, measuring 5 marla, situated at Govt. Colony Madh, Rayya, Teshil Baba Bakala, Distt. Amritsar inter alia pleading that he was the owner of the house in question in which one room and bathroom have been constructed and hand pump has also been installed and boundary wall constructed. It was further averred that the house in question has been allotted to schedule caste community and that the plaintiff-petitioner was residing in the house in question since the last more than 21 years and that the house in question was given to the plaintiff-petitioner by the Panchayat of Village Madh about 21 years ago. It was further averred that on 15.11.2015 all the defendant-respondents forcibly entered the house of the

plaintiff-petitioner and abused, insulted and beat the plaintiff-petitioner, his wife and children and they were forcibly thrown out from the house in question along with their articles. On the basis of these averments, a decree for possession and permanent injunction was sought.

The suit was contested by the defendant-respondent Nos.3 and 6 while the other defendant-respondents were proceeded against ex-parte. In the written statement filed by defendant-respondent Nos.3 and 6 objections regarding maintainability, estoppel, cause of action, etc. were raised. It was submitted that the house in question is situated at Village Madh (Colony) while the family of the plaintiff-petitioner was residing in main Village Madh and there is a distance of about one kilometer between the two villages i.e. Madh and Madh Colony. The suit property bears revenue record and is having Khasra No.101 (0-5) which was in the name of Dalip Singh s/o Puran Singh who was the father of defendant-respondent No.6 and after his death defendant-respondent No.6 being the only son of Dalip Singh was owner in possession of the suit property. It was further stated that earlier the plaintiff-petitioner had filed a civil suit for permanent injunction and had tried to grab the property of the defendant-respondent No.6 and in that suit the plaintiff-petitioner could not prove his ownership over the suit property and did not appear before the Court and the said suit was dismissed.

On the basis of the pleadings of the parties the Trial Court framed the following issues :

- 1) Whether the plaintiff is entitled to relief of Possession of the suit property U/S 6 of the Specific Relief Act ? OPP

- 2) Whether the plaintiff is entitled to permanent injunction, as prayed for ? OPP
- 3) Whether the suit of the plaintiff is maintainable ?
OPP
- 4) Whether the plaintiff has no cause of action to file the present suit ? OPD
- 5) Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
- 6) Whether the plaintiff has not come to the court with clean hands ? OPD
- 7) Relief.

On an appreciation of the evidence on the record the Trial Court vide judgement and decree dated 03.08.2019 dismissed the suit of the plaintiff-petitioner. The Trial Court inter-alia held that “*Jamabandi Ex.D1 shows that Dalip Singh father of defendant no.6 is owner in possession of disputed property measuring 0K-5M. Now position is clear that ownership of disputed is vested in Dalip Singh and resultantly Panchayat has no capacity to allot the disputed property to any other person under any scheme. Though plaintiff side examined some other witnesses including draftsman but testimonies of all these witnesses could not establish the possession of plaintiff over disputed property. Numerous facts regarding present residence of plaintiff and his family has come on record but court has no hitch to say that vague facts cannot establish the basic possession of plaintiff over disputed property which was very much required to be successful U/S 6 of Specific Relief Act*”. Aggrieved by the aforementioned

judgment and decree the plaintiff-petitioner has filed the present revision petition.

Learned counsel for the plaintiff-petitioner has contended that the Trial Court has erred in dismissing his suit and that the possession of the plaintiff-petitioner over the house in question stood fully proved by the evidence on the record.

Heard.

The scope of a suit filed under Section 6 of the Specific Relief Act, 1963 is limited. The Trial Court is required to hold summary proceedings in relation to lawful possession of the aggrieved plaintiff and his dispossession therefrom in an unlawful manner. It is only when both the factors are established that the Trial Court is competent to issue a decree in relation to restoration of possession in favour of the plaintiff. No appeal or review is maintainable against such decree as provided under sub-section (3) of Section 6 of the Specific Relief Act, 1963 though the High Court in exercise of revisional jurisdiction under Section 115 CPC may interfere if a strong case within the parameters laid down for invoking powers under Section 115 CPC is made out.

In the present case the Trial Court Court has given a firm finding of fact that the plaintiff-petitioner had been unable to establish his possession over the house in question. This finding was reached after appreciation of the oral and documentary evidence on the record. The counsel for the plaintiff-petitioner has been unable to convince this Court to hold to the contrary after embarking upon a re-appreciation of the evidence. In **Sanjay Kumar Pandey vs. Gulbahar Sheikh [(2004) 4 SCC 664]** the Supreme Court held that :

“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.”

The present revision petition has been filed under Article 227 of the Constitution of India and not under Section 115 CPC. Courts have limited power under Article 227 of the Constitution of India and it cannot be

invoked except for ensuring that the subordinate Court functions within its limits. Further, the High Court cannot exercise its power under Article 227 by interfering with a finding of fact and set aside the judgment of the Court below on merits. In the case of **State of Haryana vs. Manoj Kumar [(2010) 4 SCC 350]** it was inter-alia held :

“20. This Court again clearly reiterated the legal position in Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi [(1995) 6 SCC 576]. The Court again cautioned that: (SCC pp. 579-80, para 9)

“9. ... The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

21. A three-Judge Bench of this Court in Rena Drego v. Lalchand Soni [(1998) 3 SCC 341] again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

22. *In Virendra Kashinath Ravat v. Vinayak N. Joshi [(1999) 1 SCC 47] this Court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.*

23. *This Court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.”*

Consequently, this revision petition under Article 227 of the Constitution of India is dismissed. However, the plaintiff-petitioner is at liberty to institute a regular suit for declaration and/or possession in accordance with law, if so advised. Pending applications, if any, also stand disposed off.

17.01.2023
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO