

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 3899 of 2014

Sri Biswanath Singha

-Versus-

Smt. Sudevi Gupta & Ors.

**For the Petitioner : Mr. Rwilendra Banerjee,
Mr. Ritwik Pattanayak,
Mr. A. Roy Chowdhary.**

**For the Opposite Parties : Mr. Dipanjan Dutta,
Mr. Manomohan Basu,
Mr. Subhajit Chowdhury.**

BEFORE

HON'BLE JUSTICE PRASENJIT BISWAS

Date:- 09.01.2024

Prasenjit Biswas, J:-

1. The instant application under Article 227 of the Constitution of India is directed against the judgment and decree dated 9th September, 2014 passed by the learned Civil Judge (Senior Division) Jhargram, Paschim Mednipur in Title Suit No.47 of 2011.

2. The petitioner filed a suit under Section 6 of the Specific Relief Act for recovery of possession of a flat. The case made out by the petitioner in the plaint of the said suit in a nutshell runs thus.

3. Admittedly the suit flat belongs to the defendant No. 1 (Sudevi Gupta). There was a talk of sale in between the plaintiff and defendant No. 1 (since deceased) and she was agreed to sell the said flat to the petitioner at a consideration price of Rs. 5,15,000/-. After negotiation, the opposite parties/defendants had given liberty to the plaintiff/petitioner to use the scheduled flat on receipt of Rs. 1,15,000/- on the very first date of talk of sale. An agreement for sale was executed in between them on 08.03.2009 and this petitioner further gave Rs. 2,00,000 to the defendant No. 1 out of the total consideration money of Rs. 5,15,000/-. As per the said agreement the defendant No. 1 was obligated to supply the original deed of purchase to the petitioner/plaintiff by 24.03.2009 with a further stipulation that if it is delayed then the plaintiff/petitioner would be obligated to get the sale deed registered from the defendant No. 1 within one month of supply of the original deed of purchase.

4. The opposite parties/defendant No. 1 and 2 never supplied the original deed of purchase to the plaintiff/petitioner after necessary rectification as there was a manifest error which revealed from the certified copy of the same given to the petitioner by the opposite party no. 1. In the meantime, a suit was initiated by the defendants/opposite parties against this petitioner with a prayer for recovery of possession after evicting him from the said flat. In the said suit being O.S No. 88 of 2010 this petitioner entered his appearance and prayed for time for filing written statement. It is stated by the petitioner that on 13.04.2011 the defendants/opposite parties took the possession of the scheduled flat forcefully by breaking open the pad-lock taking advantage of the petitioner's temporary absence there from. This petitioner filed G.D. Entry

before the concerned police station for necessary help to restore his possession of flat but it was ended in vain and no fruitful result had come in view of such complaint. This petitioner also lodged an FIR being No. 226/11 before Jhargram P.S dated 14.08.2011 upon which a criminal proceeding has been started and a criminal case is still pending before the court of learned ACJM Jhargram.

5. Finding no other alternative this petitioner as a plaintiff filed a suit against the defendants/opposite parties with a prayer for recovery of possession in respect of the scheduled flat under Section 6 of the Specific Relief Act. In the said suit the defendants/opposite parties entered their appearances and filed written statement denying the possession of this petitioner in the scheduled flat. It is stated by the defendants that the plaintiff/petitioner failed to pay the balance consideration money within the stipulated period as per the agreement dated 19.02.2008 and thereafter, the defendants tried to contact with the plaintiff on several times and told him to pay the balance consideration money and to get the deed executed and registered. But the plaintiff expressed his inability to pay the balance consideration money. Thereafter all on a sudden the plaintiff appeared before the defendants with a request to extend the time for agreement for sale and pursuant to the request made by the plaintiff the defendants renewed the said agreement by extending the period from 08.03.2009 to 31.03.2009. Although the plaintiff promised to pay the balance consideration money within 31.03.2009 and get the deed registered but he did not pay the balance consideration money within the extended period of time i.e. 31.03.2009. Then the defendants served notice through their advocate requesting the plaintiff /

petitioner (herein) either to vacate the suit flat or to get the deed registered but in spite of receiving notice no step was taken by the plaintiff. Under these compelling circumstances the defendants filed a suit as a plaintiff against this petitioner for recovery of possession from the scheduled property. Thereafter at the intervention of the respected persons of the locality the plaintiff quit and vacated the possession of the flat in question to these opposite parties and then the defendant No. 1 on good faith withdrew the suit filed against this petitioner.

6. Learned Counsel on behalf of the petitioner submits that the learned Court below acted illegally and with material irregularity by dismissing the suit in spite of the fact that the plaintiff/petitioner (herein) has proved that he was put into possession of the suit premises by the opposite parties in pursuance of an agreement held in between him and defendant no.1. Learned Counsel further assailed that possession was handed over to this petitioner in the event of part-performance of the agreement for sale of the suit flat. It is denied that the status of the plaintiff was of a licensee as claimed by the defendants no(s). 1 and 2. It is further submitted by the learned Counsel appearing on behalf of the petitioner that the plaintiff was obligated to pay the rest amount as per agreement within 31.03.2009 but there are other stipulations such as the defendant No. 1 was also obligated to supply the deed of purchase to the plaintiff within 24.03.2009 after its necessary rectification and if the defendant No. 1 failed to supply the deed of purchase the date being 31.03.2009 shall have to be ignored and in that event the plaintiff would be saddled with an obligation to get the deed registered after making over the rest amount within

one month from the date of supply of the deed of purchase by the defendant No. 1.

7. It is argued by the learned Counsel on behalf of the petitioner that the object of Section 6 of the Specific Relief Act is to prevent person from taking law in their own hands however good the title he may have in as much as a lawful owner can be proceeded against even by a trespasser in peaceful possession if he is dispossessed by the former without his consent or otherwise than in due course of law.

8. Learned Counsel appearing on behalf of the opposite parties assailed that the petitioner expressed his inability to purchase the flat in question and delivered possession of the flat to these opposite parties voluntarily. It is further assailed that the petitioner lodged the complaint before the police station falsely and with a *malafide* intention and it would also be appeared from the enquiry report submitted by the police. It is stated by the opposite parties that the plaintiff filed the case under Section 6 of the Specific Relief Act on false allegation with a motive to harass these defendants and he is not entitled to get any relief as prayed for and accordingly there is no illegality or irregularity in the judgment and order passed by the learned Trial Court.

9. Section 6 of the Specific Relief Act entails that 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, then 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 set up in such suit.

2. No suit under this Section shall be brought :-

- a. after the expiry of 6 months from the date of dispossession;*
- 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/decreed 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.

10. Under Section 6 when a person is dispossessed without his consent from the immovable property without following the due course of law then either he or any person claiming through him may, by suit, recover possession thereof. Therefore, the essential ingredients are that any person must be dispossessed from immovable property without his consent and he must be dispossessed otherwise than in due course of law. Where these essentials are fulfilled then either he or any person claiming through him may file a suit to recover the possession. It is to be kept in mind that the plaintiff has to prove that he has judicial possession of the immovable property and defendant has taken possession of that immovable property without his consent. It may be noted that Section 6 covers only that case where the plaintiff is unlawfully dispossessed of immovable property. Another essential of Section 6 is that the plaintiff must be dispossessed without following procedure under law. Therefore, where the plaintiff is dispossessed without following law, he can file

a suit under this Section. The purpose behind Section 6 of the Act is to restrain a person from using force and to dispossess a person without his consent otherwise than in due course of law. In a suit under Section 6 of the Act the only question that has to be determined by the Court is whether the plaintiff was in possession of the disputed property and whether he had been illegally dispossessed there from on any date within 6 months prior to the filing of the suit. Section 6 postulates the existence of the plaintiff on the date of eviction, at least possessory title. That means that he should have judicial possession and he should not be mere trespasser squatting on the property, judicial possession in one is actually possession with an intention of maintaining himself in possession.

11. If a suit is brought under Section 6 of the Specific Relief Act, for recovery of possession no question of title can be raised or determined in that suit or in working out judgment. Therefore, the object of the Section is clear which discourages forcible dispossession and to enable the person dispossessed to recover possession by merely proving previous possession and wrongful dispossession without proving title but that is not his only remedy. He may, if he so chooses to bring a suit for possession on the basis of title but he cannot combine both the remedies in the same suit and cannot get a decree for possession even he fails to prove title. The object of Section 6 of the Specific Relief Act is not to settle disputes of title but to safeguard against any illegal or unlawful dispossession.

12. The learned Trial Judge after considering the evidences of the parties held that the plaintiff's possession was nothing but a mere permissive possession and he has no title to the suit property and also failed to

prove/establish his case by adducing oral and documentary evidences which he was required to prove and it was/is his bounden duty. The learned Trial Judge has failed to consider the true spirit of Section 6 of the Specific Relief Act which speaks that it is not necessary to consider the nature of the title of the parties. The Court while dealing with such a suit is to consider as to who was in possession of the suit property and whether he has been dispossessed without due course of law within a period of 6 months immediately before the suit. A suit under Section 6 of the Act is called a summary suit in as much as the enquiry in the suit under Section 6 is confined to find out the possession and dispossession within a period of 6 months from the date of institution of the suit ignoring the question of title. In the impugned judgment the learned Trial Court decided that the suit has been filed within the period of time as per requirement of the Section.

13. The defendant No. 1/opposite party No. 1 (since deceased) handed over the possession of the scheduled suit flat to this petitioner in pursuance of agreement held in between them. So, the defendant got the possession and was remained in possession in the said suit flat. It is claimed by the defendants/opposite parties that the petitioner handed over the possession of the flat in favour of them voluntarily due to his inability to purchase the same but from Exhibit 8 which is a certified copy of plaint in connection with O.S 88 of 2010 it appears that these opposite parties as plaintiffs filed a suit for eviction and recovery of khas possession against this petitioner but subsequently, it was withdrawn by him. It is the case of this petitioner that the opposite party took the possession of the scheduled flat forcefully which resulted his dispossession from the said property in question.

14. It is profitable to quote the observations of Hon'ble Apex Court in case of ***Krishna Ram Mahale Vs. Mrs. Shobha Venkat Rao*** reported in **(1989) 4 SCC 131** wherein Hon'ble Court observed *interalia* that:-

"It is well settled law in the country that where a person is in settled position of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law."

Thus, the dispossession complained of in an action under Section 6 of the said Act, must be without the consent of the person in possession thereof otherwise than in due course of law. If the dispossession is shown to be with the consent of the person dispossessed or if the dispossession is demonstrated to be in due course of law notwithstanding the lack of consent of the person dispossessed, the suit under Section 6 would fail.

15. The nature of the suit under Section 6 of the Act of 1963 can also be discerned from a reading of sub-Section 3 of Section 6 which stipulates that 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 meaning thereby judicial interference against an order or decree passed in a proceeding under Section 6 is kept at the minimum taking into consideration the nature of the suit. What is required, therefore, in a proceeding under Section 6 there are two factors that the person who has filed a suit was in possession in suit property and he has filed the suit within the period of 6 months from the date he has been dispossessed. The question of dispossession is must in proceeding under Section 6 as well as filing a proceeding under

Section 6 has to be within the period of 6 months from the date of dispossession. In other words what a plaintiff in a suit under Section 6 is required to do is that he has to prove that he was in possession of the suit property on the date of dispossession and that the suit was filed within the period of 6 months.

16. From a reading of Section 6(3) of the Act, it is clear that no appeal or review would lie not only from a decree but also from any order passed in a Section 6 suit. It is further profitable to quote the observation of the Hon'ble Apex Court in case of **Sanjay Kumar Pandey and others v. Gulbahar Sheikh and Others** reported in **(2004) 4 Supreme Court Cases 664** wherein the Apex Court has held as follows:

"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."

17. Therefore, from a reading of the above Judgments, it is evident that as against a decree passed in a suit filed under Section 6 of the Act, a revision under Section 115 of the Code of Civil Procedure is available to the unsuccessful party and the High Court exercising its revisional jurisdiction is only concerned with the legality/propriety of the exercise of jurisdiction and not appreciate the evidence. However, the revision before this Court has been filed invoking the superintending jurisdiction of this Court under Article 227 of the Constitution of India and not under Section 115 of the Code of Civil Procedure. There is no quarrel to the proposition that where an Act expressly bars a remedy by way of an appeal or otherwise, the superintending power of the High Court under Article 227 of the Constitution of India can be invoked. In the instant case Section 6 (3) of the Act has placed a bar to a further appeal or review. Therefore, the invocation Article 227 is in order.

18. Admittedly, the suit property belongs to Smt. Sudevi Gupta (since deceased)/ defendant no.1. It is the specific case of the plaintiff that after negotiation of talk of sale between the plaintiff and the defendant no.1, the defendant no. 1 took advance money on the very date of talk of sale i.e. on 14.08.2008 and on the date of the execution of written agreement for sale i.e.08.03.2009 possession of the flat in question was handed over to the

plaintiff. Exhibit-10 i.e. agreement for sale in between the parties are admitted. It appears from the second paragraph of page no.3 of the agreement for sale dated 08.03.2009 starts with the fact of giving possession of the suit flat by the defendant no.1. Defendant did not deny that the plaintiff was put in possession in respect of the case flat but as per their case it was permissive possession. Plaintiff contends as there were material differences in the copy of the deed dated 01.03.2008 and the copy supplied by the Ld. Advocate for the defendant, the sale deed could not be executed and registered.

19. It appears from the agreement for sale that there is no stipulation that the plaintiff would be saddled with an obligation if he fails to pay the rest consideration amount within the stipulated date as mentioned in the agreement to hand over the possession of the case flat to the defendant no.1. There is nothing in the record which shows that the possession of the plaintiff over the suit flat as of a permissive occupier. No document is produced relating to settlement in presence of some well wishers between the parties after filing of the suit being no. 88/2010 with prayer for eviction of the plaintiff in respect of the case property.

20. In the case in hand the plaintiff has not filed the suit with any relief by enforcing the agreement for sale dated 08.03.2009 rather he has only sought for recovery of possession by resorting the provision of section 6 of the Specific Relief Act. The agreement for sale should be used as collateral evidence and it shows that the plaintiff was in possession over the suit flat. From Exhibit 7 i.e. copy of G.D. Entry of Jhargram P.S. it appears that taking opportunity of temporary absence from the suit flat on 12/13.04.2011 the pad lock put by the plaintiff in the said flat was broken and another pad lock was put therein. It is

difficult to understand the finding of the trial court wherein it observed that the story of taking forceful possession of the flat cannot be accepted as the plaintiff did not disclose the names of the defendant in the complaint. It is quite understandable that the plaintiff was not the witness to the incident and as such, he did not mention the names of specific persons in the complaint. It is a fact that soon after the incident the defendant got the possession and withdrew the suit being no. 88 of 2010 pending the before the court of Civil Judge (Jr. Division), Jhargram.

21. Learned Trial Court observed that the possession of the plaintiff was nothing but a mere permissive possession and he has no title to the suit property. The plaintiff has no right over the suit property and is not entitled to get any relief as prayed for. A reading of the judgement of the learned trial court indicates that in coming to the findings recorded, the learned trial court took into account the pleaded case of the defendants that the possession of the plaintiff was permissive possession and he voluntarily handed over the case flat in favour of the defendants. It is difficult to agree with the view of the learned Trial Court as the suit filed under Section 6 of the Act, the plaintiff is bound to prove two main ingredients, namely (a) his possession of the suit property just prior to dispossession and (b) the factum of dispossession. The court should not touch upon the question of title as this is immaterial to a suit filed under Section 6 of the Act. The plaintiff proved those two essential ingredients and therefore learned Trial Court was wrong in dismissing the suit.

22. In the above context it can reasonably be presumed that other lock was put in the case flat after breaking the existing pad-lock of the suit flat and it has been done to get the forceful possession of the said property and thereafter

the defendants withdraw the suit being OS 88 of 2010 filed by them pending before the learned Trial Court.

23. So, there is no hesitation in my mind that the plaintiff/petitioner was in possession and was dispossessed from the suit flat immediately within 6 months from the date of presentation of the case before the Trial Court.

24. The learned Court below acted illegally and with material irregularities in passing the impugned judgment and order dated 09.09.2014 without appreciating the facts of the petitioner as well as pertinent law point involved in the case. Accordingly, the judgment and order passed by the learned Trial Court dated 09.09.2014 is hereby set aside.

25. The defendants/ opposite parties are directed to vacate the suit flat immediately.

26. Let the possession of the suit flat be handed over to the plaintiff/petitioner.

27. Accordingly, CO being No. 3899/14 is hereby allowed and disposed of.

28. There will be no order as to costs.

29. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)