

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**216****CR No.4516 of 2019****Reserved on : 08.02.2024****Date of Decision : 13.02.2024**

Ajay

....Petitioner

VERSUS

Atma Ram and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas S. Chawra, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition under Article 227 of the Constitution of India has been preferred against the judgment and decree dated 18.05.2016 passed by the Trial Court decreeing the suit of the plaintiff- respondents filed under Section 6 of the Specific Relief Act, 1963.

2. The brief facts relevant to the present *lis* are that the plaintiff- respondents approached the Court averring in the plaint that ancestor of the plaintiff-respondents namely, Sunder Lal son of Sita Ram, filed a suit for possession by way of partition titled as 'Sunder Lal vs. Bhagwati Prasad Etc.' which was partly decreed on 08.06.1999. Aggrieved by the same Sunder Lal preferred an appeal which was allowed and he was declared as owner to the extent of ½ share in the property. Thereafter, Sunder Lal filed an application under Order XX Rule 18(2) CPC for final partition of the properties wherein Mr. N.K. Joon, Advocate was appointed as Local Commissioner for suggesting the mode of partition qua the properties. The Local Commissioner submitted a detailed report along with a site plan

suggesting the mode of partition of the property. The application for final partition was accordingly decreed on 30.11.2007 by the Court concerned. Sunder Lal expired and his LRs filed an execution petition in the year 2008 for taking possession of the property allotted to them in final partition by the Court. The possession of the suit property was handed over to the plaintiff-respondents on 08.01.2012 and accordingly the counsel representing the plaintiff-respondents in the said execution petition withdrew the execution being fully satisfied. It is further the case that the defendant-petitioner herein forcibly and illegally dispossessed the plaintiff-respondents from the suit property on 31.10.2013 and that he had no concern whatsoever with the suit property in any manner. Upon notice the defendants herein filed their joint written statement raising the preliminary objections of maintainability, limitation, estoppel, mis-joinder and non-joinder of necessary parties. On merits it was contended that the defendant Nos.1 to 11 and defendant No.12 in the suit filed for possession by way of partition were declared owners to the extent of $1/4^{\text{th}}$ share each in the suit property. Even in the appeal the shares of defendant Nos.1 to 12 were not disturbed by the First Appellate Court. The filing of the application for passing of the final decree and appointment of the Local Commissioner was specifically denied by the defendants. It was further contended that the vendors namely, Bhagwati Parsad, Devaki Nandan, Rajbir and Pardeep, transferred their $1/2$ share in favour of the defendants vide agreement to sell dated 17.08.2001 and actual physical possession of the suit property was also handed over to them at the time of the agreement to sell and since the purchase of the property they have been in possession. On the basis of the pleadings the following issues were framed :

1. Whether the plaintiffs are in possession of the suit property mentioned in para no. 4 of the plaint on 08.01.2012 ? OPP
2. Whether the plaintiffs have been dispossessed by the defendants forcibly and illegally on 31.10.2013 from the suit property ? OPP
3. Whether the plaintiffs are entitled for decree of possession by directing the defendants to hand over the vacant possession of the suit property shown by letters ABCD ? OPP
4. Whether the plaintiffs have no locus standi to file the present suit ? OPD
5. Whether the suit is not maintainable in the present form ? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties ? OPD
7. Whether the plaintiffs have not come with clean hands before the Court ? OPD
8. Whether the plaintiffs have no cause of action to file the present suit ? OPD
9. Relief

3. The Trial Court decreed the suit vide the impugned judgment and decree dated 18.05.2016. Hence, the present revision petition.

4. Learned counsel for the defendant-petitioner would contend that the defendant-petitioner is the owner of the suit property in view of the agreement to sell dated 17.08.2001 and that the defendant-petitioner was in

possession as owner of the suit property and he had not dispossessed the plaintiff-respondents as alleged.

5. I have heard the learned counsel for the defendant-petitioner.

6. Learned counsel for the defendant-petitioner has been unable to show to this Court any sale deed in favour of the defendant-petitioner. The only reliance is on an agreement to sell dated 17.08.2001 which by itself would not pass any right, title or interest in the suit property to the defendant-petitioner. The Trial Court while decreeing the suit had held that the plaintiff-respondents had been able to prove that there was a suit which was filed by the ancestor of the plaintiff-respondents for partition in which a final decree for partition was passed on the basis of report of the Local Commissioner and the final partition was allowed on 30.11.2007. The plaintiff-respondents had proved the report and the site plan prepared by the Local Commissioner as Ex.P1 and Ex.P4 respectively. The boundaries and dimensions shown in the site plan (Ex. P4) were identical to the boundaries and dimensions of the suit property mentioned by the plaintiff-respondents in the plaint. The plea of the defendant-petitioner that his vendor had $\frac{1}{2}$ share in the suit property was found to be false and completely devoid of any merit. The Hon'ble Supreme Court in case of **Sanjay Kumar Pandey & Ors. vs. Gulbahar Sheikh & Ors. [2004 (4) SCC 664]** has held as under:

“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.”

7. In **ITC Ltd. vs. Adarsh Coop. Housing Society Ltd. [(2013) 10 SCC 169]** it was inter-alia held :

“9. Section 6 of the Specific Relief Act, 1963 under which provision of law the suit in question was filed by the respondent-plaintiff is in pari materia with Section 9 of the 1877 Act. A bare reading of the provisions contained in Section 6 of the 1963 Act would go to show that a person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him recover such possession by filing

a suit. In such a suit, the entitlement of the plaintiff to recover possession of property from which he claims to have been illegally dispossessed has to be adjudicated independently of the question of title that may be set up by the defendant in such a suit. In fact, in a suit under Section 6, the only question that has to be determined by the Court is: whether the plaintiff was in possession of the disputed property and he had been illegally dispossessed therefrom on any date within six months prior to the filing of the suit? This is because Section 6(2) prescribes a period of six months from the date of dispossession as the outer limit for filing of a suit. As the question of possession and illegal dispossession therefrom is the only issue germane to a suit under Section 6, a proceeding thereunder, naturally, would partake the character of a summary proceeding against which the remedy by way of appeal or review has been specifically excluded by sub-section (3) of Section 6. Sub-section (4) also makes it clear that an unsuccessful litigant in a suit under Section 6 would have the option of filing a fresh suit for recovery of possession on the basis of title, if any.

It was further held that “Though Section 6(3) of the 1963 Act bars the remedy of appeal and review, a small window, by way of a revision, was kept open by the legislature possibly to enable the High Court to have a second look in the matter in an exceptional situation”.

8. The present revision petition has been filed under Article 227 of the Constitution of India and not under Section 115 CPC. The Courts have limited powers under Article 227 of the Constitution of India and it cannot be invoked except for ensuring that the subordinate Courts function within their limits. Further, the High Court in exercise of powers under Article 227 of the Constitution of India cannot interfere with the finding of fact and set aside the judgment of the Trial Court on merits. The present is not an exceptional case warranting any interference by this Court.

9. Consequently, the present revision petition being devoid of any merit is dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

13.02.2024

jk

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