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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 16th October, 2024***

+ CM(M) 97/2024
ATAM PRAKASH KAUSHIK THR LRS

.....Petitioner

Through: Mr. Raman Kapoor, Sr. Advocate
with Mr. Vinay Kant Singh and Mr.
Aman Kaushik, Advocates.

versus

AMIT KUMAR KHATTARRespondent

Through: Mr. Arvind Dhingra, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 2826/2024 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 97/2024

1. Respondent herein i.e. Mr. Amit Kumar Khattar had filed a suit under Section 6 of Specific Relief Act, 1963 against four persons i.e. (i) Atam Prakash, (ii) Sanjay Pasrija, (iii) Ram Kumar and (iv) Manoj Kumar Khattar.
2. According to the averments made in the plaint, plaintiff Mr. Amit Kumar Khattar and his brother Mr. Manoj Kumar (defendant No.4) were joint tenants in a shop situated at Kucha Natwa, Chandni Chowk, Delhi.
3. According to plaintiff, the tenancy was protected under *Delhi Rent Control Act* and the tenancy was never terminated and they never surrendered the tenancy in favour of landlord or in favour of anyone else.
4. According to plaintiff, on 9th April, 2018, it was learnt that defendant Nos. 1, 2 and 3, in an illegal and clandestine manner, removed the locks as



well as the goods belonging to the plaintiff from the suit shop and thus trespassed into the shop, unlawfully.

5. Such action resulted in the filing of the above said suit.

6. The suit was resisted and a joint written statement was filed by defendant Nos. 1, 2 and 3 and in such written statement, it was denied that the plaintiff was a joint tenant, while also supplementing that the possession had been rather given back by the defendant No. 4 (brother of the plaintiff) vide surrender deed dated 2nd April, 2018. It was also denied that the plaintiff was in joint control and possession of the suit premises along with his brother and was running any business from such suit premises or for that matter that the rent was being regularly paid by him.

7. During trial, plaintiff entered into witness box.

8. However, from the side of defendants, defendant No.1 Mr. Atam Prakash did not enter into witness box but his co-defendant Mr. Ram Kumar (defendant No.3) entered into witness box. He was duly examined and discharged and on the basis of statement made by counsel of defendants No.1, 2 & 3 on 23rd September, 2021, DE was closed and the case was fixed for final arguments.

9. Mr. Atam Prakash (defendant No.1) died on 23rd April, 2022.

10. Thereafter, his LRs were brought on record. However, even before their formal impleadment, such LRs moved an application under Order VI Rule 17 CPC praying therein that they may be permitted to amend written statement. They also prayed to lead evidence in terms of Order XVIII Rule 17 CPC.

11. Such request has been declined vide order dated 22nd December, 2023 and this is how the present petition under Article 227 of Constitution



of India has been filed.

12. Since the brief background of the entire case was necessary to decide the above said issue, this Court has, *albeit* briefly, noted the averments made in pleadings, germane for the present limited purpose.

13. As noted above, the suit has been filed under Section 6 of Specific Relief Act, 1963.

14. Section 6 of Specific Relief Act, 1963 reads 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.”

15. It is, thus, very much obvious from the bare contents of the aforesaid Section that in any such suit, the only question which is to be determined by the Court is whether the plaintiff was in possession of the disputed property or not and whether he has been illegally dispossessed by anyone or not. Such suit has to be filed before the expiry of six months, from the date of alleged dispossession.



16. The purpose behind aforesaid provision is to restrain a person from using force or to dispossess anyone without his consent, otherwise then in due course of law. It is a summary procedure and if the ingredients are proved, the plaintiff concerned can be put back into possession and, evidently, the aspect of title does not come into play at all.

17. Reference be made to *ITC Ltd. v. Adarsh Coop. Housing Society Ltd.*, (2013) 10 SCC 169. Relevant paras of said judgment read as under:-

“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.

10. In fact, the above view has found expression in several pronouncements of this Court of which reference may be made to the decisions in *Lallu Yeshwant Singh v. Rao Jagdish Singh* [AIR 1968 SC 620], *Krishna Ram Mahale v. Shobha Venkat Rao* [(1989) 4 SCC 131] and *Sanjay Kumar Pandey v. Gulbahar Sheikh* [(2004) 4 SCC 664]. In fact, para 4 of this Court's



judgment passed in Sanjay Kumar Pandey [(2004) 4 SCC 664] may be a useful reiteration of the law in this regard. The same is, therefore, extracted hereinbelow:

“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.”

18. Here, as per the averments made in the plaint, though the plaintiff claimed himself to be *joint tenant* along with his brother but he has, in no uncertain terms, claimed that he was dispossessed by defendant Nos.1, 2 and 3 in an illegal manner on 09.04.2018 and the suit has also been filed within the stipulated period of said dispossession.

19. As noted above, when the joint written statement was filed by all the above said three defendants, they claimed that the brother of the plaintiff had surrendered the tenancy in favour of defendant No.1 on 02.04.2018.

20. These defendants have also strongly relied upon *Surrender Deed* dated 02.04.2018.

21. Fact remains that such *Surrender Deed* does not contain signature of



the plaintiff and plaintiff has also disputed the same.

22. Interestingly, the brother of the plaintiff (defendant No.4) is not traceable since 08.04.2018 and plaintiff apprehends that he has colluded with the other defendants.

23. By virtue of moving an application under Order VI Rule 17 CPC, the LR's of deceased defendant No.1 want to introduce a new fact.

24. According to them, the property in question was never let out by Sh. Atam Prakash Kaushik but it was let out by *Kaushik Family Trust* and, therefore, the plaintiff is tenant of *Kaushik Family Trust* and, therefore, a preliminary objection is sought to be raised by incorporating such amendment.

25. By moving another application under Order XVIII Rule 17 CPC, permission has been sought to lead evidence to the above said effect. It is claimed that there were certain documents on record already which indicated that the landlord was *Kaushik Family Trust* but these documents could not be exhibited and, therefore, it was prayed that permission may be granted to LR's of defendant No.1 to lead evidence to that effect.

26. The case is already at the stage of final arguments and the above said legal representatives have merely stepped into the shoes of deceased defendant No.1. It has to be assumed that they do not have any interest adverse or contrary to the plea taken by the original defendants. Sh. Atam Prakash Kaushik, never claimed any such thing when the written statement was filed by him along with other defendants. It was never mentioned in the written statement that the landlord was trust. For the reasons best known to him, he never entered into witness box and did not make reference to the alleged documents which, as alleged, indicated that the landlord was said



trust.

27. Moreover, it hardly is of any concern as to who is the landlord.

28. It's a case of dispossession under Section 6 of the Specific Relief Act, 1963 and the alleged dispossession can be anyone, including a stranger.

29. As already noticed above, the case of the plaintiff is very clear and unambiguous.

30. Even if it is assumed for a moment that the tenancy was created by such trust, fact remains that Section 6 of the Specific Relief Act, 1963 comes into play when any person is dispossessed otherwise than in due course of law and, in the case in hand, according to plaintiff, he was dispossessed by defendant Nos.1, 2 and 3 and, therefore, even otherwise, the plea or the averments, which are now being sought to be incorporated, are not necessary herein. If the trust is of the view that it is the landlord of the suit shop, it can always file independent suit to establish its such right over the suit property and to also recover possession thereof, in case the possession is restored to the plaintiff in the suit in hand.

31. Learned counsel for the petitioner/LRs of deceased defendant No.1 has relied upon *Sumtibai & Others vs. Paras Finance Co. Mankanwar*: AIR 2007 Supreme Court 3166 and contends that any such impleaded legal representative can also be permitted to file additional written statement. However, in that case, the application was moved by them under Order XXII Rule 4(2) CPC read with Order I Rule 10 CPC and they had sought permission to file additional written statement. There is nothing in that judgment which may indicate that any such additional written statement sought to be filed by such legal representatives was inconsistent to the stand taken by their predecessor-in-interest.



32. The case is already at the stage of final arguments and unless cogent reason is supplied or some exceptional exigency is pleaded, no such amendment should be permitted at such a belated stage. As regards permission to lead evidence, the learned Trial Court has not committed any error in rejecting the above said application as well.

33. During his lifetime, defendant No.1 Sh. Atam Prakash Kaushik never thought of entering into witness box.

34. Moreover, the LRs of defendant merely want to lead evidence to show that the landlord of the suit property is *Kaushik Family Trust* and not defendant No.1. In the suit in hand, the Court is not required to answer the above said aspect of relationship of landlord and tenant between the parties and, for that matter, as to who was the landlord.

35. As noted already, it is a case of dispossession and the alleged dispossession is by defendant Nos.1, 2 and 3 and if the plaintiff is able to prove that he had been dispossessed by them illegally, the plaintiff becomes entitled to recover back such possession irrespective of the fact that the actual landlord might be the trust. Powers under Order XVIII Rule 17 CPC need to be exercised only for seeking elucidation and clarification, which may assist the Court in rendering justice and in view of above discussion, there is no compelling reason to permit legal representatives of deceased defendant No.1 to enter into witness box under Order XVIII Rule 17 CPC either.

36. The petition is, accordingly, dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 16, 2024/ss/st