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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 7th November, 2024+ C.R.P. 242/2019

HAZI ACCHEY MIAN & ANR

.....Petitioners

Through: Mr. Sunil Satyarthi, Ms. Amita Saxena and Ms. Archisha Satyarthi, Advocates with Petitioner in person.

versus

MOHD SHAHID & ORS

.....Respondents

Through: Mr. D K Singh, Mr. Pankaj Chouhan Singh, Mr. Avtar Singh Chouhan and Mr. Atak Kumar, Advocates.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)****CM APPL. 49173/2019 (delay)**

1. An Application under Section 5 of the *Limitation Act, 1963* read with Section 151 of the *Code of Civil Procedure, 1908* ('CPC' hereinafter), has been filed on behalf of the Petitioners, for condonation of delay of 305 days in filing the accompanying Civil Petition.

2. For the reasons stated in the Application and in the interest of justice, the delay of 305 days in filing the accompanying Revision Petition, is condoned. The Application is allowed.

3. The Application is disposed of accordingly.

CM APPL. 26006/2022 (for early hearing of the Case)

4. An Application under Section 151 of CPC, has been filed on behalf of



the Petitioners, for early hearing of the accompanying Revision Petition.

5. For the reasons stated in the Application, the early hearing of the accompanying Revision Petition is allowed.

6. The Application is disposed of accordingly.

C.R.P. 242/2019

7. The matter is taken up today with the consent of the parties. The Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (*'CPC' hereinafter*) has been filed on behalf of the Plaintiff/Petitioner *vide* which the learned Civil Judge dismissed the *Suit under Section 6 Specific Relief Act, 1963 for Possession and Declaration, Mandatory Injunction, Damages/Mesne Profits*. An Appeal was preferred before the learned ADJ who dismissed it as not maintainable, *vide* Judgment dated 20.07.2019.

8. ***Briefly stated***, the Plaintiff had filed a Suit under Section 6 of the *Specific Relief Act, 1963* wherein it was asserted that Defendant Nos. 1 and 2 are the cousins of Plaintiff No. 1 and nephew of Plaintiff No. 2. It was claimed that the Property No. 278 (old No. 48), Khureji Khas, Delhi was the ancestral property of the Plaintiff, which had been adversely possessed, occupied, and acquired by Late Sh. Habib Ahmad, father of Plaintiff No. 1 and husband of Plaintiff No. 2, about 50 years back. Sh. Habib Ahmad expired about 10 years back. During his lifetime, he orally permitted his brother, Sh. Rafiq Ahmad, to live in a portion of the property in question measuring 50 sq. yards out of love and affection, without charging any user occupation/license-fee with a condition that he would vacate the premises as and when required or demanded by him. The rest of the portion of the aforesaid property measuring 150 sq. yards were in the possession of Late Sh. Habib Ahmad and his family including the Plaintiff, who had been



residing peacefully to the exclusion of all others. Out of this portion of 150 sq. yards, area of about 50 sq. yards was let out to *M/s Om Bakery* in the year 1979-80 by Late Sh. Habib Ahmad, which was vacated a few years back and its vacant possession was handed over to the Plaintiffs.

9. After the demise of Sh. Rafiq Ahmad, the father of the Defendant Nos. 1 and 2, they along with their mother, Smt. Hasmi Begum and other brothers and sisters, came to reside in the licensed portion to which no Objection was taken by the Plaintiffs because of their cordial relationship.

10. In November, 2007, the Plaintiff demanded the possession of the Suit Property from the defendant Nos. 1 and 2 since their family had extended and they needed to extend the portion of the use of the family of the Plaintiffs. The Defendants agreed reluctantly and sought time to shift to their own property by December, 2007 but they again sought further extension of time since the property was being renovated.

11. In the meanwhile, Plaintiff No. 1 met with a serious road accident at Meerut (UP) on 07.12.2007 and the Defendants taking benefit and undue advantage of the accident and the pre-occupation of other family members, conspired together along with the mother, Smt. Hasmi Begum and parted with the possession of the Suit Property, to some third person by keeping the Plaintiffs in dark.

12. The Plaintiffs came to know about the *mala fide* intention of the Defendants from some neighbour and local estate agent. The Plaintiffs asked the Defendants for vacant possession of the Suit Property but the Defendants assured that these were all rumours and they were not parting with the possession in favour of third party. In the end of March, 2008, the Plaintiffs came to know that the Defendants have received an advance amount from



Defendant No. 3, for transferring the possession of the Suit Property. The Plaintiffs issued a Legal Notice dated 24.03.2008 on Defendant No. 1 to 3 despite which the Defendants indulged in the fabricated and void Sale Deed, which is liable to be cancelled.

13. On 10.05.2008, the Plaintiffs found that the Defendant Nos. 1 and 2 had started removing their articles and were shifting to their own house. On 20.05.2008, the Plaintiffs were shocked to find that Sh. Nasrudin and his wife, Smt. Mst. Rehana/Defendant Nos. 3 and 4 respectively, present in the Suit Property in which they had tress-passed illegally even though the Suit Property belonged to the Plaintiffs and their family members. It is claimed that they had been dispossessed illegally on 20.05.2008 for which a Complaint was made in the Police for restoration of the possession but the Police being in collusion with the Respondents, did not take any action on the ground that it was a Civil dispute. The Plaintiffs thus, filed the Suit for under Section 6 of the *Specific Relief Act, 1963* for Possession, Mandatory Injunction, Declaration and Mesne Profits against the Defendants.

14. ***The Suit was contested by the Defendant Nos. 1 and 2, who in their Written Statement*** took the *preliminary objections* that the Plaintiffs had no *locus standi* to file the present Suit and had concealed the material facts that there was no cause of action as the Plaintiffs had no personal right title and interest in the Suit Property. It was further claimed that since there is no dispossession, the Suit under Section 6 of the *Specific Relief Act, 1963*, is not maintainable.

15. *On merits*, it was explained that Rafiq Ahmed, father of the Defendant Nos. 1 and 2 and Sh. Habib Ahmad, father of the Plaintiffs, were the co-sharers of the Property in question admeasuring 200 sq. yards. They both



were co-owners of 100 sq. yards each. The Suit Property being an ancestral property, was divided in two equal shares between the father of the Plaintiffs and the Defendants. It was further claimed that the Defendant Nos. 1 and 2 have sold their share of the Suit Property i.e. 100 sq. yards to Defendant No. 4 on 21.01.2008 *vide* Registered Sale Deed and Defendant No. 4 along with his wife, Defendant No. 3, are now living in the Suit Property.

16. It was further explained that the father of the Defendant Nos. 1 and 2 had executed a *Will* dated 02.09.1997 in favour of Sh. Anees Ahmed (elder brother of the Defendant Nos. 1 and 2), Defendant Nos. 1 and 2, his daughter, Ms. Shama Praveen and wife Mst. Hashmi Begum in respect of the property in question. The Defendant Nos.1 and 2 and Ms. Shama Praveen executed a *Relinquishment Deed* dated 21.11.2007, in favour of the mother, Smt. Hashmi Begum and the elder brothers whereby they both became the absolute owner of the Suit Property. Smt. Hashmi Begum executed a Gift Deed along with the Affidavit of the Defendant Nos. 1 and 2, in respect of the 50 sq. yards each in the aforesaid Suit Property by virtue of which they became the exclusive owner and in possession of 50 sq. yards each. The Defendant No. 2 had let out the ground floor portion ad measuring 50 sq. yards to Sh. Taslim Ahmed in the year 2004. The Defendant Nos. 1 and 2 denied that they were in permissive occupation or that their license has been terminated by the Plaintiffs or that the Defendant Nos. 3 and 4 had forcibly entered into the Suit Property.

17. ***The Defendant Nos. 3 and 4***, in their ***Written Statement*** have reaffirmed the defence as taken by the Defendant Nos. 1 and 2.

18. From the pleadings of the parties, the following issues were framed:

1. *Whether the Petitioner is entitled to the relief of*



possession? OPP

2. *Whether the Petitioner is entitled to the relief of declaration as prayed for? OPP*
3. *Whether the Petitioner is entitled to the relief of mandatory injunction? OPP*
4. *Whether the Petitioner is entitled to the damages and mesne profits? OPP*
5. *Whether the present suit has not been properly valued for the purpose of court fees and jurisdiction?*
6. *Relief.*

19. *PW-1 is the Plaintiff, Mr. Hazi Acchey Mian*, who tendered his Evidence by way of Affidavit, Ex.PW-1/A. He produced the various documents having his residential address, which are Ex.PW-1/1 to Ex.PW-1/11. The Legal Notice is Ex.PW-1/12.

20. *PW-2, Mr. Rakesh Kumar*, in his affidavit of evidence, Ex.PW-2/1 corroborated the testimony of PW-1 and proved the receipts of Sales Tax Office and Income Tax Office, Ex.PW-2/1 to Ex.PW-2/15.

21. *DW-1 Mohd. Shahid*, the Defendant, tendered his Evidence by way of Affidavit, Ex.DW-1/1. He also proved the documents Ex.DW-1/D1 till Ex.DW1/K, in support of his assertions.

22. *DW-2 Mohd. Javed, Defendant No.* led his evidence by way of Affidavit, Ex.DW-2/1. DW-2 proved the House-Tax receipts, Mark D-1 to Mark D2 electricity bills, Ex.DW1/C1 to DW1/C9. He also proved the Relinquishment Deed PW1/Y Mark A, Gift deed DW1/F, Affidavits as Ex.DW-1/G. He also proved the Gift Deed, Ex.DW-1/H. The Affidavit,



Ex.DW-1/I and Sale Deeds along with the General Power of Attorney dated 22.11.2007, Ex.DW-1/J and Ex. DW-1/K, which were executed by Smt. Hashmi Begum in his favour and the GPA dated 02.11.2007, Ex.DW-5/A which was executed by Smt. Hashmi Begum in favour of Mr. Mohd. Shahid.

23. DW-3, *Mr. Nazar Mohammad* tendered his evidence by way of Affidavit Ex.DW-3/A.

24. DW-4, *Mr. Anjar Ahmad* tendered his evidence by way of Affidavit Ex.DW-4/A.

25. The learned Trial Court dismissed declined to grant the Relief of *Declaration, Mandatory Injunction and Damages* by making a reference to *Nair Service Society Ltd. vs. Rev. Father K.C. Alexander and Ors.*, AIR 1968 SC 1165 wherein it was observed that the proceedings under Section 6 embodies a summary remedy, intended solely for restoration of possession of Plaintiff and is intended to secure swift restitution, leaving the determination of title to regular proceedings. Similarly, it was held in *Amur Singh vs. Ghanshyam*, AIR 1998 RAJASTHAN 333, wherein it was observed that Section 6 must be construed strictly. When the Section envisions no other relief than recovery of possession, the other reliefs cannot be read into the language. Mesne Profits cannot be claimed as a circumstantial relief in a Suit under Section 6 of the *Specific Relief Act, 1963*.

26. Similar observations were made in *Dina Nath Pandey and Ors. vs. Adya Pandey*, 2017(3) CLJ 114 Del. (Delhi High Court) and *Sri Niwas Gupta vs. Surender Kumar*, 2016 (4) CLJ 490 Del. The Relief of Declaration, Mandatory Injunction, Damages and Mesne Profits were, therefore, rejected at the threshold.



27. *Regarding Issue No. 5*, about proper valuation of the Suit for the purpose of Court fees and jurisdiction, it was held that no evidence had been led by the Defendants, to suggest that the market value of the Suit Property was more than Rs.50,000/- on the date of institution of the Suit. This Issue was, therefore, decided in favour of the Plaintiff.

28. *The main Issue No. 1 was regarding the entitlement of the Plaintiff, for Possession.* The learned Civil Judge observed that neither party i.e. the Plaintiff or the Defendants No.1&2, had any Sale Deed of the aforesaid property. Moreover, the question of title was immaterial for adjudication the issue of possession in the present Suit. It was observed that the onus was on the Plaintiff, to prove that he was in possession of the Suit Property and that the Suit had been filed within six months of the dispossession. Reference was made to the Cross-Examination of PW-1 wherein he had stated that Smt. Hashmi Begum along with the Defendant Nos. 1 and 2, handed over of the Suit Property to him on 10.05.2008; however, he nowhere stated in his Plaint as well as his examination-in-chief, that it was vacant physical possession that was handed over to them before or on 10.05.2008. According to the averments made in the Plaint on 10.05.2008, the Plaintiff found Defendant Nos. 1 and 2 started removing their household from their portion on the plea that they were shifting to their own house i.e. the present address of the Defendants and assured that after its complete vacation, they shall hand over the vacant possession to the Plaintiff.

29. The deposition of PW-1, Mr. Hazi Acchey Mian that he was handed over the possession of the Suit Property by Defendant Nos. 1 and 2, on 10.05.2008 was not supported by his own pleadings. There was no evidence to suggest that the actual physical possession of the Suit Property, was



handed over on 10.05.2008 or thereafter.

30. Thus, it was concluded that except the oral testimony of PW-1, the Plaintiff miserably failed to prove that he was in possession of the property, six months prior to the institution of the Suit. The documents i.e. the House-tax assessment of MCD, the Letter by SDM Ex.PW-1/4, copy of objection letter to House-Tax Department, Ex.PW-1/5, copy of summons Ex.PW-1/6, copy of notice by MCD, Ex.PW-1/7, copy of MCD receipt of house tax Ex.PW-1/8, copy of issuance certificate dated 30.04.1965 of controlled cement bags by Government for construction of suit property, Ex.PW-1/9, were all in the name of Late Habib Ahmad. None of these documents corroborated the physical possession of the Plaintiff.

31 The Plaintiff claimed that he had let out portion of 50 sq. yds of Suit Property, to *M/s Omkar Bakery* in the year 1979-80, which was vacated by the tenant few years back and peaceful possession was handed over to him.

32. PW-2, Mr. Rakesh Kumar son of the proprietor of *M/s Omkar Bakery*, was relied upon by the Plaintiff, but the Court concluded that even his testimony failed to prove the physical possession even over 50 sq. yards of the Suit Property, since there was no Rent Agreement produced by the Plaintiff, to show that he had ever given 50 sq. yards on rent to *M/s Omkar Bakery*. Furthermore, the Plaintiff failed to demonstrate in the Plaint as to how, the Defendant Nos. 3 and 4 dispossessed them from 50 sq. yards portion, which was earlier in the possession of Defendant NNo.1&2 as claimed by them. The learned Civil Judge thus, concluded that the Plaintiff had miserably failed to prove his possession of the Suit Property from which he was allegedly illegally dispossessed on 20.05.2008. Hence, the Suit for Possession under Section 6 of the *Specific Relief Act*, 1963 was dismissed.



33. The Plaintiff had preferred an Appeal before the learned ADJ, who dismissed the Appeal, as being not maintainable. Thereafter, the present Revision Petition has been filed against the impugned Judgement and Decree dated 27.07.2018 of learned Civil Judge.

34. Insofar as the reliefs in regard to the damages, mesne profits, declaration and injunction are concerned, it is well settled that the said reliefs cannot be claimed in a Suit for Possession under Section 6 of the Specific Relief Act, 1963. This Section is intended for prompt restoration of possession to a person, who has been illegally dispossessed without due process of law. Such person is entitled to be put in possession without any further ado and without considering the title of such person. Therefore, the relief of Damages, etc., has been rightly declined to the Plaintiff.

35. The *only moot question* is whether the plaintiff was in possession of the Suit Property and has been illegally dispossessed on 20.05.2008. As per the testimony of PW-1, Mr. Hazi Acchey Mian, the Plaintiff, the property in question originally measured 200 sq. yards and was the ancestral property occupied by his late father, Sh. Habib Ahmad, about 50 years back. To corroborate, he proved the house-tax assessment receipts of MCD, in favour of his late father, Sh. Habib Ahmad, as Ex.PW-1/2 and the house-tax receipt as Ex.PW-1/3, Letter of SDM, Ex.PW-1/4 and the other documents pertaining to the MCD as Ex.PW-1/5 to Ex.PW-1/8.

36. According to him, his father expired about 10 years back prior to filing of the Suit, which was filed in May, 2008. He during his lifetime, permitted his brother, Mr. Rafiq Ahmad i.e. the father of the Defendant Nos. 1 and 2, to live in the portion of the aforesaid Suit Property measuring about 50 sq. yards, out of love and affection without charging any rent or user



charges. The Plaintiff and his family continued to be in possession of about 150 sq. yards where they were residing peacefully. Out of this 150 sq. yards, 50 sq. yards were let out to *M/s Om Bakery* in the year 1979-80, which they eventually vacated and handed over the possession to the Plaintiff.

37. The Plaintiff further deposed that upon the death of Mr. Rafiq Ahmed, the Defendant Nos. 1 and 2 along with their mother, Smt. Hashmi Begum and other brothers and sisters, started residing in this licensed portion of 50 sq. yards, to which they did not object because of their cordial relationship.

38. In November, 2007, he was in *bona fide* need of the portion in occupation of the Defendant Nos. 1 and 2 as he intended to extend his bakery business and also because of expansion of the family, he revoked the license and requested the Defendants to vacate for which they took time upto the end of December, 2007. They assured the Defendants that they were getting their premises renovated and would be soon shifting out of the Suit premises. He met with an accident and was confined to bed and unable to pursue the affairs in March, 2008. He came to know that the Defendant No. 3 was transferring the possession of the suit property, on the basis of forged and fabricated documents.

39. On 10.05.2008, the Defendant Nos. 1 and 2 started removing their household articles from the portion in their possession and assured that they would hand over the complete and vacant possession to the Plaintiff. The Defendant Nos. 3 and 4 entered into the Suit Property in the portion measuring 100 sq. yards as shown in the Site Plan. He, therefore, has sought recovery of possession of the suit land in their favour.

40. Pertinently in the cross-examination, it is admitted by the Plaintiff/Appellant that Smt. Hashmi Begum along with the Defendant Nos.



1 and 2, were in possession of the Suit Property in December, 2007. He claimed that the possession was handed over to him on 10.05.2008. However, he himself had deposed that on 10.05.2008, he found the Defendant Nos. 1 and 2 removing their articles and Defendant Nos. 3 and 4 trespassed into the Suit Property. It is evident that the possession of the Suit premises was handed over by defendant No1&2 , who were admittedly in possession of the Suit Property, to the Defendant Nos. 3 and 4.

41. The evidence of the Plaintiff/Appellant itself shows that he was never in possession of the Suit Property. The possession of suit property was handed over by the Defendant Nos. 1 and 2 to the Defendant Nos. 3 and 4, on the basis of documents, namely, GPA, Ex.DW-1/K, Sale Deeds Ex.DW-1/J, House-Tax receipts, Mark D-1 to Mark D2 electricity bills, Ex.DW1/C1 to DW1/C9, Relinquishment Deed PW1/Y Mark A, Gift deed DW1/F and Affidavits as Ex.DW-1/G.

42. Pertinently, PW-1 also admitted that there was an electric connection in the name of Mr. Rafiq Ahmed, in the 50 sq. yards portion of the Suit Property in question. He also admitted not paying the electricity bills in respect of the electricity meter in the name of Mr. Rafiq Ahmad. Likewise, he was confronted with four water bills installed in the Suit Property, in the name of Mr. Rafiq Ahmad, about which he denied any knowledge. He further stated that he did not remember the number of electricity meter installed in the suit property in the year 1990. In the year 2000, there were four electricity meters in the aforesaid property, though he was unable to give the name of the persons in whose name, the meters were installed. He was also unable to give the name of the original owner of the property in question. He further denied that the property originally belonged to their



grandfather, Sh. Ahmed Baks, who had orally partitioned the property equally between his father and the father of the Defendant No. 2 whereby he got 100 sq. yards portion in their possession. A suggestion was also given by the Defendants to the Plaintiff that *M/s Om Bakery* was in fact the tenants of the Defendant No. 2. It was thus, suggested that 100 sq. yards of the property in question, was always in possession of the Defendant Nos. 1 and 2, in their own right.

43. Pertinently, PW-1 further admitted that he had no knowledge of the date and month when the Defendant No. 3 came in possession of the Suit Property. On 20.05.2008, he was informed that the Defendant No. 3 has thrown away his belongings from the Suit Property and put his goods in the Suit Property. He then came to know that the Defendant No. 3 had purchased the portion of the Suit Property in February/March, 2008. He admitted that though he had come to know about the sale of the property by the Defendant No. 3, in February/March, 2008, he did not confront the Defendant Nos. 3 and 4 about being the owner of the Suit Property, from February, 2008 till the institution of the Suit. He was also confronted that the Sale Deed dated 21.01.2008 *vide* which the Defendant No. 4 had purchased a portion of the Suit Property from the Defendant No. 1. He further admitted that *vide* Sale Deed dated 07.04.2008, which bears the signatures of the Defendant No. 1, the portion of the Suit Property was sold to the Defendant No. 4. He also was not aware if the Defendant No. 4, had taken the possession of 50 sq. yards from the Defendant No. 2.

44. *The learned Trial Court* after referring to the evidence of the parties, concluded that the Plaintiff had neither been able to prove by oral deposition or from any documents that he was ever in possession of the Suit Property or



that he had been illegally dispossessed. The portion of the property in possession of the Defendants, was having the common house number and common description area in locality. The testimony of the Plaintiff that their father had let out 50 sq. yards of the Suit Property to *M/s Om Bakery* in the year 1979-80, was rightly disbelieved as no rent agreement or any other cogent evidence was led in this regard. Neither the date, month or year of handing over of the tenanted premises, was established nor was there any proof of the possession having been handed over.

45. It was further concluded that PW-1, Mr. Hazi Acchey Mian, had admitted in his cross-examination that he had no knowledge about the sale of the portions of the Suit Property by the Defendant Nos. 2 to Defendant No. 3 and 4 *vide* Sale Deeds or when the possession of the respective portions, was handed over to them. Moreover, no Police Complaint was made by the Plaintiff, to corroborate his alleged dispossession on 20.05.2008; rather the testimony of the Plaintiff itself established that he was never in possession of the Suit Property and if he was not in possession, there was no question of his dispossession or restoration or possession under Section 6 of the *Specific Relief Act, 1963*.

46. The learned Trial Court has rightly dismissed the Suit of the Plaintiff/Appellant. There is no merit in the Appeal, which is hereby dismissed.

47. The Appeal is disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 7, 2024/RS