



2024 : DHC : 1293



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

% **Judgment reserved on : 16 February 2024**

Judgment pronounced on : 20 February 2024

+ **C.R.P. 202/2022 & CM APPL. 53870/2022**

SMT. KAMLESH Petitioner

Through: **Mr. Zahid Ali and Mr. M. Shakeel, Advs.**

versus

SMT. SUNITA SHARMA Respondent

Through: **Mr. Anuroop P.S. & Mr. Vikas Dudeja, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This Civil Revision Petition is preferred by the petitioner in terms of section 115 of the Civil Procedure Code, 1908, who was the defendant before the learned Trial Court (hereinafter referred as the 'petitioner/defendant'), assailing the Impugned Judgment dated 29.08.2022 passed by the learned Additional District Judge-04, South East, Saket Courts, New Delhi¹ in suit bearing CS No. 936/2018, whereby suit of the respondent/plaintiff instituted on 08.06.2018 under Section 6 of the Specific Relief Act, 1963², was decreed.

2. The case of the respondent/plaintiff before the learned Trial Court was that the property bearing No. TA-33A/2, Tugalkabad

¹ Trial Court

² Act



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Extension, New Delhi³ was originally owned by one Mr. Rampal, who died intestate and the right, title and interests in the same were inherited by his widow, two sons and three daughters. It was claimed that there was effected an oral family settlement amongst the legal heirs and consequent thereto, while the first floor of the suit property which has been in occupation of the petitioner/defendant, who is the wife of Mr. Hukum Singh S/o late Sh. Rampal, was left for intact, the rest of the property comprising of ground, second and third floor constructed on an area of 28 Sq. Yards was sold to her by the other legal heirs of deceased Rampal vide Sale documents viz., registered GPA, possession letter, receipt and Will dated 20.07.2011 registered on 23.07.2011 for a total consideration of Rs. 10,75,000/-.

3. It was stated that the petitioner/defendant joined with her husband and filed a suit for permanent injunction and declaration against other legal heirs of the deceased Mr. Rampal besides her so as to get the sale documents executed by them in her favour as 'null & void', which was hotly contested and was eventually dismissed by the learned Additional Civil Judge, Saket Courts, New Delhi vide judgment dated 10.01.2018. It is alleged that thereafter the petitioner/defendant, who was having some matrimonial disputes with her husband started creating hurdles in her peaceful occupation of the suit property on the ground floor, second floor and third floor and it was alleged that she trespassed into her portions of the property by breaking open the locks on 02.06.2018 and took over illegal possession and control of the same. Therefore, she filed a suit under

³ Suit property



Section 6 of the Act seeking to reclaim the possession of the suit property.

4. The suit was contested by the petitioner/defendant *inter alia* raising preliminary objections that suit was bad for non-joinder of her husband, who was a necessary party and her stand was that suit property was a Coparcenary property inherited from her father-in-law Mr. Rampal, who died intestate; and that although he did die intestate it was claimed that her father-in-law had left behind several properties, which are described in paragraph (3) as under:-

- i. TA-25/A-2, Gali No. 1-2, Tuglakabad Extn., New Delhi 110 019 Area 50 Sq.Yds (Basement+Gr Floor) Presently under the possession of Mr. Goptal, Brother-in-law of Defendant.
- ii. RZ-81/5, Gali No. 5, Tuglakabad Extn., New Delhi 110 019 Area 90 Sq.Yds. (3'd & 4th Floor) Presently under the possession of Mother-in-law & Sister-in-law (Ms. Poonam) of Defendant.
- iii. RZ-517/24, Gali No. 24, Tuglakabad Extn., New Delhi 110 019 Area 50 Sq. Yds. (Basement+Ground+4 floors) Presently under the possession of Ms. Manju, Sister-in-law of Defendant.
- iv. TA-, Gali No. 4, Tuglakabad Extn., New Delhi 110 019 Area 50 Sq.yds. Presently under the possession of Ms. Usha, Sister-in-law of Defendant.”

5. She claimed that since she was having some marital discord with her husband, her in-laws were annoyed with her, and therefore, they executed forged and fabricated sale documents so as to transfer the right, title or interest in other portions of the property in favour of the respondent/plaintiff, and she claimed that she has always been in possession of the entire property in her own right; and that the respondent/plaintiff was not entitled to possession of coparcenary property acquired by her illegally in collusion with her in-laws as also her husband.



6. Needless to state that a replication was filed wherein the respondent/plaintiff refuted the allegations levelled by the petitioner/defendant and reiterated and reaffirmed the averments of her plaint. From the pleadings of the parties, learned Trial Court framed the following issues vide order dated 02.04.2019:

- i. Whether the plaintiff was in possession of ground floor, second floor and third floor with terrace of the property bearing no. TA-33A, Tughlakabad Extension, New Delhi? (OPP)
- ii. Whether the defendant dispossessed the plaintiff from ground floor, second floor and third floor with terrace of the property bearing no. TA-33A, Tughlakabad Extension, New Delhi on 02.06.2018? (OPP)
- iii. Whether the suit is not maintainable for non-joinder of Sh. Hukam Singh/husband of the defendant as a party to the suit? (OPD)
- iv. Whether the plaintiff is entitled to a decree of possession in respect of ground floor, second floor and third floor with terrace of the property bearing no. TA-33A, Tughlakabad Extension, New Delhi? (OPP)
- v. Relief.”

7. During the course of trial, the respondent/plaintiff examined her husband as SPA holder Mr. Davinder Kumar Sharma, who in his testimony produced various documents which are Ex.PW-1/1 to PW-1/26; and she examined PW-2 Shri Yashpal, Assistant Personnel Officer, who deposed about the installation of electricity connection in the suit property vide documents Ex.PW-2/1 to PW-2/4 in the name of the respondent/ plaintiff; and she also examined PW-3 Ct. Manoj Kumar from PS Govindpuri so as to bring on record lodging of police complaints vide DD entries that are Ex.PW-3/A and PW-3/B. On the other hand, the petitioner/defendant came in the witness box and she was examined as DW-1.



IMPUGNED JUDGMENT:

8. Learned Trial Court clubbed issues No. 1 to 4 and held that PW-1 duly proved on record the sale documents in her favour dated 20.07.2011 for sale consideration of Rs. 10,75,000/- which are Ex.PW-1/3 to PW-1/6 while on the other hand DW-1 only made a bald assertion that Smt. Usha, Smt. Poonam and Smt. Manju, who are the sisters of her husband sold the other portions in the suit property without having legal rights. It was held that she was not able to substantiate as to how and in what manner any fraud had been committed upon her. It was further held that in terms of judgment dated 10.01.2018 in suit no. 51544/16, there was rendered a specific finding that petitioner/defendant was only in possession of first floor of the suit property and she and her husband failed to substantiate that they were in possession of ground, second and third floor, which finding on fact constituted constructive *resjudicata*.

9. Suffice to state that based on the evidence that electricity connection had been installed in the name of respondent/plaintiff and police complaints, which had not been refuted by the petitioner/defendant, it was found that the respondent/defendant had been able to prove that the petitioner/defendant had illegally trespassed into the suit property on 02.06.2018, and thus issues No. 1, 2 and 4 were decided in favour of the respondent/plaintiff and against the petitioner/defendant.

10. Issue No.3 was also decided against the petitioner/defendant since the cause of action brought out that she had trespassed into the aforesaid portions of the property *sans* her husband. Accordingly, the



suit was decreed and the petitioner/defendant was directed to hand over the vacant and peaceful possession of the suit property comprising of ground, second and third floor measuring 28 Sq. Yards to the respondent/plaintiff as per site plan Ex.PW-2/1 with costs awarded to the respondent/plaintiff.

GROUND FOR REVISION:

11. The impugned judgment-cum-decree dated 29.08.2022 has been assailed in the present revision *inter alia* on the grounds that the learned Trial Court failed to appreciate that the entire suit property had been given to her by her in-laws as her share out of the ancestral properties after an oral family partition but as her relationship with her husband became strained, they reneged on the oral family settlement and have cheated her by selling different portions of the property to the respondent/plaintiff; and that the learned Trial Court failed to appreciate that her husband became entitled to 1/6th share in the properties left behind by her father-in-law and since her husband is missing and his whereabouts are not known, she has every right to protect and claim 1/6th share in favour of her husband; and that the learned Trial Court erred in appreciating that she had dispossessed the respondent/plaintiff from the suit property in unlawful manner.

12. It is pertinent to mention at this stage that since civil revision against an order passed under Section 6 the Act could only be entertained on a substantial question of law, the following questions of law have been raised by the petitioner/defendant:

“1. Whether the Ld. Trial Court erred in appreciating that the respondent in possession of the suit property till 2018 whereas the



petitioner has been in the possession since the other co-parcener had shifted to their respective properties?

2. Whether the Ld. Trial Court erred in appreciating that the respondent has been dispossessed from the suit property by the petitioner?

3. Whether the Ld. Trial Court failed to appreciate that the respondent was not in possession since he illegally purchased the suit property from the persons who were not the actual owner of the suit property?

4. Whether the Ld. Trial Court failed to appreciate that the suit was time barred as the respondent was never in possession at any point of time?

5. Whether the Ld. Trial Court failed to appreciate that there was no any oral or written settlement which make Smt Somvati and Gopal owner of the respective floors of the suit property?

6. Whether the petitioner had any share in entire matrimonial properties in absence of the order passed by the Ld. MM in PWDV case through her husband?

7. Whether in absence of any family settlement the ratio of share of the petitioner could be determined and without determination of share of the member of the matrimonial family the share of the respondent through the documents executed by the other coparcener is nothing but a cheating to respondent as well as to the petitioner?

8. Whether the Ld Trial Court erred in proceeding that the respondent has been dispossessed though the evidence doesn't suggest so?

9. Whether the entire property in question is the share of the petitioner out of entire matrimonial properties?

10. Whether the Ld. Trial Court failed to consider the petitioner's position and her possession over the property in question as share?

11. Whether the Ld. Trial Court erred in presuming that the documents executed by the other family member of the petitioner got finality because the order dated 10.01.2018 was not challenged by the petitioner whereas the said order is still under challenge.”

13. On serving of the notice of the present revision petition upon the respondent/plaintiff, operation of the impugned judgment and decreed dated 29.08.2022 has been stayed vide order dated 09.02.2023 of this Court. Needless to state that the respondent/plaintiff has



opposed the maintainability as well as merits of the present revision petition tooth and nail.

ANALYSIS & DECISION:

14. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I have gone through the entire record of the case including the digitized TCR⁴. I have also gone through the written submissions filed by the parties on the record.

15. First things first, it would be relevant to reproduce Section 6 of the Act, which goes 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 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.”

16. A careful perusal of the aforesaid provision would show that if a person is dispossessed from an immovable property otherwise than in accordance with due process of law, he/she may file a suit to recover possession irrespective of any defence of the title to the suit property that may be set up by the defendant. It is well ordained in

⁴ Trial Court Record



law that the aforesaid provision only applies when the cause of action is unlawful dispossession from the premises, irrespective of title of the opposite party and it is limited to seeking relief of recovery of possession of the premises. Reference can be invited to decision in **A. Subramanian & Anr. v. R. Pannerselvam**⁵

17. In view of the aforesaid proposition of law reverting back to the instant matter, it would be relevant to reproduce the reasons assigned by the learned Trial Court while deciding issues No. 1,2 and 4 against the petitioner/defendant, which read as under:-

“11. The plaintiff has filed the present suit for possession. The husband of the plaintiff on the basis of SPA dated 07.06.2018 Ex. PW1/2 entered into witness box as PW-1 and has deposed that the property bearing no. TA-33A/2, Tughlakabad Extn., New Delhi was originally owned by one Sh. Ramphal; that the said property was distributed between his legal heirs as per oral family settlement and defendant i.e. wife of the one of the son of Sh. Ramphal namely Sh. Hukum Singh, who was in occupation of first floor of the said property was given the same and the suit property was sold to the plaintiff vide registered GPA, possession letter, receipt and Will all dated 20.07.2011 for total consideration amount of Rs.10,75,000/-. GPA, Will, receipt, possession letter as **Ex.1/3 to Ex.PW1/6**. DW-1 had admitted that the suit property was lawfully sold by Smt. Usha, Smt. Poonam and Smt. Manju etc. to the plaintiff however made voluntary statement that the same was without any right and both the statements did not go together since property lawfully sold means sold with legal right. DW-1 has further taken the plea in her evidence that the said documents are forged and fabricated but has not substantiated how the fraud has been done. She has not deposed anything about the details as to who, how, where and when the alleged fraud has been committed. To prove fraud it must be proved that the representation made was false to the knowledge of the party making such representation or that party could have no reasonable belief that it was true. The party pleading fraud or misrepresentation will have to not only plead the details but will have to lead evidence in support of such allegations. A minute scrutiny of the averments set out in the

⁵ (2021) 3 SCC 675



defence disclose that the allegations are general in nature. Except for the use of the words “false” and “fabricated”, the defendant has not pleaded as to each verbal misrepresentation or occasion thereto. Order VI Rule 4 of the CPC is of a distinct category in law, requiring pleading with specificity, particularly and precision. The averments are wanting in the pleadings of the fact of misrepresentation and fraud which the plaintiff could meet. It is not the mere use of the general words such a ‘fraud’ or ‘collusion’ that can serve as a foundation for the plea. Such expression are quite ineffective to form a legal basis when denuded of a particular statement of facts which alone can furnish the requisite basis of the action. The averments made in the written statement in my opinion, do not set out with reasonable precision, the particulars, so as to constitute allegations of fraud and misrepresentation. In view of the same, I came to the conclusion that defendant have failed to prove their plea of documents being false and fabricated as alleged which till the balance of probability scale in the favour of the plaintiff.

12. PW-1 has further deposed that the defendant was not having cordial relations with her husband and she was given residence orders qua the first floor of the suit property in proceedings under Section 12 of Domestic Violence Act. The copy of order is Ex.PW1/18. He has further deposed that thereafter, defendant alongwith her husband Sh. Hukum Singh filed a suit for permanent injunction and declaration titled “Hukum Singh vs Sonwati” against Smt. Sonwati, Gopal, Manu, Usha, Poonam and plaintiff thereby declaring the documents executed by them be declared null and void against the plaintiff and with a prayer not to take the forcible possession of the suit property; that the plaintiff herein filed written statement in the said suit thereby denying all the averments of the plaint and stated that the defendant and her husband were only in possession of first floor and not whole of the suit property; that the said suit was dismissed by the Court of Sh. Vikrant Vaid, ACJ, Saket Courts, New Delhi wherein it was held by Id. Judge that the defendant was not in possession of whole of the suit property and was only in possession of first floor; that after the dismissal of the said case the defendant and her associates began obstructing the passage of the plaintiff into the suit property. Copy of the plaint, written statement and judgment are **Ex.PW1/19, PW1/20 and PW1/22.** None of these fact has been disputed from the side of defendant.

13. It is not in dispute that the defendant alongwith her husband filed suit for permanent injunction and declaration against the defendants herein thereby restraining them from taking forcible possession of the suit property and further declaring the documents executed in favour of plaintiff herein as null and void. Vide



judgment dated 10.01.2018 it was held by the Court that defendant herein is not in possession of the suit property and further the relief of declaration qua the documents **Ex.PW1/19, PW1/20 and PW1/22** was also declined. The judgment has not been challenged and hence has attained finality. In the given facts and circumstances when the relief of the declaration qua the said documents has been declined by the Court and defendant has failed to prove her right better than then that of the plaintiff, the plaintiff has all right to seek possession of the suit property from the defendant. In **Hardip Kaur vs. Kailash & Anr., 193(2012) DLT 168**, the Hon'ble High Court of Delhi has observed that "an agreement to sell alongwith the payment of entire sale consideration handing over of the possession, execution of the receipt, affidavit, Will, indemnity bond and irrevocable General Power of Attorney create "an interest in the property" within the meaning of Section 202 of the Contract Act and has held that a right to possession of an immovable property arises not only from a complete ownership right in the property but having a better title or a better entitlement/right to the possession of the property than qua the person who is in actual physical possession thereof".

14. PW-1 further deposed that on 02.06.2018 plaintiff was shocked to see that the defendant illegally trespassed in the suit property by breaking open the locks and took illegal possession of the same which was under her use, control and occupation; that the police complaint was immediately lodged in PS Govindpuri. Copy of the electricity bill and police complaint are **Ex. PW1/24 and PW1/26**. Defendant has not specifically denied that she did not illegally trespassed into the suit property on 02.06.2018. **Secondly**, it has already been held by judgment dated 10.01.2018 that defendant was in possession of only first floor of the property bearing no. TA-33A/2, Tughlakabad Extn., New Delhi. In view of the same, it stood established that the defendant dispossessed the plaintiff from the suit property and she has all right to ask her possession back."

18. On a careful perusal of the aforesaid reasoning besides the testimony of petitioner/defendant, who was examined as DW-1, I am unable to find any blemish in the decision given by the learned Trial Court. The reasons are not far to seek. It is brought on the record that in earlier Suit No. 51544/16 decided vide judgment dated 10.01.2018



between the same set of parties, the petitioner/defendant was held to be in possession of only first floor of the suit property. It is also in evidence that on buying the ground, second and third floor of the suit property by virtue of sale documents dated 20.07.2011, the respondent/plaintiff got installed an electricity connection in her name on 13.09.2011 in terms of inspection report dated 14.09.2011. There is nothing to discern the testimony of PW-2, who was an independent witness, was tainted and unreliable.

19. Further, it is also proven on the record that the respondent/plaintiff came to know of alleged trespassing into her portion of the property by the petitioner/defendant by breaking open the locks, the respondent/plaintiff lodged a complaint with the police vide DD No. 31B dated 01.04.2018 and DD No. 21B dated 03.06.2018, which are Ex.PW-3/A and PW-3/B respectively. The said witness was not cross-examined by the petitioner/defendant despite affording an opportunity. What further *turned the table* against the petitioner/defendant is that in her cross-examination she conceded that ground, second and third floor portion of the suit property had been sold by Smt. Usha, Smt. Poonam and Smt. Manju in a lawful manner but then she corrected herself, voluntarily stating that they sold the property without any legal right.

20. The petitioner/defendant has been unable to show any document or lead any evidence that her sisters-in-law were not having any legal right to dispose of other portions in the property, particularly in the face of the fact that the father-in-law had died intestate and each one had inherited 1/6th share in the property. The plea of the learned



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counsel for the petitioner/defendant that the father-in-law had left behind huge properties, which were apportioned amongst other legal heirs to their satisfaction and she was given exclusive right, title and interest in the entire suit property by virtue of oral family settlement is an assertion which has not been substantiated. There is no averment as to by whom, or who were the parties, or on what date, time and month the suit property was held to be her exclusive share. There is no proof that she ever claimed entire suit property to be her own or applied for mutation of the same in her name with the Municipal Corporation of Delhi. She has miserably failed to substantiate her defence to the suit, which otherwise too is outside the scope of section 6 of the Specific Relief Act.

21. In view of the foregoing discussion, this Court finds no merit in the present revision petition. The same is accordingly dismissed.

22. The interim order dated 09.02.2023 of this Court stands vacated.

23. The pending application also stands disposed of.

DHARMESH SHARMA, J.

FEBRUARY 20, 2024

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