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

+ **CM(M) 176/2015**

RAJENDER SINGH SISODIA

..... Petitioner

Through: Mr. Ramesh Kumar Shukla,
Advocate along with Petitioner in
person

versus

SHAFEENA BEGUM & ORS

..... Respondents

Through: Mr. A.K. Mishra, Mr. Sudhanshu
Dwivedi and Mr. Manoj Kumar,
Advocates with Respondent No. 1.

Reserved on: 01st April, 2024

Date of Decision: 24th April, 2024

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This petition has been filed under Article 227 of the Constitution of India impugning the judgment dated 11th December 2014 ('impugned judgment') passed in suit no. 18/2005 ('re-numbered as 167/2006') titled as **Shafeena Begum v. Rajender Singh Sisodia & Ors.** whereby the Trial Court¹ decreed the suit for possession in favour of the plaintiff/Respondent No. 1 filed under Section 6 of Specific Relief Act, 1963 ('Act of 1963').

1.1. The Trial Court after appreciation of evidence has concluded that Respondent No. 1 was illegally dispossessed by the Petitioner from the

¹ Civil Judge (West) - III, Tis Hazari Court, Delhi



property bearing no. D-2 on land measuring 40 sq. yds. bearing khasra No. 689/719, Hari Nagar Extn. Jaitpur, Badarpur, New Delhi-110044 ('suit property') at the time when she was not available in the city, without following due process of law; and on the said finding the trial Court decreed the suit of possession in favour of Respondent No. 1 with costs.

1.2. The Petitioner is the original defendant no. 1 and Respondent No. 1 herein is the original plaintiff in the civil suit. The Petitioner *vide* impugned judgment has been directed to handover possession of the suit property to Respondent No. 1.

1.3. The Respondent No. 2 is the original defendant no. 2, however, no direction has been issued against him by the Trial Court.

Brief facts

2. Respondent No. 1 along with her husband Mr. Kamal Hasan and her three minor children, as on 19th December 2004 was admittedly in possession and occupation of the suit property. The Respondent No. 1's identification documents such as ration card and passport bear the address of the suit property.

2.1. It is the stand of Respondent No. 2 that the suit property was sold to him on 20th December, 2004 by Mr. Kamal Hasan by virtue of an Agreement to Sell ('ATS'), Will and General Power of Attorney ('GPA') [all unregistered documents]; and the vacant possession of the suit property was handed over to Respondent No. 2 by Mr. Kamla Hasan on the said date.

2.2. It is further the stand of Petitioner and Respondent No. 2, that the suit property was sold by Respondent No. 2 to the Petitioner by a separate unregistered ATS, Will and GPA dated 05th January, 2005; and the vacant possession of the suit property was taken over by the Petitioner from



Respondent No. 2 on the said date.

2.3. In contrast, Respondent No. 1 stated that she left the suit property on 19th December, 2004 to visit her relatives outside Delhi and on her return on 06th January, 2005 she was forcibly evicted from the suit property. It is the stand of the Respondent No. 1 that all her household articles, lying in the suit property as on 19th December, 2004, had been looted by Petitioner and Respondent No. 2.

2.4. There was an altercation of the Petitioner and Respondent No. 2 with Respondent No. 1 on 06th January, 2005 with respect to the possession of the suit property leading to police complaint being filed by Respondent No. 1. It is a matter of record that Respondent No. 1 lodged a complaint under Section 200 of Cr.P.C., which led to registration of an F.I.R.² No. 202/2005 with respect to her claim of illegal dispossession.

2.5. In addition, Respondent No. 1 filed the underlying suit on 19th January, 2005 before the Trial Court under Section 6 of Act of 1963 for recovery of possession of the suit property. The Respondent No. 1 admits that her husband, Mr. Kamal Hasan had proprietary rights to the suit property. She, however, asserts that the suit property was transferred by Mr. Kamal Hasan in her favour in the year 1999 and, in fact, the Petitioner herein is an attesting witness to the said documents. She contends that, thus, the Petitioner was aware about her proprietary rights to the suit property.

2.6. Simultaneously, the Petitioner as well apprehending his dispossession filed a separate suit bearing no. 82/2006 ('renumbered as 194/2012') on 22nd January, 2005 praying the relief for permanent injunction against Respondent

² First Information Report



No. 1 from interfering in the Petitioner's peaceful possession of the suit property.

2.7. The underlying suit for possession filed by the Respondent No. 1 and the Petitioner's suit for injunction were tried together before the same Court.

2.8. The Respondent No. 1's husband Mr. Kamal Hasan is stated to be a migrant from Bangladesh and is untraceable since the year 2005 after the aforesaid alleged sale of the suit property. It is stated that he has abandoned Respondent No. 1 and her children.

2.9. After completion of investigation, the chargesheet was filed and the concerned criminal Court *vide* order dated 20th May, 2014 was pleased to discharge the Petitioner and Respondent No. 2 in the case registered under F.I.R. No. 202/2005. The concerned Court observed that in the facts of the case it appears that the Respondent No.1/complainant may have been cheated by her husband, Mr. Kamal Hasan.

2.10. In the underlying suit, the Respondent No. 1 specifically pleaded in the plaint that not only she and her minor children were illegally dispossessed on 06th January 2005 but even her household articles had been looted by the Petitioner and Respondent No. 2. The allegation of theft of household articles was specifically denied by the Petitioner and Respondent No. 2 in their combined written statement filed on 23rd February, 2005. So also, Petitioner herein did not refer to status of the household articles of Respondent No. 1 in his suit for injunction i.e., suit no.194/2012 and the affidavit of evidence³ filed therein. However, inexplicably during the trial of the underlying suit, Petitioner in his evidence affidavit filed on 28th August 2009 for the first time

³ Filed on 18th May 2006



took a stand that he had purchased the household articles lying in the suit property on 19th December 2004 from Mr. Kamal Hasan, i.e., the husband of Respondent. The Petitioner also placed on record [without leave of the Court] a receipt for the alleged sale of household articles in evidence as Ex. DW-1/A.

The Petitioner's assertion for purchase of household articles on 19th December, 2004 was not stated before the concerned criminal Court and in fact the order of discharge dated 20th May, 2014 proceeds on the basis that Respondent No. 1 was unable to provide the list of her alleged stolen household articles.

2.11. The introduction of the alleged receipt of purchase of household articles purportedly on 19th December, 2004 by Petitioner from Mr. Kamal Hasan, without seeking the leave of the Court, as per the learned Trial Court raised a plea/defence which was inconsistent with the pleadings and the evidence; and therefore, the Trial Court concluded that not only was the alleged receipt ingenuine and inadmissible in evidence but it also showed *mala fide* of the Petitioner. The Trial Court on considering the evidence observed that the stand of Petitioner [raised for the first time during evidence] that he allegedly bought the household articles on 19th December, 2004, which however, continued to remain in the suit property; whereas the suit property itself was sold on 19th December, 2004 by Mr. Kamal Hasan to Respondent No. 2; and thereafter, suit property was also purchased by Petitioner on 5th January, 2005 from Respondent No. 2 were acts against/unlike the conduct of a prudent man. The Trial Court, thus, concluded that the said defence put by the Petitioner as regards the purchase of



household articles on 19th December, 2024 was false.

2.12. The issue of the household articles assumed significance before the Trial Court as the Petitioner herein had consistently denied any knowledge of the household articles while Respondent No. 1 had categorically alleged that the household articles had been looted by Petitioner and Respondent No. 2. In these facts, when the Petitioner suddenly and inexplicably after 4 ½ years of the institution of the suits took a stand that he had purchased the household articles from Mr. Kamal Hasan caught the attention of the Trial Court and after appreciation of evidence, the Trial Court held that the said defence of purchase of household articles is 'false' and it deemed the entire defence led by the Petitioner on the issue of possession/dispossession doubtful. The detailed findings of the Trial Court on the issue of the false defence of alleged purchase of household articles are at paras 23 to 38 of the impugned judgment. The relevant paras read of the impugned judgment reads as under:

"26. It is important to note that the defendant filed an affidavit in evidence in Suit No.167/06 on 29.08.2009, wherein the defendant, surprisingly and diametrically opposite to the stand taken in the WS of Suit No.167/06, disclosed for the first time that he had purchased the household articles lying in the suit property on 19.12.2004 from the husband of the plaintiff. The defendant also placed on record a receipt for the alleged sale of articles, tendered in evidence as Ex.DW-I/A.

27. Thus, from 29.08.2009 onwards the defendant suddenly introduced a new and inconsistent fact that he took possession of the suit property alongwith the articles lying there since 19.12.2004 when the said articles were sold to him by the husband of the plaintiff while the property itself was sold to Shashi Bhushan.

....

30. At this stage it is further interesting to note that the alleged receipt dt. 19.12.2004, was placed on record for the first time on 29.08.2009 without seeking any leave from the Court and without explaining the reasons for



not placing the document on record at an earlier stage. Thus, the act of the defendant to surreptitiously placing a new document on record, which goes beyond the scope of the pleadings, without seeking leave of the Court renders the document inadmissible in evidence.

31. The act of the defendant to introduce inconsistent pleas at the time of evidence and to produce a document which finds no mention in any pleadings raises serious doubts over the genuineness of the document. If the document actually existed at the time of filing of both the suits, the defendant had no reason not to mention the same in the pleadings and to not even place a copy of the alleged receipt on record. This conduct of the defendant indicates mala fide on the part of the defendant.

....

33. More inconsistency is evident from the fact that the defendant has not pleaded that he took away the articles after purchasing the same. The absence of this plea amounts to admission of the defendant that the household articles allegedly purchased on 19.12.2004 were lying in the suit property at all time including the alleged sale of the suit property on 20.12.2004 and 05.01.2005.

*34. Further, it is strange to note that even Shashi Bhushan did not state in his WS that when he purchased the suit property from the husband of the plaintiff on 20.12.2004, the suit property already had articles belonging to the defendant purchased from the husband of the plaintiff. Moreover, it remains unexplained as to why the defendant did not take away the purchased articles from the suit property when the suit property itself was being sold to a third person. The aforesaid conduct of the defendant and Shashi Bhushan, apart from **smacking of mala fide**, goes against the normal conduct of a prudent man which makes it further impossible to believe.*

*35. Thus, the receipt dt. 19.12.2004, apart from being inadmissible in evidence is also against the conduct of a prudent man. **The said receipt cannot be relied upon to support the case of the defendant but can be looked into to raise a presumption of falsehood against the defendant.***

....

38. From the aforesaid discussion regarding the receipt dt. 19.12.2004, it is clear that the belongings of the plaintiff were always lying in the suit property irrespective of the whether they were purchased by the defendant or not."

(Emphasis supplied)

2.13. The Trial Court after appreciation of evidence concluded that



Respondent No. 1 who was admittedly in possession of the suit property till 19th December, 2004 had been dispossessed without following due process of law. The Trial Court, therefore, decreed the suit for possession in favour of Respondent No. 1 and dismissed the suit for injunction filed by the Petitioner.

Submissions of counsel for Parties

3. Learned counsel for the Petitioner stated that the Petitioner entered into peaceful and vacant possession of the suit property on 05th January, 2005 and received the possession from Respondent No. 2. He stated that, therefore, there was no illegal dispossession of Respondent No. 1 by the Petitioner herein. He stated that the underlying suit filed by Respondent No. 1 is collusive and at behest of her husband, Mr. Kamal Hasan. He stated that in alternative the fraud, if any, on Respondent No. 1 has been played by her husband, Mr. Kamal Hasan.

3.1. He stated that since the proprietary rights of Mr. Kamal Hasan are admitted, Respondent No. 1 has no independent right to remain in possession after the sale of the suit property made in favour of Respondent No. 2 and thereafter to the Petitioner. He stated that there is nothing on record to show that Respondent No. 1 was not aware about the sale in favour of Respondent No. 2 on 19th December, 2004.

3.2. He stated that the pleadings in the plaint were inconsistent disentitling Respondent No. 1 to the relief sought. He also relied upon the order dated 20th May, 2014 passed by the concerned Criminal Court discharging the Petitioner.



3.3. He stated that the first appeal⁴ filed by Petitioner herein against the dismissal of his suit for injunction i.e., suit no. 194/2012 has been withdrawn; however, the same is of no consequence as the issues arising in the underlying suit are distinct.

4. In reply, learned counsel for the Respondent No. 1 stated that Petitioner herein was aware that suit property stood transferred by Mr. Kamal Hasan in favour of Respondent No. 1 on 11th October, 1999. He stated Petitioner herein was the attesting witness to the said documents executed in 1999. He stated that Mr. Kamal Hasan who was a migrant from Bangladesh has abandoned her since January, 2005. He stated that, nonetheless, the issue of the title to the suit property is not a subject matter of the underlying suit filed under Section 6 of the Act of 1963.

4.1. He stated that the suit was filed on 19th January, 2005 and despite a decree in her favour dated 11th December, 2014, the Respondent No. 1 is still out of possession of the suit property.

Findings

5. This Court has considered the submission of the learned counsel for the parties and perused the record.

6. The Trial Court returned the following findings of fact, which led to the conclusion that the Respondent No. 1 has been forcibly dispossessed without following the due process of law:

(i) The possession of Respondent No. 1 in the suit property till 19th December, 2004 is admitted by the Petitioner and Respondent No. 2 (re: para 22 of the impugned judgment).

⁴ RCA No. 2 of 2015 withdrawn on 21st August, 2015



- (ii) The production of receipt dated 19th December, 2004 by the Petitioner to show that he had purchased the household articles from Mr. Kamal Hasan, during trial, without the leave of the Court, makes the receipt inadmissible and this stand of purchase of household articles is inconsistent with the pleadings. However, even on appreciation of evidence led by the Petitioner with respect to the execution of the said receipt, the Trial Court concluded that the said receipt was a doubtful document and raised a presumption of falsehood against the Petitioner (re: para 30 and 35 of the impugned judgment).
- (iii) Since, the conclusion of the Trial Court was that the defence of Petitioner based on alleged receipt dated 19th December, 2004 is false, the Trial Court concluded that it is evident that the household articles of the Respondent No. 1 continued to remain in the suit property (without removal) always even after 19th December, 2004 (re: para 38 of the impugned judgment).
- (iv) The Trial Court concluded that the propounding of a false defence of purchase of household articles *vide* receipt dated 19th December, 2004 proves that the Respondent No. 1 was away to visit her relatives and not present when the possession was taken over by Petitioner herein (re: para 39 of the impugned judgment).
- (v) The Trial Court held that the title documents relied upon by either party to claim ownership of the suit property are not a subject matter of adjudication in the present proceedings as the Court was only concerned with deciding the issue of possession.
- (vi) The Trial Court concluded that Petitioner has forcefully dispossessed



Respondent No. 1 without following the due process of law and is, therefore, liable to restore her possession. The Trial Court granted him liberty to pursue appropriate legal remedies to obtain possession in accordance with law. (re: para 17 and 41 of the impugned judgment)

7. At the outset, it may be noted that the Petitioner has not challenged the findings of the Trial Court with respect to the falsehood of the defence based on receipt dated 19th December, 2004 purportedly for purchase of the household articles lying at the suit property. It is evident from the conclusion of the Trial Court that Petitioner herein had propounded a false defence of receipt dated 19th December, 2004 which tainted the veracity of his defences raised in the written statement to resist the decree of possession.

8. The Trial Court in its judgment at paras 21 and 22 has returned a finding that the possession of Respondent No. 1 in the suit property till 19th December, 2004 is admitted by the parties; and pertinently neither Petitioner nor Respondent No. 2 has averred that Respondent No. 1 was present on the spot when the alleged sale of the suit property took place on 20th December, 2004 and 05th January, 2005. The said findings are not disputed by the Petitioner herein. Neither the Petitioner nor Respondent No. 2 have led any independent evidence to prove that Respondent No. 1 vacated or handed over the possession of the suit property to Respondent No. 2 on 19th December, 2004. Thus, it remains an admitted fact that Respondent No. 1 who along with her minor children was residing at the suit property until 19th December, 2004 and she did not vacate the suit property to hand over vacant possession to Respondent No. 2 in pursuance of any sale executed between Mr. Kamal Hasan and Respondent No. 2 on 19th December, 2004.



9. The Petitioner's sole defence is based on the plea of receiving vacant physical possession and to substantiate this defence he relies upon execution of the alleged title documents dated 19th December, 2004 between Mr. Kamal Hasan and Respondent No. 2. However, Petitioner and Respondent No. 2 have been unable to lead evidence to satisfy the Trial Court with respect to handing over of the vacant physical possession by Mr. Kamal Hasan to Respondent No. 2 on 19th December, 2004. In fact, in the cross-examination of the Petitioner dated 2nd July, 2011, it is admitted that he took possession of the suit property along with household articles from Mr. Kamal Hasan on 05th January, 2005. This admission contradicts and falsifies the plea of the Petitioner and Respondent No. 2 that the vacant physical possession of the suit property was handed over by Mr. Kamal Hasan on 19th December, 2004. In fact, the contradictions in the Petitioner's evidence affidavit dated 28th August, 2009 and his cross-examination recorded on 02nd July, 2011 shows that Mr. Kamal Hasan resided in the suit property till 05th January, 2005 and the household articles also remained at the suit property. The Petitioner has also admitted that he was aware that Respondent No. 1 was residing in the suit property with her children for 8-9 years. Thus, there is no evidence on record led by the Petitioner and Respondent No. 2 to show that the physical possession of the suit property was vacated by Respondent No. 1 on 05th January, 2005 or any time prior thereto.

10. The Respondent No.1 contended that her household articles were lying in the suit property on 19th December, 2004, when she went to meet her relatives outside Delhi and on her return on 06th January 2005, the same had been misappropriated by the Petitioner and Respondent No.2, due to the



forcible dispossession. The flip-flop by Petitioner on the issue of existence of household articles in the suit property led to his indictment in the suit by the Trial Court. The Petitioner during evidence in the year 2009, for the first time, admitted that Respondent No. 1's household articles were purchased by him. Prior to that the Petitioner had denied any knowledge of the existence of the household articles in the pleadings of the suit as well as in the criminal proceedings; and alleged that he had received vacant possession. The contradiction in the pleadings and evidence is writ large. The Petitioner after admitting the existence of the household articles in the evidence failed to disclose the date on which he removed the articles from the suit property. The Trial Court on a holistic reading of the pleadings and evidence disbelieved the stand of the Petitioner that the household articles were sold to him by Mr. Kamal Hasan on 19th December, 2004. The said finding of the Trial Court has not been challenged in this petition and has thus, attained finality. The corollary of the finding of the Trial Court is that Respondent No. 1's household articles were indeed lying in the suit property uninterruptedly as she was travelling and the transaction, if any, between Mr. Kamal Hasan and the Petitioner transpired in her absence and the possession of the suit property [alongwith household articles] was taken over by the Petitioner without consent of Respondent No. 1. The inconsistent stand⁵ taken by the Petitioner with respect to the household articles are mutually destructive and have rightly led to the Trial Court concluding that the Respondent No. 1 was dispossessed without her consent.

11. The contention of the Petitioner that it is a collusive suit filed by

⁵ Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435, Para 12



Respondent No. 1 at the behest of Mr. Kamal Hasan is not borne out from the record and in fact, the concerned criminal Court in the order dated 20th May, 2014 noted that Mr. Kamal Hasan, who was also an accused in the F.I.R., is absconding. Thus, this contention of the Petitioner is not persuasive.

12. In this matter, the alleged sale transactions dated 19th December, 2004 or 05th January, 2005 relied upon by the Petitioner and are all based on unregistered documents of ATS. There is no registered sale deed in favour of the Petitioner or Respondent No. 2. The said unregistered ATSs are inadmissible in evidence *per-se* and in the absence of registration do not confer any enforceable rights or title in either party, in view of Section 17(1A) of the Registration Act, 1908 and Section 53-A of the Transfer of Property Act, 1882. In such facts, possessory rights of the party, who was last admitted to be in physical possession become significant and dominant. In this regard it would be instructive to refer to the judgment of the Supreme Court in *Shivshankara v. H.P. Vedavyasa Char*, 2023 SCC OnLine SC 358. The relevant extract of the judgment read as under:-

“32. It is evident that on a careful consideration of the available pleadings of the defendants, the High Court held that they did not disclose their defence in their written statement and at the same time did not even contend therein that they are in possession of the suit property. According to us, in such circumstances, when the facts disclose no title in either party, at the relevant time, prior possession alone decides the right to possession of land in the assumed character of owner against all the world except against the rightful owner. In that context, it is worthy to refer to the maxim ‘Possessio contra omnes valet praeter eum cui ius sit possessionis’ (he that hath possession hath right against all but him that hath the very right)”.

(Emphasis Supplied)

The continuous and uninterrupted physical possession of Respondent No. 1



in the suit property for 8-9 years as on 19th December, 2004, which is admitted by all the parties could not have been disturbed without her consent or without following the due process of law, on the basis of the said unregistered ATS. Since the Petitioner and Respondent No. 2 have admitted that Respondent No. 1 did not consent to vacate her possession, her dispossession by Petitioner and Respondent No. 2 on the basis of the unregistered ATS and GPA dated 19th December, 2004 or 05th January, 2005 is contrary to law.

13. The Petitioner's reliance on concerned criminal Court's judgment dated 20th May, 2014 is of no assistance as it is evident that the Petitioner changed his stand in the civil Court. It appears from the judgment therein that while Petitioner contended before the criminal Court that he had not removed the Respondent No. 1's household articles or did not know about its whereabouts; he changed his stand in the civil Court and admitted custody of the household articles by producing the purported receipt dated 19th December, 2004. The Trial Court's impugned judgment is, therefore, based on distinct facts which the Petitioner did not disclose before the criminal Court.

14. The Petitioner has challenged the impugned Judgment by filing this petition under Article 227 of the Constitution. It is well-settled that scope of jurisdiction under Article 227 is to be exercised sparingly and in those cases where there is no evidence at all to justify or the findings of the Trial Court are so perverse that no reasonable person can come to such a conclusion. The Supreme Court in *India Pipe Fitting Co. v. Fakruddin M.A. Baker*⁶ has

⁶ (1977) 4 SCC 587



reiterated that the High Court in the exercise of its supervisory jurisdiction cannot upset conclusion of facts and neither can it convert itself into a court of appeal while exercising jurisdiction under Article 227. The relevant paras of the judgment reads as under:

“5. The limitation of the High Court while exercising power under Article 227 of the Constitution is well-settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is well-settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565 : 1954 SCJ 290] where the principles have been clearly laid down as follows:

*“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in **Dalmia Jain Airways Ltd. v. Sukumar Mukherjee** [AIR 1951 Cal 193] to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”*

The same view was reiterated by another Constitution Bench of this Court in Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam [AIR 1958 SC 398 : 1958 SCR 1240 : 1958 SCJ 798]. Even recently in Bathutmal Raichand Oswal v. Laxmibai R. Tarta [(1975) 1 SCC 858] dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.”

7. It is possible that another Court may be able to take a different view of the matter by appreciating the evidence in a different manner, if it determinedly chooses to do so. However, with respect to the learned Judge (Vaidya, J.) that will not be justice administered according to law to which courts are committed notwithstanding dissertation, in season and out of season, about philosophies.



8. We are clearly of opinion that there was no justification for interference in this case with the conclusions of facts by the High Court under Article 227 of the Constitution. We are also unable to agree with the High Court that there was anything so grossly wrong and unjust or shocking the Court's "conscience" that it was absolutely necessary in the interest of justice for the High Court to step in under Article 227 of the Constitution. Counsel for both sides took us through the reasonings given by the High Court as well as by the Courts below and we are unable to hold that the High Court was at all correct in exercising its powers under Article 227 of the Constitution to interfere with the decisions of the courts below. In our opinion the High Court arrogated to itself the powers of a court of appeal, which it did not possess under the law, and has exceeded its jurisdiction under Article 227 of the Constitution."

(Emphasis Supplied)

15. It would also be relevant to refer to judgment of Supreme Court in **Mohd. Yunus v. Mohd. Mustaqim**⁷, which reads as under:

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. **In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.**"

(Emphasis Supplied)

16. In the present case in hand, the Trial Court has sifted through the entire evidence and returned the findings of fact, which in this Court's considered opinion do not merit any interference in this petition. The impugned judgment of the Trial Court does not suffer from any jurisdictional error or

⁷ (1983) 4 SCC 566



any error warranting supervisory jurisdiction of this Court as alleged in the grounds of petition.

17. Accordingly, the present petition is without any merits and is hereby dismissed along with pending applications. Interim order dated 03rd March, 2015 stands vacated.

18. The Petitioner is directed to vacate and handover the peaceful possession of the suit property to Respondent No. 1 within 30 days of passing of this judgment. The Petitioner shall also pay costs of Rs. 25,000/- to the Respondent No. 1 within 30 days.

19. It is noted that though the suit was instituted on 19th January, 2005 and decreed on 11th December, 2014, the Respondent No.1 has not been restituted due to the pendency of this petition and interim order passed herein. The Petitioner continued to deny Respondent No. 1 the possession of the suit property despite the impugned judgment. There is no statutory appeal provided under Act of 1963 to the Petitioner and the Petitioner continued to enjoy the possession of the suit property under the interim order granted in this petition filed under Article 227 of the Constitution. It is, therefore, necessary to balance the interest of both the parties and Respondent No. 1 cannot be placed at a disadvantage for the time taken in the adjudication of the present petition. In view of the finding that Respondent No. 1 was dispossessed illegally without following the due process of law, it is further directed that if the Petitioner fails to hand over vacant and peaceful possession within 30 days from today, he will become further liable to pay mesne profits of Rs. 7,500/- per month w.e.f. 11th December, 2014 (i.e., the date of the passing of the decree).



20. The suit property consists of one room set on the ground floor and one room set on the first floor built up on land measuring 40 sq. yds. Thus, keeping in view the prevalent rate of rent in the metropolis of Delhi, the uniform rate of Rs. 7,500 per month for the period of 2014-2024 is reasonable. The direction to pay mesne profits has been fixed from 11th December, 2014 i.e., the date on which the suit was decreed by the Trial Court. The said amount towards mesne profits shall be recoverable by the Respondent No. 1 along with interest at 8% per annum and the costs, in execution, and the decree is modified accordingly.

21. It is reiterated that the obligation to pay mesne profits from 11th December, 2014 till the date of actual handing over of possession shall only arise if the Petitioner fails to handover vacant and peaceful possession of the suit property to the Respondent No. 1 within 30 days from passing of this judgment.

MANMEET PRITAM SINGH ARORA, J

APRIL 24, 2024/hp/ms