



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

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**Judgment reserved on : 27 May 2024
Judgment pronounced on : 13 August 2024**

+ **C.R.P. 143/2014 & CM APPL. 15296/2014, CM APPL. 39828/2017, CM APPL. 39829/2017, CM APPL. 31176/2018**

BAJRANG PRASAD (DECEASED) THR LRS & ANR

..... Petitioners

Through: Mr. Arvind Kumar Gupta, Mr.
Rishi Bhardwaj, Mr. A. Gupta
and Mr. Shivank S. Singh,
Adv.

versus

RAM NIWAS

..... Respondent

Through: Mr. R.K. Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present civil revision petition filed by the petitioner-revisionist under Section 115 of the Code of Civil Procedure Code, 1908¹ assailing the Impugned Order dated 07.05.2014 passed by the Learned Civil Judge-06, (Central District), Tis Hazari Courts, Delhi² in Suit No. 1050/2011 titled as "*Bajrang Prasad and Anr. v. Sh. Ram Niwas*" whereby the petitioner-revisionist's suit under Section 6 of the Specific Relief Act, 1963³ seeking recovery of possession was dismissed.

¹ CPC

² Learned CJ/ Trial Court

³ SRA



FACTUAL BACKGROUND:

2. Briefly stated, the present revision petition arises out of a suit under Section 6 of the SRA, filed by one Mr. Bajrang Prasad (now deceased) on 03.06.1999 seeking relief of possession of the suit property. While it is settled that the question of title is irrelevant in a suit of such nature, the petitioner/plaintiff Mr. Bajrang Prasad is seeking such relief of possession on the ground that he is the *bona fide* owner of the suit property through his wife Smt. Gulab Devi i.e. Plaintiff No.2. It is also noted that during the evidence led before the Learned Trial Court, the petitioner/plaintiff has time and again impressed upon his title over the suit property.

3. The case of the petitioners/plaintiffs, as averred in the plaint, is that since 1958, they were the lawful tenants of a property admeasuring 75 sq. yards and bearing No. 2116, Prem Nagar, Delhi, comprising of two rooms, kitchen, latrine, and bathroom, as shown in red colour on the site plan of the suit property (Ex PW1/1) (hereinafter referred to as “subject premises”) and have identified one Sh. Sadhu Singh as their landlord. It is claimed that from the year 1958 to 1974, the plaintiff ran a Fair Price Shop No.1557 at the subject premises and thereafter, he used it as a godown to store scale and weights etc. for his business. The petitioner/plaintiff has produced several old documents Ex PW1/2 to PW1/9 relating to licenses from the Food and Civil Supplies Department, Office of Controller of Rationing etc. that have the subject premises as the address of the petitioner/plaintiff.

4. It is further claimed by the petitioners/plaintiffs that the entire property measuring “300 sq. yards”, of which the subject premises is a



part, was purchased by three partners, Sh. Richhpal, Smt. Ranjit Kaur, and Sh. Ram Niwas i.e., the defendant/respondent herein, from its lawful owner Sh. Daljeet Singh Sambhi S/o Sh. Sadhu Singh. The said property was then mutually divided among the three aforesaid persons and each became entitled to an equal proportionate share. Accordingly, the defendant/respondent herein became the owner of portion of property admeasuring 75 sq. yards as shown in yellow colour in the site plan.

5. Furthermore, the petitioners/plaintiffs alleged that the portion measuring 75 sq. yards (shown in red in the site plan) that was already in the possession of the plaintiffs was purchased by Plaintiff no.2 i.e. Smt. Gulab Devi W/o Plaintiff No.1 from the three co-owners Sh. Richhpal, Smt. Ranjit Kaur, and Sh. Ram Niwas, i.e. the defendant/respondent herein, for a sum of Rs. 90,000/-, vide the following sale documents: -

- a) *Ikrarnama* dated 20.06.1995 (Ex PW2/1) executed by Sh. Richhpal and the defendant/respondent in favour of the petitioner/plaintiff.
- b) GPA dated 16.10.1995 (Ex PW2/2) executed by Sh. Richhpal and Smt. Ranjit Kaur in favour of the petitioner/plaintiff.
- c) Receipt dated 16.10.1995 (Ex PW2/3) executed by Sh. Richhpal and Smt. Ranjit Kaur acknowledging that a sum of Rs. 90,000/- has been received from the petitioner/plaintiff.
- d) Agreement to Sell dated 16.10.1995 (Ex PW2/4) executed by Sh. Richhpal and Smt. Ranjit Kaur in favour of the petitioner/plaintiff.
- e) Affidavit dated 16.10.1995 affirming sale of suit property and delivery of its possession (Ex PW2/5) by Sh. Richhpal and Smt. Ranjit Kaur to the petitioner/plaintiff.
- f) Registered Will of Sh. Richhpal (Ex PW2/6) in favour of the petitioner/plaintiff.
- g) Registered Will of Smt. Ranjit Kaur (Ex PW2/6) in favour of the petitioner/plaintiff.





6. It is pertinent to note here that none of the above alleged title documents have been executed by all three co-owners at once. Rather, out of the three abovesaid persons, only two of them (not including the defendant/respondent herein) in different combinations have been signatory to the said documents. The defendant/respondent herein has only signed one document i.e., *Ikrarnama* dated 20.06.1995 (Ex PW2/1).

7. It is claimed that thereafter, the petitioners/plaintiffs continued to enjoy the subject premises that was allegedly already in their possession and use as a godown. However, the defendant/respondent herein allegedly started interfering in the peaceful possession of the petitioners/plaintiffs after purchasing the entire property with his partners.

8. It is also alleged that the defendant/respondent with *mala fide* intentions, initiated proceedings u/s 145 CrPC titled as “*State v. Ram Niwas, Gulab Devi*” wherein *vide* Order dated 21.06.1996, the Learned SDM declined the application of the State for sealing of property after finding that the petitioners/plaintiffs are using and possessing the suit property uninterrupted.

9. It is further claimed by the petitioner/plaintiff that on 02.01.1999 at 11.00 pm, the defendant illegally and unauthorisedly broke down the wall from Point A to B as shown in the site plan, trespassed into the suit premises and fixed an iron gate at point C after removing the wooden gate already fixed. The other iron gate at point D is still having the lock of the petitioners/plaintiffs from outside. The defendant/respondent has locked the entrance from inside and stocked



various articles against both entrance gates. The defendant/respondent allegedly dispossessed the petitioner/plaintiff from the subject premises by throwing away the said articles and stealing the petitioner/plaintiff's scooter. In response, the petitioner/plaintiff allegedly lodged a complaint at PS Patel Nagar on 02.01.1999 and a PCR reached the subject premises, but no action was taken. Thereafter, the petitioner/plaintiff lodged multiple complaints dated 27.01.1999, 29.05.1999 and 23.06.1999 (Ex PW1/13, PW1/14, PW1/15) at PS Patel Nagar requesting coercive action to be taken against the defendant/respondent herein.

10. The present suit under Section 6 of the SRA was then filed by the petitioner/ plaintiff on 03.06.1999 before learned Civil Judge seeking relief of possession of the subject property. *Vide* Impugned Order dated 07.05.2014, such suit was dismissed. Hence, present revision petition.

11. The defendant/respondent herein has, by way of Written Statement in the suit proceedings, denied that the petitioner/plaintiff was a tenant in the suit premises. He further stated the true and correct fact to be that the property bearing No, 2116, Gali No. 7, Prem Nagar, Delhi, measuring "225 sq. yards" of which the suit premises is a part, was jointly purchased by the defendant/respondent along with Shri Richhpal Singh and Smt. Ranjit Kaur, *vide* Agreement to Sell and GPA dated 21.04.1995. Thereafter, it was mutually divided among the three aforesaid persons, and each of them got an equal proportionate share in it. Thus, the respondent/defendant has since 21.4.1995 become the true owner in possession of a portion of said property



admeasuring 75 sq. yards. He further stated that the petitioner/plaintiff's alleged purchase of the suit property was a fake transaction and the petitioners/plaintiffs have never been in possession of the subject property. It is rather alleged that it was the petitioners/plaintiffs who tried to dispossess the respondent/defendant, for which two FIR's bearing no. 726/95 and no. 41/97 as well as two Civil Suits bearing no. 17/99 and 107/96 seeking declaration and injunction were filed, whereby the defendant/respondent is seeking "declaration for cancellation of Agreement dated 20.6.1995 or 16.10.1995" purported to be executed in favour of the plaintiff/revisionist by defendant/respondent as well as Shri Richhpal Singh and Smt. Ranjit Kaur.

12. The defendant/respondent Mr. Ram Niwas expired on 18.04.2017 during the pendency of the present petition. Accordingly, this court, *vide* order dated 19.07.2017, substituted the wife and son of the defendant/respondent, namely Mrs. Munni Devi and Mr. Amlesh Kumar, in place of the deceased respondent. Subsequently, the seven married daughters of the deceased respondent were also impleaded as respondents in the present petition.

13. The defendant/respondent Mrs. Munni Devi also expired on 25.02.2019 during the pendency of the present petition. Since all legal representatives of the deceased defendant/respondent were already on record, her name was deleted from the array of parties in the present petition *vide* order dated 23.09.2019.



**PROCEEDINGS BEFORE THE LEARNED TRIAL COURT
AND IMPUGNED ORDER DATED 07.05.2014:**

14. Based on the pleadings of the parties, the following preliminary issues were framed by the learned Trial Court on 20.04.2001: -

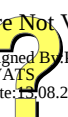
- (1) Whether the suit of the plaintiff is not maintainable in its present form?
- (2) Whether the suit of the plaintiff is barred by limitation?

15. The learned Trial Court framed further issues on 20.11.2002 as mentioned hereinbelow: -

- (1) Whether the plaintiff were in possession of the property in dispute and whether the plaintiff have been dispossessed without their consent by the defendant?
- (2) Whether the suit of the plaintiff is barred by limitation and whether the suit is not maintainable in its present form?

16. Suffice to state at this juncture that the learned Trial court decided the Issue No.1 (framed on 20.11.2002) in favour of the defendant/respondent and against the petitioner/plaintiff. The Issue No.2 (framed on 20.11.2002) pertaining to the bar of limitation as well as the preliminary issues, however, were decided in favour of petitioner/plaintiff by default since the respondent/defendant did not lead any evidence to prove the same.

17. Consequently, the learned Trial Court dismissed the suit of the petitioners/plaintiffs upon finding that the essential ingredients for the grant of relief of possession under S.6 of SRA, i.e., proof of prior possession within six months prior to the date of the suit and proof of dispossession without consent and otherwise than in due course of law, were not fulfilled by the plaintiff to the court's satisfaction.





GROUND OF APPEAL

18. The impugned order has been assailed *firstly* on the ground that the learned Trial Court did not appreciate the evidence brought on record by the petitioner/plaintiff to prove his title over the subject property, for instance the admission by the respondent/defendant of his signature on *Ikrarnama* dated 20.06.1995 (Ex PW2/1) executed by him and Sh. Richhpal in favour of the petitioner/plaintiff by virtue of which the defendant/respondent along with the other two co-owners have sold the portion shown yellow in the site plan which is admeasuring 75 sq. yards. *Secondly*, the learned Trial Court did not appreciate that the petitioner/plaintiff proved that he was in possession of the subject premises by way of Order passed by the Learned SDM dated 21.06.1996 (Ex PW1/12) and Documents (Ex PW-1/2 to PW-1/9) relating to his business of rationing that show the address of the petitioner/plaintiff as the subject premises. *Thirdly*, the learned Trial Court did not appreciate that the plaintiff was dispossessed from the suit property on 02.01.1999. Lastly, the Learned Trial Court did not appreciate that the defendant/respondent has not produced any document on record to show that he was/is in legal possession of the subject premises.

ANALYSIS & DECISION

19. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at Bar. I have also gone through the relevant record of the case including the digitized Trial Court Record.



20. At the outset, this Court finds that the impugned judgment passed by the learned Trial Court does not suffer from any illegality, perversity, or incorrect approach in law.

21. First things first, it would be expedient to point out that the learned Trial Court firstly examined the legal import of the alleged sale documents relied upon by the petitioners/plaintiffs and the conclusions were reached as under:-

“18. ...When reference is made to these documents, it is seen that neither the agreement Ex PW2/1 nor the alleged title documents Ex PW2/2 to Ex PW2/7 i.e. GPA, agreement to sell etc have been executed by all the three person i.e. defendant, Richhpal and Ranjit Kaur but rather the agreement Ex PW2/1 has been executed by defendant and Richhpal while the other set of documents have been executed by Richhpal and Ranjit Kaur only leaving the defendant. Thus, out of three persons only two of them in different combinations have been signatory to the said documents. Although defendant admitted his Signature on the agreement Ex PW2/1 but the Id. Counsel on his behalf vehemently agreed that this agreement reflects **that the vacant possession will be handed over as per terms agreed which implied that plaintiff was not in possession as on the date of agreement 20.06.1995.** Taking note of this argument, it is seen that there is a stipulation in the said agreement Ex PW2/1 that on receiving earnest money, this receipt has been written and possession will be handed over. It is noted that while there are appropriate strokes over the words plot, shop and house, **but there is no striking/cutting over that words that vacant possession will be handed over meaning thereby there has been no amendment in the printed language to the effect that plaintiff is already having possession.** Thus, a serious doubt has been raised by the defendant regarding prior possession of plaintiff as the reading of this agreement shows that possession of property is yet to be taken.

19. Further, Richhpal who appeared as witness PW2 on behalf of plaintiffs deposed in his affidavit in evidence Ex PW2/A that the premises in tenancy of plaintiff no.1 was agreed to be sold to him by the deponent i.e. Richhpal , Ram Niwas i.e. defendant and Smt. Ranjit Kaur vide Ikrarnama executed by deponent i.e. PW2 and defendant in favour o plaintiff no.2. This deposition is contrary to the documents Ex PW2/1 itself as Smt. Ranjit Kaur is not a signatory to it and it cannot be allowed to be proved by virtue of





bar contained in s. 91 of Indian Evidence Act that she also entered into such agreement. Furthermore, the document Ex PW2/1 is titled 'Ikrarnama' and therefore, alleged to be an agreement, but there is no signatures of the other party i.e. Gulab Devi, plaintiff no. 2 appended on it. Also the plaintiff, did not examine the property dealer whose name, address and telephone number are printed on the said agreement.

20. Similarly, there is no signature of Gulab Devi i.e. plaintiff no.2 on any of the documents GPA etc Ex PW2/2 to Ex PW2/7, not even on the agreement to sell Ex PW2/4 out of these documents, while she is allegedly the purchaser of the suit premises. She has not got herself examined as a witness in the present suit though being alive. It has even been admitted by PW1 in his cross examination dated 23.10.2004 that the agreement to sell Ex PW2/4 does not bear signatures of plaintiff no.2, himself and defendant.

21. Now, I come to another document filed by plaintiff which is a receipt Ex PW1/11. This receipt executed by Richhpal records that earnest money of rs. 5000/- has been received by him from Smt. Gulab Devi i.e. Plaintiff no.2 with respect to sale of his house no. 2116 agreed to be sold for Rs. 90,000/-. It is noted that this receipt has been solely executed by Richhpal and the contents imply that he is selling his property and which is contrary to the above mentioned agreement Ex PW2/1 and GPA etc Ex PW2/2 to Ex PW 2/7 wherein alternatively atleast two persons have executed the documents. Moreover, this receipt does not bear the signature of plaintiff no.2 rather bears the signature of plaintiff no.1. It also bears the signature of one Raman Kumar as a witness who has not been examined. Further it is noted in the testimony dated 04.12.2004 of Richhpal, examined as PW2, that at one place he admits his signature on this receipt Ex PW1/11 while at another place he deposes that he had not separately taken any 'Bayana/earnest money'. In this manner the witness PW2 Richhpal himself creates doubt about this receipt Ex PW1/11. He also deposed that he did not execute any will while he did not execute a will in favour of plaintiff no.2 which is Ex PW2/6. It has been admitted by PW2 that he is an accused in FIR no. 726/95 P.S. Patel Nagar, although he has denied to the suggestion that he is giving false evidence as defendant has made a complaint against him in the aforesaid FIR.

22. Thus the observation regarding the documents Ex PW2/1, Ex PW2/2 to Ex PW2/7 and Ex PW1/11 as made in foregoing paras show that there is no coherence amongst these documents and thus do not support the case of the plaintiffs. The pleadings of the plaintiffs in replication are also not consonance as in para 4 of replication it is averred that agreement dated 20.06.1995 Ex PW2/1



was executed by defendant and Richhpal Singh while in para 6 it is stated that defendant and his two partners executed legal and valid documents receiving consideration of Rs. 90,000/-. The giving of earnest money of Rs. 50,000/- vide agreement Ex PW2/1 formed part of Rs. 90,000/- this agreement was not executed by three persons. Also, the averment in para 6 is also contrary to the documents Ex PW2/2 to Ex PW2/7 as these documents are not executed by three persons. Similarly, it is contrarily stated in para 9 replication that defendant executed earnest money receipt of Rs. 50,000/- while it was executed by Richhpal only and is Ex PW1/11.

23. The documents Ex DW1/1 to Ex DW1/4 which are CPA. agreement to sell etc pertaining to 225 sq yds of property no. 2116. It has been suggested to defendant/DW1 in cross-examination dated 02.09.2008 that the suit property has been purchased by three persons and not by him alone and DW1 admits to his suggestion.

24. It is noted that the plaintiff himself has put contradictory suggestions to DW1 as initially it is suggested that property was partitioned by them (i.e. three purchasers) and later it is suggested that no partition was effected and the property was joint. Anyhow, if defendant had separated his share there must have been a document as to partition. Merely that the documents Ex DW1/1 to Ex DW1/4 refer 12 ½ % share of defendant does not give any clear picture and moreover 12 ½ % of 225 sq yds is far less than 75 sq yds which leads us nowhere. Moreover, these documents even though in some manner relied upon by the plaintiffs, remained unproved on record. These are merely unregistered notarised documents except the will Ex DW1/4 which is registered but even no witness was called to prove its execution, attestation or registration. These documents cannot be seen to convey any title in the suit property.”

[Emphasis Supplied]

22. Further, as regards the question of dispossession “*otherwise than in due course of law*”, as spelled out in Section 6⁴ of the Specific Relief Act, learned Trial Court referred the following findings:

⁴ **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.



“26. It is also pertinent to reproduce some relevant portion from the testimony of plaintiff no.1/PW1 recorded on 29.01.2004: -

"I cannot tell when I was dispossessed from suit property by defendants. I can read and write Hindi."

27. The above noted testimony reveals that not only that the plaintiff did not disclose any particular date of dispossession but also that no approximate time period was stated. Here, it was essential for the plaintiff to have volunteered to disclose the date or at least some time period of dispossession as this is an important ingredient considered in a suit u/s 6 of Specific Performance Act, 1963.

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39. ... Although the plaintiffs have failed to prove their site plan but even if it be assumed that the intervening wall was broken to enter the suit property, it. has not been disclosed how the plaintiff came to know that defendant has stocked various articles against both entrances gate after locking the same when admittedly plaintiffs have no entry inside the suit premises after such alleged act of trespass by the defendant.

40. It is also astonishing that while plaintiffs have alleged that defendant has also stolen two wheeler scooter and various other articles from the suit premises but plaintiffs have not lodged any FIR especially with respect to the scooter. Plaintiff although has alleged that various police complaints were filed Ex PW1/3 to Ex PW1/7 but it is noted that none of them have been proved as no witness was summoned in this regard. Plaintiff even did not call the record of the PCR which he allegedly called at the time of the event of trespass. The testimony of PW1 recorded on 29.01.2004 is again relevant to be noted wherein he deposed that he cannot tell when he was dispossessed from the suit property by defendant. Thus, the plaintiffs have also failed to prove the averments with respect to the alleged act of trespass by defendant and their unlawful dispossession. The citations relied upon by the plaintiffs are not of any use to them.”

[Emphasis Supplied]

(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.



23. *Qua* question of prior possession in the form of tenancy as alleged by the plaintiff, the learned Civil Judge has made the following observations:-

“25. Now coming to the aspects of prior possession and being dispossessed without due process of law. It is observed that plaintiff no.1 states that he was a lawful tenant in the suit premises. In his cross examination dated 23.10.2004 plaintiff no.1/PW-1 admits that there is no receipt or any other document to show his tenancy under Sh. Sadhu Singh. PW-1 volunteered to further state that rent used to be taken by Chandan Singh. PW-1 denied to produce any receipt issued by said Chandan Singh and volunteered to state that there was no arrangement for issuance of rent receipt between him and Chandan Singh. Here, the plaintiff ought to have examined the said Chandan Singh atleast, in order to throw some weight on his averments regarding tenancy. Plaintiff even did not sought to examine any of the LRs of the previous owner Sh. Sadhu Singh to show his tenancy which is alleged to be very old since 1958. In testimony dated 29.01.2004 also PW1 stated that he was tenant under Sadhu Singh but he has no document including receipts etc to show his tenancy.

28. Another testimony of PW-1 dated 23.10.2004 touching the aspect of possession is also worth reproducing:

"Q: Can you tell whether any document filed by you contains recital of the fact as alleged by you that you were in possession of suit premises on 16.10.1995 i.e. date of purchase or any other point of time as a tenant?"

Ans: I cannot say."

29. This deposition further clears that plaintiff possessed no document as to show his possession in the suit premises. It is noted that PW1 even deposed on 29.01.2004 that after purchase of 225 sq yds the three persons Ram Niwas (defendant), Richhpal and Ranjit Kaur were not in possession. Thus, when these persons were not in possession then how could they hand over possession of suit property to plaintiff no.2 as is stipulated in Agreement to Sell Ex PW2/4 which is executed by two of them.

30. Some portions from the testimony of plaintiff no.1/PW1 dated 28.08.2004 is also relevant to be reproduced:

"It is correct that it is printed on Ex PW2/1 that vacant possession will be given, that the possession was already with us."





31. Here PW1 in voluntary statement has attempted to depose contrary to the writings in the agreement Ex PW2/1 but his said voluntary statement remained unsubstantiated.

32. It is even admitted by PW1 that he does not have a voter ID card for the suit property address, although he has a voter ID Card for his other property no. 2113.

33. The plaintiff has also failed to prove his site plan as in testimony dated 29.01.2004 he deposed that he cannot tell the name as to who prepared the same. He further stated that he cannot say whether he or his wife got prepared the site plan. Even there is contrary deposition as to the area as PW1 in his testimony dated 29.01.2004 stated that 90 sq yds was purchased while it is 75 sq yds as mentioned in plaint. At one place in his testimony dated 02.03.2004 PW1 has volunteered to state that defendant has illegally occupied 15 sq yds area of land. This deposition is beyond pleadings as nothing of this sort has been averred in the pleadings. It is also admitted by PW-1 in his cross-examination dated 23.10.2004 that the portions of Richhpal and Smt. Ranjeet Kaur have not been shown separately in the site plan Ex PW1/1. Thus, there are discrepancies noted in the site plan and even the person who prepared it has not been examined and thus it remains unproved.

34. With respect to the other documents filed by the plaintiff which are Ex PW1/2 to Ex PW1/10, the plaintiff has averred that these relate to license from Food and Supplies department. It is important to note that plaintiff even did not summon a single witness from any department to prove these documents. Although, some of these documents are more than 30 years old but in view of the abovenoted failures on the part of the plaintiffs, and the peculiar facts and circumstances of the case, this Court is not inclined to draw any presumption u/s 90 of the Indian Evidence Act, 1872, which is even a 'may presumption'.

35. Plaintiffs also got examined another witness namely Joginder Singh as PW3 but the testimony of this witness appears to be not much reliable as he has deposed that he had signed on receipt Ex PW1/11 but then after going through it he stated that he has not signed on it. Moreover, admittedly he is not a witness to other documents Ex PW2/1 to Ex PW2/4. it is important to note that while in his affidavit in evidence PW3 it is stated that plaintiff no.1 was tenant in the portion measuring 75 sq yds and it was in his possession but the following excerpt from his cross examination dated 04.12.2004 will reveal to the contrary, making his evidence merely a hearsay which has no value. The said excerpt reads as follows: -



“I have personally not seen any document regarding tenancy of the plaintiff Bajrang Prasad. Vol. Bajrang Lal is in possession of last 35 years as it was told to us by the persons of the locality.”

36. It is further pertinent to observe that plaintiffs did not examine any neighbour who could have well deposed about the possession with respect to the suit property. It is reasonably expected that a person in possession of any particular immovable property and that too for very long is normally known to the other persons of the locality. It is also noted that it has been averred in the plaint that defendant started interfering in the possession of the plaintiffs after purchasing the entire property with his partners, defendants and his partners allegedly purchased in 1995, and also that proceedings u/s 145 Cr.P.C vide kalandra dated 12.04.1996 were also initiated between the parties. Despite these alleged interference in possession and filing of kalandra, the plaintiffs did not even file an injunction suit to restrain the defendant from forcefully dispossessing the plaintiffs from the suit property.

37. The prima facie finding of the SDM in the said kalandra cannot be conclusive and cannot be read in light of the facts and circumstances of the case discussed in the foregoing paras.

38. Thus, considering the above findings it can be concluded that plaintiffs were not in possession of the suit property.”

[Emphasis Supplied]

24. Learned counsel appearing for the petitioners herein was unable to bring out any infirmity or perversity in appreciation of evidence by the learned Trial Court. Evidently, the sale documents Ex.DW-1/1 to DW-1/5 have never been disputed by the petitioners, a bare perusal of which would show that Sh. Ram Niwas, Sh. Richhpal and Smt. Ranjit Kaur claimed that they were in possession of the subject property as on 21.04.1995. The aforesaid aspect has to be read coupled with the fact that the petitioners/plaintiffs were at a loss when asked to specifically point out as to on which date they were actually dispossessed from premises in question. Once the recital in the aforesaid documents is admitted, no evidence to the contrary can be



appreciated unless and until the petitioners/plaintiffs had examined Sadhu Singh from whom they initially claimed to have acquired the possessory rights as tenants. In my opinion, the learned Trial Court has given very cogent and sound reasons while appreciating the oral as well as documentary evidence led and placed on the record.

25. Needless to state that the jurisdiction of this Court under Section 115 of the CPC is limited and the petitioners/plaintiffs have been unable to show any patent illegality or gross jurisdictional error committed by the learned Trial Court in passing the impugned judgment. Hence, the present revision petition is dismissed.

26. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

AUGUST 13, 2024

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