



CR-2404-2018 (O&M)

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(378)

CR-2404-2018 (O&M)

Date of Decision: - 05.03.2026

Gamdoor Singh and another

...Petitioners

Versus

Harjinder Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Jai Bhagwan, Advocate
for the petitioners.

Mr. Raman Mohinder Sharma, Advocate
for respondents No.1 to 3.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 06.09.2017 (Annexure P-6) passed by the Civil Judge (Junior Division), Malerkotla, whereby the suit under Section 6 of the Specific Relief Act, 1963, filed by the respondents No.1 to 3 for possession has been partly decreed.

ARGUMENTS ON BEHALF OF THE PETITIONERS

2. Learned counsel for the petitioners has submitted that the petitioners were defendants No.3 and 4 in the main suit filed by respondents No.1 to 3 under Section 6 of the Specific Relief Act, 1963 (hereinafter to be referred as '1963 Act') and the said petitioners were



bona-fide purchasers, inasmuch as, they had purchased the suit land vide registered sale deed dated 01.06.2012. It is further submitted that the petitioners had taken possession from defendant No.2 and thus, the suit filed by respondents No.1 to 3 under Section 6 of the 1963 Act, against the present petitioners was not maintainable and accordingly, the impugned judgment dated 06.09.2017, decreeing the suit of respondents No.1 to 3 partly, is against law and deserves to be set aside. It is argued that the trial Court has rightly held that the petitioners are true owners of the property by virtue of the sale deed dated 01.06.2012 and thus, no injunction has been granted against them.

ARGUMENTS ON BEHALF OF RESPONDENTS NO.1 TO 3

3. Learned counsel appearing for respondents No.1 to 3, on the other hand, has submitted that the present petition under Article 227 of the Constitution of India is not maintainable as a revision under Section 115 of the CPC was maintainable. It is further submitted that the impugned order in the present case was passed on 06.09.2017, whereas, the present revision petition had been drafted on 31.03.2018 which is beyond the period of limitation and had been filed after a delay of more than 100 days and there is no application for condonation of delay. It is further submitted that it is a matter of settled law that in the proceedings under Section 6 of the 1963 Act, the sole question which is to be seen is as to whether the plaintiffs were in possession and had been dispossessed from the suit land and the question of title is not to be considered. It is further submitted that in the present case, it had been duly proved on



record that respondents No.1 to 3 had a registered mortgage deed dated 05.08.2010 in their favour, which had been duly exhibited as Ex.P2 and a perusal of the same would show that the mortgage was done along with delivery of possession. It is further submitted that the mutation regarding the said registered mortgage deed was sanctioned on 01.09.2010 which was duly reflected in the jamabandi (Ex.P1) which was for the year 2008-2009 and the present petitioners, even as per their own case, had purchased the suit property on 01.06.2012 which is subsequent to the said mutation entry and thus, it cannot be said that they were not aware of the registered mortgage deed. It is submitted that in the said circumstances, the trial Court had rightly decreed the suit of respondents no.1 to 3 and had held the respondent Nos.1 to 3 to be entitled to possession of the suit property. It is argued that the present petitioners had forcibly taken the possession from respondents No.1 to 3 on 10.11.2012 and the suit under Section 6 of the 1963 Act was filed within a period of six months from the said dispossession i.e. on 21.11.2012.

ANALYSIS AND FINDINGS

4. This Court has heard learned counsel for the parties and has perused the paper-book and finds that the impugned order dated 06.09.2017 is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

5. It is not in dispute that respondents No.1 to 3 had filed a suit under Section 6 of the 1963 Act seeking possession of the suit land



measuring 10 bighas. Further prayer was also made in the suit for declaring the sale deed dated 09.02.2012 executed by defendant no.1 in favour of defendant No.2 as well as sale deed dated 01.06.2012 executed by defendant No.2 in favour of defendants No.3 and 4 as null and void and further relief of permanent prohibitory injunction restraining the defendants No.3 and 4/petitioners from alienating and transferring the suit land was also prayed for.

6. It was the case of respondents No.1 to 3 that defendant No.1 was the owner of the suit property and he was in need of money and had obtained a sum of Rs.7,00,000/- from the plaintiffs and in lieu thereof, had mortgaged the suit property in favour of the plaintiffs vide registered mortgage deed dated 05.08.2010 and the possession of the property was also given to respondents No.1 to 3 and the mutation regarding the same was also sanctioned and was duly reflected in the jamabandi. It was further their case that it was subsequent to the said sanctioning of the mutation that the sale deed was executed in the year 2012 and on 10.11.2012 the present petitioners forcibly dispossessed the plaintiffs from the suit property without their consent and without following due course of law. Defendants No.1, 2 and 5 did not appear in spite of service and accordingly, they were proceeded against ex parte.

7. Defendants No.3 and 4/petitioners had filed a written statement and the plea raised by the said defendants/petitioners was that defendant No.1 had sold the suit property to defendant No.2 vide sale deed dated 09.02.2012 and thereafter, defendant no.2 further sold the said



property to defendants No.3 and 4, vide sale deed dated 01.06.2012. It is further the case of the petitioners that they had seen the revenue record but the alleged mortgage deed was not in existence and stood cancelled and that the said petitioners/defendants no.3 and 4 were bona fide purchasers. The trial Court on the basis of the said pleadings had framed the following issues:-

- “1 *Whether the plaintiffs are entitled for the possession of suit property as prayed for? OPP*
- 2 *Whether the plaintiffs are entitled for the declaration as prayed for? OPP*
- 3 *Whether the plaintiffs are entitled for the permanent prohibitory injunction as prayed for? OPP*
- 4 *Whether the present suit is not maintainable? OPD*
- 5 *Whether plaintiff has not come to the court with clean hands and suppressed the material facts from the Court ?OPD*
- 6 *Relief.”*

8. Under issue No.1, the trial Court, after considering the provision of Section 6 of the 1963 Act observed that in such a case, the entitlement of the plaintiff to recover possession of property, of which he claimed to have been illegally dispossessed, has to be adjudicated independent of the question of title and the only question which is to be determined under Section 6 of the 1963 Act is as to whether the plaintiffs were in possession of the disputed property and had been illegally dispossessed. It was further observed that the registered mortgage deed dated 05.08.2010 had been duly exhibited as Ex.P2 and as per the recitals in the same the mortgage deed was coupled with delivery of possession to the plaintiffs. The mutation regarding the said registered mortgage deed



was also stated to be duly sanctioned on 01.09.2010 and was also incorporated in the jamabandi (Ex.P1) for the year 2008-2009. It was further observed that the sale deed in favour of defendants no.3 and 4 was subsequent to the said entry of the mutation with respect to the registered mortgage deed in the jamabandi as the sale deed was dated 01.06.2012 and thus, it could not be stated by any stretch of imagination that defendants no.3 and 4 were not aware of the said registered mortgage deed. The trial Court also took into consideration the fact that the petitioners were stating that they were in possession of the property in spite of the specific recital with respect to the delivery of possession in the mortgage deed and accordingly, accepted the plea of respondents No.1 to 3 that they had been forcibly dispossessed on 10.11.2012 and had filed the suit on 21.11.2012 i.e. well within the period of limitation . On the basis of the same, issue no.1 was decided in favour of respondents No.1 to 3 and respondents No.1 to 3 were held entitled to possession of the suit property. However, with respect to the declaration sought by the plaintiffs as well as the injunction sought against the present petitioners/defendants no.3 and 4 restraining them from alienating the property, the same was not granted.

9. The suit of the plaintiffs was partly decreed to the following extent: -

“ISSUE No.6: (Relief)

*22 Up shot of my above discussion, the suit of the plaintiffs is hereby partly decreed with cost. **Plaintiffs are held entitled for the possession of the suit property as detailed in Para A of the caption of the plaint and the defendants are hereby***



directed to quit the possession of the suit property and hand over the same to the plaintiffs within period of two months from the date of order. Decree sheet be prepared accordingly. File be consigned to the record room, Malerkotla.

*Announced in open Court
Date:06.09.2017*

*(Bikramdeep Singh), PCS
Civil Judge (Junior Division),
Malerkotla”*

10. It is a matter of settled law that under Section 6 of the 1963 Act, the possession and dispossession of the party who has filed the suit is the relevant consideration and not the title of the suit property. Section 6 of the Specific Relief Act, 1963 specifically provides that in case a person is dispossessed from immovable property without his consent, otherwise than in due course of law, then, he is entitled to file a suit for recovery of possession of property, notwithstanding any other title that may be set up in such a suit. The trial Court had thus rightly observed in para 12 of its judgment that the question in the present suit which was required to be adjudicated was as to whether the plaintiffs were entitled to recovery of possession or not. No provision of law or judgment to the contrary has been cited on behalf of the petitioners.

11. It is not disputed before this Court that defendant No.1 who was the admitted owner of the property in question had executed a registered mortgage deed dated 05.08.2010 which had been duly exhibited as Ex.P2 and a perusal of the same would show that the mortgage deed was coupled with delivery of possession and recital to the said effect was incorporated in the mortgage deed. It is a matter of settled law that the recitals made in a registered document carry presumption in



their favour and in case a party wishes to rebut the said presumption, then, heavy onus lies upon the said party. No such evidence has been highlighted on behalf of the petitioners to even remotely rebut the presumption in favour of the registered mortgage deed and the terms mentioned in the same.

12. The defendant No.1 who was a party to the mortgage deed has not chosen to contest the suit and the petitioners i.e. defendants no.3 and 4 were not even parties to the said mortgage deed. It is further not in dispute that the mutation with respect to the registered mortgage deed dated 05.08.2010 was sanctioned on 01.09.2010 and was duly reflected in the jamabandi for the year 2008-2009, which jamabandi had been duly exhibited as Ex.P1. The sale deed in favour of the petitioners/defendants No.3 and 4 is dated 01.06.2012 and was thus admittedly executed subsequent to the said mutation had been incorporated in the jamabandi (Ex.P1). It is the case of the petitioners that they had verified the revenue record, thus, it cannot even be remotely said that the petitioners were not aware of the registered mortgage deed which had been duly incorporated in the jamabandi prior to their purchase. The observations of the trial Court, to the said effect, are in accordance with law and deserve to be upheld. Thus, the finding of the trial Court to the effect that the plaintiffs/respondents No.1 to 3 were in possession of the property and were subsequently dispossessed on 10.11.2012, is in accordance with law and deserves to be upheld.

13. The petitioners had not been able to show that they had taken

**CR-2404-2018 (O&M)****-9-**

possession in accordance with law and after having instituted any proceedings/suit for taking possession. The present suit was filed on 21.11.2012 which is within the period of limitation. Issue No.1 has thus rightly been decided by the trial Court. Even the findings on the other issues are in accordance with law and deserve to be upheld and no contest has been made to the said findings. It is a petition under Section 115 of the CPC which was maintainable against the impugned order. The present petition under Article 227 of the Constitution of India has apparently been filed in order to overcome the delay in filing the case. At any rate, this Court has considered the case on merits.

14. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order does not call for any interference by this Court and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

15. Pending application(s), if any, stand disposed of.

March 05, 2026*naresh.k*

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes