

(2023) 09 GAU CK 0052

In the Gauhati High Court

Case No : Civil Revision Petition No. 156 Of 2019

Padumi Deori And Anr.

APPELLANT

Vs

Shantanu Sarmah Boruah

RESPONDENT

Date of Decision : 21-09-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 11
Specific Relief Act, 1963 — Section 6, 6(3)

Citation : (2023) 09 GAU CK 0052

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A. Ganguly, Y. S. Mannan

Final Decision : Dismissed

Judgement

1. Heard Shri A. Ganguly, learned counsel for the petitioners. Also heard Shri Y. S. Mannan, learned counsel for the sole respondent.

2. The present application has been filed under Section 115 of the Code of Civil Procedure, 1908 against the judgment dated 08.07.2019 and decree dated 17.07.2019 passed in Title Suit No. 40/2012 passed by learned Munsiff No. 1, Lakhimpur, North Lakhimpur. The said suit was instituted by the petitioner as plaintiff under Section 6 of the Specific Relief Act, 1963 (hereinafter the Act, 1963).

3. At the outset, the learned counsel has submitted that under Section 6(iii) of the Act, no appeal lies against any order or decree and therefore, the present revision petition has been filed.

4. Petitioners were the defendants in the Title Suit which was instituted under Section 6 of the Act. In the plaint, the present respondent who was the plaintiff, had averred that a plot of land measuring 2 katha 10 lechas was in the possession of the plaintiff in respect of which land revenue was also paid. On the west side of the suit land, the plaintiff had patta land and therefore the said suit

land was used for thoroughfare. The patta lands were under Dag No. 225 and 226 which were in the name of the plaintiff and his mother. It is the specific case of the plaintiff that on 21.06.2012, the plaintiff was dispossessed by the defendants and in October, 2012, the defendants had posted concrete pillars on the land. Resultantly, the plaintiff had issued legal notice followed by institution of the present suit.

5. The defendants in their written statement separately filed, had contended that the plaintiff was never in possession of any part of the suit land which is covered by Dag No. 223. It has further been stated that the father of the plaintiff was the pattadar of land of annual patta no. 30 covered by Dag Nos. 225 and 226 and he had transferred the possession of the land to the defendant no. 1 on 12.03.1994 by executing a kutchra deed and on the said deed, the plaintiff and his brother were witnesses. The defendants claim to be in continuous and peaceful possession of the land till 2012 and the plaintiff, in spite of having knowledge about the transfer of the land covered by Dag Nos. 225 and 226 had got the names of the members of his family mutated in place of the father. In any case, it is the specific case of the defendants that they were in continuous and peaceful possession over the land and further averred that the plaintiff did not submit any document to show his possession.

6. The defendant no. 2 in his written statement had also stated that the plaintiff was never in possession of the plot of land covered by Dag No. 223 (suit land) which was in front of the plot of land covered by Dag Nos. 225 and 226.

7. The learned Trial Court upon perusal of the pleadings had formulated 9 (nine) numbers of issues. Out of those, the relevant issues would be issue nos. 5, 6 & 7. With regard to the issue no. 5, the learned Trial Court had come to a finding that the plaintiff was in possession since long over the plot of land covered by Dag No. 223 corresponding to touzi 97. The learned Court has also discussed the evidence of five numbers of PWs and also the deposition of the DWs who had mentioned above the other plot of land covered by Dag Nos. 225 and 226.

8. With regard to the issue no. 6, the learned Trial Court had come to a finding that the plaintiff was dispossessed on 21.06.2012 and accordingly the issue no. 8 with regard to entitlement for recovery was decided in favour of the plaintiff.

9. Shri A. Ganguly, learned counsel for the petitioners has submitted that the findings arrived at by the learned Trial Court is perverse and the relevant materials on record have not been properly appreciated and rather, the judgment is based on irrelevant materials and extraneous considerations. He submits that the learned Trial Court had taken note of Ext. 4 which was a Jamabandi and a perusal of the same would show that the same contains only the signature of the Lat Mondal and there was no signature of the Circle Officer. He further submits that the Lat Mondal had deposed as PW 5 on 28.04.2014 whereas the Ext. 4 was also of the same date. He submits that the same raises a great deal of doubt and suspicion on the veracity of the defendants case.

10. The learned counsel for the petitioners has also drawn the attention of this Court to Ext. 5, the Chitha in which the name of the plaintiff was not there. Reference has also been made to Ext. 6, Trace Map and has contended that the plot of land under Dag Nos. 225 and 226 are in the possession of the petitioners and the suit land is covered by Dag No. 223 which is the only access to the National Highway. He submits that the petitioners had purchased the plot of land under Dag Nos. 225 and 226 from the father of the plaintiff by a kutchra Sale Deed dated 12.03.1994 which was proved as Ext. Ka. The Sale Deed was executed by the father of the plaintiff, namely, Dimbeswar Sarma Baruah in which the plaintiff himself was a witness. Shri Ganguly, the learned counsel has also referred to the schedule of the Sale Deed to contend that on the east, there was a Sarkari Land and NH 52 and if at all the plaintiff was in possession of the land in question covered by Dag No. 223, there should have been a description in the schedule which was not there. As regards the touzi receipt, Shri Ganguly, the learned counsel has submitted that while Ext. 1 is dated 15.10.2012, Ext. 8 is dated 17.10.2013 and neither of the receipts would show that prior to the date on which dispossession has been alleged, the plaintiff was in possession of the suit land.

11. Shri Ganguly, the learned counsel has accordingly raised the following questions:-

1. When and how the plaintiff had come into possession of the suit land.
2. Was the plaintiff able to show that he was in settled possession and not in fugitive or stray possession.
3. Whether the plaintiff had led evidence to establish that he was dispossessed.

12. In support of his submission, the learned counsel for the petitioners has relied upon the case of Rame Gowda (D) Vs M. Varadappa Naidu (D) by LRS. & Anr. reported in 2003 Supp. (6) SCR 850, wherein the concept of settled possession has been elaborately explained by the Hon'ble Supreme Court in the following manner:-

"It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration, (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab, (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh, (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The

possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh and Ors.'s case* (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

- i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
- ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;
- iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and
- iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

13. Per contra, Shri Mannan, the learned counsel for the respondent (plaintiff) has submitted that the issue is only with regard to dispossession of a party who was in possession of immovable property land and in a suit of the instant nature instituted under Section 6 of the specific Relief Act, even Title will hardly have any role. He submits that the case projected by the respondent, as plaintiff was duly established by seven numbers of PWs. He submits that though the plot of land covered by Dag Nos. 225 and 226 was sold to the petitioners by the father of the respondent, the said sale was not concerning the present suit land which is covered by a separate Dag, namely, Dag No. 223.

14. Shri Mannan, the learned counsel has highlighted that after discharging the initial burden by the plaintiff with regard to the fact of dispossession, the onus shifts upon the defendants. The DW in her evidence did not even state that she was in possession of the suit land covered by Dag No. 223. By drawing the attention of this Court to the plaint, the learned counsel has submitted that it was specifically stated that the plaintiff was in continuous possession of the suit land and in this connection he has referred to paragraph 7 of the plaint. Shri Mannan, the learned counsel also submits that though an argument has been made with regard to the touzi receipts by contending the same to be after the date of dispossession, he submits that Ext. 1 though dated 15.10.2012, was for the relevant period as it is only after expiry of period that such touzi is paid. He further submits that the burden on part of the party alleging dispossession is to be discharged only with regard to the relevant period namely the date of dispossession and earlier period may not be necessary.

15. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court, including the LCRs have been examined.

16. Section 6 of the Act, 1963 reads as follows:

"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."

17. The requirement of the statute can be laid down in the following manner:

i. There is a fact of dispossession of a person from an immovable property.

ii. Such dispossession is without his consent.

iii. Such dispossession has been done without following due course of law.

Under such conditions, a suit under Section 6 of the Act can be instituted for recovery of possession.

18. What transpires is that it is a fact of possession which needs to be

established before such allegation of dispossession. The relief under Section 6 of the Act is summary in nature with the object to protect the judicial possession of a person and to claim such protection, a person has to prove that he was in possession and was dispossessed unlawfully. In the case of Mohd. Mehtab Khan & Ors. Vs Khushnuma Ibrahim & Ors. reported in AIR 2013 SC 1099 it has been held as follows:-

"12. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any time six months prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit."

19. This Court has also noticed that Court adjudicating a suit filed under Section 6 of the Act is not required to go to the aspect of title and the examination would only be on the aspect of possession and dispossession. The statute also bars any appeal unlike any other order or decree passed by a Civil Court. The objective of such provision is based on the fact that the dispute is only with regard to the dispossession and therefore finality has been sought to be brought by adjudication of the issue by the Trial Court itself.

20. This Court is also conscious of the limited powers to be exercised while adjudicating a matter under the revisionary jurisdiction conferred by Section 115 of the Code of Civil Procedure. The Code, after its amendment has made such jurisdiction a circumscribed one wherein certain restrictions have been laid down and the factors under which such jurisdiction can be exercised have also been laid down. The said factors are as follows:

- i. When the order passed is without jurisdiction
- ii. When there is refusal to pass an order by the Court which was vested with such jurisdiction
- iii. When the order appears to be fraught with material irregularity illegality.
- iv. When the order has been passed by ignoring / overlooking the relevant factors into consideration and
- v. When the order has been passed by taking into consideration irrelevant and extraneous factors.
- vi. Interference may not be called for when the view taken is a plausible view and only because an alternative view is possible to be taken on the basis of the

materials.

vii. When the order impugned, if passed in favour of the petitioner would have disposed of the proceeding.

21. Keeping in mind the aforesaid provision of law, the present lis is required to be examined.

22. In the instant case, though Shri Ganguly, the learned counsel for the petitioners may be correct in contending that the documentary evidence may not fully support the case of the respondent-plaintiff, in the opinion of this Court, the crucial issue is the issue of possession and such fact can be proved by oral evidence only. As indicated above, even a rightful owner of a plot of land having valid title has to take due course of law to evict any unauthorized person who is in occupation and law does not permit even such rightful owner to forcefully evict a person in possession. Therefore, even ignoring the documentary evidence exhibited on behalf of the respondent-plaintiff, namely, the Jamabandi and the Chitha, the oral evidence adduced on behalf of the plaintiff still stands from which the fact of the plaintiff being in possession of the suit land who was dispossessed on 21.06.2012 appears to have been established in the proceeding.

23. A Revisional Court exercising powers under Section 115 of the CPC is not an Appellate Court and therefore cannot re-appreciate evidence on record. The interference by a Revisional Court is a circumscribed one and only upon certain conditions, interference may be made and those conditions have been indicated above. In the opinion of this Court, the impugned judgment does not suffer from any jurisdictional error or any material irregularity which requires any interference by this Court.

24. In the case of Rame Gowda (supra) relied upon by the petitioners, the principles of possession has been laid down wherein possession has been held to meant a settled possession and not the possession of a trespasser. There is absolutely no dispute with the proposition laid down but in the instant case, it is seen that the respondent-plaintiff was able to establish his possession over the suit land till the crucial date namely, 21.06.2012 when he was forcefully dispossessed.

25. In view of the above, this Court is of the opinion that no case for interference is made out and accordingly the revision petition is dismissed.

26. The LCRs may be sent back forthwith.