

Equivalent citations: 2005 (3) BLJR 1912, 2005 (3) JCR 374 Jhr

Bench: M Eqbal

Gulbahar Sheikh And Anr. vs Sanjay Kumar Pandey And Ors. on 15/7/2005

JUDGMENT

M.Y. Eqbal, J.

1. This civil revision application under Section 115 of the Code of Civil Procedure is directed against the judgment and order dated 24.2.1999 passed by 1st Sub-Judge, Garhwa in Title Suit No. 8/97 whereby the trial Court has decreed the suit filed by the plaintiffs-opposite parties under Section 6 of the Specific Relief Act and has ordered for delivery of possession of the suit property to the plaintiffs-opposite parties.

2. The plaintiff-opposite parties filed the aforementioned title suit for a decree for putting them in possession of the suit property by the process of Court after evicting the defendants-petitioners therefrom. Plaintiffs' case, in short, is that the suit land measuring 10-1/2 decimals comprised of plot No. 17 within Khata No. 31 of village, Jhalua along with structures standing thereon was purchased by them from Md. Issa Sheikh and Md. Israil Sheikh by virtue of two registered sale-deeds dated 24.10.1991 and 6.4.1996 and thereafter they came in possession of the same. The plaintiffs, after purchase, got their names mutated after proper verification and compliance of all formalities vide Mutation Case No. 68/1996-97 and are paying rent to the State of Bihar. Plaintiffs' further-case is that they constructed boundary wall which pucca bricks and fixed a gate for entry. They also constructed two rooms which were tiled roof with wooden doors fitted with bricks. It is alleged that they have been residing in the suit property with their family members. It is further alleged that the defendants, being influenced by some local politics and in collusion with the district administration, dispossessed the plaintiffs from the suit land on 18.6.1996 by forming unlawful assembly without the consent of the plaintiffs.

3. The defendants-petitioners contested the suit by filing written statement stating, inter alia, that they do not have any knowledge of the sale-deeds dated 24.10.1991 and 6.4.1996 by which the plaintiffs alleged to have purchased the suit land. They have also denied the possession of the plaintiffs over the suit land. Defendants' further case is that the plaintiffs were never in possession of the suit property. On the contrary, they had constructed four rooms, two of which are roofed and two are without any roof and they are residing therein along with their family members. It is alleged that on 18.9.1996 the plaintiffs entered into the house of the defendants with the help of their vendors having formed an unlawful assembly. It is alleged that the plaintiffs assaulted them, committed rape and kidnapped the family members of the defendants. The police officer got information by the neighbours and then they were apprehended in the way.

4. The trial Court framed the following issues for consideration :

I. Whether the suit as framed is maintainable ?

II. Whether the plaintiffs have valid cause of action for the suit ?

III. Whether the plaintiffs came in possession over the suit land and constructed house thereon after purchasing the same through valid sale-deeds dated 24.10.1991 and 6.4.1996 ?

IV. Whether the possession of plaintiffs over the house situated over the

suit land be resorted by evicting the defendants there from ?

V. Whether the dispossession of plaintiffs by the defendants from the house situated over the suit land is legal and valid ?

VI. Whether the plaintiffs are entitled to the relief as claimed for ?

VII. To what relief or reliefs, if any, are the plaintiffs entitled ?

5. Issue Nos. 3 to 7 were taken up together and after considering the entire evidence, both oral and documentary, the trial Court came to the conclusion that on the relevant date the plaintiffs were in possession of the suit property and they were dispossessed by the defendants without their consent. On the basis of the said findings the trial Court decreed the suit.

6. Mr. M.S. Anwar, learned Counsel appearing on behalf of the defendants-petitioners assailed the impugned judgment as being illegal and wholly without jurisdiction. Learned Counsel submitted that the impugned judgment is perverse in law inasmuch as the Court below has not correctly appreciated the evidence adduced by the parties. Learned Counsel submitted that although the plaintiffs' witnesses supported the case of the defendants and the plaintiffs miserably failed to prove their dispossession from the suit property, the Court below recorded a perverse finding of possession in favour of the plaintiffs. Learned counsel submitted that the Court below has perfectly failed to frame the most vital issue, namely, whether the plaintiffs were ever dispossessed from the suit property within six months from the date of filing of the suit. Learned Counsel relied upon a decision of the Supreme Court in the case of Nagarpalika Jind v. Jagat Singh .

7. Mr. P.K. Prasad, learned Counsel appearing on behalf of the plaintiffs-opposite parties, on the other hand, submitted that the finding arrived at by the Court below on the question of possession cannot be disturbed as the same is based on appreciation of evidence adduced by both the parties. Learned Counsel submitted that not a single document was brought on record by the defendants in support of their title and possession over the suit property. On the contrary, the plaintiffs adduced both oral and documentary evidence in support of their title and possession on the suit property. Learned Counsel further submitted that the Court below has gone into the facts of the case and the evidence and then has recorded a finding on the question as to who was in possession of the suit property on 18.6.1996, the alleged date of dispossession and, therefore, mere some defect in framing of issues cannot vitiate the entire judgment. Learned Counsel relied upon a decision of the Supreme Court in the case of Nedunuri Kameswarama v. Sampati Sobha Rao .

8. Section 6 of the Specific Relief Act provides a special summary and speedy remedy for a person in possession of immovable property whatever his title may be thereto, to recover such possession from another who had illegally and without his consent ousted him from there. This has its origin in the proceeding called 'interdict undivi' of the Roman Law, where a person wrongfully dispossessed by another could recover it back if he put forward his claim within a period of one year on the mere ground of his previous possession irrespective of defect in his title. The word 'possession' has not been defined under the Act. The term 'possession' expresses the physical relation of control exercised by a person over a thing. In other words, the continuing exercise of a claim to the exclusive use of thing constitutes the possession of it. According to Salmond's definition, in order to constitute possession two elements are essential to be present, namely, 'corpus possession' and 'animus possidendi' . It is, therefore, clear that a person who has been illegally dispossessed can recover possession under Section 6 of the Act even against rightful owner of the property and the question of title of the property is irrelevant in such a suit. To prove his possession the plaintiff has to show that he was exercising acts of dominion over the property or over a part of it and such acts of dominion were calculated to exclude alien interference with the property. Section 6 cannot be invoked unless the plaintiff has been deprived of actual physical possession otherwise than in due course of law. For example; Dispossession by reason of the order under Section 145 of the Code of Criminal Procedure is not a valid ground in a suit under Section 6 of the Act. In a suit filed under Section 6 of the Act, the onus of proof lies on the plaintiff to establish that he was in possession and has been illegally dispossessed but where both parties have led evidence the question of burden of proof becomes immaterial. In such a case the Court must be

satisfied before passing a judgment in favour of the plaintiff that he has established his possession over the suit property and further proved that he has been illegally dispossessed by the defendant. The only question in a suit under Section 6 of the Specific Relief Act is therefore, whether dispossession had taken place within six months prior to the Institution of suit and the question of title is irrelevant in such a suit.

9. As noticed above, no appeal lies from a decision in a suit under Section 6 of the aforesaid Act. However, the Court may interfere with the decision in the exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure; The normal remedy of unsuccessful party in such a suit is to file a suit for declaration of title and possession. The Court can interfere with the judgment and order in revision if finding of possession arrived at by the Court below is either perverse in law or is without any basis.

10. The only question, therefore, that remains for consideration in this case is whether the finding of possession arrived at by the Court below is perverse in law. The trial Court firstly considered the documentary evidence adduced by the plaintiffs. The defendants have not adduced any documentary evidence in support of their title and possession. The Court below, thereafter has discussed the oral evidence adduced by the plaintiffs In support of their possession. The Court below also discussed and considered the oral evidence of the defendants' witnesses and recorded a finding of possession in favour of the plaintiffs on the relevant date of their dispossession by the defendants. I do not find any grave error of law or any illegality or material irregularity in the impugned judgment and order passed by the Court below which warrants interference by this Court in exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure.

11. For the aforesaid reasons, I do not find any merit in this revision application which is, accordingly, dismissed. However, it is clarified that the finding of possession arrived at by the Court below will not operate as res judicata and the defendants-petitioners shall not be prejudiced by such finding in the event a regular suit is filed for declaration of title and recovery of possession.