

**HIGH COURT OF PATNA****Bench: Justice Sunil Dutta Mishra****Date of Decision: 10-11-2023****CIVIL REVISION No.37 of 2021**

1. Dilip Sharma, son of Late Janak Sharma
2. Ashok Sharma, son of Late Janak Sharma
3. Rajan Sharma, Son of Late Janak Sharma
4. Manoj Sharma, son of Late Lakhan Sharma, R/o Mohalla-Rani Talab Fatehpur, P.S.-Industrial Area, District-Bhagalpur.
5. Babu Sharma, @ Bablu Sharma, son of Late Lakhan Sharma, R/o MohallaRani Talab Fatehpur, P.S.-Industrial Area, District-Bhagalpur.
6. Rakesh Sharma @ Rakesh Kumar Sharma, son of Late Lakhan Sharma, R/o Mohalla-Rani Talab Fatehpur, P.S.-Industrial Area, District-Bhagalpur.

... .. Petitioner/s

Versus

Badal Tiwary, S/o Sri Nitya Nand Tiwary, R/o Village-Pansa, P.S. Hahorma, P.O. Mehrma, District-Godda (Jharkhand), at present at and P.S.-Adampur, District-Bhagalpur.

... .. Opposite Party

**Legislation:****Section 6 of the Specific Relief Act****Section 144 of the Criminal Procedure Code (Cr.P.C.)****Section 10 of the Code of Civil Procedure****Article 64 of the Limitation Act**

**Subject: Civil Revision Application in the context of the Specific Relief Act, focusing on a dispute over possession and dispossession of immovable property.**

**Headnotes:**

Civil Revision Application – Specific Relief Act – Dismissal of revision against judgment and decree passed under Section 6 of the Specific Relief Act – Plaintiff's suit for restoration of possession decreed – Defendants' possession claim over ancestral property not upheld – Trial Court's findings affirmed. [Para 2, 5, 15]

Possession and Dispossession – Section 6 of the Specific Relief Act – Determination of possession and dispossession within six months – Court not required to investigate title in such proceedings – Summary procedure outlined by the legislature for restoration of possession. [Para 9, 12]

Limitation – Timeframe for filing suit under Section 6 of the Specific Relief Act – Suit filed within six months from the date of dispossession – Comparison with Article 64 of the Limitation Act for recovery of immovable property based on previous possession. [Para 11]

Revision Jurisdiction – High Court's limited interference in revisional jurisdiction under Section 6 of the Specific Relief Act – Exceptional cases where grave injustice or error of law is evident – Appeal and review barred under Section 6(3). [Para 13, 14]

Final Decision – Dismissal of Civil Revision Application – Affirmation of trial court's judgment and decree in favor of the plaintiff – Stay on further proceedings of Execution Case vacated. [Para 15, 16]

#### **Referred Cases:**

- **East India Hotels Ltd. Vs. Syndicate Bank, 1992 Supp.(2) SCC 29**
- **State of U.P. vs. Maharaja Dharmender Prasad Singh, (1989) 2 SCC 505**
- **Krishna Ram Mahale vs. Shobha Venkat Rao, (1989) 4 SCC 131**
- **Muddanna Vs. Panthanagere Group Panchayat, Kengeri Hobli, (2003) 10 SCC 349**
- **Sanjay Kumar Pandey and Ors. Vs. Gulbahar Sheikh and Ors., (2004) 4 Supreme Court Cases 664**
- **I.T.C. Limited vs. Adarsh Cooperative Housing Society Limited, (2013) 10 SCC 169**

#### **Representing Advocates**

**For the Petitioners: Mr. Shiv Shankar Sharma, Advocate; Mr. Pankaj Kumar, Advocate**

**For the Opposite Party: Mr. Ganpati Trivedi, Sr. Advocate; Mr. Madan Mohan, Advocate; Mr. Ritik Shah, Advocate; Ms. Aishwarya Shree, Advocate**

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**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**

**C.A.V. JUDGMENT**

**Date : 10-11-2023**

Heard learned counsels for the parties.

2. This Civil Revision Application has been filed against the judgment dated 16.03.2021 and decree dated 27.03.2021 passed by learned Sub Judge-XIV, Bhagalpur in Title Suit No.703 of 2012 filed under Section 6 of the Specific Relief Act whereby the suit of the opposite party/plaintiff was decreed in favour of the plaintiff.

3. The fact, in brief, is that opposite party/plaintiff filed Title Suit No.703 of 2012 under Section 6 of the Specific Relief Act stating that he had purchased the suit land vide registered sale deed dated 26.11.2007 from the recorded Raiyat (title holder), namely, Jago Mandal for valuable consideration and mutated his name in Anchal Sirista and got rent receipt in lieu thereof. It is further stated that the plaintiff erected boundary wall, installed grill and locked up the gate. The case of the opposite party is that the petitioners/defendants had attempted to take possession of the suit land for which a proceeding under Section 144 of Cr.P.C. was initiated vide Misc. Case No.655 of 2007 in which the S.D.O., Sadar, Bhagalpur decided the said case in favour of the plaintiff's vendor, namely, Jago Mandal. It is further alleged that the petitioners/defendants broke the lock of the gate and dispossessed the plaintiff from the suit land. The proceeding under Section 144 of Cr.P.C. vide Misc. Case No.904 of 2012 was initiated which was decided in favour of the plaintiff in which the father-in-law of the plaintiff was

first party on behalf of the plaintiff and vide order dated 29.08.2012, the defendants were restrained to interfere with the lawful possession and enjoyment of the plaintiff. However, after the said order, he has been dispossessed on 30.08.2012.

Accordingly, the opposite party/plaintiff filed the instant suit for restoration of possession under Section 6 of the Specific Relief Act without adjudication of the title.

4. The petitioners/defendants, on summon, appeared and contested the suit by filing their common written statement asserting that the suit land was purchased by Mahadev Mistri, common ancestor of the petitioners, vide registered sale deed dated 10.07.1962 from Md. Abdul Rashid Khan, who was the father of Md. Zakki and Md. Muso (Vendor of sale deed of Jago Mandal from whom the opposite party has purchased the suit land). Mahadev Mistri was in peaceful possession of the purchased land and after his death, his successors/petitioners are in peaceful possession over the suit land. Petitioners/defendants got their names mutated and paying rent and getting rent receipts. Land purchased by the plaintiff is fake one and he has to prove his title. It is also stated that the petitioners filed Title Suit No.679 of 2012 before filing of the instant suit in which opposite party/plaintiff is also made party as defendant no.3 and the said suit belongs to the same land.

5. The learned trial Court framed 8 issues. Both the parties led their evidences; oral and documentary and after hearing both parties, the learned trial Court passed the impugned judgment and decree.

6. Learned counsel for the petitioners has submitted that the learned trial Court has failed to appreciate that the plaintiff has failed to prove the specific date, mode and manner of his dispossession from the suit land which was sine-qua-non for adjudication under Section 6 of the Specific Relief Act. The learned trial Court failed to consider the evidence of PW-3 in which he has admitted the earlier filing of Title Suit No.679 of 2012 by the petitioners. He has further submitted that the suit under Section 6 of the Specific Relief Act must be filed within six months from the date of dispossession but the date of dispossession of the plaintiff has not been established. Accordingly, the suit is liable to be dismissed. He has next submitted that the opposite party/plaintiff was never in possession of the suit land and the petitioners have title and possession over the suit land, which is their ancestral property. Since the title suit between the parties was pending with respect to the suit land, the trial Court should have stayed the

proceeding of the suit under Section 10 of the Code of Civil Procedure. However, he had conceded that the petitioners had not filed any petition in this regard before the learned Court below. He has further submitted that the alleged sale deed of the suit land in favour of the plaintiff is fake having no force of law and in proceeding under Section 144 of Cr.P.C., title of the suit property cannot be decided and accordingly, the petitioners have already filed the said title suit which is pending for adjudication.

7. On the other hand, learned senior counsel for the opposite party/plaintiff has submitted that the impugned judgment/decreed has been passed after the inquiry as required to find out the possession and dispossession within a period of six months. The remedy available to the petitioners is to file a regular suit for establishing their title over the suit property. The learned trial Court recorded the finding that the plaintiff was dispossessed from the suit land on 30.06.2012 and he has filed the suit on 29.10.2012 which is well within a period of six months from the date of dispossession from the suit land. Hence, the suit cannot be said as time barred by limitation. He has further submitted that the learned trial Court on the basis of materials available on record gave a reasoned judgment and held that the plaintiff was in possession over the suit land and he has been dispossessed by the defendants which requires no interference by this Court in exercise of its revisional jurisdiction.

8. Having heard the learned counsels for the parties and on perusal of the materials available on record, it appears that the opposite party/plaintiff had filed the suit for restoration of his possession over the suit property under Section 6 of the Specific Relief Act which has been decreed on contest and directed the defendants/petitioners to hand over possession of suit land to plaintiff/opposite party within 60 days from the date of judgment. The trial Court has given finding of fact that plaintiff was in possession of the suit land and he has been dispossessed by the defendants from suit land within six months of filing of this suit without process of law.

9. The legislature has provided a summary procedure under Section 6 of the Specific Relief Act which is an exhaustive, self contained and complete Code by itself regarding special suit. This provision provides a special forum, a special remedy and a special procedure for a person who is dispossessed from an immovable property. The Hon'ble Supreme Court in **East India Hotels Ltd. vs. Syndicate Bank 1992 Supp.(2) SCC 29** held that the purpose behind Section 6 is to restrain a person from using force to

dispossess a person without his consent, otherwise than in due course of law.

10. The Hon'ble Supreme Court in **State of U.P. vs. Maharaja Dharmender Prasad Singh (1989) 2 SCC 505, Krishna Ram Mahale vs. Shobha Venkat Rao, (1989) 4 SCC 131 and Muddanna vs. Panthanagere Group Panchayat, Kengeri Hobli, (2003) 10 SCC 349**, held that where a person is in settled possession of property, even on the assumption that he had no right to remain in property, he cannot be dispossessed by the owner of the property except by due process of law.

11. A suit for recovery of immovable property can be filed either merely on the basis of prior possession *de hors* title or on the basis of title. Though Article 64 of the Limitation Act, provides for Limitation of 12 years but Section 6 of the Specific Relief Act, for a suit thereunder, provides for a limitation of six months only. A suit for recovery of immovable property, based on previous possession can be filed either under Section 6, within six months from the date of dispossession or under Article 64 of the Limitation Act, within twelve years from date of dispossession.

12. In the proceeding under Section 6 of the Specific Relief Act, the Court is not required to investigate the title of the person in disputed property and the sole point for determination will be whether the plaintiff was in possession of the disputed property within six months previous to the institution of the suit and whether he had been deprived of such possession by the defendants otherwise than in due course of law. The Court in such suit does not try the question of title and the scope of enquiry is limited.

13. The question also raised whether Revision against the decree passed in a suit under Section 6 of the Specific Relief Act, would be available or not. In this regard, the observation of Hon'ble Supreme Court in **Sanjay Kumar Pandey and Ors. vs. Gulbahar Sheikh and Ors.**, reported in **(2004) 4 Supreme Court Cases 664** in paragraph no.4 is relevant which are as under:-

*“A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-Section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this Section. No review of any such order or decree is permitted. The*

*remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.*

14. It appears that under Section 6(3) of Specific Relief Act, the remedy of appeal and review is barred, a small window, by way of revision, was kept open by the legislature to enable the High Court to have a second look in an exceptional situation and thus only in exceptional cases the High Court may interfere in its Revisional Jurisdiction. In **I.T.C. Limited vs. Adarsh Cooperative Housing Society Limited (2013) 10 SCC 169**, it was held that the High Court should interfere only if there is grave injustice or error of law and not to re-appreciate evidence.

15. Considering the facts and circumstances of the case and the legal proposition discussed above, this Court is of the considered opinion that the petitioners have failed to make any of the grounds to exercise revisional jurisdiction calling for reversal of the decision of the trial Court under Section 6 of the Specific Relief Act. The impugned judgment of the learned Court below is a reasoned judgment arrived at on the basis of the evidence and materials adduced by the parties and is in accordance with law. There is no merit in this Revision Application and the same is liable to be dismissed.

16. This Civil Revision Application is, accordingly, dismissed. There shall be no order as to cost.

17. The stay on further proceedings of Execution Case No. 15 of 2021 pending in the Court of Sub-Judge XIV, Bhagalpur granted by this Court stands vacated.

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