



GAHC010214112011

Page No.# 1/7



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/196/2011

GUNA DUTTA
S/O LT. LAKHI NATH DUTTA, R/O DULIAJAN DAILY BAZAR, MOUZA-
KHEREMIA, PS. DULIAJAN, DIST. DIBRUGARH, ASSAM.

VERSUS

M/S ASSAM VALLEY PLYWOOD P LTD and ORS
HAVING ITS PLACE OF BUSINESS AND REGD. OFFICE AT TINSUKIA
KHAGESWAR ROAD, ASSAM BORPATHAR ROAD, ACTING THROUGH AND
REP. BY ITS DIRECTOR AND PRINCIPAL OFFICER - SURABIR GUPTA, PIN-
786125.

2: SURABIR GUPTA

DIRECTOR AND PRINCIPAL OFFICER OF M/S. ASSAM VALLEY PLYWOOD P
LTD
TINSUKIA ROAD
DIST./PS. TINSUKIA
ASSAM
PIN-786125

3: OM PRAKASH RAI

S/O BADRI RAI
R/O DULIAJAN TOWN
PO/PS. DULIAJAN
DIST. DIBRUGARH
ASSAM
PIN-786602

4: LALAN PROSAD RAI



S/O BADRI RAI
R/O DULIAJAN TOWN
PO/PS. DULIAJAN
DIST. DIBRUGARH
ASSAM
PIN-786602

5:M/S. INDRAPURI PRIMARY HOUSING COOP. SOCIETY LTD

HAVING ITS PLACE OF BUSINESS AND REGD. OFFICE AT DULIAJAN
DIST. DIBRUGARH
PIN-786602
ACTING THROUGH AND REP. BY - P.C. DUTTA

6:AMALA BORTHAKUR

W/O KAMAKHYA BORTHAKUR
R/O GOLAPHUKHURI T.S.K.
DIST. DIBRUGARH
ASSAM
PIN-786600

Advocate for the Petitioner : MS.M KECHII

Advocate for the Respondent : MR.T BARUAH

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : 21.09.2023

Date of judgment : 21.09.2023

JUDGMENT & ORDER

Heard Shri RS Mishra, learned counsel for the petitioner. None appears for the respondents in spite of names of counsel being shown in the cause list.

2. The present application has been filed under Section 115 of the Code of



Civil Procedure, 1908 against the judgment and decree dated 24.03.2011 passed by the learned Munsiff No. 1, Dibrugarh in Title Suit No. 140/2007. 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. It is the case of the petitioner that on 31.12.1983 and 25.03.1989, the petitioner came in the possession of a plot of land which measures 1 Bigha, 2 Katha and 10 Lechas in aggregate. The petitioner alleges that on 02.12.1994, he was dispossessed by the defendants leading to filing of the title suit. The same was renumbered as TS case No. 140/2007.

5. Shri Mishra, learned counsel for the petitioner by referring to the issues in the impugned judgment dated 24.03.2011 has submitted that issue no. 7 is specifically on the point of dispossession and was structured in the following manner:

“Whether the defendant no. 1 to 4 dispossessed the plaintiff on 02.12.94 as alleged?”

6. It is the contention of the petitioner that the aforesaid issue has been decided by the learned Court of Munsiff No. 1, Dibrugarh by taking into consideration irrelevant factors and misleading evidence and also by overlooking the relevant factors and the evidence on record. He submits that the learned Court, in spite of being confined to the aspect of dispossession had gone to the aspect of title which is not the purpose and objective of a suit filed under Section 6 of the Act. He submits that the requirement of the aforesaid provision

of law is a fact of dispossession without the consent of the plaintiff from immovable property and without following the due course of law which according to the learned counsel have been duly fulfilled in the present case.

7. The submissions advanced by Shri Mishra, the learned counsel have been duly considered.

8. 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.”

9. 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.

10. What transpires is that it is a fact of possession which needs to be established before such allegation of dispossession.

11. 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.

12. This Court is also conscious of the limited jurisdiction 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 can be enumerated 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 favor of the petitioner would have disposed of the proceeding.

13. Keeping in mind the aforesaid provision of law, the present */is* is required to be examined.

14. In the discussion on the issue no. 7, this Court has noticed that learned Munsiff No. 1, Dibrugarh has taken note of the oral evidence of the 5 numbers of PWs including the plaintiff who was examined as PW-1. The Court has however come to a finding that there was no acceptable evidence on the fact of possession of the suit land by the petitioner – plaintiff on the date on which such dispossession has been alleged.

15. At the same time, the learned Court, by taking into consideration the evidence adduced on behalf of the defendants by 7 numbers of DWs, have come to the conclusion that the allegation of dispossession was not established. The learned Court has also held that though an agreement was produced by the plaintiff, the same was not executed by any authorized person of the defendant and the said document also does not show that the petitioner – plaintiff was in possession of the suit land.

16. As enumerated above, a Court exercising revisionary jurisdiction is only



required to examine whether the judgment which has been impugned has taken into consideration the relevant factors or whether irrelevant and extraneous factors were considered. Such powers can also be invoked if there is a jurisdictional error of the learned Court adjudicating the issue or if the findings arrived at suffers from material irregularity or gross illegality. Those conditions do not appear to be fulfilled in the present case.

17. In view of the above, this Court is of the considered view that no case for interference is made out and accordingly the instant appeal is dismissed.

18. No order as to cost.

JUDGE

Comparing Assistant