



GAHC010264052019

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

Case No. : CRP/155/2019

DILIP BAISHYA

S/O- LT. KARMARAM BAISHYA, R/O WARD NO. 8, HEAD P.O. ROAD,
TEZPUR TOWN, P.O.- TEZPUR, MOUZA- MAHABHAIRAB, DIST.- SONITPUR,
PIN- 784001.

VERSUS

SARU SARMAH

S/O LT. BHAGWAN SARMAH, R/O.- WARD NO. 8, HEAD P.O. ROAD, TEZPUR
TOWN, P.O.- TEZPUR, MOUZA- MAHABHAIRAB, DIST- SONITPUR, PIN-
784001.

Advocate for the Petitioner : MR SISHIR DUTTA

Advocate for the Respondent : MR. S K SINGH

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioner :Mr. S Dutta, Advocate

For the Respondent : Mr. SK Singh, Senior Advocate
Mr. B Puchilal, Advocate

Date of Hearing : 27.01.2023, 13.02.2023

Date of Judgement :26.04.2023

JUDGEMENT & ORDER (CAV)

Heard Mr. S Dutta, learned counsel for the petitioner. Also heard Mr. S K Singh, learned Senior counsel assisted by Mr. B Puchilal, learned counsel for the respondent.

2. This present revision petition under Section 115 of the Code of Civil Procedure, 1908 is filed assailing judgment and decree dated 29.07.2019 passed in TS No. 46/2015 by the learned Civil Judge at Tezpur, Sonitpur.
3. The background facts of the present litigation can be summarized as follows:
 - I. The respondent herein preferred a title suit under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as Act, 1963) for recovery of possession of the suit land by evicting the petitioner defendant by demolition and removing one Ekshali Tin House.
 - II. The plaintiff pleaded that the suit land measuring 12 Lechas covered under Dag No. 1458 of Periodic Patta No. 419 has been in the occupation of the plaintiffs as tenant since the date of his predecessor-in-interest constructing houses thereon and the holding No. 2222 is still recorded in the name of the plaintiff's mother.
 - III. It is the further case of the plaintiff that a suit was filed by the earlier landlord of the plaintiff for enhancement of rent under the provision of Assam (Non Agricultural Urban Areas) Tenancy Act,

1955 claiming that the plaintiff is their tenant in respect of the suit land and adjacent suit land from the days of their predecessor-in-interest. It is also case of the plaintiff that the plaintiff is having electricity connection in the suit premises, however, the APDCL disconnected such electricity connection on 06.10.2015 on an application filed by the defendant and without hearing the plaintiff.

- IV. It is also pleaded that the defendant is now claiming that he had purchased the suit land and its adjacent land along with the houses standing thereon from the previous owners. However, the houses and structures standing on the land belong to the plaintiffs. The defendant with the help of Tezpur Police Station had taken the male members of the family of the plaintiff to the Tezpur Police Station and forcibly occupied the suit land and constructed a tin roof and wall ekshali house in the suit land.
- V. It is specifically pleaded by the plaintiff that the defendant had no possession over the suit land prior to 20.09.2015 i.e. the date of forceful eviction.
- VI. The defendant by filing written statement took a stand that the holding No. 2222 belongs to Sona Devi, wife of Bhagaban Sarma, who resided thereon along with four sons. Sona Devi died about 35 years back leaving behind her four sons including the plaintiff. Another brother of the plaintiff namely Ashok Sarma died leaving behind his wife Smt. Sugandhi Sarma and therefore 1/4th of the share of the property devolved upon said Sugandhi Sarma and



said Sugandhi Sarma has executed registered sale deed in respect of her share and since then the defendant has been residing over the suit land.

VII. It was also pleaded by the defendant that the plaintiff had no possession over the suit land and therefore the suit is liable to be dismissed.

VIII. The plaintiff side adduced three witnesses and exhibited certain documents. The defendant also adduced oral as well as documentary evidence and examined four witnesses.

IX. The learned trial court below framed as many as eight issues. After consideration of the pleading and evidences led by the parties, the learned trial court came to a conclusion that the plaintiff was in possession of the suit premises till 20.09.2015 and the defendant illegally dispossessed the plaintiff from the suit land without complying with due process of law. Accordingly, the decree was passed, which is under challenge in the present revision petition under Section 115 of the CPC.

4. **The decision of the learned trial court can be summarized as follows:**

I. The plaintiff through his own evidence and evidence of PW2 proved that the occurrence took place on 20.09.2015 and he was taken by the police to the police station inasmuch as during cross-examination both the witnesses reaffirmed the aforesaid fact. The PW3 supported and corroborated the story of the plaintiff. It is also proved through the aforesaid evidence that the defendant is now possessing the suit land and keeping his vehicle

there.

II. The defendant No. 1 admitted in his cross-examination that presently the plaintiff is paying the electricity bill and the electricity connection stands in the name of the plaintiff. The learned trial court also considered that during cross-examination the defendant had admitted that the electricity was disconnected on 06.10.2015 and same was restored as per order of injunction passed by the learned court of Munsiff, Tezpur and that the garage was constructed by the plaintiff and not by the defendant and that he had purchased the suit land vide exhibit A, an unregistered sale deed.

5. **Arguments advanced by the learned counsel for the petitioner:**

- I. The decision of the learned trial court is perverse inasmuch as the defendant had purchased the suit land in the year 2010 and since then residing there.
- II. The defendant had a better title over the suit property and duly proved that he was in settled possession of the property. However, the learned trial court failed to appreciate such fact.
- III. It is well settled that in a possessory suit, the plaintiff is to prove that there is a better title of the plaintiff than the person who had allegedly dispossessed the plaintiff. In support of such contention, Mr. Dutta relies the judgment of Hon'ble Apex Court in the case of ***Poona Ram Vs Moti Ram*** reported in ***AIR 2019 SC 813***.
- IV. The plaintiff has failed to prove his possession and therefore he

is not entitled to recover such possession by taking recourse to the provision of Section 6 of the Act, 1963. Once the possession is established, then only question of dispossession will arise. In support of such contention, he relies on the decision of the Hon'ble Calcutta High Court in ***Ramesh Chand Koiri vs Chandan Koiri*** reported in ***(2018) SCC Online Cal 6471***.

6. **Per contra, learned Senior counsel for the respondent submits as follows:**

- I. A suit under Section 6 of Specific Relief Act, 1963 is summary in nature and limited to finding out the question of possession within a period of six months of institution of such suit ignoring question of title and therefore, it is well settled that remedy of an un-successful person in a suit under Section 6 is to file regular suit based on title. Though remedy of revision is available but the same is an exception. In the case, no exception has been carved out for interference under Section 115 of the CPC inasmuch as the defendant in no unambiguous term admitted in his cross-examination that the plaintiffs were in the possession of the suit land, electricity connection stands in the name of the plaintiff till now. It is contended that though electricity was disconnected, on a direction being given by the court of learned Munsiff the same was restored, the predecessor-in-interest from whom the plaintiff inherited the suit property was a tenant over the suit land, the portion of the suit land wherefrom the plaintiffs were dispossessed was purchased by the defendant from one of the sister-in-law of the plaintiff by an unregistered sale deed value of

which was more than 100 and therefore the learned court below has not committed any perversity in decreeing the suit under Section 6 of the Act, 1963.

II. As the defendant is not having any better title to prove in a suit and therefore, the present revision is filed inasmuch as the plaintiff is having admittedly better title over the suit land being a tenant under the original land owner and such tenancy has been inherited from his mother.

III. In support of his contention, Mr. Singh relies on the decision of the Hon'ble Apex court in the case of ***Sanjay Kumar Pandey vs Gulbahar Sheikh*** reported in ***(2004) 4 SCC 664*** and ***Md. Mehtab Khan vs Khushnuma Ibrahim Khan*** reported in ***(2013) 9 SCC 221***.

7. Finding of this court:

I. This Court has given anxious consideration to the submissions made by the learned counsels for the parties.

II. It is by now well settled that a proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding and object of such proceeding is to afford an immediate remedy to an aggrieved party to reclaim possession of which the party may have been unjustly denied by an illegal act of dispossession. Law is equally well settled that forcible dispossession from land is illegal.

III. The Hon'ble Apex court in the case of ***Pandurang Dhoni Chougule vs Maruti Hari Yadav*** reported in ***AIR 1966 SC***

153 held that while exercising its jurisdiction under Section 115 of the CPC, a High Court is not competent to correct errors of fact, however, gross they may be, or even errors of law, unless such errors of law have relation to the jurisdiction of the court to try the dispute itself. It is only in cases where a subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in exercised of its jurisdiction illegally or with material irregularity, then only revisional jurisdiction of High court can be properly invoked.

- IV. In the case of ***Sanjay Kumar Pandey (supra)*** the Hon'ble Apex court in no un-ambiguity held that a proceeding under Section 6 of the Act, 1963 is intended to be a summary proceeding with an object to afford immediate remedy to an aggrieved party to reclaim possession which has been unjustly denied by an illegal act of dispossession.
- V. Section 6 (3) of the Act, 1963 clearly debars any appeal from any order passed under Section 6 of the Act, 1963.
- VI. The certified copies of the evidence on record were produced before this court and have been perused. After careful perusal of the same, this court is of the view that the learned trial court on consideration of the respective claims of the parties, their oral and documentary evidences came to a conclusion that the plaintiff has been illegally dispossessed and accordingly passed the decree. This court has also not found such exercise of power by the learned trial court either palpably wrong or not tenable under law. This court is of the further view that no jurisdictional

error has also been committed by the learned trial court. Accordingly, this court is not inclined to interfere with the decision of the learned trial court below by re-appreciating the evidence as in exercise of its jurisdiction under Section 115 of the Code of Civil Procedure, 1908 inasmuch as such course of action is also not permissible under the law.

VII. Coming to the judgments relied on by Mr. Dutta in ***Poona Ram (supra)*** the Hon'ble Apex court came to a conclusion that there was no material available in favour of the plaintiff to show possession and in the aforesaid context, the Hon'ble Apex Court observed that plaintiff is to prove his own case and will have to show that he has a better title than the other person.

VIII. In the case in hand, even if it is assumed that the defendant is having a better title, this court cannot find fault with the finding of the learned trial court inasmuch as the learned trial court below considered the continuous possession of the plaintiff since the date of predecessor-in-interest under erstwhile owner as tenant and the defendant's claim of title on the basis of an unregistered sale deed executed by one of the legal heirs of the predecessor-in-interest of the plaintiff. The learned Trial Court also took note of the admission made by the defendant during cross examination, which shows that the electricity connection has been in the name of the plaintiff, the same was disconnected prior to alleged dispossession and on application filed by the plaintiff, such connection was restored under the order of civil Court etc. Conclusion arrived on the basis of such evidence and

the evidence of PWs by the learned trial court cannot be re-appreciated in exercise of the revisional jurisdiction in as much as this Court has not found any perversity.

IX. The case of ***Ramesh Chand Koiri (supra)*** was decided in given fact of that case. In that case, during cross-examination of the plaintiff, it was established that on the alleged date of dispossession, the plaintiff was not having possession over the suit land. Therefore, in the given fact of the present case and admission made by the defendant in his cross-examination as discussed hereinabove, the decision of ***Ramesh Chand Koiri (supra)*** is not applicable.

8. In view of the above, this court is not inclined to interfere with the judgment and decree dated 29.07.2019 passed in TS No. 46/2015 by the learned Civil Judge at Tezpur, Sonitpur and accordingly the present revision petition stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant