

(2014) 09 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 2963 of 2004

Ram Kumar

APPELLANT

Vs

Subhash Chand

RESPONDENT

Date of Decision: Sept. 17, 2014

Acts Referred:

- Constitution of India, 1950 - Article 227
- Specific Relief Act, 1963 - Section 6

Citation: (2015) 177 PLR 407

Hon'ble Judges: Bharat Bhushan Parsoon, J

Bench: Single Bench

Advocate: Rajinder Goyal, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Dr. Bharat Bhushan Parsoon, J.

Vide this civil revision petition, petitioner-plaintiff Ram Kumar challenges judgment and decree dated 23.3.2004 passed by the Additional Civil Judge (Senior Division), Kaithal.

2. Claim of the petitioner-plaintiff before the lower court was that he was incepted as a tenant under Aggarwal Dharamshala, Pundri. Subhash Chand, respondent No. 1 herein and defendant No. 1 in the suit in last week of June, 1994 had joined hands with him for business of selling Phirni sweets. Sometime later, said respondent-defendant colluding with the office bearers of Pundri Tirath Sabha got a rent note dated 28.6.1994 executed in his favour and filed a suit for injunction against the petitioner-plaintiff on 1.7.1994 wherein he had claimed himself to be in exclusive possession of the suit property and was successful in obtaining forcible possession from the plaintiff. Restoration of possession of the suit property was sought.

3. Claim of the respondents, defendants in the suit controverting the stand of the petitioner-plaintiff therein, however, was that neither the Aggarwal Dharamshala was the owner of the suit property nor the petitioner-plaintiff was in possession as a tenant. It was elaborated that, in fact, the petitioner-plaintiff had never been in occupation of the suit property and right from the very start, the respondent No. 1 was tenant in the suit property under respondent No. 2 herein on the basis of rent note dated 28.6.1994. In short, version of the petitioner-plaintiff of forcible dispossession from the suit property at the hands of respondents No. 1 and 2 was denied. The petitioner-plaintiff, however, had reiterated his version in the replication furnished by him.

4. Rival claims of the parties were sought to be adjudicated by the lower court on the following issues, which were framed by it on 9.10.2001:

1. Whether the plaintiff was in possession of the suit property since June 1994, as alleged? OPP

2. If issue No. 1 is proved in favour of the plaintiff, whether he has been dispossessed forcibly and without adopting due process of law within a period of six months before filing of the present suit, by the defendants? OPP

3. Whether the suit is not maintainable? OPD

4. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD

5. Whether the suit is not properly valued for the purpose of court fee? OPD

6. Whether the suit is not within the period of limitation? OPD

7. Relief.

5. The parties had led oral as well as documentary evidence and after appreciating the same, the lower court had come to a firm finding that the plaintiff, petitioner herein was not in possession of the suit property as claimed by him. It was, rather, held that respondent No. 1 was in possession. Sequently, deciding issues No. 1, 2, 4 and 6 against the petitioner-plaintiff, his suit was dismissed leaving the parties to bear their own costs.

6. Since there is no appeal provided against adjudication of civil suit made u/s 6 of the Specific Relief Act, 1963 (hereinafter mentioned as the Act), the petitioner-plaintiff has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India by way of this civil revision petition.

7. It is claimed that established possession of the petitioner-plaintiff as also his forcible dispossession thereafter, is fully proved on record but even then, the trial court wrongly returned findings against him. It is claimed that though he was not required to prove as to in which capacity, he was in possession but even then there

is enough evidence to substantiate his claim that he was in possession as a tenant. It is claimed that there is overwhelming evidence in favour of the petitioner especially in the statement of Surender Pal (PW1) that he was in possession as a tenant. Reversal of the impugned judgment and decree has been sought.

8. Hearing has been provided to the counsel for the petitioner while going through the paper book.

9. At the outset, Section 6 of the Act is reproduced as below:

"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."

10. Perusal of this provision reveals that there is summary remedy provided for a person who is dispossessed of immovable property otherwise than in due course of law in which venture, he is not required to prove his title. Not the question of title but the question of possession is relevant under the aforesaid provision. A person dispossessed of some property is required to prove his previous possession and dispossession by the defendants otherwise than in due course of law within six months of filing of the suit.

11. The petitioner-plaintiff was required to prove his possession and thereafter dispossession and then was to establish that the suit was filed by him within six months of alleged dispossession.

12. Counsel for the petitioner-plaintiff citing [Abdul Rahiman Vs. Nalakath Muhammed Haji](#), has urged that the court was not required to go into the nature of possession of the parties. It was held therein as under:

"A person who is in possession of the property cannot be dispossessed without his consent or in any manner otherwise than in due course of law. Question of title is irrelevant in this suit. It is the question of possession. Plaintiff must prove his previous possession and dispossession by the defendants otherwise than in due course of law within six months of the suit. The court need not go into the nature of parties" possession. However, it is the person who claims u/s 6 should prove his

possession and also the fact that he was dispossessed, within six months from the filing of the suit. The burden of proof is on the plaintiff to prove that he was dispossessed and that the suit was filed within six months from the date of dispossession."

13. The plaintiff has approached the court with a definite case that he was a tenant under Aggarwal Dharamshala, Pundri. When, in what circumstances, on what terms and conditions, he was incepted as a tenant and was ushered in possession of the suit property, has not been disclosed by him. Even when petitioner-plaintiff Ram Kumar himself has entered the witness box as PW3, such details are missing from his testimony. Even his pleadings are blank in this respect.

14. Competing with the stand of the petitioner in rent note dated 28.6.1994 showing tenancy of respondent No. 1 under respondent No. 2, reference to documents Ex.P2 to Ex.P9 with a view to establish that Aggarwal Dharamshala, Pundri was owner and the petitioner was tenant under it, is of no avail because these entries have not been related to the property in dispute. In fact, there is nothing on record or in evidence produced by the parties to show that the property is owned by Aggarwal Dharamshala or that the petitioner-plaintiff was in possession of the property much less as a tenant under it.

15. No doubt, the petitioner-plaintiff is not required to prove his proprietary or possessory title qua the property in dispute but once he knocks at the door of the court with a definite plea that he was tenant under Aggarwal Dharamshala, Pundri, he was to substantiate his claim in which attempt, he has utterly failed. There is neither any rent note in favour of the petitioner nor any receipt showing payment of rent by him to his alleged landlord. Even Surender Pal (PW1) appearing for Aggarwal Dharamshala, Pundri as its President has failed to substantiate his claim as no record of tenancy or payment of rent could be proved by him. The petitioner-plaintiff also failed to examine Dr. Subhash Chand, who was President of Aggarwal Dharamshala, Pundri in the relevant period i.e. from 1992 to 1996.

16. Dispossession of the petitioner-plaintiff by defendant-respondent No. 1 is alleged to be in last week of June, 1994. Concedingly, this period was under the president-ship of Dr. Subhash Chand of Aggarwal Dharamshala, Pundri but no effort was made by the petitioner to bring him in the witness box. Even when claim of the petitioner viz. a viz. stand of the respondent is evaluated, the case of the petitioner is that he was in possession of the property earlier to execution of rent note dated 28.6.1994 meaning thereby that possession of the petitioner-plaintiff was earlier to that date. There is absolutely no evidence on this count. In the impugned order, reference has been made to [Stanley Parker Jones Vs. Bansraj Laltaprasad Mishra](#), whereby the petitioner-plaintiff was to prove his possession otherwise than a stranger or a trespasser.

17. To suffer repetition, though there is sweeping statement of the petitioner-plaintiff (PW3) about his possession but neither there is any supporting evidence regarding his inception in possession of the property nor of dispossession. In fact, when from the evidence on record, it is not proved that the petitioner-plaintiff was in possession of the property; there is no question of his dispossession.

18. For maintainability of the suit, the petitioner-plaintiff was required to prove that the suit was filed within six months of his dispossession. There is total blackout even in his own statement as PW3 of date of his alleged dispossession.

19. At this stage, it would be important to notice that yet another litigation regarding the suit property had been initiated by present respondent No. 1 Subhash Chand where, inter alia, the petitioner-plaintiff was one of the defendants alongwith his two brothers. In such suit for permanent injunction filed by plaintiff Subhash Chand, decree of permanent injunction was passed against the respondents including the present petitioner-plaintiff restraining him from dispossessing Subhash Chand, respondent No. 1 herein and the plaintiff in the said suit for permanent injunction, which was filed on 1.7.1994. This judgment and decree of 9.4.2002 of the lower court was taken in appeal by present petitioner Ram Kumar but his plea was not accepted and his appeal, consequently, was dismissed on 30.10.2004. Though judgment and decree of the suit as Ex.D1 and Ex.D2 had been produced in evidence by the respondents in this petition as well but since the adjudication by the Appellate Authority came later on 30.10.2004, the same could not have been produced, however, on this count, no dispute is raised by the counsel for the petitioner-plaintiff urging that Regular Second Appeal against the same is pending adjudication.

20. Keeping in view the totality of facts and circumstances as also evidence appreciated threadbare by the lower court, there is no factual or legal infirmity in the findings rendered by the lower court on issues No. 1, 2, 4 and 6 against the petitioner-plaintiff and affirming the impugned judgment and decree, this petition being devoid of any merit, is dismissed.