(1998) 08 GAU CK 0016

Gauhati High Court (Agartala Bench)

Case No: Civil Revision No. 25 of 1998

Haripada Sen and Others		APPELLANT
	Vs	
Rasha Prava Dev Barman and Others		RESPONDENT

Date of Decision: Aug. 31, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2A, Order 6 Rule 17, 115
- Specific Relief Act, 1963 - Section 6

Citation: (1998) 3 GLT 485

Hon'ble Judges: D. Biswas, J

Bench: Single Bench

Advocate: B. Das, A. Bhattacharjee and N. Majumdar, for the Appellant; B.B. Deb, A.K. Deb and K. Deb, for the Respondent

Judgement

D. Biswas, J.

This revision petition u/s 115 of the Code of Civil Procedure, hereinafter referred to as the Code, has been preferred against the judgment and decree dated 31.1.1998 and 4.2.1998 passed respectively by the learned Civil Judge, Junior Division, Dharmanagar, in Title Suit No. 17 of 1985 decreeing the suit for recovery of possession u/s 6 of the Specific Relief Act.

2. During the course of argument, Mr. B. Das, learned senior counsel for the revisionists emphasised mainly on the ground that the learned Court below without application of mind to the evidence on record decided the issue of possession illegally and with material irregualrity and thus failed to exercise jurisdiction in proper perspective. According to him, the suit originally filed by the Plaintiff-Respondents was for perpetual injunction restraining the Defendants from entering the suit land. The ad-interim injunction granted at the intial stage prohibiting the Defendant-Respondents was vacated after hearing both the parties and, only

thereafter, the Plaintiff- Respondents came with a prayer for amendment of the plaint under Order 6 Rule 17 of the Code. This petition was filed on 1.12.1985 and by this petition the prayer was inserted for recovery of possession based on previous possession u/s 6 of the Specific Relief Act. In this petition, the Plaintiff- Respondents disclosed that they were dispossessed by the Defendant-Petitioners on 12.7.1985. According to the learned Counsel for the revisionists, this amendment is engineered to revive an otherwise dying case on false grounds. It has been further argued that the petition filed by the Plaintiff-Respondents under Rule 2A of Order 39 of the Code alleging violation of the prohibitary order on 15.7.1985 is silent about the dispossession.

3. I have examined throughly the impugned judgment with reference to the materials made available. It may be mentioned here that the petition dated 15.7.1985 was submitted alleging violation of the prohibitary order imposed upon the Defendant-Petitioners. Thereafter, the Plaintiff-Respondents came with the petition for amendment of the plaint. There may be delay of few month, but that does not in any way render the suit as false and vexatious. The amendment permitted to convert the suit for perpetual injunction into a suit for recovery of possession u/s 6 of the Specific Relief Act because of the alleged dispossession during the pendency of the suit cannot be said to have completely changed the nature and character of the suit to the prejudice of the Defendant-Petitioners. The appreciation of the evidence on record and the finding arrived at by the learned Civil Judge has been pin-pointedly elaborate touching all the material points relevant for deciding the factum of possession. He has evaluted the evidenciary value of the statement of the witnesses and the documents of the Plaintiff-Respondents, and after comparative analysis with that of the evidence and documents of the Defendants, came to a finding that the Plaintiff-Respondents have been all along in possession of the disputed land till they were dispossessed in 1985. His findings that the documents tendered into evidence by the Defendant-Petitioners may suggest their possession after 1985 and not prior to that needs no interference. In my considered opinion, there has been no illegality or irregularity committed by the learned Court below resulting into miscarriage of justice warrenting interference by this Court u/s 115. There is no dispute to the legal position that when some illegal or material irregularity is one committed by the Subordinate Court in the matter of exercise of its jurisdiction, such illegality or material irregularity can be corrected by a Court in exercise of its powers u/s 115 of the Code. In order to succeed in a petition under this section, the revisionists will have also to show that the impugned order has occasioned failure of justice. After a thorough scrutiny of the impugned judgment and decree, I am of the opinion that the Petitioners have not been able to show that there has been improper or illegal exercise of jurisdiction which has resulted into mis-carriage of justice in the instant case.

4. In view of the above canclusion, the decision in T. Arivandandam Vs. T.V. Satyapal and Another, directing the trial Court to screen out fradulent and fribolous litigation

at the initial stage cannot be applied in the instant case.

5. Similarly, the ratio laid down in Dilbagrai Punjabi Vs. Sharad Chandra, could not be applied for non application of mind to any relevant evidence.

6. I have also taken into consideration the decisions rendered in Sher Sing v. Joint Director of Consolidation reported in AIR 1978 SC 1341 , Ram Avtar and others Vs. Ram Dhani and others, and Debasish Majumdar and Another Vs. Saha Brothers, West Tripura, Agartala and Others, regarding limited powers of the Revisional Court in coming to interfere with the impugned judgments.

7. In the result, the revision petition is dismissed with costs.