

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.R.P. No.1338/2002

Sh.Raj Singh Petitioner
! through: Mr.S.D.Dixit, Adv.

VERSUS

\$ Sh.Samey Singh & Ors. Respondents
^ through: Mr.Shanmuya Patro, Adv.,
Mr.Neeraj Sharma, Adv. &
Mr.Shivnath Mohanta, Adv.

RESERVED ON : 18-07-2007

% DATE OF DECISION: 31-07-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. The dispute is between the father-in-law on one side and on the other side his unfortunate daughter-in-law and her father, mother and brother. Petitioner Raj Singh is the plaintiff. He filed a suit invoking remedy under Section 6 of the Specific Relief Act seeking restoration of possession of property

bearing No.234, Village Rithala, Delhi.

2. He impleaded his daughter-in-law Smt.Usha as a defendant and her mother, brother and father as co-defendants, alleging that on 19.11.1993 his daughter-in-law aided and abetted by her father, brother and mother took forcible possession of the suit property.

3. Whereas father, brother and mother of the daughter-in-law disclaimed any concern with the suit property, the daughter-in-law asserted that she and her children were in lawful possession of the suit property; that after she got married to the son of the plaintiff on 22.11.1989 she started residing in the matrimonial house at Ashok Vihar where even plaintiff was residing. That she was tricked to shift to the suit property as plaintiff i.e. her father-in-law and her mother-in-law wanted their son and his family to shift to the suit property. That when along with her husband and children she shifted to the suit property, her husband left her and returned to his parents. She stated that the suit property was in the village and she was tricked to move from a house in the urban area to a dilapidated house in the village. She stated that the suit property was ancestral in the hands of the plaintiff and that, if not she, her children i.e. her sons had a right by birth to jointly

possess and occupy the suit property. She further stated that on 21.11.1993 the local panchayat intervened at the asking of the plaintiff and took a decision that she along with her children would be entitled to live in the suit property.

4. On the pleadings of the parties, following issues were framed:-

“1. Whether the suit is correctly valued for the purpose of Court Fees and jurisdiction? OPD

2. Whether the defendant No.4 is living in the disputed house within her own rights? OPD

3. Whether the plaintiff has got no locus standi to file the present suit in view of decision of the Panchayat on 21.11.1993? OPD

4. Whether the plaintiff is entitled to the relief of possession?

5. Relief.”

5. Vide impugned judgment dated 11.9.2002, learned

Trial Judge has returned a finding as under:-

“From the aforesaid facts coming out of the cross examination of PW-1/plaintiff it is clear that the property in dispute is ancestral property of the plaintiff and the son of the plaintiff namely Shri Pawan Kumar – who is the husband of defendant No.4 hence children of said Shri Pawan Kumar also have right in the property as co-owners. It is admitted fact that the plaintiff was also not residing in the property in dispute on the date of alleged forcible dispossession i.e. 19.11.1993. Taking into consideration the aforesaid facts, even if it is assumed that prior to 19.11.1993 the defendant was not residing in the property in dispute – a suggestion which has been put to the DWs in their

cross examination is correct, it is clear that the plaintiff and the husband of the defendant No.4 – both were in constructive possession of the suit property as its co-owners.”

6. As a consequence, suit filed by the plaintiff has been dismissed.

7. At the outset I may note that a suit under Section 6 of the Specific Relief Act, being not a title suit, question of title cannot be adjudicated in such a suit. Issue has to be decided with reference to the fact of being in physical possession or otherwise.

8. I need not elaborate on the legal nuances of a suit under Section 6 for the reason in my decision dated 17.4.2007 disposing of CRP No.193/2005, Deep Chand vs. Kulanand Lakhera & Ors. I had exhaustively dealt with the law relating to a suit based on a possessory title vis-a-vis a suit for possession based on title. I adopt the discussion in said decision.

9. It had been noted by me that the legal concept of possession is not restricted to the common sense concept of possession, viz., physical control. That possession in fact is not a simple notion. The question, whether in fact a person is in possession of a thing depend on various factors such as the nature of the thing itself and the attitudes and activities of other persons.

10. Law recognizes possession as a substantive right or an interest. Lawful possession is the state of being a possessor in the eyes of law.

11. Since possession is recognized as a right by itself, law recognizes that a wrong doer who is deprived of his possession can recover the same simply on the ground of his possession provided the wrong doer can show juridical possession.

12. Unfortunately, the learned Trial Judge has proceeded to adjudicate the suit as if the subject matter of the suit was the enforcement of a right, in co-parcenary properties, to be in joint possession thereof.

13. The issue before the learned Trial Judge was a simple issue. It was, whether plaintiff was in possession of the suit property and was he dispossessed on 19.11.1993. The issue had to be decided with reference to the fact of physical possession and no more.

14. Surely, family disputes pertaining to a right claimed by a person to occupy joint family property cannot be resolved by force and law does not recognize the wrong doer protecting his unlawful possession based on his right to occupy the same.

15. No person can be a judge in his own cause.

16. If a person is physically excluded from a joint property, he or she must regain possession thereof by due process of law.

17. Since the learned Trial Judge has not considered the evidence in relation to the claim of respondent No.4 that she and her children were already in possession of the property on 19.11.1993 as they were tricked to move into the suit property vis-a-vis the claim of the plaintiff that his daughter-in-law trespassed into the property on 19.11.1993 and in said act was aided and abetted by her father, brother and mother, I am inclined to remit the suit for fresh adjudication by the learned Trial Judge.

18. Petition stands disposed of quashing the impugned judgment and decree dated 11.9.2002.

19. Matter is remanded for fresh adjudication to decide as per evidence.

20. Learned Trial Judge would seek guidance from not only the present decision but judgment and decree dated 17.4.2007 passed by this Court deciding CRP No.193/2005 Deep Chand vs. Kulanand Lakhera & Ors.

21. Trial Court record, if received, be returned.

22. No costs.

July 31, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE