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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 24th December, 2021
+ **C.R.P. 86/2021 & CM APPL. 42960/2021**

BALWINDER SINGH Petitioner
Through: Mr. Vijay Kinger, Advocate.
versus

KAMAL KISHORE Respondent
Through: Mr. Fateh Singh Chauhan & Ms.
Usha Kashyap, Advocate.
(M:9871054777)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present revision petition arises out of the impugned judgment/decreed dated 22nd September, 2021 passed by **SCJ-CUM-RC (North East) Karkardooma Courts Complex, New Delhi** (hereinafter "Trial Court") in **CS No. 391/2016** titled **Kamal Kishore v Balwinder Singh** by which the suit of the Plaintiff/Respondent Shri Kamal Kishore (hereinafter "Plaintiff"), has been decreed. The case of the Plaintiff is that he is the owner of the **West part of property No. A-40 (part) Mansarovar Park, Shahdara, Delhi**, (hereinafter "suit property") which was allegedly illegally broken into by the Defendant/ Petitioner (hereinafter "Defendant") who was the owner of the remaining part of the suit property.
3. The suit was filed under Sections 6 and 39 of the Specific Relief Act, 1963 (hereinafter "the Act") seeking decree of declaration, recovery of possession and mandatory injunction in relation to the suit property. The

reliefs sought in the plaint are as under:

- “i) Pass a decree for recovery of possession of the plaintiff’s immoveable property standing at A-40 (West Part), Mansarovar Park, G.T.Road, Shahdara, Delhi.*
- ii) Pass a mandatory injunction in favour of the plaintiff and against the Defendant for restoration of the main door and partition wall of the plaintiff’s immoveable property standing at A-40 (West Part), Mansarovar Park, G.T.Road, Shahdara, Delhi.*
- iii) Cost of the present suit in favour of the plaintiff and against the Defendant.”*

4. The written statement was filed by the Defendant, and evidence was led by both the parties. The Trial Court came to the conclusion on the basis of the evidence, that the Plaintiff has been able to establish that the property was purchased from one Sh. Monu Aggarwal. Electricity bills to this effect issued in the name of Shri Monu Aggrawal were perused. The Trial Court also observed that the photograph PW1/X8-13 placed on the record of the Trial Court clearly show that there was a wall which was erected between the Plaintiff’s and Defendant’s portion which was demolished by the Defendant. Further Exhibit DW6/1, which is relied upon by both the parties also reveals the entrance to the Plaintiff’s side of the property having been freshly plastered with the evidence of a door bell space in the wall which showed that there was a separate entrance from the street, to the suit property.

5. The Trial Court further records based on the testimony of two independent witnesses, Sh. Nanak Chand and Sh. Tapsi Ram that Sh. Monu Aggarwal was in possession of the suit property till 28th June 2001.

Thereafter, the Plaintiff purchased the property from Sh. Monu Aggarwal and was using it for the purposes of residence of his mother till her death in the year 2006. The Plaintiff was not regularly residing in the property in question and he used to occasionally visit the suit property. The findings of the Trial Court are relevant and are set out below:

“16. PW1 during his cross examination categorically admitted that there is a partition wall between the portion shown in red and the portion shown in green in the site plan Ex. PW1/D2. The suit property as a portion of Ranjeet Kaur has been reflected in the lay out plan, part of DW9/A which is an admitted document by the defendant. It also has a photograph of the property A-40 which shows a wall dividing 3/4th and 1/4th share of the property. Further PW1 during his cross examination was confronted with the site plan Ex. PW1/D2 where he admitted that there is a wall from point X1 to X2 and the height of the wall is approximately 11 to 12 feet. This admission of PW1 corroborates the testimony of DW2 Bhupinder Singh who during his evidence categorically stated that after he purchased 1/4th share of his mother i.e. the suit property and he got it separated from the rest of the part of A-40, Mansarover Park by constructing a full height and full length brick wall. No suggestion on this aspect has been given by the plaintiff to DW2 during his cross examination denying the construction of the wall by defendant no. 2. The aforesaid evidence lead on record clearly shows that the property A-40 Mansarover Park was even physically divided especially 3/4th portion on one side and 1/4th portion on the other which is the suit property herein. The photographs PW1/X8-13 are the photographs depicting the status of construction inside the suit property. These photographs have

also been admitted by PW1 during his cross examination which clearly shows and proves the separation of suit property from the rest of the portion of A-40. Similarly, PW1/X6 and PW1/X7 are also admitted by PW1 in cross examination that also apparently shows the physical separation of property A-40. Apart from the admitted photographs exhibited as Ex. PW1/X8 to Ex. PW1/X13, document Ex. DW6/1 relied by both the parties also shows that a door has been installed in the partition wall and the roadside wall also seems to have been constructed recently.”

6. On the strength of the evidence led by both the parties, the Trial Court directed the Defendant to handover the peaceful and vacant possession of the suit property to the Plaintiff and to restore the main door in front of the road along with the partition wall of the suit property within one month from the date of judgment.

7. Ld. Counsel for the Defendant submits that the Defendant had also filed a suit which was rejected by the Trial Court and appeal has been preferred by the Defendant being RCA 28/2021 which is pending adjudication. Thus, this Court ought to await the outcome of the said appeal. He further submits that there are four cross F.I.Rs. which have been filed by the parties against each other in respect of the property, documents and other allegations which have been raised in the present Petition. He further submits that mere electricity bills in the name of Sh. Monu Aggarwal would not be sufficient as there is no consumption of electricity shown in those bills.

8. On the other hand, Mr. F.S. Chauhan, Ld. Counsel for the Plaintiff submits that actual position was that one part of the property was in the

possession of the Defendant, however, the suit property, i.e., 1/4th share of the property was in possession of the Plaintiff. Moreover, there was a partition wall erected to divide the two portions of the property which were in the possession of the Defendant and the Plaintiff respectively. There was also a front door which enabled entrance to the suit property. Since the Plaintiff was not regularly residing in the suit property since 2006 and was residing in the neighbourhood, he used to visit the suit property every two three days, the Defendant took advantage of the same and blocked the front entrance of the suit property with a brick wall and broke the separating wall from the inside. The existence of the entrance was established by Exhibit DW1/W and the plastered wall photograph. Thus, the Defendant has no rights in the suit property and the decree has been rightly passed by the Trial Court and execution has already been preferred by the Plaintiff of the impugned decree. Mr. Chauhan, Id. Counsel for the Plaintiff has shown the photographs taken before the partition wall was allegedly brought down to the court which would make it evident that there was a proper vertical wall dividing the properties of the Plaintiff and the Defendant.

9. However, Counsel for the Defendant submits that from the electricity bill in the name of Mr. Monu Aggarwal, it is evident that not even a single unit of electricity was consumed which shows that the Plaintiff was not residing in the suit property. He also relies upon the testimony of DW-10 from the BSES who deposed that he cannot say if there was any consumption of electricity from 2000 to 2004. The said sale by Mr. Monu Aggarwal to the Plaintiff should, therefore, not be recognised by this Court.

10. Id. Counsel for the Plaintiff on the other hand submits that the claim of the Plaintiff initially was that the original deeds relating to the suit

property were deposited with State Bank of India as the property was mortgaged in lieu of loan taken by Late Shri S. Harbans Singh, father of the Plaintiff. Vide a letter dated 27th September 2003 issued by the SBI it was stated that the said bank has misplaced the documents related to the suit property and no dues were left to be paid to the bank. However, it was thereafter revealed that the loan which was taken from SBI by the father of the Plaintiff was for buying of 2 trucks and it had nothing to do with the suit property in question. It was later found vide a certificate issued by the Syndicate Bank, on the direction of the Trial Court, marked as Exhibit PW1/X3 that actual title documents of the suit property were in fact in the possession of Syndicate Bank from where the Defendant had availed a loan of Rs. 1.3 crores on the basis of the title documents of the suit property.

11. It is further submitted by the Id. Counsel for the Plaintiff that the Will of the original owner Sh. Harbans Singh whose title is not disputed by the Defendant itself shows that he had created four separate parts in the property: East, West and two middle parts.

12. The East part given to Shri. Balwinder Singh and the West part was given to the mother of the Plaintiff, Shri Ranjeet Kaur and two middle parts of the property were purchased by Sh. Gulzar Khan. Sale deed in this regard has also been shown to the Court. Insofar as the Western portion, which was with the Smt. Ranjeet Kaur is concerned, the Will in Clause - क clearly mentioned that the western portion is of 71 sq. yards. It is this portion which is sold to Mr. Monu Aggarwal and thereafter purchased by the Plaintiff from Mr. Monu Aggarwal thereby establishing title of the Plaintiff over the Property. It is submitted by counsel for the Defendant that there are several litigations between the parties. It is also submitted by the Defendant that the

said Will on which the reliance is placed by the Plaintiff is forged.

13. Heard. In the suit, the following issue was framed by the Trial Court:

“1. Whether the plaintiff was illegally dispossessed by the defendant from the house built on 1/4th part of plot no. A-40 (Western portion) Mansarovar Park, Delhi? OPP

2. Relief.”

14. The Trial Court has considered the various documents which were exhibited on the record. The photographer who took the photographs was also produced as witness before the Trial Court by the Plaintiff. On the said issue which was framed, after considering that the main defence of the Defendant that there is no water or electricity connection, the Trial Court has concluded that there were two independent witnesses namely PW-2 and PW-3 i.e., Mr. Nank Chand and Mr. Tapsi Ram supporting Plaintiff's case. Mr. Nanak Chand has deposed that the Plaintiff was in possession of the suit property and that Balwinder Singh was in the possession of less than 1/4th portion of the entire property situated A-40, Mansarovar Park. It is further stated in the evidence by the Mr. Tapsi Ram that he has seen Plaintiff doing construction on the suit property and that the mother of the Plaintiff resided at the suit property. Mr. Tapsi Ram admitted that the Plaintiff was the owner of the entire build up property A-40 Mansarovar Park, Delhi. However, he also claims that he was also an acquaintance of the Plaintiff and he used to visit the Plaintiff regularly for the last 30-35 years. Notably, the partition wall between the two properties were also admitted in the evidence. On the basis of the evidence which was recorded and the photographs which was taken, the Trial Court came to the conclusion that the status of construction is also quite clear and the physical separation between the two properties is

also clear. After holding so, the suit was decreed by the Trial Court in favour of the Plaintiff. The Trial Court also, simultaneously vide separate order, dismissed the application under Order XXXIX Rule 2 (a) CPC.

15. The issue in this petition is only on the final relief and not related to the contempt application. The main submission of Id. Counsel for the Defendant is that since there is no consumption of electricity, it cannot be stated that the Plaintiff was in possession of the suit property. This has already been explained by the Plaintiff by stating that he lives in the neighbourhood and his parents/ lastly his mother was living in the suit property. He has also stated that he used to visit the suit property regularly. Under such circumstances, the mere fact that there was no electricity consumption in some recent period would not take away the fact that the separate property existed with the partition wall. The electricity bill in the name of Mr. Monu Aggarwal is explicit to the effect that someone else was living in this property and not the Defendant. The original electricity bills have been placed on record in the Trial Court show that as of 2001, 2002 there has been consumption of electricity in the property. Thus, the submission of Id. Counsel for the Defendant that the lack of electricity consumption shows that there was no occupation and use of the premises by the Plaintiff is liable to be rejected.

16. Id. Counsel for the Defendant also argues that the source of photographs exhibited by the Plaintiff has not been shown. In the digital era, the previous method of proving photographs by producing the negatives is no longer the process followed any more. In the present case, the photographer himself has deposed in this case and has submitted before the Trial Court that he used a digital camera for taking the said photographs.

The affidavit of the photographer reads as under:

“That my camera uses memory card and does not generate ‘negatives’. However, the receipts of the amount received from Shri Kamal Kishore were given to him.

xxx xxx xxx

It is correct that in Ex. DW5/1 to DW5/5, there is no laborer or mason work seen working. I do not remember the camera from which I took the photographs, however, it was having a memory card. It is correct that changes in photographs is possible in photo-sop after the photographs are taken, however, no such changes were made in the present case. I do not remember the name or the designations of the police officials present on 10.09.2013 but they were around 3-4 in number. I was accompanied by four police officials, Kamal Kishore and Rakesh to the suit property. It is wrong to suggest that no photographs were taken by me prior to 10.09.2013. It is wrong to suggest that I am deposing falsely at the instance of Kamal Kishore. ”

Thus, the photographer’s testimony cannot be dislodged merely on the ground that negatives of the photographs were not produced.

17. Be that as it may, the scope of a Revision petition under Section 115 is to see if there is any gross jurisdictional error. A constitution bench of the Supreme Court in ***Pandurang Dhoni Chougule v Maruti Hari Jadhav AIR 1966 SC 153***, while examining the scope of High Court’s power under section 115 CPC has observed:

“11. The provisions of s. 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under

s. 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of s. 115 indicate, it is only in cases where the 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 the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well-settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of s. 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under s. 115.”

The said view has been reiterated by the High Court of Jammu and Kashmir in **Ab. Raheem Bhat v Mukhti Bibi 2020(5) JKJ 236** wherein the High Court held:

“6. From the aforesaid backdrop, it is deducible that for effective exercise of the High Court's superintending and visitorial powers over subordinate courts, the revisional jurisdiction has

been conferred on the High Court by Section 115 of the Code. The powers given are clearly limited to keep subordinate courts within bounds of their jurisdiction. Thus, the scope of revisional jurisdiction depends on the language of the statute. Though revisional jurisdiction is only a part of appellate jurisdiction, yet it cannot be equated with that of a full-fledged appeal. It is well settled that the High Court, while considering the matter in exercise of its jurisdiction in civil revision, would not reverse the finding of the fact as recorded by the courts below. Even where an error of jurisdiction is committed by the court below but the action taken by it has not been proved to have resulted in injustice, the High Court would be loath to interfere with it. Thus, power under Section 115 is very limited and not to be exercised except in the rarest of rare cases, however, grossly erroneous. From all angles the present case does not come and fall within rarest of rare cases inasmuch as there is no error muchless grave in passing of orders both by Trial Court as well as Appellate Court.

Thus the question of facts raised before this Court by the Defendant cannot be analysed under revisional jurisdiction. Nevertheless, the evidence which has come on record and the photographs, all point to only one fact- that there was a separate partition delineated from the Plaintiff's property which was sought to be merged by the Defendant into the Defendant's property by breaking of a wall and by closing the entrance from the road.

18. In the opinion of this Court, it is for cases like the one presently before this Court that Section 6 of the Specific Relief Act, 1963 has been enacted. The purpose and import of section 6 is to give quick and immediate relief to any person who has been dispossessed. The limitation is

also, therefore, fixed as six months from the dispossession. The Hon'ble Supreme Court in ***Sanjay Kumar Pandey & Ors. v. Gulbahar Sheikh And Others, (2004) 4 SCC 664*** has held that Section 6 of Specific Relief Act, 1963 is a provision to give immediate succour to the person who has been incorrectly dispossessed from the property which was under his possession. The Court observed as under:

“A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the Plaintiff was in possession at any time six months prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.”

19. Furthermore, the intent of the legislature while enacting the said provision is also clear as no appeal from orders and decrees passed under Section 6 of the Act is provided. In view of the legislative bar placed by Section 6(3) of the Act no appeal/ review of the order/judgment can be entertained by this Court against the order passed by the Trial Court under section 6. This view finds support from Supreme Court decision in ***Mohd. Mehtab Khan & Ors. v. Khushnuma Ibrahim Khan, (2013) 9 SCC 221***

wherein it has observed:

“A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the Plaintiff was in possession at any time six months prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.”

20. Admittedly, the suit in this case was filed in 2010, it has taken 11 years for the suit for possession to be decided. The Court having perused the impugned judgment as also the evidence on record is of the opinion that this is not a case which warrants any interference under Section 115 CPC.

21. Accordingly, the present petition, along with all pending applications, is disposed of. Under such circumstances no costs are awarded.

PRATHIBA M. SINGH
JUDGE

DECEMBER 24, 2021

dj/sk

(corrected and released on 30th December, 2021)