

SANJAY KUMAR PANDEY AND ORS.

v.

GULBAHAR SHEIKH AND ORS.

APRIL 2, 2004

[R.C. LAHOTI AND ASHOK BHAN, JJ.]

*Specific Relief Act, 1963:*

*S.6—Suit—Decreed—Remedy against—Plaintiffs filed suit under s.6 complaining of their dispossession from immoveable property—Suit decreed—Defendant's revision u/s 115 CPC allowed by High Court and suit dismissed—Held, the remedy of a person unsuccessful in a suit under s.6 is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under s.6—The remedy of filing a revision is available but that is only by way of an exception, for the High Court would not interfere with a decree or order under s.6 except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction u/s 115 CPC—On facts, High Court has not looked into all the material available on record and has not indicated any of the grounds u/s 115 CPC so as to exercise revisional jurisdiction calling for reversal of decision of trial court u/s 6 of the Act—Order of High Court set aside—Revision before High Court shall stand restored for decision afresh—Code of Civil Procedure, 1908—S.115.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2040 of 2004.

From the Judgment and Order dated 25.7.2001 of the Jharkhand High Court at Ranchi in C.R. No. 223 of 1999.

Sugriva Dubey and Rakesh K. Sharma for the Appellants.

Abhimeet Sinha, Ejaz Maqbool, Ms. Minakshi Nag and Gourav Kejriwal for the Respondents.

The following Order of the Court was delivered.

A Leave granted.

B Plaintiff-appellants filed a suit under Section 6 of the Specific Relief Act 1963 (hereinafter referred to as the 'Act') complaining of their dispossession of immovable property otherwise than in due course of law by the respondents. The suit was contested. Evidence, oral and documentary, was adduced. The trial Court found the plaintiff-appellants entitled to a decree and hence decreed the suit.

C The defendant-respondents filed a revision under Section 115 of Code of Civil Procedure, 1908 (hereinafter 'the Code', for short). The revision has been allowed and the suit filed by the plaintiff-appellants directed to be dismissed. Feeling aggrieved, the plaintiffs have come up in appeal by special leave.

D A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-Section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this Section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.

G A perusal of the order of the High Court shows that the High Court has for the purpose of reversing the decree of the trial Court relied on the oral statements of Natai Sheikh, PW-3 and Ram Sevak Ram, PW-5. One sentence each from the two depositions has been extracted and set out by the High Court in its order for the purpose of forming an opinion that they are not the plaintiffs but the defendants who were in possession of the suit property before six months from the date of the institution of the suit. The High Court has not looked into all the material available on record and has also not

indicated clearly the availability of any of the grounds within the parameters of Section 115 of the Code so as to exercise revisional jurisdiction calling for reversal of the decision of the trial Court under Section 6 of the Act. The revision filed before the High Court cannot be said to have been satisfactorily disposed of.

A

The appeal is allowed. The impugned order of the High Court is set aside. The civil revision in the High Court shall stand restored to file for hearing and decision afresh in accordance with law. No order as to the costs in this appeal.

B

Parties, through their respective counsel, are directed to appear before the High Court on 17th May, 2004.

C

R.P.

Appeal allowed.