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CR-118-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 16th OF OCTOBER, 2025CIVIL REVISION No. 118 of 2016*SMT. DEVKI KUSHWAH**Versus**MAHENDRA SINGH AND OTHERS*

Appearance:

Shri Gaurav Mishra, Advocate for the applicant.

*Shri K.N.Gupta, Senior Advocate with Ms. Suhani Dhariwal, Advcoate for
respondent Nos. 2 to 4.*

ORDER

This civil revision, under Section 115 of CPC, has been filed against the judgment and decree dated 27/8/2016 passed by III Civil Judge, Class-II, Gwalior in Civil Suit No. 14-A/2010, by which the suit filed by plaintiff under Section 6 of the Specific Relief Act has been dismissed.

2. The facts necessary for disposal of the present civil revision, in short, are that the plaintiff/applicant filed a suit under Section 6 of the Specific Relief Act for multiple reliefs, including the recovery of possession and *mesne* profits. It was the case of the plaintiff that defendant No. 1 was the owner and in possession of a house situated in Karwari Mohalla, Hem Singh Ki Parade, Lashkar, Gwalior, having building No. 35/102 (old). On 4/3/2005, a registered sale deed was executed by defendant No. 1 in favour of the plaintiff, and in order to avoid any controversy, the signatures of defendants No. 2 to 4 were obtained as consenters. The entire consideration amount was paid, and possession of the disputed property along with rights was transferred to the plaintiff. By amendment, it was pleaded that on 11/3/2005, the documents were presented for



execution of sale deed and sale deed was executed on 14/3/2005. It is the case of the plaintiff that after obtaining permission, she was intending to construct a new house and accordingly it was agreed upon between the parties that defendant No. 1, after demolishing the house situated on the land in dispute, would alienate the open plot. The defendant had demanded ₹500 towards the demolition cost, and the said amount was also paid and in order to demolish the building, labourers were also hired by the defendant, and it was assured by defendant No. 1 that at the time of registration of the sale deed, the entire construction shall be removed and the property would remain as open land. Accordingly, defendant No. 1 proposed the draft sale deed along with the map, in which the property in dispute was shown as open land. However, after the sale deed, the key of the disputed property was also handed over to the plaintiff. When the plaintiff went to the spot along with the Registrar, then it was found that defendant No. 1 had not removed the debris which were lying on the spot, and accordingly, the Sub-Registrar, after charging an additional stamp duty of ₹9,288, executed/registered the sale deed, as a result, the plaintiff was also required to bear additional financial liabilities. If the defendant No. 1 had removed the debris as per his assurance, then the plaintiff was not required to bear the additional stamp duty of ₹9,288. The key of the disputed building and possession of the plot were handed over to the plaintiff on 11/3/2005. After taking possession, the plaintiff not only took possession of the building but also put her locks and shifted to the disputed building on 11/3/2005 itself along with her family members for residential purposes. On 14/3/2005 at about 6:00 p.m., defendants No. 1 to 4, along with some anti-social elements, came to the disputed property and by show of weapons insisted that the plaintiff should hand over the vacant possession. When the plaintiff did not vacate the premises and did not hand over the vacant possession of the property, then all the aggressors started



assaulting the plaintiff, and the TV, table fans, as well as other household articles including cash of ₹5,000, were looted. The locks were broken. The plaintiff tried to lodge an FIR, but under the political pressure of the defendants, the FIR was not lodged and, accordingly, the complaint was sent by registered post and under certificate of posting. Under these circumstances, the plaintiff filed a suit for the following reliefs:

"(ए) यह कि, इस आशय की आदेशात्मक स्थाई निषेधाज्ञा प्रदान की जावे कि वादिनी को अवैध रूप से बलपूर्वक लूट करने एवं वेदखल करने व विवादित भवन पर तोड़फोड़ कर कब्जा करने का प्रतिवादीगण को कतई कोई अधिकार नहीं है तथा वादिनी विवादित भाग का अवैध रूप से की गई वेदखली के विरुद्ध आदेशात्मक स्थाई निषेधाज्ञा प्राप्त करने की अधिकारी है।

(बी) यह कि, इस आशय की घोषणा वादिनी प्राप्त करने की अधिकारी है कि वादिनी विवादित भवन की स्वत्व, स्वामित्व एवं आधिपत्यधारिणी है व विवादित भवन के किसी भी भाग के उपयोग, उपभोग करने का प्रतिवादीगण को कतई कोई स्वत्व, स्वामित्व एवं अधिकार नहीं है।

(सी) यह कि, इस आशय की आदेशात्मक स्थाई निषेधाज्ञा वादिनी के हक में प्रदान की जावे कि प्रतिवादीगण वादिनी के विवादित भाग में हस्तक्षेप करने से वाधित रहें व प्रतिवादीगण वादग्रस्त भवन में हस्तक्षेप ना तो स्वयं करें और ना किसी अन्य से करावें तथा अवैध रूप से की गई कार्यवाही को अपास्त कर यथास्थिति बनाये रखे जाने के आदेश प्रदान करने की कृपा करें।

(डी) यह कि, प्रतिवादीगण के विरुद्ध स्थाई आदेशात्मक निषेधाज्ञा व अन्य सहायता एवं अवैध रूप से किया गया अतिक्रमण हटाकर क्षतिपूर्ति धन दिलाया जावे तथा रुपये 500 (पाँच सौ) प्रतिमाह से कब्जा प्राप्ति तक क्षतिपूर्ति धन दिलाया जावे एवं किये गये अवैध अतिक्रमण को प्रतिवादीगण स्वयं हटायें एवं ना हटाने पर पुलिस सहायता व जर्र नाजिर कार्यवाही वादिनी को आधिपत्य एवं कब्जा दिलवाया जावे एवं अन्य आदेश जो वादी के पक्ष में व प्रतिवादीगण के विरुद्ध आवश्यक हों, प्रदान किये जाने के आदेश देने की कृपा करें।"

3. The defendants filed their written statement and denied the execution of the sale deed. It was alleged that the house which was in ownership and possession of defendant No. 1 was never sold to the plaintiff. The boundaries had been wrongly mentioned. No sale deed was executed on 4/3/2005. No consideration amount was received by the defendant. It was pleaded that after the death of Khubi Singh, the property went to the sister of Mahendra Singh/defendant No. 1, and as



per the family partition, she is the owner and in possession of the property in dispute. It was further pleaded that the plaintiff has got the document executed fraudulently. The allegations of dispossession and assault, as well as damage to the household articles, were also denied.

5. The trial Court after framing issues fixed the case for recording of evidence of the parties. The defendants were proceeded *ex parte* as they did not appear before the trial Court on 21/4/2008. The evidence of the plaintiff was recorded, and after hearing the plaintiff, the trial Court dismissed the suit on 26/11/2008 by holding that the suit does not fall within the scope of Section 6 of the Specific Relief Act.

6. Being aggrieved by the judgment and decree dated 26/11/2008 passed by II Civil Judge, Class-I, Gwalior, in RCS No. 194-A of 2007, the plaintiff preferred Civil Appeal No. 15-A/2009, which was allowed by judgment and decree dated 2/7/2009 passed by IX Additional District Judge, Fast Track Court, Gwalior, and the matter was remanded back to the trial Court with a direction to award an opportunity to prove the original sale deed dated 11/3/2005. After the remand, the VI Civil Judge, Class-II, Gwalior, by judgment dated 29/10/2010 passed in RCS No. 14-A of 2010, again partially dismissed the civil suit and it was held that the plaintiff is not entitled to declaration of any kind. However, the plaintiff was awarded *mesne* profits at the rate of ₹500 per month from 14/3/2005 till the date of judgment.

7. Being aggrieved by judgment and decree dated 29/10/2010 passed by the trial Court, the applicant preferred Civil Revision No. 2/2011. The civil revision was allowed by order dated 30/6/2016, and it was held that there is no dispute that the suit was filed within six months from the date of dispossession by the defendants. It was held that sub-section (4) of Section 6 of the Specific Relief Act



does not require that for recovery of possession, a person should establish his title. Accordingly, it was held that the provision of Section 6(4) of the Specific Relief Act cannot be pressed into service to deny the right to file a suit for recovery of possession by the person who holds the title. Accordingly, the matter was remanded back to the trial Court for decision afresh within the scope of Section 6 of the Specific Relief Act. After the remand, it appears that the respondent filed an application under Order IX Rule 7 CPC for setting aside *ex parte* proceedings. By order dated 13/10/2010, the application filed under Order IX Rule 7 CPC was rejected. Ultimately, the trial Court, after hearing both the parties, once again dismissed the suit by holding that the reliefs claimed by the plaintiff are not covered by Section 6 of the Specific Relief Act.

8. Challenging the judgment and decree passed by the Court below, it is submitted by counsel for the applicant that this Court, while deciding Civil Revision No. 2/2011, had held that the plaintiffs were dispossessed within a period of six months from the date of institution of suit under Section 6 of the Specific Relief Act. It was further held that although some of the reliefs, claimed by the plaintiff may not be covered by the provisions of Section 6 of the Specific Relief Act, but the trial Court was directed to decide the suit within the scope of Section 6 of the Specific Relief Act. Admittedly, the plaintiffs had purchased the property in dispute on 11/3/2005, and they were dispossessed on 14/3/2005, therefore, the trial Court committed a material illegality by holding that the suit does not fall within the scope of Section 6 of the Specific Relief Act.

9. *Per contra*, the civil revision is vehemently opposed by counsel for the respondent. It is submitted that there is a material discrepancy in the pleadings and evidence of the plaintiff as well as in the sale deed. The question of title is not relevant for the purposes of proceedings under Section 6 of the Specific Relief



Act. It is submitted that it is clear from the sale deed that an open plot was purchased by the plaintiff whereas in the plaint as well as in evidence she had claimed that she was dispossessed from the house. From the sale deed, it is clear that the house was never sold to the plaintiff, and thus it is submitted that the trial court did not commit any mistake by dismissing the suit filed by the plaintiff. In support of his contentions, counsel for the respondent has also relied upon the judgment passed by the Supreme Court in the case of *Sanjay Kumar Pandey vs. Gulbahar Sheikh*, reported in (2004) 4 SCC 664, and *Mohd. Mehtab Khan and Others vs. Khushnuma Ibrahim and Others*, reported in (2013) 9 SCC 221. Although some more judgments have been uploaded by the respondent in the reference column of ERP of the High Court of Madhya Pradesh, but those judgments were not referred to or cited during the course of arguments.

10. Heard the learned counsel for the parties.

11. In the present case, the defendant had filed the written statement, and subsequently, they were proceeded *ex parte*. They never applied for setting aside of the *ex parte* proceedings. They did not cross-examine the plaintiff's witnesses. However, it appears that after the matter was remanded back by the High Court, they filed an application under Order IX Rule 7 CPC for setting aside the *ex parte* proceedings, but that application was rejected, and accordingly, the suit was decided after hearing the parties. Therefore, although the written statement of the defendant is on record, but neither they cross-examine the plaintiff's witnesses nor they sought setting aside of the *ex parte* proceedings during the first stage of the trial, nor did they lead any evidence in their defence after getting the *ex parte* proceedings set aside.

12. The Supreme Court, in the case of *Kanchhu vs. Prakash Chand and*



Others, decided on 22/4/2025 in Civil Appeal No. 5319 of 2025, has held as under:

"19. Pleadings, either in a plaint or a written statement, constitute the plinth on which the respective claims and defence of the parties to a civil suit rest. What a pleading ought to contain is provided in Order VI Rule 2, CPC. Only material facts, on which the party pleading relies for his claim or defence to succeed, have to be stated without the evidence by which the pleading is to be proved. Once the pleadings are complete but the defendant is set *ex parte*, and such order has attained finality, the defendant's rights suffer a curtailment. He cannot produce evidence in defence and hence statements, which are in the nature of factual assertions, cannot be proved by leading evidence. Generally speaking, the limited right that the defendant, set *ex parte*, would have is confined to cross-examining the plaintiff's witnesses. The effort has to be directed towards demonstrating that they are not speaking the truth and, thereby, demolish the case of the plaintiff. Essentially, therefore, in such a case the defendant has to convince the court that the case put up by the plaintiff is so false that the court ought not to accept it. However, if the defendant raises an issue on law which is traceable in the written statement, for instance, the suit is barred by limitation or Section 9, CPC is attracted, or if the relief claimed in the suit cannot be granted for reasons disclosed, the requirement of the defendant proving such defence as raised in the written statement by leading evidence may not arise and the court may frame an issue of law and decide the same."

Therefore, the facts and circumstances of the case shall be considered in the light of the law laid down by the Supreme Court in the case of *Kanchhu (supra)*.

13. The plaintiff had pleaded that on 11/3/2005 the sale deed was drafted, it was presented, and it was registered on 14/3/2005 (Ex. P/1). Initially, some building was standing on the land in dispute, and the plaintiff had assured that before execution of the sale deed, the said building would be removed by him, and a vacant and open plot would be sold to the plaintiff. However, the defendant did not keep his promise and did not remove the standing structure, although the sale deed was drafted and prepared as the defendant No. 1 was alienating an open plot. It was pleaded that when the plaintiff went to the spot along with the



Registrar, the Registrar had directed for payment of additional stamp duty of ₹9,288 for the simple reason that the plot was not open plot, but a structure was also standing over it. Accordingly, the plaintiff had paid the additional stamp duty for the structure which was standing on the plot. It is mentioned in the plaint that after taking possession on 11/3/2005, the plaintiff shifted to the property in dispute along with her bag and baggages, and family members, but on 14/3/2005, she was dispossessed forcibly.

14. It is the case of the defendant that there is a material discrepancy in the sale deed executed by defendant No. 1 in favour of the plaintiff, according to which only an open plot was sold, whereas it is the case of the plaintiff that she had taken possession of the superstructure also and shifted in it, and was dispossessed from the same on 14/3/2005, therefore, the plaintiff has failed to prove that she was dispossessed from the property which was purchased by her.

15. However, when a specific question was put to the counsel for the defendant as to whether the defendant wants to communicate that the property in dispute is other than the property which was sold to the plaintiff, and whether the defendant is ready to accept that this Court may pass a decree for possession in respect of the property/plot which was purchased by the plaintiff, then no reply was given.

16. Be that whatever it may be.

17. It is the case of the plaintiff herself that when the Registrar went to the spot, he found that a superstructure was standing over it, and therefore, an additional stamp duty of ₹9,288 was charged. The plaintiff has also filed a copy of order dated 30/6/2005 (Ex.P/4) passed by Collector of Stamps and District Registrar, Gwalior, in Revenue Case No. 20/B-103/04-05/48B, according to which it was held that the sale deed was got executed by showing the property as



an open land, whereas one room and one *pator* was found constructed over it and, therefore, it was held that the plaintiff was liable to pay additional stamp duty of ₹10,278, out of which she has already paid the stamp duty of ₹9,288, and it was directed that the remaining stamp duty of ₹990 be deposited. It is not out of place to mention here that in the aforesaid case, defendant No. 1 as well as the plaintiff were parties. Therefore, the original written statement which was filed by defendant No. 1 that the property as claimed by the plaintiff was never sold by him, is false, because he never took an objection before the Collector of Stamps and District Registrar, Gwalior, that there is a discrepancy in the property shown for stamp duty purposes. Therefore, the defence taken by the defendant that the property in question was never sold to the plaintiff cannot be relied upon. It is not out of place to mention here that in order to maintain a suit under Section 6 of the Specific Relief Act, it is not necessary for the plaintiff to prove that he or she is the owner of the property in dispute. The only thing which is required to be proved is that the person concerned was dispossessed illegally within a period of six months. Therefore, the factum of possession is of paramount consideration. If the sale deed dated 11/3/2005 is considered, then it is clear that the same can be considered for the purposes of ascertaining as to whether the plaintiff was ever placed in possession of the property in dispute or not. There is a clear recital in the sale deed dated 11/3/2005 that the plaintiff was placed in possession. Therefore, for the limited purposes of ascertaining as to whether the plaintiff was placed in possession on 11/3/2005 or not, the sale deed dated 11/3/2005 shall be taken into consideration. Accordingly, it is held that the plaintiff was placed in possession by defendant No. 1 on 11/3/2005. It is the case of the plaintiff that she was dispossessed by defendants No. 1 to 4 on 14/3/2005. Therefore, it is clear that the plaintiff was dispossessed within a period of six months from the date of



institution of the suit under Section 6 of the Limitation Act. Under these circumstances, it is held that this Court, while deciding Civil Revision No. 2/2011, had rightly held that the plaintiff was dispossessed within a period of six months from the date of institution of the suit.

18. It is next contended by counsel for the respondent that the reliefs which were sought by the plaintiff are not covered by the provisions of Section 6 of the Specific Relief Act, therefore, the suit was rightly rejected.

19. Considered the submissions made by counsel for the respondent.

20. The reliefs claimed by the plaintiff in the suit filed under Section 6 of the Specific Relief Act have already been reproduced in the previous paragraph. The plaints are drafted by the lawyers and generally they are not drafted by the litigants. The manner in which the reliefs were couched clearly shows that the scribe of the plaint was interested in showing his intelligence or knowledge about law instead of keeping the things as simple as possible.

21. Relief No. (A) provides that a mandatory permanent injunction be granted to the effect that the defendants have no right to dispossess the plaintiff and have no right to take possession after causing damage to the property, and it was also prayed that the plaintiff is entitled for mandatory permanent injunction against her illegal dispossession from the property in dispute. The scribe of the plaint should have kept this relief very simple by claiming that since the plaintiff has been dispossessed within a period of six months from the date of institution of the suit, therefore, her possession may be restored. The plaintiff is a household lady having no knowledge about the niceties of law, and therefore, if she signed and verified the plaint under the hope and belief that whatever has been drafted by her lawyer is correct, then the only question for consideration is as to whether



relief No. (A) can be considered as a relief for restitution of possession of the property from where she was illegally dispossessed on 14/3/2005 or not. The manner in which the plaint was drafted, it can be said to be a *mofussil pleadings*. “*Mofussil*” means the provincial or rural districts of India, and *mofussil pleadings* means legal documents filed in rural or less urban courts which should be interpreted liberally as a whole, focusing on the substance of the claims rather than strict adherence to legal technicalities. *Mofussil* courts tend to overlook minor technical deficiencies to ensure that substantial justice is served and are more flexible with amendments. This Court has already held that the scribe of the plaint was interested in showing his intelligence or knowledge about law rather than keeping the plaint as simple as possible. Be that whatever it may be. By treating the prayer clause No. (A) of the suit filed by the plaintiff as a *mofussil* pleading, it is held that the prayer clause (A) of the plaint has to be interpreted that the plaintiff wanted the restoration of possession from where she was dispossessed on 14/3/2005.

22. Under these circumstances, this Court is of the considered opinion that the trial court has miserably failed in considering the pleadings as *mofussil pleadings* and has miserably failed in exercising the jurisdiction which was vested in it. Rather than finding out the real controversy and rather than making an attempt to ensure that substantial justice is served, it appears that the trial Court decided to stick to the literal meaning of the pleadings, in spite of the fact that the High Court in Civil Revision No. 2/2011 had specifically held that the plaintiff was dispossessed within a period of six months from the date of institution of the suit filed under Section 6 of the Specific Relief Act. Under these circumstances, this Court is of the considered opinion that the trial court has failed to exercise the jurisdiction vested in it.



23. As a result, the judgment and decree dated 27/8/2016 passed by III Civil Judge, Class-II, Gwalior in Civil Suit No. 14-A/2010 cannot be given the stamp of approval, and accordingly, it is hereby set aside. The suit filed by the applicant under Section 6 of the Specific Relief Act is hereby allowed. It is directed that the defendants shall immediately hand over the vacant possession of the property which was sold by defendant No. 1 to the plaintiff by registered sale deed dated 11.3.2005/14.3.2005 (Ex. P/1).

24. With the aforesaid observations, this civil revision is allowed.

25. Decree be drawn accordingly.

(G. S. AHLUWALIA)
JUDGE

(and)