

GAHC010230942019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/132/2019

ABDUL MUHIT BARBHUIYA AND 7 ORS.
S/O- LT. SARAF UDDIN BARBHUIYA, R/O- VILLAGE BOWERTHAL
(CHANDUIPUR GRANT), P.O. ALGAPUR, P.O. ALGAPUR- 788150, DIST.
HAILAKANDI, ASSAM.

2: MOIN UDDIN LASKAR
S/O- LT. HABIB ALI LASKAR
R/O- VILLAGE BOWERTHAL (CHANDUIPUR GRANT)
P.O. ALGAPUR
P.O. ALGAPUR- 788150
DIST. HAILAKANDI
ASSAM.

3: RAHMAN ALI BARBHUIYA
S/O- LT. FARJAN ALI BARBHUIYA
R/O- VILLAGE BOWERTHAL (CHANDUIPUR GRANT)
P.O. ALGAPUR
P.O. ALGAPUR- 788150
DIST. HAILAKANDI
ASSAM.

4: ABDUL MANNAF BARBHUIYA
S/O- LT. KUTUB UDDIN BARBHUIYA
R/O- VILLAGE BOWERTHAL (CHANDUIPUR GRANT)
P.O. ALGAPUR
P.O. ALGAPUR- 788150
DIST. HAILAKANDI
ASSAM.

5: ABDUL GANI BARBHUIYA
S/O- LT. SOMAR MIA BARBHUIYA
R/O- VILLAGE BOWERTHAL (CHANDUIPUR GRANT)
P.O. ALGAPUR
P.O. ALGAPUR- 788150

DIST. HAILAKANDI
ASSAM.

6: BODAI BORBHUIYA
S/O- LT. NAMAR ALI BORBHUIYA
R/O- VILLAGE BOWERTHAL (CHANDUIPUR GRANT)
P.O. ALGAPUR
P.O. ALGAPUR- 788150
DIST. HAILAKANDI
ASSAM.

7: ABDUL KUDDUS CHOUDHURY
S/O- LT. ABDUL JABBAR CHOUDHURY
R/O- VILLAGE BOWERTHAL (CHANDUIPUR GRANT)
P.O. ALGAPUR
P.O. ALGAPUR- 788150
DIST. HAILAKANDI
ASSAM.

8: FAIZUL HOQUE BARBHUIYA
S/O.- LT. ASAD ALI BARBHUIYA
R/O- VILLAGE BOWERTHAL (CHANDUIPUR GRANT)
P.O. ALGAPUR
P.O. ALGAPUR- 788150
DIST. HAILAKANDI
ASSAM

VERSUS

DUKAR KHASIA AND ANR.
DAUGHTER OF LATE LUKAR KHASIA, VILLAGE PEDLAPUNJI
(CHANDUIPUR GRANT), POST OFFICE- ALGAPUR- 788150, DISTRICT
HAILAKANDI, ASSAM.

2:STATE OF ASSAM
REP. BY THE DISTRICT COLLECTOR
HAILAKANDI
DISTRICT- HAILAKANDI
ASSAM

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent :

BEFORE

THE HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date of hearing : 21/12/2021.
Date of Judgement : 21/12/2021.

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. N. Dhar, learned counsel appearing on behalf of the petitioners. None has appeared on behalf of the respondents in-spite of service of notice.
2. This is an application under Section 115 of the Civil Procedure Code (CPC) challenging the judgement and decree dated 26/06/2019 passed by the learned Munsiff No.1, Hailakandi in Title Suit No. 73/2010. The brief facts of the instant case is that the respondents herein, as plaintiffs, had instituted a suit under Section 6 of the Specific Relief Act, 1963, for restoration of possession of the plaintiff over the suit land. It is the case of the plaintiffs in the suit that on 25/06/2010 at about 10 a.m., the defendants trespassed upon the suit land and threatened the plaintiff of dire consequences unless the plaintiff leaves the suit land and consequently, the plaintiff was compelled to leave the suit land. The plaintiff has also filed an FIR before the Algapore Police Station, which was registered and numbered as Algapore PS Case No. 197/2010, corresponding to GR Case No. 933/2010. It is on the basis of the said cause of action, the suit was filed on 11/08/2010.
3. Pursuant to the said suit being filed, the petitioners herein as defendants filed a joint written statement wherein it was denied that on 25/06/2010, the defendants trespassed into the suit land and threatened the plaintiff. It was the specific case of the defendants in their written statement that 50 years back, the land was non-agricultural one and the father of the defendants was in possession of the suit land by using the suit land for cultivation and dwelling houses. Thereafter, the grandfather of the defendants filed an application before the

Assistant Settlement Officer, Hailakandi, for getting a certificate of suit land along with other land and also filed a petition for getting the names of the defendants recorded as tenants and the defendants and the grandfather of the defendants acquired right , interest and possession over the suit land since long back.

4. On the basis of the pleadings, as many as, three issues were framed, which are :-

- (i) Is there any cause of action for the suit ?
- (ii) Whether the defendants dispossessed the plaintiff from the suit land?
- (iii) Whether the plaintiff is entitled to restoration of possession?

5. During the trial, the plaintiff examined as many as five witnesses, who were, however, not cross examined and the defendant did not adduce any evidence. The Court of Munsiff No.1, Hailakandi by the judgement and decree dated 24/08/2012, decreed the suit in favour of the plaintiff, whereby, it was held that the plaintiff was entitled to a decree for recovery of the khas possession by evicting the defendants, their agents etc. there-from and by way of demolishing the house etc. constructed thereon by the defendants during their stay.

6. Feeling aggrieved and dissatisfied, the petitioners herein as appellants preferred an appeal against the judgement and decree dated 24/08/2012 passed in Title Suit No. 73/2010. The Appellate Court by an order dated 18/07/2014 allowed the appeal and remanded the matter back to the trial Court under the provision of Order XLI Rule 23 with a direction to the trial Court to re-admit the suit in its original number and allow the defendants to cross examine the plaintiff witnesses and thereafter give chance to them to adduce evidence either documentary or oral to contest the suit and thereafter, deliver the judgement afresh.

7. Pursuant to the order passed by the First Appellate Court, the trial Court while deciding the issue No. 2, had on the basis that Ext. 1 came to a finding that the plaintiff has been in possession over the suit land. On the basis thereof, held that the plaintiff was in possession over the suit land. However, there was no discussion as to whether the plaintiff was dispossessed on 25/06/2010. Be that as it may, the suit was again decreed by the judgement and decree dated 22/09/2016, in favour of the plaintiff for recovery of possession in respect of the suit land by evicting the defendants, their men and agents, if any, and by demolishing any structure constructed by the defendants.

8. Though the proceedings under Section 6 of the Specific Relief Act, 1963 does not conceive of an Appeal the petitioners herein again had filed an appeal before the Court of the Civil Judge, Hailakandi, which was registered and numbered as Title Appeal No. 19/2016. The said appeal was disposed of by the judgement and decree dated 29/03/2017, thereby affirming the judgement and decree dated 22/09/2016 passed by the Munsiff No.1, Hailakandi in Title Suit No. 73/2010.

9. Feeling aggrieved and dissatisfied, the defendants therein, approached this Court under Section 115 of the CPC challenging the judgement and decree dated 22/09/2016 passed by the Munsiff No.2, Hailakandi in Title Suit No. 73/2010. The said revision application was registered and numbered as CRP 38/2016. This Court by an order dated 27/04/2018, set aside the judgement and decree dated 22/09/2016 passed in Title Suit No. 73/2010, again with a direction to the trial Court to decide afresh taking into consideration that the suit under Section 6 of the Specific Relief Act, 1963 is a summary proceeding wherein, the Court is entitled to pass a decree subject to the fulfilment of conditions mentioned therein. It was also observed by this Court in the said order dated 27/04/2018 that the trial Court has to record

the satisfaction that the plaintiff has been unlawfully dispossessed from the suit land by the defendant and the suit has been filed within six months of such illegal dispossession.

10. On the basis of the remand having ordered by this Court by the order dated 27/04/2018, the trial Court again decided the said suit and in doing so, again decreed the suit in favour of the plaintiff thereby, directing that the plaintiff is entitled to recover the khas possession over the suit land by evicting the defendants from the suit land. It is against the said judgement and decree passed on 26/06/2019 that the defendants, who were the petitioners herein, have approached this Court under Section 115 of the CPC.

11. Before going into the merits of the case, it would be relevant to first take note of what is a proceeding under Section 6 of the Specific Relief Act, 1963. The said section for the sake of convenience, is quoted herein below :-

“6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

12. A bare perusal of the provisions contained in Section 6 of the Act of 1963, would go

to show that the person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him recover such possession by filing a suit. In such a suit, the question of title has no relevance. What is relevant is that the person concerned who has filed the suit was in possession of the immovable property and has been dispossessed by his adversary. Sub-section (2) of Section 6 are limitations imposed by the legislature in respect to suits under Section 6 of the Act of 1963. Sub-section 2(a) of section 6 stipulates that no suit under the said section shall be brought after expiry of six months from the date of dispossession and sub-section (2)(b) of said Section 6 stipulates that no suit shall be brought against the Government. The period of six months have been put by the legislature with the basic reason that these proceedings under Section 6 are in the nature of urgent relief and summarily required to be disposed and as such, in a proceeding under Section 6, the question of title is not relevant. What is relevant is that the person concerned was in possession of the immovable property and the suit has to be filed within the period of 6 (six) months from the date when the person (s) was dispossessed.

13. The nature of the suit under Section 6 of the Act of 1963 can also be discerned from a reading of sub-section (3) of Section 6, which stipulates that no appeal shall lie from any order or decree passed in any suit instituted under this Section nor shall any review of any such order or decree be allowed meaning thereby, judicial interference against an order or decree passed in a proceeding under Section 6 is kept at the minimum taking into consideration the nature of the suit. Sub-section (4) further clarifies the nature of the suit under Section 6 whereby, it stipulates that section 6 shall not bar any person from suing to establish his title over the property or recovery of possession thereof. In other words, if a person fails to institute a suit under Section 6 or trial in a sit under Section 6, it shall not bar

the said person from instituting a suit based upon title and to recover possession thereof if he is entitled to as per law.

14. In the backdrop of the above, what is required therefore in a proceeding under Section 6 is two factors that the person who has filed the suit was in possession of the suit property and he has filed the suit within the period of six months from the date he has been dispossessed. The question of dispossession is a must in a proceeding under Section 6 as well as filing of a proceeding under Section 6, has to be within the period of 6 months from the date of dispossession. In other words, what a plaintiff in a suit under Section 6 is required to do is that he has to prove that he was in possession of the suit property on the date of dispossession and that the suit was filed within the period of six months.

15. Let this Court take the facts of the instant case. In the plaint at paragraph no. 3, the plaintiff had specifically pleaded that on 25/06/2010, the defendants trespassed into the suit land and threatened the plaintiff with dire consequences unless the plaintiff leaves the suit land and consequently, the plaintiff left the suit land and the defendants had entered into possession. As already stated herein above, the suit was filed on 11/08/2010. Now, therefore, the question which arises in view of the limited scope in the proceedings under Section 6 of the Act of 1963 is as to whether the plaintiff has proved that he was in possession of the suit land and was disposed on 25/06/2010. In this regard, the evidence may be looked into.

16. The plaintiff was the Plaintiff Witness no.1 in the said suit. She stated in her evidence on affidavit that on 25/06/2010, the defendants armed with weapons tried to dispossess her. I have perused the entire evidence- in- chief of plaintiff witness no.1, wherein there is no single statement that the plaintiff no.1 has been dispossessed. In her cross

examination, she specifically mentioned that she cannot say what is written in her evidence-in-chief. The PW-2 also in his evidence on affidavit stated that on 25/06/2010, the plaintiff was threatened of dispossession. There is no statement in his evidence-in-chief that the plaintiff was dispossessed on 25/06/2010. In his cross examination, he had categorically stated that the date of trespass by the defendants to suit land, he cannot say. The PW-4, in her evidence-in-chief goes to the extent of saying that the defendants are still trying to dispossess the plaintiff from the suit land.

17. In the backdrop of the evidence, if we look into the findings arrived at by the learned trial Court, it would be apparent that the trial Court did not take into consideration the evidence at all. The trial Court had only taken into consideration the pleadings wherein there is a mention of 25/06/2010 at 10 a.m., there was a threatening to the plaintiff with regard to her life for which the plaintiffs were compelled to leave the suit land. But the same has not been supported by the plaintiff by the evidence she adduced wherein, she only limits her evidence to the fact that on 25/06/2010, she was threatened to be dispossessed.

18. In that view of the matter, taking into consideration that the fact of dispossession is a must and the plaintiff having failed to prove the same, the instant proceedings under Section 6, on the face of it, was not maintainable, which the trial Court take into consideration, at the time of passing the judgement and decree dated 26/06/2019, for which the said judgement and decree having not taken into consideration the relevant materials on record which would have other-wise affected the decision, the said judgement and decree is suffers from perversity. In that view of the matter, the impugned judgement and decree is interfered with.

19. The dismissal of the suit by this Court shall not preclude the respondents herein from instituting a suit based on title and recover possession, if she is entitled to under the law.

20. With the above observation, the petition stands allowed. However, without any costs.

21. Send back the LCR.

JUDGE

Sukhamay

Comparing Assistant