

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 1026 of 2022

1. Randhir Kumar, aged about 70 years, son of Late Shiva Priya Nath Ganjhu
 2. Rahul Kumar Kashyap, aged about 38 years, son of Late Rajendra Prasad Ganjhu, both are Residents of Village Khunti, PO, PS and District-Khunti
- Applicants/Petitioners

Versus

1. Budhdeo Kumar Kashyap, son of Tulsi Ram Ganjhu, resident of Village-Belwadag, PO, PS & District-Khunti
- 2(i) Prabhawati Devi W/o Late Raju Kumar
- 2(ii) Ayush Kr. (Minor)
- 2(iii) Sneha Kumari (Minor) d/o Late Raju Kumar
r/o village Ahigara, P.O. & P.S.-Khunti, Distt.-Khunti
3. Ajit Kumar Singh, Son of Late Satyadeo Singh, resident of Gayatri Nagar, PO, PS & District-Khunti

.... Plaintiffs/Opposite Parties

4. Samarendra Kumar, son of Jyotindranath Ganjhu, resident of Shivalik Garden, Khuntitoli, Torpa Road, PO, PS & District-Khunti

.....Defendant/Opposite Party

- 5.Parwati Devi, Aged about 70 years, Widow of Late Rajendra Prasad Ganjhu,

- 6.Alokendra Nath Ganjhu, Aged about 44 Years.

- 7.Kedar Nath Ganjhu, aged about 39 years, both sons of Late Rajendra Prasad Ganjhu

5 to 7 are residents of Village Khunti, PO, PS and District-Khunti

- 8.Krishna Kumar Ganjhu, aged about 66 years, son of Late Shiva Priya Nath Ganjhu, Resident of Village-Murga, PO & PS: Kamdara, District-Gumla

..... Applicants/Proforma Opposite Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Rahul Kr. Gupta, Advocate
: Mr. Rakesh Kr. Singh, Advocate
: Ms. Swati Singh, Advocate
: Mr. Surya Prakash, Advocate
For the Opposite Party no. 1 to 3: Mr. Praveen Akhouri, Advocate
: Mr. Mohini Gupta, Advocate
For the Opposite Party no. 4 : Mr. Aayush Jha, Advocate

Order No.22 /Dated: 18th November, 2024

Heard learned Counsel for both the parties.

2. At the very outset, learned counsel for the petitioner has submitted that vide order dated 19th April, 2024, I.A. No. 9633 of 2023 was allowed whereby on account of the death of opposite party no. 2, namely, Raju Kumar, his legal heirs were directed to be substituted and, thereafter, notice were also served to all the legal heirs of deceased Raju Kumar but in

compliance of the order dated 19th April, 2024, he could not make the necessary amendment in the array of parties in this CMP, impleading the legal heirs of Raju Kumar.

3. The learned counsel for the petitioner is directed to incorporate the amendment in this C.M.P. during the course of day.

4. This C.M.P. has been preferred on behalf of the petitioner against the order dated 18.11.2022, whereby the application moved by the petitioner for impleadment of party to the Original Suit No. 14 of 2021, pending before the Court of learned Civil Judge (Senior Division)-I, Khunti has been rejected.

5. Learned counsel for the petitioner has submitted that Original Suit No. 14 of 2021 Budhdeo Kumar Kashyap and Ors. vs Samarendra Kumar is pending in the court of Civil Judge (Senior Division) I Khunti and the same is at the stage of argument. It has been further submitted that the petitioner is not party to that suit. He had moved the application under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure for impleading him as defendant in the very suit on this ground that the petitioner is the co-sharer of the very suit property in regard to which possession is sought to be restored under Section 6 of the Specific Relief Act by the plaintiff against the defendant that very property is the property of joint ownership and joint possession and the petitioner being one of the co-sharer of that very property has valuable right in the same and the learned Trial Court has rejected the application of the petitioner by passing the impugned order which is based on perverse finding.

5.1 It has also been further submitted that the plaintiff is alleged to have obtained the possession of the property in question under an agreement, for the same, the property in suit which was of joint ownership and joint possession was never partitioned, as such the very agreement to sell if any executed in favor of the plaintiff, same is also nullity as without any partition, no specific portion of the property of joint ownership and joint possession could have been agreed to be transferred by way of their agreement to sell.

5.2 In support of his submission, learned counsel for the petitioner relied upon the case law, ***Gajara Vishnu Gosavi vs. Prakash Nanasaheb Kamble & Ors, (2009) 10 SCC 654 and Hardeo Rai vs Shakuntala Devi &***

Ors, (2008) 7 SCC 46.

6. Per contra on behalf of the opposite party, learned counsel has vehemently opposed the contentions made by learned counsel for the petitioner and contended that the suit which was filed by the plaintiff/opposite party herein was for restoration of the possession under Section 6 of the Specific Relief Act from which the petitioner was forcibly dispossessed by the defendants Surendra Kumar. It has also been further submitted that the very property in suit was in possession of the plaintiff/opposite party under an agreement to sell which had been executed by Bhagirathi Gaunjhu who was also the co-sharer in the property in question and it has also been alleged that Bhagirath Gaunjhu had delivered the possession of the property in question to the plaintiff under the agreement having still alleged that the very property in question had been received by him under the oral partition. As such, the suit which is at the stage of argument and the presence of the petitioner is neither necessary nor proper and learned Court below has rightly rejected the application of the petitioner to be impleaded as defendants in the suit and in support of his submission, learned counsel for the opposite party relied upon the case law of *Dwarka Prasad Agarwal (D) by LRs. and Anr. vs. Ramesh Chander Agarwal and Ors* reported in *(2003) 6 SCC 220* wherein the Hon'ble Apex Court has held that the question of title of ownership was not to be decided in a suit under Section 6 for the Specific Relief Act. Paragraph 19 reads as under.

19. A bare perusal of the aforementioned provisions leaves no manner of doubt that thereby the jurisdiction of the civil court has not been ousted. The civil court, in the instant case, was concerned with the rival claims of the parties as to whether one party has illegally been dispossessed by the other or not. Such a suit, apart from the general law, would also be maintainable in terms of Section 6 of the Specific Relief Act, 1963. In such matters the court would not be concerned even with the question as to the title/ownership of the property.

7. Learned counsel for the opposite party no. 4 has contended that the plaintiff of the Original Suit who is here opposite party no. 1 to 3 was never in possession of the property in question and was not dispossessed by him since he was not in possession of the same, the question of dispossession also does not arise and property in suit is the property of joint ownership

and joint possession and the same was never partitioned.

8. On behalf of the Budhdeo Kumar Kashyap, counter affidavit was filed and along with the counter affidavit, the copy of the Original Suit no. 14 of 2021 was also annexed. From the very perusal of the plaint of Original Suit No. 14 of 2021, it is found that this suit was instituted by Budhdeo Kumar Kashyap, Raju Kumar and Ajit Kumar Singh against Samrenda Kumar for the decree of possession in regard to the property in suit from which he was dispossessed for same and in paragraph 7 of the plaint, it is also stated that Gonjhin Juthan Kanwari and Gonjhin Goura Kunwari had got the property partitioned orally in equal shares having 2.56 acres each with a definite boundary and Gaunjhu Juthan Kanwari who was the allottee of the land received in partition had left behind him after his death Bhagirathi Gonjhu whereas Gonjhin Goura Kunwari died leaving behind 8 sons Bhagirathi Gaunjhu had executed an agreement to sell on 11.05.2015 in regard to his share of the land, which was the property in suit.

9. The dispute between the parties is that property in question originally was the property of joint ownership and joint possession and one of the co-sharer, had executed the agreement to sell as alleged by the plaintiff of the original suit and possession of the same was also delivered to the plaintiff of the suit. Subsequently, Samrendra Kumar who was the defendant of the suit had forcibly dispossessed him alleging himself to be the co-sharer of the property in question and also alleging that that property was never partitioned.

9.1 Admittedly, **the suit was for recovery of the possession under Section 6 of the Specific Relief Act.** It is the settled law that in a suit under Section 6 for the Specific Relief Act, the title for ownership in regard to the property in question is not to be adjudicated. The dispute which is between the parties whether the property in question had been partitioned before executing the agreement to sell, in favour of the plaintiff in suit by one of the co-sharer, same has no bearing while deciding the suit under Section 6 for Specific Relief Act. **In this very suit, only the two issues are to be decided by the learned Trial Court, firstly,** whether the plaintiff of the suit no. 14 of 2021 was in possession of the property in suit? **Secondly,** whether the plaintiff of the suit has been dispossessed from the property in

question by force without adopting due course of law? This dispute is to be decided between the plaintiff and the defendant of the suit.

9.2 The petitioner who have come herein having assailed the order which was passed by the learned Trial Court rejecting the application under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure pleading themselves to be the co-sharer of the property in question and have also pleaded that the very property in question being of joint possession and joint ownership, they were necessary parties. This plea is not tenable taking into consideration the issues which are to be decided between the parties.

9.3 Learned counsel for the petitioner had relied the case law of *Gazara Vishnu Gosavi vs. Prakash Nanasaheb Kamble & Ors. (Supra)* and also *Hardeo Rai vs. Sakuntala Devi & Ors.*, the benefit of both the case law cannot be given to the petitioner, since in *Gazara Vishnu Gosavi*, the suit was under Section 8 of the Specific Relief Act and in the case law *Hardeo Rai vs. Sakuntala Devi & Ors.* the suit was for specific performance for agreement to sell.

9.4 Taking into consideration the issues which are to be decided between the plaintiff and defendant of **Original Suit No. 14 of 2021** the petitioner are neither the necessary party nor proper party.

10 The impugned order passed by the learned Court below bears no infirmity and this Civil Miscellaneous Petition is hereby **dismissed**. The impugned order dated 18.11.2022 passed by the learned Civil Judge (S.D.) Ist, Khunti in Original Suit No. 141 of 2021 is **affirmed**.

(Subhash Chand, J.)

Rashmi/A.F.R.