Before Amol Rattan Singh, J.

RANI AND ANOTHER—*Petitioners*

versus

MANOJ AND OTHERS—*Respondents*

CR No.2230 of 2019

May 31, 2019

A. ***Specific Relief Act—S.6(4)—Suit under Section 6(4)—No res judicata on subsequent suit for title.***

Held that, thus, the only thing to be seen in such a suit (under Section 6 of the Act of 1963), is that the person who has instituted such suit was actually proved to be in possession of the suit property and that he has filed that suit within a period of six months from him having been illegally dispossessed therefrom.

(Para 37)

Further held that, naturally, that is the basic principle of *res judicata,* which however has absolutely no applicability when a suit under Section 6 of the Specific Relief Act is instituted and even decreed in favour of the plaintiff therein, with the defendant therein still not barred from raising the question of title in a subsequent suit.

(Para 42)

B. ***Evidence Act—S.40—Will not apply if earlier suit filed under Section 6(4) of Specific Relief Act—As no specific bar.***

Held that, coming to the argument raised by learned counsel on the touchstone of Section 40 of the Evidence Act, though that provision would obviously be otherwise relevant even to apply the principle of *res judicata*, however, in the face of a statutory provision under a special Act enacted for the purpose of granting relief in specific circumstances, i.e. the Specific Relief Act, 1963, the aforesaid provision of the Evidence Act would not be applicable, because once the Act of 1963 stipulates that a suit brought under Section 6 of that Act would not debar a party to that *lis* from instituting a separate suit to prove his title thereto, naturally Section 40 of the Act of 1872 can have no application.

(Para 43)

Sandeep Singal, Advocate
for the petitioners.

AMOL RATTAN SINGH, J.

CM No. 12488-CII-2019

(1) Judgment had been reserved in the accompanying petition on 05.04.2019 and the matter had been put up for re-hearing, for the reasons recorded in the order dated 17.05.2019, to the effect that during the course of dictation of the judgment, it was seen that though in the petition it was stated that two separate suits had earlier been filed by the petitioners against the respondents/the first respondent, the judgment and decree in only one of those cases (filed by petitioner no. 2), has been annexed with the petition, a copy of that judgment being Annexure P-4 and the copy of the decree issued being Annexure P-5.

(2) Thus, the judgment in the suit instituted by petitioner no. 1 herein, i.e. Rani, had not been annexed, with it not therefore certain as to whether the said suit was also one instituted under the provisions of Section 6 of the Specific Relief Act, 1963, or otherwise.

(3) Consequently, upon learned counsel for the petitioners having been directed to place on record, a copy of the suit instituted by petitioner no. 1 in the accompanying petition, this application has been filed seeking to place on record the judgment and decree-passed in Civil Suit No. 505 of 2013, decided on 03.10.2017 by the learned Civil Judge (Junior Division), Rohtak, it also being a suit filed by petitioner no. 1, Rani, seeking relief under the provisions of Section 6 of the Act of 1963.

(4) The said suit had been decreed in favour of petitioner no. 1, with possession of the suit property ordered to be handed over by the defendants therein, two of whom are the same as are impleaded as respondents no. 1 and 2 in the accompanying petition, the 3rd defendant in that case being the father of respondents no. 1 and 2 herein, Nanak Chand, with, presently, respondent no. 3 in the petition being the mother of respondents no. 1 and 2, i.e. the wife of the late Nanak Chand.

(5) The application is allowed and a copy of the judgment and decree passed by the learned Civil Judge (Junior Division), Rohtak, on 03.10.2017, in Civil Suit No. 505 of 2013, is taken on record in the accompanying petition, as Annexure P-8.

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(6) By this petition, the petitioners challenge the order passed by the learned Civil Judge (Junior Division), Rohtak, dated February

07, 2019, by which the application filed by them (defendants in the suit before that court) under Rule 11 Order 7 of the Code of Civil Procedure, has been dismissed.

(7) The contention of the petitioners in their application (copy Annexure P-2), was that the suit was not maintainable on the principle of *res judicata*, the issue in question already having been finally decided in two civil suits earlier instituted between the parties.

(8) The petitioners further contended that they had purchased the suit land vide a sale deed dated 30.03.2007, which had been held to be valid by a competent court that had also ordered delivery of possession of the land to them, and that the court of the Civil Judge that had decided the said suits not being one subordinate to the one before which the suit in the instant *lis* was pending, the latter court could not adjudicate upon the matter again.

(9) Lastly, it was contended that since the petitioners were in the process of taking possession of the suit land in execution proceedings instituted in a competent court, such exercise of their legal right, "could not cause any injury to the plaintiffs".

(10) A reply was filed to that application by the respondent-plaintiffs, stating that the judgment and decree passed by the Civil Judge (Junior Division) in the previous *lis,* was one in which that civil suit was not actually maintainable, despite which the decree had been passed, without affording a proper opportunity to the plaintiffs to prove their title.

(11) As regards purchase of the suit land on March 30, 2007, as per the respondent-plaintiffs the sale deeds were based upon a fraud 'executed'.

(12) It was next contended in the reply of the plaintiffs that though the court of the Civil Judge as had decided the previous *lis* was not a subordinate court to the one in which a fresh suit had been filed, however, an appeal was not maintainable against the judgment and decree passed by the 'previous court' on 03.10.2017, and one of the applicants (in the application under Order 7 Rule 11), despite being a legal heir of Nanak Chand, she not having been impleaded as a party to the earlier suit, exercise of her legal right now could not be ooposed.

(13) The learned trial court, upon having considered the aforesaid pleadings, first observed in the impugned order that while deciding an application under Order 7 Rule 11 the court was only to

look into the averments contained in the plaint and any defence put forth by the defendants could not be taken into consideration; and that the facts contained in a plaint are to be presumed to be "correct on the face of it".

(14) Thereafter, it was observed that Rule 11 of Order 7 specifies six "peculiar grounds" on which the plaint may be rejected, with *res judicata* not being one of the grounds, and as such that having been taken as the ground for rejection of the plaint, the issue required careful comparison of the pleadings in both the civil suits.

(15) It was further observed that a perusal of the record of the case revealed that the applicant defendants (the present petitioners) had failed to produce the pleadings in the previous civil suits titled as Rani v. Manoj and Sapna v. Manoj, and consequently, it could not be ascertained as to whether the matter directly and substantially involved in those suits was the same as that in the present suit.

(16) (However, thereafter the trial court has observed in the impugned order that only a copy of the judgment dated 03.10. 2017 passed in the civil suit titled as "Sapna Vs. Manoj etc.", had been produced).

(17) Next, it has been observed that the earlier suit filed was one seeking possession (of the suit property) under Section 6 of the Specific Relief Act, 1963, whereas as per the pleadings contained in the plaint of the suit in the present *lis*, the contention of the plaintiffs was that sale deed nos.12437 and 12438, both dated 30.03.2007, be declared to be null and void, they being forged documents on which the signatures and thumb impressions of the true owners were actually not appended.

(18) Having observed as above, it was then held by that court that the merits of the case could not be gone into while deciding an application under Order 7 Rule 11 and that in fact a perusal of the judgment dated 03.10.2017 passed in the civil suit titled as Sapna v. Manoj etc. (Sapna being the 2nd petitioner in the present petition, i.e. defendant no.2 in the present *lis)*, no finding was recorded as regards the validity of the sale deeds dated March 30, 2007, and in fact no issue had come up for determination in the said suit on that question.

(19) Hence, on the aforesaid grounds, the application was dismissed vide the impugned order.

(20) Before this court, learned counsel for the petitioners

submitted that earlier two separate civil suits were filed by the present petitioners under Section 6 of the Act of 1963, seeking possession of the suit property, with the respondents herein having taken a plea that the sale deeds relied upon by the petitioners were false and fabricated documents.

(21) He submitted that evidence was led to prove the title of the petitioners, to the suit property, on the basis of the sale deeds, thus proving their possession of the property.

(22) He next submitted that therefore the trial Court, (in one of those suits), having held the petitioners to be owners of the suit land and having decreed the suit vide a judgment and decree dated 03.10.2017 (copy Annexure P-4), and that judgment having attained finality, the respondents herein are debarred from bringing a fresh suit challenging the sale deeds on the same grounds, and consequently, such suit being barred on the principle of *res judicata*, the application filed by the petitioners under Order 7 Rule 11 of the CPC should have been allowed.

(23) Learned counsel also sought to rely upon a judgment of the Supreme Court in ***Sheodan Singh*** versus ***Daryao Kunwar***[1].

(24) Mr. Singal next argued that even in terms of Section 40 of the Indian Evidence Act, 1872, the existence of a judgment, order or decree which by law prevents any Court from taking cognizance of a suit, is a relevant fact when the question is whether such Court ought to take cognizance of such suit.

(25) Hence, learned counsel submitted that the impugned order deserves to be set aside.

(26) Having considered the matter, what is to be first and foremost seen by this court is that the suits instituted earlier by the petitioners herein, against the present respondents no.1 and 2 and their father, were those seeking possession of a plot measuring 275 sq. yards bearing *khasra* nos.36/1/2, 2/1, 9/2 and 10, situated within the *abadi* of Shiv Nagar, Rohtak, which, it was contended, that they (present petitioners) were dispossessed from, "between 10.02.2013 to 20.02.2013", with the defendants in those suits (present respondents no.1 and 2 and their father), refusing to deliver such possession back to them.

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[1] AIR 1966 SC 1332

(27) In each of those suits, on the issue framed as to whether the plaintiffs was entitled to a decree of possession, the finding of the trial court was that the sale deeds executed qua the suit land were never challenged or declared null and void, further also noticing that the present respondent no.1 (plaintiff no.1 in the suit in the present *lis*), had admitted in his testimony that 3 persons, i.e. Makhan Lal, Mange Ram and Om Parkash, were co-sharers of a certain chunk of land.

(28) Other than the above (and other details pertinent to those suits), it was also stated in those judgments (copies Annexures P-4 & P-8 in this petition), that sale deeds were executed in 2007, according to which the possession was also handed over, thereby showing that the defendants (plaintiffs in the present *lis*, i.e. respondents no.1 and 2 herein), were not in possession of the plot and in fact the person to whom the property had been sold had further alienated his right in favour of the vendors of the plaintiff (in that suit), i.e. the present petitioners.

(29) On that finding, it was held that possession not having been with the respondents herein (defendants in that suit and plaintiffs in the present one), proved the fact that the petitioners herein (plaintiffs in those suits) had been dispossessed subsequently.

(30) It was also noticed that even if it was presumed that the suit land had not been partitioned and that the defendants therein were co-sharers, in any case once possession of a particular co-sharer had been established, he could not be ousted by another co-sharer, and if any specific portion of jointly held land had been alienated, such alienation would be taken into consideration at the time of partition of the property.

(31) On the aforesaid findings those suits instituted by the present petitioners were both decreed in their favour on the same date (03.10.2017), in terms of Section 6 of the Specific Relief Act, holding that they had been illegally dispossessed therefrom and were therefore entitled to be put back into possession.

(32) The suit in the present *lis* on the other hand is one instituted by the respondents herein, seeking a decree that documents (sale deeds no.12437 and 12438 dated 30.03.2007), be declared to be null and void, they being forged and fabricated documents.

(33) Thus, the respondents have essentially sought that the sale deeds shown to be executed by them on that date be declared to be null and void (obviously thereby nullifying the effect of any such

alienation).

(34) To determine whether or not the findings in the previous suit would operate as *res judicata* thereby debarring the respondents herein from instituting the suit in the present *lis*, Section 6 of the Specific Relief Act, 1963 needs to be looked at, which reads as follows:-

> "**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."

(35) Sub-section (4) of the aforesaid provision very clearly stipulates that nothing contained in the said provision would bar any person from seeking to establish, by way of an appropriate suit, his title to the property as was subject matter of the suit seeking re-possession thereof.

(36) In other words, Section 6 of the Relief Act is only a provision to be invoked to put back into possession a person who has been illegally dispossessed of a property that he was proved to be in possession of, regardless of the fact that he/she is the owner of the suit property or not.

(37) Thus, the only thing to be seen in such a suit (under Section 6 of the Act of 1963), is that the person who has instituted such suit was actually proved to be in possession of the suit property and that he has filed that suit within a period of six months from him having been illegally dispossessed therefrom.

(38) Therefore, even if a person who has dispossessed a person in possession, is himself ordered to be dispossessed by the court in any *lis* under Section 6, with the plaintiff in such a suit to be put back in possession of the suit property again, it would not bar the person who so dispossessed the plaintiff (obviously the defendant in the suit under Section 6), from instituting a separate suit to establish his right to the suit property and to seek consequent possession thereof, by due procedure of law.

(39) Consequently, very obviously, even as per sub-section (4) of Section 6 of the Specific Relief Act, the principle of *res judicata* does not get attracted when a suit instituted under that provision is decreed, except perhaps to the extent that any finding on who actually was in possession of the suit property at the relevant time, cannot be re-agitated in a separate suit.

(40) As regards title to the suit property, to repeat, the principle of *res judicata* is specifically ousted by sub-section (4).

(41) As regards the reliance of learned counsel for the petitioner on the judgment of the Supreme Court in ***Sheodan Singhs'*** case (supra), that case does not even refer to Section 6 of the Specific Relief Act, there being no question arising therein. The judgment of the Supreme Court is entirely on the applicability of the principle of *res judicata* when any suit has been earlier filed, in which the issue therein has been adjudicated upon, such issue thereafter not being capable of being raised in a subsequent suit.

(42) Naturally, that is the basic principle of *res judicata*, which however has absolutely no applicability when a suit under Section 6 of the Specific Relief Act is instituted and even decreed in favour of the plaintiff therein, with the defendant therein still not barred from raising the question of title in a subsequent suit.

(43) Coming to the argument raised by learned counsel on the touchstone of Section 40 of the Evidence Act, though that provision would obviously be otherwise relevant even to apply the principle of *res judicata*, however, in the face of a statutory provision under a special Act enacted for the purpose of granting relief in specific circumstances, i.e. the Specific Relief Act, 1963, the aforesaid provision of the Evidence Act would not be applicable, because once the Act of 1963 stipulates that a suit brought under Section 6 of that Act would not debar a party to that *lis* from instituting a separate suit to prove his title thereto, naturally Section 40 of the Act of 1872 can have

no application.

The said provision reads as follows:-

"**40. Previous judgments relevant to bar a second suit or trial.-** The existence of any judgment, order or decree which by law prevents any Courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial."

(44) Consequently, in view of the above discussion, finding no ground to reverse the order of the trial court, this petition is dismissed.

(45) It is however again made clear that as regards any finding on possession of the suit land as was recorded by the trial court in the previous *lis* (the judgment dated 03.10.2017 in the suit instituted under Section 6 of the Act of 1963), such finding of course cannot be adjudicated upon in the suit in the present *lis*, at least qua those who were parties to the suit under Section 6.

(46) The suit in the present *lis* qua title and right of lawful possession. of any of the parties thereto, and on the validity of the sale deeds dated 30.03.2007, would therefore be decided wholly on the merits thereof, as per evidence led by both the parties, with no observation made by this court in the present petition to be treated to be having any bearing on such merits of the case of either of the parties, except to the extent of any finding of possession of the suit property as recorded in the previous *lis* under Section 6 (vide the judgments of the trial court in those suits, both dated 03.10.2017).

Tejinderbir Singh