2025:DHC:4013

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:19.05.2025

\+ **C.R.P. 259/2017 & CM APPL. 42697/2017, CM APPL. 54842/2022**

SONIA CHHABRA & ANR .....Petitioners

versus

SHANTA GROVER & ORS .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. A.K. Vali, Mr. Bhaskar Vali & Mr. Sushant Shankar, Advocates.

For the Respondent : Mr. Rakesh Vatsa, Advocate (Through V.C.).

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed *inter alia* challenging the judgment dated 26.10.2017 (hereafter '**impugned judgment**'), passed by the learned ADJ, Saket Courts, New Delhi, in CS No. 11750/2016.

2. By the impugned judgment, the learned ADJ dismissed the suit preferred by the petitioners.

3. The brief facts of the case are as follows:

a. The subject suit was filed by the petitioners seeking possession under Section 6 of the Specific Relief Act, 1963 ('**SRA**') and recovery of *mesne* profits in respect of property bearing no. B-31A, Second Floor, Kailash Colony, New Delhi (hereafter '**subject property**'). Petitioner No. 1 is the daughter of Respondent No. 1 (since deceased) and late Mr. H.L.Grover. Respondent Nos. 2 and 3 are the brothers of Petitioner No.1 and Petitioner No.2 is her husband.

b. It is the case of the petitioners that Petitioner No.1 is the owner of the subject property and was in possession of the same since the year 2002. It is alleged that the plaintiffs were dispossessed from the subject property by the respondents illegally and the respondents had forcibly trespassed on the subject property between 31.08.2011 and 04.09.2011. It is further alleged that Respondent Nos. 2 and 3 had sold the goods worth lakhs of rupees, belonging to Petitioner No.2, that were stored in the subject property.

c. It is claimed that the subject property was purchased by the father of Petitioner No.1 and the funds for the same, as well as for meeting the needs of Respondent Nos. 2 and 3, were taken from the petitioners, either directly or as loan from his business contacts as loan. The parents of Petitioner No.1 expressed their inability to repay the loan and required more money to support the needs of Respondent Nos. 2 and 3, who were residing in Czechoslovakia, due to which, the original documents of the subject property were allegedly handed over to the petitioners as security. The parents of Petitioner No.1 promised to clear the loan taken from Petitioner No.2 and others on his guarantee before

Diwali of the year 2001. Since the loan could allegedly not be cleared, the subject property was sold by the father of Petitioner No.1 to her by way of an Agreement to Sell, Registered GPA, Registered SPA and Registered Will, etc. in favour of Petitioner No.1 on 24.01.2002. It was also agreed that as and when the subject property is to be sold by Petitioner No.1, her father will execute any necessary documents in favour of the intending purchaser.

d. It is claimed that Respondent No.1 also executed an affidavit confirming the sale and declaring her no objection. Since the sale was part of an internal family matter, only some family members were in knowledge of the same. It is further claimed that since the value of the subject property was lower than the amount due, it was agreed that the balance amount would be paid when the parents of Petitioner No.1 receive money from Respondent Nos. 2 and 3. It is claimed that electricity bills and property tax was being paid by the petitioners. It is further claimed that income tax of the father of Petitioner No.1 was being paid from the joint account of Petitioner No.2 and the father of Petitioner No.1.

e. Part of the subject property was being used as a godown for storing electronic spare parts of Petitioner No.2 and the subject property had also been let out after January, 2002 by the petitioners through Petitioner No.2 on rent. It is claimed that the petitioners had also spent a lot of money on the renovation of the subject property.

f. Despite multiple attempts to sell the subject property even during the lifetime of the father of Petitioner No.1, the same could not be sold

as no suitable buyer was found. The petitioners also repaid the amounts payable to the market sources, including the interest on various loan amounts.

g. On 04.09.2011, Petitioner No.2 found from a local property dealer–Sunny, who was sent to the subject property with keys by Petitioner No.1, that when he tried to open the lock, he found that the key was not matching the lock. Sunny also informed that he heard some voices from inside the premises. On this, Petitioner No.2 rushed to the premises and dialled the PCR. The petitioners were asked to bring the original papers of the subject property. When the PCR reached the spot around 11:56 AM, Petitioner No.1 found out that the respondents had trespassed into the subject property by breaking open the locks. A complaint was filed by Petitioner No.2 on 04.09.2011 before the SHO, PS Greater Kailash. While the police officers delayed registration of FIR, the respondents filed a suit for permanent injunction, being, CS (OS) No. 2244/2011. An *ex parte* order dated 15.09.2011 was pased directing the parties to maintain a *status quo* in relation to the subject property.

h. An FIR for offences under Sections 454/448/380/120B/34 of the Indian Penal Code, 1860 ('**IPC**') was registered against the respondents. The respondents were apparently granted pre-arrest bail in the aforesaid FIR by this Court.

i. It is claimed that Respondent No.1 had been residing in Sadiq Nagar at various addresses and the defendants had also been residing with her till they all trespassed on the subject property. It is claimed that

Respondent Nos. 2 and 3 were residing in Czechoslovakia and had come to India only around 20.07.2011 after Sh. H.L. Grover expired on 14.07.2011. It is alleged that Respondent Nos. 2 and 3 came to India only to make a false claim in relation to the subject property. It is claimed that Respondent No.1 was apparently tutored in filing the frivolous suit– CS (OS) No. 2244/2011.

j. The respondents, in their written statement, denied the assertions of the petitioners. It was contended that even on the basis of the alleged documents relied upon by the petitioners, the petitioners would not be entitled to maintain the present suit. It was further contended that the petitioners took a contradictory stand in their written statement filed in the suit initiated by the respondents. It was contended that the documents relied upon the petitioners are forged and fabricated. It was emphasised that the parents of Petitioner No.1 were well off and highly qualified and had no cause to take any loans. It was further averred that that the subject property was purchased by Sh. H.L.Grover out of his own funds and after purchase of the same, he along with Petitioner No.1 shifted there and Respondent Nos. 2 and 3 also resided in the aforesaid property whenever they were in Delhi. It was contended that the parents shifted to Sadiq Nagar locality due to their health issues and the subject property was kept locked with period visits. It was contended that after demise of Sh. H.L.Grover, Respondent Nos. 2 and 3 came to Delhi and the subject property was cleaned up soon after their arrival. On 04.09.2011, the defendants were accosted by goons who came to the

subject property to take possession of the same, pursuant to which, a call was made to PCR.

k. By the impugned judgment, after examining the evidence and the material on record, the learned ADJ opined that the plaintiffs/ petitioners had failed to discharge the burden that they had been dispossessed from the subject property without due process of law between 01.09.2011 to 04.09.2011.

l. Aggrieved by the same, the petitioners have preferred the present petition.

m. During the pendency of the proceedings in the present case, it was informed that Respondent No.1 (Shanta Grover) had expired.

4. The learned counsel for the petitioners submitted that the impugned judgment is bad in law and the learned ADJ has relied upon minor inconsistencies to dismiss the suit erroneously. He submitted that the written Agreement to Sell (Ex. PW1/7) and possession letter (Ex. PW1/14) were not duly considered by the learned ADJ.

5. He further submitted that the petitioners were also able to prove the affidavit of Respondent No.1 (Ex. PW1/8) affirming the sale of the subject property and her no objection to the same. He submitted that Respondent No.1 did not step into the witness box to deny the execution of the said affidavit.

6. He submitted that the respondents did not lead any evidence to disprove the signatures of late H.L. Grover on the title documents and failed to prove that the concerned documents were never executed by him.

7. He submitted that the factum of transfer of possession of the suit property to the petitioners is recorded in first Agreement to Sell dated 24.01.2002, second Agreement to Sell dated 24.01.2002 and separate Possession Letter dated 24.01.2002. He submitted that separate Possession Letter dated 24.01.2002 has the signatures of late H.L. Grover beneath Possession Delivered and there is no reason to doubt veracity of the statement that vendor has handed over physical and vacant possession of the subject property.

8. He submitted that it is not denied that Respondent Nos. 2 and 3 had migrated to Europe way back in the year 1989 and were not present at time of delivery of possession.

9. He submitted that the aforesaid factors coupled with the admitted fact that H.L. Grover and Respondent No.1 were living in Sadiq Nagar inevitably lead to the only conclusion that physical possession of the suit property was handed over to the petitioners.

10. He submitted that close family relatives of the parties, that is, PW-3 (sister of Respondent No.1), PW-4 (son of PW-3/ nephew of Respondent No.1) and PW-8 (sister of deceased H.L. Grover) had appeared as witnesses and deposed that the petitioners were in possession of the subject property since the year 2002.

11. He submitted that the deposition of PW-11 has been discarded without giving any reason, even though, she has stated that she used to take the keys and return them to “her”, meaning Petitioner No.1. It is stated that PW-11 had also deposed that the renovation of the property was carried out by Petitioner No.2. He submitted that PW-11 was

collecting keys from Petitioner No. l for doing cleaning work and that she used to go regularly for a period of 6 months to the suit premises where renovation work was going on, for serving tea to the labourers and food for her husband.

12. He submitted that PW-11 went to the suit premises regularly during the entire period of renovation and that she took the keys of the suit premises from Petitioner No. l, which shows the possession of the petitioners.

13. He submitted that the joint account was operated by Petitioner No.2 and payment of a few bills by the father of Petitioner No.1 did not disprove possession of the petitioners. Moreover, the electricity connection of the suit property remained in the name of the predecessor-in-interest of Late H.L. Grover from the year 1997 till about the year 2006, and the electricity connection read, "Mr. H.L. Grover, C/o Mr. R.K. Chhabra".

14. He submitted that in the written statement filed by the petitioners in the suit filed by respondents, it was clearly mentioned that the suit property had been sold by Late H.L. Grover to Petitioner No. l and, therefore, there was no concealment whatsoever of the fact of Agreements to Sell and Possession Letter.

15. *Per contra*, the learned counsel for the respondent submitted that the scope of revision petition is limited and the Court cannot venture into reappreciating evidence. He submitted that the story of dispossession is unbelievable.

16. He submitted that the learned ADJ referred to the testimony of PW-1 & PW-2 (the petitioners) as also Pw-11 Smt. Parvati Devi and came to the conclusion that there is no such record of continuous possession.

17. He submitted that the scope of the present proceedings is limited in nature and this is not the appropriate forum for the petitioners to agitate their arguments in relation to title, if any.

18. He submitted that the parties are related to each other and the dispute has admittedly arisen *after* death of Mr. H.L. Grover, who was the owner of the property. He submitted that the petitioners have maliciously instituted the present suit to deprive the respondents of their rightful interest in the property.

ANALYSIS

19. At the outset, it is relevant to note that the petitioner has challenged the impugned judgment before this Court under Section 115 of the Code of Civil Procedure, 1908. The scope of revision proceedings is limited to correction of errors of jurisdiction by subordinate Courts and cannot be misconstrued to be akin to an appeal.

20. The Hon'ble Apex Court, in the case of ***Keshardeo Chamria v. Radha Kissen Chamria* : (1952) 2 SCC 329**, had discussed a catena of judgments in relation to the scope under Section 115 of the CPC. The relevant portion of the aforesaid judgment is as under:

> "***21.*** *A large number of cases have been collected in the fourth edition of Chaitaley & Rao's Code of Civil Procedure (Vol. I), which only serve to show that the High Courts have not always appreciated*

the limits of the jurisdiction conferred by this section. In ***Mohunt Bhagwan Ramanuj Das v. Khetter Moni Dassi [Mohunt Bhagwan Ramanuj Das v. Khetter Moni Dassi, (1896-97) 1 CWN 617 : 1896 SCC OnLine Cal 11]*** *, the High Court of Calcutta expressed the opinion that sub-clause (c) of Section 115 of the Civil Procedure Code, was intended to authorise the High Courts to interfere and correct gross and palpable errors of subordinate courts, so as to prevent grave injustice in non-appealable cases. This decision was, however, dissented from by the same High Court in Enat Mondul v. Baloram Dey [Enat Mondul v. Baloram Dey, (1899) 3 CWN 581] , but was cited with approval by Lort-Williams, J. in Gulabchand Bangur v. Kabiruddin Ahmed [Gulabchand Bangur v. Kabiruddin Ahmed, ILR (1931) 58 Cal 111 : 1930 SCC OnLine Cal 52]* ***. In these circumstances it is worthwhile recalling again to mind the decisions of the Privy Council on this subject and the limits stated therein for the exercise of jurisdiction conferred by this section on the High Courts.***

22. *As long ago as 1894, in* ***Amir Hassan Khan v. Sheo Baksh Singh [Amir Hassan Khan v. Sheo Baksh Singh, (1883-84) 11 IA 237 : 1884 SCC OnLine PC 13]*** *, the Privy Council made the following observations on Section 622 of the former Code of Civil Procedure, which was replaced by Section 115 of the Code of 1908 : (IA p. 239)*

> *"... The question then is, did the Judges of the lower courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it.* ***Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.****"*

23. *In 1917 again in* ***Balakrishna Udayar v. Vasudeva Aiyar [Balakrishna Udayar v. Vasudeva Aiyar, (1916-17) 44 IA 261 : 1917 SCC OnLine PC 32]*** *, the Board observed : (IA p. 267)*

> *"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."*

24. *In 1949 in* ***N.S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board [N.S. Venkatagiri Ayyangar v. Hindu***

Religious Endowments Board, (1948-49) 76 IA 67 : 1949 SCC OnLine PC 8] *, the Privy Council again examined the scope of Section 115 and observed that they could see no justification for the view that* ***the section was intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate courts so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree of error of subordinate courts could be measured****. It was said : (IA p. 73)*

> *"... Section 115 applies only to cases in which no appeal lies, and, where the legislature has provided no right of appeal, the manifest intention is that the order of the trial court, right or wrong, shall be final. The section empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court on questions of fact or law."*

25. *Later in the same year in* ***Joy Chand Lal Babu v. Kamalaksha Chaudhury [Joy Chand Lal Babu v. Kamalaksha Chaudhury, (1948-49) 76 IA 131 : 1949 SCC OnLine PC 17]*** *, their Lordships had again adverted to this matter and reiterated what they had said in their earlier decision. They pointed out : (IA p. 142)*

> *"...There have been a very large number of decisions of Indian High Courts on Section 115 to many of which their Lordships have been referred. Some of such decisions prompt the observation that High Courts have not always appreciated that* ***although error in a decision of a subordinate court does not by itself involve that the subordinate court has acted illegally or with material irregularity so as to justify interference in revision under sub-section*** *(c), nevertheless, if the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so*

vested, a case for revision arises under sub-section (a) or sub-section (b) and sub-section (c) can be ignored."

26. *Reference may also be made to the observations of Bose, J. in his order of reference in* ***Narayan Sonaji Sagne v. Sheshrao Vithoba [Narayan Sonaji Sagne v. Sheshrao Vithoba, AIR 1948 Nag 258 : 1947 SCC OnLine MP 21]*** *wherein it was said that the words "****illegally" and "material irregularity" do not cover either errors of fact or law****. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with.*"

(emphasis supplied)

21. In the case of ***Varadarajan v. Kanakavalli*** **: (2020) 11 SCC 598**, the Hon'ble Apex Court highlighted that merely because the High Court has a different view on the same facts, the same is not sufficient to interfere with the impugned order. The relevant portion is reproduced hereunder:

*"****15…****The High Court in exercise of revision jurisdiction has interfered with the order passed by the executing court as if it was acting as the first court of appeal. An order passed by a subordinate court can be interfered with only if it exercises its jurisdiction, not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity.* ***The mere fact that the High Court had a different view on the same facts would not confer jurisdiction to interfere with an order passed by the executing court.*** *Consequently, the order passed by the High Court is set aside and that of the executing court is restored. The appeal is allowed.*"

(emphasis supplied)

22. The suit in the present case was filed by the petitioners under Section 6 of the SRA. Section 6 of SRA reads as under:

*"****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

through whom he has been in possession 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 suit to establish his title to such property and to recover possession thereof."

23. In the case of ***Sanjay Kumar Pandey v. Gulbahar Sheikh* : (2004) 4 SCC 664**, the Hon'ble Apex Court had held as under:

"4. 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****."*

(emphasis supplied)

24. The Hon'ble Apex Court, in the case of ***Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan* : (2013) 9 SCC 221**, it was held as under:

"16. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of

> *which he may have been unjustly denied by an illegal act of dispossession.* ***Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any time six months' prior to the date of filing of the suit.*** *The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit."*
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> (emphasis supplied)

25. Thus, to claim possession under Section 6 of the SRA, the plaintiff is required to establish that he has been dispossessed from the suit property without his consent, otherwise than in due course of law. The limitation for preferring such a claim is six months from the date of dispossession and the question of title or better right to possession is immaterial in such proceedings.

26. In line with the same, the learned Trial Court framed three issues. First, whether the plaintiffs were dispossessed from the suit property without due process of law between 01.09.2011 to 04.09.2011 as alleged in the plaint. Second, whether the plaintiff is entitled to *mesne profits* and if so, at what rate and to what amount. Third, what relief is to be granted in the present suit.

27. The very first issue was decided not in favour of the plaintiffs, due to which, no adjudication of the latter two issues was required.

28. The petitioners are essentially aggrieved that the learned Trial Court did not find them to be in possession of the suit property, even though the said fact is mentioned in the possession letter and agreements to sell that were executed in the year 2002 by Mr. H.L. Grover.

Furthermore, it is their case that the evidence of PW11 has not been properly appreciated. It is further argued that Respondent No.1 as well as Mr. H.L. Grover were residing in another locality, which proves that the petitioners were in possession of the suit property.

29. It is pertinent to note that the learned Trial Court succinctly took note of the evidence adduced by both parties before passing a well-reasoned order, categorically dealing with all the contentions of the plaintiffs.

30. It was noted that sale, as defined under Section 54 of the Transfer of Property Act, 1882, provides that delivery of tangible immovable property takes place when the seller places the buyer in possession of the property and something more than handing over of title document is required to prove handing over of possession. While it is argued that the agreements to sell and possession letter have not been given due deference by the learned Trial Court, however, the said argument is without merit. The learned Trial Court took note of the possession letter and observed that it does not speak about handing over of keys of suit property. It was also noted that the attesting witnesses to the Agreement to Sell and possession letter, being, PW4 and PW5, have categorically deposed that they do not know if Mr. H.L. Grover had left the suit property on 24.01.2002. During cross examination, PW4 has categorically deposed that she did not know if Mr. H.L. Grover had collected his furniture from the property and PW5 has stated that he had not visited the suit property in January, 2002 and he did not know when the actual possession of the suit property was handed over. PW5 has

further deposed that he could not give the exact date when the belongings of Mr. H.L. Grover were removed from the suit property. Since the attesting witnesses have not supported the case of the petitioners that the possession of suit property was handed on the date of execution of the documents, being, 24.01.2002, the same casts a doubt over the petitioners' plea that they came into possession on 24.01.2002. As noted above, the issue of title is irrelevant while deciding a claim under Section 6 of the SRA and the said documents, in view of the uncertainty shown by the attesting witnesses, does not prove that the petitioners were in actual possession of the suit property. As also noted by the learned Trial Court, in the permanent suit for injunction filed by the respondents, although the petitioners claimed ownership of the suit property, they did not disclose about the two agreements to sell and possession letter dated 24.01.2002. Yet, in the present case, the entire thrust of the petitioners is on the aforesaid documents without any plausible reason for hiding them in the parallel proceedings.

31. While the plaintiffs had also deposed in regard to gaining possession on 24.01.2002, the learned Trial Court found issue in their testimony being silent on the shifting of household goods of Mr. H.L. Grover. The learned Trial Court had also taken note of material discrepancies in relation to furnishing of suit property. It was noted that PW2 had deposed that he had got the suit property furnished. It was further noted that PW11 stated that she used to frequent the suit property for cleaning the same when the renovation was being carried out.

However, PW1/ Petitioner No.1 stated during cross-examination that the house had remained unfurnished from January, 2002 till September, 2011. In view of this, the plea of renovation was belied due to the inconsistency.

32. It is argued that considering the familial relationship between Mr. H.L.Grover and the petitioners, it was not necessary to show that goods of Mr. H.L. Grover had been removed from the suit property. The said argument is unmerited. It has not been contended anywhere that the goods of Mr. H.L. Grover were not removed due to the relationship between parties and it cannot be ignored that the learned Trial Court was more so weighed by the inconsistency in the depositions of the petitioners.

33. The learned Trial Court also rightly rejected the arguments in relation to the Bills being paid by the petitioners by taking note of the fact that Petitioner No.2, during cross examination, had admitted that House Tax receipts (Ex. PW-2/X7 and Ex. PW-2/X8) were paid by late Sh. H.L. Grover from his account. It was also noted that income tax returns for the years 2010-2011 also show the rent received from suit property and that house tax was paid by Mr. H.L. Grover.

34. This Court is in agreement with the observation made by the learned Trial Court that the plea of possession on basis of depositing of electricity and house bills was negated by certain payments having been made by Mr. H.L. Grover. It is argued that the same does not bely the possession of the petitioners, however, no reasonable explanation has been provided for this aspect. It is to be noted that had the suit property

been in the possession of the petitioners, it would make no sense for the allegedly economically aggrieved Mr. H.L. Grover to foot further bills in relation to a property that he no longer owned or was not in possession of.

35. Insofar as the argument in relation to transfer of electricity connection is concerned, it is stated that no adverse inference ought to have been drawn as the same remained in the name of the predecessor in interest of Mr. H.L. Grover till the year 2006. The transfer happened in the year 2006, way after the alleged transfer of suit property to Plaintiff No.1 in the year 2002. The situation is thus distinguishable. The learned Trial Court rightly noted that the explanation tendered for non -transfer of the electricity connection is not satisfactory, especially since the transfer of the connection to the name of Mr. H.L. Grover happened *after* him having allegedly transferred the possession.

36. Having found none of the pleas raised by the petitioners to be convincing in regard to them having continuous possession of the suit property, the learned Trial Court also aptly dealt the arguments in relation to dispossession.

37. The learned Trial Court took note of the deposition of PW7 (property dealer) and the complaint made by the petitioners. It was observed that the complaint, which was made after inspection of premises, mentioned that a lot of valuable goods were lying in the property but made no mention of missing goods. No attempt was made to retrieve the goods either. It was noted that the list of missing goods was given belatedly with the second complaint and the stock in suit

property and deposition of PWs were not consistent. The relevant portion in this regard is as under:

> "*24. Now I will deal with* ***the plea of dispossession from the suit property on or around 01.09.2011 to 04.09.2011 by the defendants.*** *The burden to prove that plaintiff were dispossessed from the suit property is upon the plaintiff. To prove this fact plaintiffs besides themselves have examined* ***PW- 7 Satinder Singh*** *©Sunny, property dealer who deposed that on 04.09.2011 at around 10.30-11.00 am he gone to suit property and tried to open the door 2-3 times but door did not open. He called the plaintiff no. 2 and also knocked the door and also suggested to call the police. He did not remember if they rang the doorbell. PCR came and police knocked the door, door was opened. Defendant no. 2 and 3 were present there. Police told them to bring the documents. Thereafter PW-7 alongwith plaintiff went to police station and gave the complaint. It is pertinent that in the complaint plaintiff has only mentioned that " It is informed that lots of valuable items of the complainant were lying in the suit property." Admittedly plaintiff lodged the complaint in the evening on 04.09.2011 after they Inspected the premises with the police.* ***Why they have not mentioned regarding missing of goods. The list of goods were handed over to the police with the second complaint dated 12.09.2011. Further, regarding the stock lying the suit property deposition of PW's are not consistent.*** *PW-1 has admitted that complaint dated 12.09.2011 was received by police on 11.09.2011.* ***PW-1 has also admitted that they did not make any efforts to retrieve the goods on 04.09.2011.*** *PW-1 further deposed that spare parts were of a Truck load. PW-7 employer of plaintiff no. 2 deposed that he do not have the stock register with him. Even PW-9 Sikander Singh another employee also deposed that plaintiff did not maintain stock in any register. PW-7 deposed that stock was about a tempo load whereas PW-9 deposed that stock was enough to be put in 2 or 3 tempos.* ***Pertinently plaintiffs have not pleaded loss of any house hold items which shows that as per case of plaintiff suit property was vacant and was being used for store of the spare parts only.***
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> *25. To prove his dispossession plaintiff should have prove the PCR call made on 04.09.2011 which is not done because defendant has also deposed that PCR was called by them. Plaintiff have also place on record the photocopy of* ***photographs obtaining from criminal case alongwith additional documents which have not been proved by the photographer****. The true copies of photograph filed alongwith*

> *the statement under Section 161 Cr.P.C of PW Naresh Bhalla, photographer in criminal case. As per the statement of PW Naresh Bhalla he took these photographs on 03.09.2011 at the instance of Investigating Officer (10) which fact is again contradictory.* ***Further, PW-11 Ms. Parvati Devi has deposed that for the last 2-3 years I have not gone there as brothers of Ms. Sonia Madam are living there after the death of her father. She has further deposed that brothers of Sonia Madam stayed in the house of plaintiff at East of Kailash for about a week or 10 days after the death of her father and after that they are living at Kailash Colony. This piece of deposition of PW-11 proves that defendants were residing in the suit property after 10 days from the death of late Sh. H.L, Grover. Admittedly Sh. H.L. Grover died on 14.07.2011. Since defendants were residing in the premises after 10 days from 14.07.2011 (date of death of late Sh. H.L. Grover), there was no question of dispossession of plaintiff on or around 01.09.2011 to 04.09.2011 since defendants were already residing in the suit property.*** *In view of the above reasons this court is of the view that plaintiff has also failed to discharge their burden that they have been dispossessed from the suit property. Hence, this issue is decided against the plaintiffs and in favour of defendants*"
>
> (emphasis supplied)

38. No argument has been raised to justify the inconsistency in the arguments in relation to the stocks that were kept in the suit property or as to why the list of missing goods was not pointed at the outset. Evidently, loss of household items has not been contested. It is rightly noted that the PCR call as well as the photographs were not properly proved.

39. The only other argument raised before this Court in the course of arguments is that the deposition of PW11 has not been duly considered. In relation to PW-11, it is also argued that her testimony has been discarded without giving any reason. It is also argued that PW-11 used to take the keys for cleaning the suit property and return them to Petitioner No.1, which shows her possession. At this juncture, it is

important to note that this Court in revisional jurisdiction cannot treat a challenge to the impugned order like that of an appeal. It is not open to this Court to reappreciate evidence but to only see if any material irregularity has been committed. Evidently, the learned Trial Court has duly considered the testimony of PW11 and even relied upon a portion of her deposition wherein she has stated that Respondent Nos.2 and 3 (brothers of Petitioner No.1) had commenced living at Kailash Colony after 10 days from 14.07.2011 (that is, the death of Mr. H.L.Grover). It was noted that in such case, there was no question of any dispossession between 01.09.2011 and 04.09.2011, as alleged by the petitioners. The other aspects of her testimony are not relied upon in view of the attending circumstances and inconsistencies that stem from the deposition of the petitioners themselves, especially in relation to renovation. This Court thus finds no merit in the said argument.

40. Needless to say, even though the plaintiffs have not succeeded in the present claim, they are not precluded from seeking their remedies in a substantive suit based on title.

41. In view of the aforesaid discussion, this Court finds no material irregularity or error in exercise of jurisdiction by the learned Trial Court in the impugned judgment so as to warrant interference of this Court.

42. The present petition is dismissed in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

MAY 19, 2025