

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 16.04.2014
Pronounced on : 01.10.2014

+ CM(M) 1210/2013

MASTER TARUN PAWAR & ORS Petitioners

Through: Mr. Tanmaya Mehta with
Mr. Ankit Agarwal, Advs.

versus

RAJ SINGH & ORS Respondents

Through: Mr. Abhishek Mudgal, Adv. for R- 1
to 4.
Mr. Nawal Kishore Jha, Adv. for R-6
to 8.
along with ACP Data Ram, SI
Yudhvir Singh & SI Rajesh.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. This petition under Article 227 of the Constitution of India impugns an order dated 01.10.2013 whereby the Trial Court dismissed the petitioners' application under Order VI Rule 17, CPC by which section 6 of the Specific Relief Act (Act) was sought to be included in the heading of the suit.

Brief facts

2. The petitioners had filed a suit claiming permanent and mandatory injunction. Thereafter, an application was filed for amendment of the plaint to include the relief of possession instead of mandatory injunction, which was allowed in the year 2004. By the aforesaid application, which is the subject matter

of this petition, it was submitted that in the heading of the suit section 6 of the Act had not been mentioned; but the suit itself was self-speaking since it had been filed under section 6 of the Act, therefore by amending the title of the suit, no prejudice would be caused to the defendants as no further evidence was required to be led by the parties.

3. In reply to the application, the respondents submitted that the application was a misuse of the process of law and had been filed to delay the proceedings; that the application could be allowed since the trial of the suit was complete; that the plaintiff was seeking to change the nature of the suit entirely, which was impermissible in law.

Impugned order

4. The Trial Court dismissed the application of the petitioners. It noted that: proceedings under section 6 were summary in nature, where the rights of the parties do not get adjudicated; for a suit under section 6, only the factum of possession in the preceding six months of the date of institution of the suit was material; the law mandates that a suit under section 6 must clearly mention in the plaint itself that the suit lies under the said provision; it is not permissible to incorporate any other relief in a suit under the statutory provision.
5. The Trial Court further noted that neither the original nor the amended plaint mentioned section 6 of the Act. On a meaningful reading of the plaint, the Trial Court was of the view that the same was not confined only to the nature of

pleadings under section 6 of the Act; the plaint averred the rights of the petitioners in the suit property by virtue of which they were entitled to the relief of possession; the paragraph in relation to cause of action too, the averments were in relation to the rights of the parties by virtue of a family agreement between them, which could not be considered as a cause of action under section 6 of the Act. The Trial Court was further of the view that the amendment proposed by the petitioners, if allowed, would completely alter the nature of the suit. Hence, it could not be allowed at the stage of final arguments.

Submissions before this Court

6. The learned counsel for the parties were heard. The petitioners, inter alia, have submitted that the Trial Court has confused the provisions of section 6 of the Act and Order XXXVII, CPC; the suit was filed within 6 days of the dispossession and the plaint dealt with all the necessary ingredients of section 6; the omission to mention a statutory provision was inconsequential; that the observation of the Trial Court regarding the non-mentioning of section 6 of the Act in the original plaint and the amended plaint was erroneous; averments relating to title in the suit property can very well be made in a suit under section 6; in fact, even the absolute owner of a property forcibly dispossessed, can very well maintain a suit under section 6, where amendments do not affect the nature of the suit or the evidence, there is no bar upon the Court to allow such amendment at any stage of the suit; there is no absence of

diligence on part of the petitioners, which would disentitle them to the reliefs claimed. In view of the above, the petitioners have sought setting aside of the impugned order and have prayed that their application, as filed before the Trial Court be allowed. The learned counsel for the petitioners has placed reliance on a decision of this Court in **Sarvesh Kumari Yadav v. H.C.Ahuja**¹ and particularly on the following paragraph:

“31. Thus, it stand established from the record that respondent is the owner of flat in question and it is proved that he was in possession of the flat in question within six months prior to the filing of the suit. Respondent has also proved that on 29th March, 2001, he was dispossessed without his consent from the flat in question by the petitioner otherwise than in due course of law. The present suit has been instituted by the respondent within six months of such wrongful dispossession.”

7. On the other hand, the learned counsel for the respondents has sought to sustain the impugned order as being sufficinetly reasoned and not suffering from any material irregularity. He has placed reliance on the judgment of the Supreme Court in **H.P.Vedavyasachar v. Shivashankara & Anr.**² and particularly on the following paragraph:

“6. So far as the contention of the learned counsel for the appellant that the suit was instituted in terms of Section 6 of the Specific Relief Act, 1963 is concerned, in our opinion, the same cannot be

¹ AIR 2011 Del 61

² (2009) 8 SCC 231

accepted. The appellant has not only prayed for grant of a decree for permanent injunction but has also asked for passing a decree for mandatory injunction directing the respondents to hand over possession to it. Such prayers, in our opinion, would not come within the purview of Section 6 of the Specific Relief Act.”

Analysis

8. The only question which needs to be determined is whether the petitioner’s claim was in any way covered under section 6 of the Act, for them to seek amendment of the plaint, so as to state in the heading of the suit. Section 6 of the Act is reproduced 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 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.”

9. Under the above legal provision, any person who is dispossessed of an immovable property without his consent otherwise than in due course of law, may file a suit within six months from the date of such dispossession. Moreover, no appeal or review shall lie from any order or decree passed in a suit instituted under Section 6 of the Act. Furthermore, sub section (4) of section 6 stipulates that nothing in the section would bar any person from suing to establish his title to such property and to recover possession thereof.
10. There is a difference between a suit on the basis of possessory right as contemplated by Section 6 of the Act and a suit based upon title. Section 6 of the Act is intended to provide a special remedy for a person who is ousted from an immovable property, irrespective of his title. The essential conditions for the grant of relief of possession under section of the Act are that the person/plaintiff has to prove his prior possession of the suit property and dispossession from it by the defendant, otherwise than in due course of law, within six months of that suit. The title of the parties is irrelevant. Furthermore, the question of title of the parties cannot be adjudicated upon in a suit under section 6 of the Act. The Supreme Court in ***Sanjay Kumar Pandey & Ors. v. Gulbahar Sheikh & Ors.***³ has observed 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

³ (2004) 4 SCC 664

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.”

11. This Court is not persuaded with the submissions of the petitioners. The petitioners had claimed rights/title in the property by virtue of a family arrangement. The petitioners had also claimed that the joint family property had been transferred and assigned to them by the respondents. However, averments were indeed made by the petitioners in regard to their forcible dispossession from the property by the respondents. Although such averments might have dealt with the ingredients of section 6 of the Act but the suit was not premised as one under section 6 of the Act. In so far as the plaint of the petitioners was not premised on section 6 of the Act, the Trial Court was right in dismissing their application under Order VI Rule 17, CPC. The reliance on **Sarvesh Kumari Yadav** (supra) by the learned counsel for the petitioner is also misplaced. In the said case, reference to the ownership of the respondent therein was made

only because the petitioner therein had not disputed the same. However, the facts of the present case are entirely different and the said case would not be applicable here.

12. Furthermore, Proviso to Order VI Rule 17, CPC provides that no application for amendment shall be allowed after the commencement of trial unless the Court concludes that the party could not have raised the matter before the commencement of trial. Admittedly, the petitioners preferred the application under Order VI Rule 17 after the commencement of trial and the matter had reached the stage of final arguments. The petitioners had earlier also sought amendment of the plaint which came to be allowed in 2004. There was no whisper of their claim being traced to section 6 of the Act either in the original plaint or in the amended plaint.

13. The reasoning for and the conclusion arrived at in the impugned order is a plausible view in law; it does not suffer from illegality, material irregularity or any infirmity. Consequently, the impugned order does not warrant the interference of this Court in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India. This petition is without merit and is accordingly dismissed.

**NAJMI WAZIRI
(JUDGE)**

OCTOBER 01, 2014