

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.602 OF 2015

Rajayya Narsayya Gundla : Applicant.
Versus
Shriniwas Rajaram Shrimal : Respondent.

Mr. Surel S Shah for the Applicant.
Mr. Ashok B Tajane for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 15th October 2015

P.C.

1 The revisionary jurisdiction of this court is invoked against the order dated 15/04/2015 passed by the learned 5th Joint Civil Judge, Junior Division, Solapur by which order the suit in question being Regular Civil Suit No.112 of 2012 came to be decreed and the Applicant herein was directed to hand over the possession of the suit property to the Respondent herein within two months from the date of the order by removal of the tin sheds put up by him.

2 The suit in question was filed under Section 6 of the Specific Relief Act. The parties i.e. the Applicant herein who is the original Defendant and the Respondent herein who is the original Plaintiff would be referred to by their status in the Trial Court. The suit was founded on the fact that the Plaintiff

was dispossessed on 20/01/2012 by the Defendant by putting up tin sheds on the suit property i.e. Plot Nos. 15 and 21. The Plaintiff claims to be in possession of the suit property on the basis of a registered sale deed executed by one Imamsahab Ramjamsahab Nadaf as a power of attorney of one Mathurabai Kakade. It is the case of the Plaintiff that pursuant to the said sale deed he is in possession of the suit property and that the suit property has also been entered in his name in the record of the Solapur Municipal Corporation. The Plaintiff on his dispossession has sent a letter dated 20/01/2012 addressed to the Inspector, MIDC Police Station, Pomul Nagar, Akkalkot Road, Solapur wherein the facts relating to how the Plaintiff was dispossessed have been mentioned, and it is requested that an FIR be registered against the Defendant in respect of his said dispossession.

3 In so far as the Defendant is concerned, he has filed his written statement and has denied the case of the Plaintiff. It was the case of the Defendant that an agreement to sale dated 15/01/1999 was executed in his favour by the said Imamsahab Nadaf and the consideration mentioned was Rs.50,100/-. It is his case that out of the said amount of Rs.50,100/-, he had paid the amount of Rs.50,000/- and the balance remaining to be paid was Rs.100/- which was to be paid at the time of execution of the sale deed. It was therefore his case that he was always in possession of the suit property since 15/01/1999 as evidenced by the clause of the said agreement to sale and that

the Plaintiff was never in possession and is therefore not entitled to the relief claimed in the suit in question.

4 The Trial Court having regard to the rival pleadings framed the issues which are required to be framed in a suit under Section 6 of the Specific Relief Act. Issue Nos.1 and 2 can be said to be material and for the sake of ready reference are reproduced herein under :-

1] Whether the plaintiff has proved his possession
on the suit property prior to his dispossession ?

2] Whether the plaintiff has filed suit within 6
months from dispossession?

The parties went to trial. In so far as the Plaintiff is concerned, he adduced his own evidence as well as the evidence of three witnesses i.e. Imamsahab Ramjansahab Nadaf, one Laxminarayan Vangari and Mehaboob Hasansahab Mujawar in support of his case whereas the Defendant did not enter into the witness box.

5 In so far as the evidence of the Plaintiff is concerned, he has stood by his pleadings in the plaint. In so far as the evidence of Imamsahab Nadaf is

concerned, it has come in his evidence that he has admitted in his evidence that agreement to sale dated 15/01/1999 was executed in favour of the Defendant. However, since the Defendant was not interested in the plots of land in question, he approached him upon which he refunded the amount of Rs.50,000/- and tore the agreement to sale dated 15/01/1999. In so far as the witness Laxminarayan Vangari is concerned, he has deposed that he has taken pictures for the site in question. In so far as the evidence of Mehboob Mujawar is concerned, he has deposed that he was a labourer engaged by the Defendant to put up the tin sheds and that he had gone to put up the sheds at 4.00 am on 10/01/2012.

6 Since reliance was placed by the Defendant on the agreement to sale dated 15/01/1999 and since the said agreement to sale was questioned on behalf of the Plaintiff as well as the said Imamsahab Nadaf as being fraudulent, the said agreement to sale was referred to the hand writing expert for his opinion. The said hand writing expert Shri Ulhas Athale had opined that the signature on the disputed document i.e. the agreement to sale dated 15/01/1999 was not that of the said Imamsahab Nadaf and the reasons for the same have been mentioned by him in his report.

7 In so far as the Defendant is concerned, as indicated above, the Defendant has not stepped into the witness box.

8 The Trial Court considered the material on record i.e. both the oral evidence as well as the documentary evidence which had come on record mainly through the Plaintiff except the agreement to sale dated 15/01/1999 which was produced by the Defendant. The Trial Court on consideration of the said material on record, has recorded findings in favour of the Plaintiff as regards the two issues which have been adverted to herein above that the Plaintiff was in possession and has been dispossessed six months prior to the filing of the suit. The Trial Court has taken into consideration the oral evidence which was adduced on behalf of the Plaintiff and the fact that the Defendant had not stepped into the witness box. The Trial Court was therefore prompted to come to the conclusion that it is the Plaintiff who is in possession and not the Defendant. The Trial Court accordingly by the impugned order dated 15/04/2015 has decreed the suit .

9 The learned counsel appearing for the Applicant Shri Surel Shah would seek to assail the decree passed by the Trial Court for possession on the ground that the document on which the Plaintiff relies itself is questionable as said Mathurabai Kakade had expired in the year 2004 whereas the document in favour of the Plaintiff has been executed in the year 2011 by virtue of the power of attorney which was executed by the said Mathurbai Kakade in favour of Imamsahab Nadaf. The learned counsel for the Applicant would seek to pick

holes in the evidence of the Plaintiff by contending that it has come on record that the Plaintiff was an employee of the said Imamsahab Nadaf and that the evidence of the labourer Mehboob Mujawar also could not be believed as he is the witness who has volunteered to give evidence. It was the submission of the learned counsel for the Applicant that the theory propounded by the said Imamsahab Nadaf of the agreement of sale being cancelled and the amount was refunded cannot be accepted by solely relying upon his evidence. If that be so, according to the learned counsel, then it could not be said that the said Nadaf was in possession and that he handed over possession to the Plaintiff.

10 Per contra, the learned counsel appearing on behalf of the Respondent Shri Ashok Tajane would support the decree passed by the Trial Court. The learned counsel would contend that it is impossible to belief that though the agreement to sale was executed in favour of the Defendant and that though the said agreement to sale provided for execution of the sale deed, the same has not been done since the year 1999. The learned counsel sought to place reliance on the opinion of the hand writing expert as also on the documents which are on record to contend that it is in fact the Plaintiff who was in possession and has been forcibly dispossessed as rightly held so by the Trial Court.

11 Having heard the learned counsel for the parties, I have

considered the rival contentions. In so far as a suit under Section 6 of the Specific Relief Act is concerned, it is well settled that the Court is not concerned with the title to the property, but the defining aspect is as to whether the Plaintiff was in possession and whether he has been dispossessed 6 months prior to the alleged date of dispossession. It is from the said perspective that the matter would have to be considered. To discharge the burden that he is in possession, as indicated above, the Plaintiff has led the evidence of as many as 4 witnesses. However, the Defendant has not stepped into the witness box. The evidence which has come on record and which militates against the case of the Defendant and operates in favour of the Plaintiff is the evidence of the said Imamsahab Nadaf wherein he has stated that the agreement to sale dated 15/01/1999 executed in favour of the Defendant was cancelled and the amount was refunded to him. This case of the said Nadaf has not been dented by any of the evidence led by the Defendant. In the absence of such evidence it would have to be accepted that the case put up by the said Nadaf in his evidence would have to be accepted. If that be so, the conclusion drawn by the Trial Court that on the cancellation of the agreement to sale dated 15/01/1999, the said Imamsahab Nadaf was back in possession and that he has thereafter executed the sale deed dated 12/09/2011 in favour of the Plaintiff and put the Plaintiff in possession would have to be accepted.

12 Another circumstance which dents the case of the Defendant is the

factum that though the agreement to sale was executed in the year 1999, the Defendant did not call upon the said Nadaf to execute the sale deed. It defies logic that a person who has paid an amount of Rs.50,000/- in the year 1999, keeps quiet and does not call upon his vendor to execute a sale deed so that his title to the property which is agreed to be sold is perfected. The case of the said Nadaf that the document dated 15/01/1999 is a got up document is lent credence by the opinion of the hand writing expert. The evidence of the said Mehaboob Mujawar has also not been controverted by the Defendant. Hence on a preponderance of probabilities, which is the standard of proof in so far as the civil proceedings are concerned, the case of the Plaintiff that he was in possession and that he has been dispossessed on 20/01/2012 appears to be more probable than the case of the Defendant that he has been continuously in possession since the year 1999. The Plaintiff has therefore, as rightly held by the Trial Court, proved his case that he was in possession and that he has been dispossessed. The findings recorded by the Trial Court are therefore based on the evidence on record, and the order passed by the Trial Court decreeing the suit filed under Section 6 of the Specific Relief Act therefore cannot be said to suffer from any error of jurisdiction for this Court to interfere in its revisionary jurisdiction. The above Civil Revision Application is accordingly dismissed.

13 At this stage, the learned counsel appearing for the Applicant Shri Surel Shah applies for stay of the instant order for a period of eight weeks to

approach the Apex Court. In the facts and circumstances of the present case, the operation of the instant order is stayed for a period six weeks from date.

[R.M.SAVANT, J]