

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

WRIT PETITION NO.9107 OF 2015

Laxmibai Ramji Rathod and others

.. Petitioners

Versus

Nivrutti Rama Ragte

.. Respondent

Ms. Maneesha Patel, for the Petitioners.

Mr. K. Rajan, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 15th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the judgment and order dated 06.05.2015 passed by the Learned Civil Judge Junior Division & JMFC, Vashi at Belapur, Navi Mumbai, by which order the suit in question being Special Civil Suit No.635 of 2011 filed by the Respondent herein under Section 6 of the Specific Relief Act came to be decree.

2. The Respondent herein is the original Plaintiff in the said suit being Regular Civil Suit No.317 of 2012. The Petitioners are the original Defendants. The said suit is founded on the fact that the Plaintiff has been dispossessed on 05.03.2011 from the suit premises being House No.1429

at village Kopari, Vashi Node (PO), Sector-26, Vashi Navi Mumbai. The suit premises admeasures 1914 square feet (58 X 33 ft.) It is the case of the Plaintiff that the land on which the suit property is situated was purchased by him from one Shri. Devidas Ramdas Bhoir under the agreement dated 01.07.1987. It is the case of the Plaintiff that after obtaining permission of the Gram Panchayat Khairne, the Plaintiff has constructed a chawl of ten rooms which is the suit property. It is the case of the Plaintiff that he had cordial relations with the Defendant No.1 for twenty years or more and had therefore authorized the Defendant No.1 to give the rooms to local workers etc. on Leave and Licence basis which the Defendant was doing till the dispossession of the Plaintiff on 05.03.2011. It is the case of the Plaintiff on 05.03.2011 he has visited the suit premises when he was confronted by the Defendants and found that the Defendants were in possession. The Defendants also threatened him that if he is seen in village Kopari they would bodily harm him. It is therefore the case of the Plaintiff that he was prevented from entering the suit premises on 05.03.2011 pursuant to which he lodged a complaint with the local police on the same day and thereafter filed the instant suit in question. The Defendants in their Written Statement has denied the case of the Plaintiff. The Defendants have sought to place reliance on certain tax receipts pertaining to House No.1429. On the basis of the said pleadings the parties went to

trial. The Trial Court framed the relevant issues as to “whether the Plaintiff was in possession and whether he was dispossessed by the Defendants ?”.

3. The Trial Court adjudicated upon the said issues. The Trial Court adverted to the fact that the Plaintiff claims to have purchased the land on which the suit property is situated from one Shri. Devidas Ramdas Bhoir and it is pursuant to the permission granted by the Gram Panchayat he had constructed the chawl comprising the said rooms. The Trial Court adverted to the fact that on 05.03.2011 when the Plaintiff visited the suit premises he was threatened by the Defendants which resulted in the Plaintiff filing a complaint with the local police. The Trial Court also adverted to the fact that the Plaintiff had also filed a complaint in respect of breaking open of the lock by the Defendants. Pursuant to which an inquiry is being carried out under Section 156(3) of the Cr.PC. The Trial Court on the basis of the material on record reached a conclusion that it is the Plaintiff who has title to the property and the aforesaid fact discloses that the Plaintiff has been dispossessed from the suit premises on 05.03.2011. The Trial Court recorded a finding that the evidence of the witness from the Navi Mumbai Municipal Corporation Shri. Rajendra Mahadev Chougule supports the case of the Plaintiff that it is the Plaintiff who is the owner of the said House No.1429 which is the suit premises. The Trial Court further observed that the material produced by the Defendants does not indicate

that there is any semblance of title vested in Defendants in respect of the suit premises. Since it was a suit under Section 6 of the Specific Relief Act, the Trial Court recorded a finding that the Plaintiff was in possession of the House No.1429 and has been dispossessed by the Defendants by their acts on 05.03.2011.

4. The Learned Counsel appearing on behalf of the Petitioners sought to assail the findings recorded by the Trial Court by contending that after coming to a conclusion that the evidence discloses that the Plaintiff was not in actual physical possession of the suit premises, the Trial Court has erred in holding that the Plaintiff has been dispossessed. The Learned Counsel would contend that the third parties/licensees were in possession and the Plaintiff was not. It was the submission of the Learned Counsel that the said Leave and Licence agreements have been executed by the Defendants in favour of the third parties and not by the Plaintiff.

5. Per contra, the Learned Counsel appearing for the Respondent Mr. K Rajan would support the impugned order. The Learned Counsel would contend that there can be no dispute about the fact that the Plaintiff is the owner of the suit premises and the Trial Court has rightly come to a conclusion that the Plaintiff has been dispossessed on

05.03.2011.

6. I have heard the Learned Counsel for the parties. As indicated above, the defining aspect in a suit under Section 6 of the Specific Relief Act is the prior possession. The Trial Court has recorded a finding that it is the Plaintiff who is the owner of the suit property being House No.1429. Hence, assuming that some third party/licensee was in physical possession, the juridical possession was always with the Plaintiff being the owner of the suit property. The Defendants by their act allegedly committed by them on 05.03.2011 of threatening the Plaintiff have ousted the Plaintiff from the suit premises and thereby forcibly dispossessed him without the due process of law. As indicated above, there is not an iota of evidence produced by the Defendants to show title to the suit property. Hence, the finding recorded by the Trial Court that the Plaintiff was in possession of the suit property prior to his dispossession in the capacity of owner of the suit property cannot be found fault with. The view taken by the Trial Court cannot be said to be a view which could not be taken in the facts and circumstances of the case. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.