

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

WRIT PETITION (STAMP) NO.29750 OF 2014

Deepak Eknath Dhawan

.. Petitioner

Versus

Anwar Faramosh Khan and another

.. Respondents

Mr. Uday Bobade i/by Mr. Mukesh Subramaniam, for the Petitioner.

Mr. M. Y. Dhuri, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 27th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked in view of the observations made by the Trial Court at the bottom of paragraph 27 of the cross-examination of the Plaintiff which reads thus:-

“(The advocate of defendant asking the questions as to alleged possession of plaintiff from 01/02/1988, the court observed that the plaintiff will have to prove that on 09/12/2001 he was in possession but evicted by the defendant without following due process of law. I observed that the evidence will be relevant only on the event of alleged eviction of plaintiff on 09/12/2001, so the questions as to past events of long standing possession and title of either party may not be substantive and relevant in this suit and the Section 6 of Specific Reliefs Act, 1963.)”

Hence, the Trial Court has restricted the cross-examination of the

Defendant only to the factum of the dispossession of the Plaintiff on 09.12.2001 and has not permitted questions to be put to the Plaintiff as regards his alleged possession since 01.02.1988.

2. The suit in question being SC Suit No.7034 of 2002 is filed under Section 6 of the Specific Reliefs Act, wherein it is the case of the Plaintiff that he is in possession of the premises in question from 01.02.1988 till his alleged dispossession on 09.12.2001. The Trial Court in the light of the pleadings, framed the issues amongst which is issue No.1 which is as follows :-

“Whether the Plaintiff was in possession of the suit premises from 1.2.1988 up till his dispossession by the Defendant No.2 on 9.12.2001.”

Hence, parties would be entitled to lead the evidence on the said issue as they deem appropriate. The said issue has been framed in view of the fact, it is the claim of the Plaintiff that he is in possession since 01.02.1988 till his alleged forcibly dispossession on 09.12.2001. Hence, the Defendant would be entitled to cross-examine the Plaintiff so as to impinge upon the said case of the Plaintiff. The Trial Court has erred in restricting the cross-examination only to the aspect of the alleged dispossession on 09.12.2001. A party to a suit is undoubtedly entitled to question the credibility of the other side by putting such questions as the party deems appropriate.

Hence, in my view the observations made by the Trial Court at the bottom of paragraph 27 would have to be set aside. The Defendant would be entitled to cross-examine the Plaintiff in the light of issue No.1 which has been framed. The Trial Court is undoubtedly within its right not to permit irrelevant questions, but that would not mean Defendant cannot cross-examine the Plaintiff on aspects which are relevant to the said issue No.1. Hence, the observations made by the Trial Court directing the Plaintiff to submit evidence close pursis would stand withdrawn on the next date that would be fixed by the Trial Court. The cross-examination of the Plaintiff's witness would continue. Since the Learned Counsel who was appearing on behalf of the Defendant has expired on 14th February, 2015, the Trial Court may fix the cross-examination of the Plaintiff's witness two weeks from date. With the aforesaid directions the Writ Petition is disposed of.

[R.M. SAVANT, J]