

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11745 OF 2015**

Ganesh Umakant Mhatre and
Ors.

..Petitioners

Vs

Tejashri Ranjan Mhatre and Ors.

.. Respondents

Mr. Umesh V. Mohite, Advocate for Petitioners.

Mr. Vishal Kanade a/w Mr. K.G.Mhatre, Mr. Prateek Pai and Ms M.
Chitnis i/b Mhatre & Associates, Advocates for Respondents.

CORAM : R.G.KETKAR,J.

DATE : 30/11/2015

PC:

1. Heard Mr. Umesh Mohite, learned counsel for the petitioners and Mr. Vishal Kanade, learned counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, Original defendants no.1 and 2 have challenged the Judgment and order dated 16.9.2015 passed by the learned Judge, City Civil Court, Greater Mumbai on preliminary issue in S.C.Suit No.163 of 2014. The learned trial Judge has framed preliminary issue under section 9A of C.P.C., namely, Whether City Civil Court has jurisdiction to entertain and try the suit? and answered in the affirmative.

3. In support of this Petition, Mr. Mohite strenuously contended that the suit is between landlord and tenant. In view

of Section 41 of the Presidency Small Cause Courts Act, 1882, the Civil Court has no jurisdiction to entertain and try the suit. He relied upon the decision of the Apex Court in the case of Mansukhlal Dhanraj Jain Vs. Eknath vithal Ogale, AIR 1995 SC 1102.

4. He further submitted that in fact the respondents have surrendered possession to the petitioners and, therefore, also the suit under section 6 of the Specific Relief Act, 1963 (for short, 'Act') is not maintainable and the Civil Court has no jurisdiction to entertain and try the suit. In particular, he relied upon paragraphs 11, 13 and 19 of Mansukhlal Dhanraj Jain case (supra).

5. On the other hand, Mr. Kanade supported the impugned order. He submitted that in view of express language of Section 6 of the Act, City Civil Court has rightly held that Civil Court has jurisdiction to entertain and try the suit.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Section 6 of the Act reads thus:

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."

7. In the case of Mansukhlal Dhanraj Jain (supra), the Apex Court was dealing with a suit for permanent injunction. In paragraph 11, the Apex Court extracted Section 41 of the Presidency Small Cause Courts Act. In paragraph 19, the Apex Court observed thus:

"Analogy drawn by Sawant, J. from cases under [Section 6](#) of the Specific Relief Act, 1963 on the clear averments in the plaints in present cases is also not apposite. It is trite to say that [Section 6](#) of the Specific Relief Act given a summary remedy to the plaintiff to seek restoration of possession from the defendant within six months of illegal recovery of possession by the defendant, without referring to the title of the plaintiff and defendant. It is purely a possessory suit wherein status of the party is irrelevant. In such type of suits the plaintiff is not required to prove his title or a superior right to possession as compared to the defendant and has only to show that he was in possession of the suit immovable property and he was illegally dispossessed within a period of six months prior to the date of the suit. Once the plaintiff proves this case, he becomes entitled to succeed and can get status quo ante and restoration of possession of the suit premises through the assistance of the Court. In given cases, even injunction suits purely based on previous peaceful possession and sub-subsequent threatened dispossession may stand on an entirely different footing and might not attract

the sweep of Section 41(1) of the Small Causes Courts or for that matter Section 28 of the Bombay Rent Act. But the present suits are not of that type. They are suits clearly based on the allegation that the plaintiffs are licensees on monetary considerations and they apprehend to be dispossessed, not in accordance with law, at the hands of defendant-licensors. Such suits as we have discussed earlier, clearly attract the applicability of Section 41 of the Small Causes Courts Act as both the conditions for its applicability, namely, that they are suits between licensees and licensors and they relate to recovery of possession of immovable properties situated in Greater Bombay are complied with. Consequently the conclusion is inevitable that the aforesaid suits as filed by the appellants were not cognizable by the City Civil Court, Bombay and they could be entertained only by the Small Causes Court, Bombay, and fall within the exclusive jurisdiction of the latter court. “

8. Perusal of paragraph 19, extracted herein above, shows that the Apex Court held that Section 6 gives a summary remedy to the plaintiff to seek restoration of possession from the defendant within six months of illegal recovery of possession by the defendant, without referring to the title of the plaintiff and defendant. It is purely a possessory suit wherein status of the party is irrelevant. In such type of suits the plaintiff is not required to prove his title or a superior right to possession as compared to the defendant and has only to show that he was in possession of the suit immovable property and he was illegally dispossessed within a period of six months prior to the date of the suit. In view thereof, I do not find that the learned trial Judge committed any error while passing the impugned order.

9. Mr. Mohite further submitted that the respondents have surrendered possession of the suit property to the defendants. Mr. Kanade disputes this position. In my opinion, that is a matter of evidence on merits. Presently, the Court is considering the question, viz. whether the Civil Court has jurisdiction to entertain and try the suit?.

10. In the light of the aforesaid discussion, I do not find that the learned trial Judge has committed any error. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)