

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.40/2014

Dilip s/o Ramkrushna Deshmukh and others

...Versus...

Satish s/o Mohanlal Jaiswal and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.K. Choube, Advocate for applicants
Shri S.P. Kshirsagar, Advocate for non-applicants

CORAM : Z.A. HAQ, J.

DATE : 16.02.2015

1. Heard the learned Advocates for the respective parties.
2. This civil revision application is filed by the original defendants challenging the judgment passed by the trial Court granting decree under Section 6 of the Specific Relief Act in favour of the non-applicant no.1/plaintiff.
3. The non-applicant no.1/plaintiff had filed the suit under Section 6 of the Specific Relief Act contending that he had purchased the suit shop by the registered sale-deed dated 13.4.2007 from Smt. Nikhat @ Munni w/o Hidayattulla Sheikh and he was put in possession of the suit property at the time of the sale-deed. The non-applicant no.1/plaintiff contended that earlier Shri R.G. Deshmukh was the tenant in the suit shop and he was running a liquor shop. According to the non-applicant

no.1/plaintiff, the original defendant no.4 (son-in-law of Shri R.G. Deshmukh) was running the shop during the life time of Shri R.G. Deshmukh on behalf of the partnership and after the death of Shri R.G. Deshmukh, there were *inter se* disputes amongst the defendant nos.1 to 3 (Legal Representatives of Shri R.G. Deshmukh) and the licence of the shop was suspended because of which the shop was closed. According to the non-applicant no.1/plaintiff, the defendant no.4 who was running the shop had given no objection for the execution of the sale-deed and accordingly the sale-deed was executed and possession was given to the non-applicant no.1/plaintiff. According to the non-applicant no.1/plaintiff, the defendant nos.1 to 3 had illegally taken the possession of the suit shop in the night between 27.1.2009 and 28.1.2009 and therefore, a complaint was made to the police on 28.1.2009. The non-applicant no.1/plaintiff having been dispossessed illegally, the civil suit came to be filed on 15.4.2009.

4. The original defendant nos.1 and 2 i.e. the present applicants filed common written statement opposing the claim of the non-applicant no.1/plaintiff. According to the applicants/defendant nos.1 and 2, because of the *inter se* disputes amongst the defendant nos.1 to 3 and the wife of the defendant no.4, the licence was suspended and the shop was closed. The applicants/defendant nos.1 and 2 contended that the Excise Department had sealed the suit shop on 19.11.2006. According to the applicants/defendant nos.1 and 2, the non-applicant no.1/plaintiff along with eleven persons had broken the seal put by the State Excise Department and had illegally taken possession of the suit shop on 5.8.2007 and a police complaint was made

about it on 6.8.2007. According to the applicants/defendant nos.1 and 2, the non-applicant no.1/plaintiff is being prosecuted and therefore, to wriggle out the prosecution, the non-applicant no.1/plaintiff had given the possession of the suit shop voluntarily and it cannot be said that he is forcibly dispossessed without taking recourse to law. The applicants/defendant nos.1 and 2 prayed that the suit filed by the non-applicant no.1/plaintiff be dismissed.

5. The learned trial Judge proceeded with the matter and after recording the evidence found that the non-applicant no.1/plaintiff proved that he was in possession of the suit shop till his dispossession by the applicants/defendant nos.1 and 2, illegally and without taking recourse to law. The learned trial Judge concluded that the non-applicant no.1/plaintiff is entitled for possession of the suit shop and granted decree. The applicants/defendant nos.1 and 2 being aggrieved by the judgment and decree passed by the learned trial Judge have filed this civil revision application.

6. Shri A.K. Choube, the learned Advocate for the applicants has submitted that the learned trial Judge has committed an error in not considering the defence of the applicants that the non-applicant no.1/plaintiff has voluntarily handed over the possession of the suit shop to save himself from the criminal prosecution. The submission made on behalf of the applicants is not supported by any material on the record. Except the statement made in the written statement filed by the applicants/defendant nos.1 and 2, there is nothing on the record to support the statement. The details of the alleged prosecution faced by the non-applicant no.1/plaintiff, which according to the

applicants is the basis which compelled the non-applicant no.1/plaintiff to hand over the possession of the suit shop to the applicants/defendant nos.1 and 2, are neither given in the written statement nor in the evidence led by them nor in the civil revision application. Even at the time of hearing, the learned Advocate for the applicants is not in a position to provide the details of the alleged prosecution. Even the applicants/defendant nos.1 and 2 admit that the non-applicant no.1/plaintiff was in possession of the suit shop on the date of dispossession. It being the specific defence of the applicants/original defendant nos.1 and 2 that the non-applicant no.1/plaintiff has voluntarily given the possession of the suit shop to the applicants/defendant nos.1 and 2 to save himself from the criminal prosecution, in my view, it was necessary for the applicants/defendant nos.1 and 2 to give necessary details relating to the alleged prosecution. The absence of the necessary details on the record shows that the defence raised by the applicants/defendant nos.1 and 2 is concocted.

It is submitted on behalf of the applicants that the suit shop was in possession of the Excise Department and it had put its seal and the lock on the shop and the non-applicant no.1/plaintiff forcibly took the possession of the suit shop. There is nothing on the record to show that the Excise Department or the State has taken any steps against the non-applicant no.1/plaintiff in the matter. In the absence of any material placed on the record by the applicants/defendant nos.1 and 2 to support the contention, it cannot be accepted that the suit shop was in possession of the Excise Department. If it had been so, in normal course, the Excise Department and/or the State would have taken appropriate steps against the non-applicant no.1/plaintiff for forcibly taking

possession of the suit shop alleged to be in possession of the Excise Department.

7. Shri A.K. Choube, the learned Advocate for the applicants has submitted that the suit filed by the non-applicant no.1/plaintiff was bad and should have been dismissed for non-joinder of the Excise Department. The submission made on behalf of the applicants is misconceived. The suit was filed under Section 6 of the Specific Relief Act praying for decree for possession against the respondent nos.1 to 3. The scope of the suit under Section 6 of the Specific Relief Act is limited and the Court while considering the suit under Section 6 of the Specific Relief Act has to decide as to who was in possession prior to the filing of the suit and whether the person has been dispossessed illegally without taking recourse to law. In the facts of the present case, it cannot be said that the Excise Department should have been impleaded as the defendant in the civil suit.

8. The learned Advocate for the applicants has submitted that the learned trial Judge has committed an error in not considering the case of the applicants that the suit was filed by the non-applicant no.1/plaintiff in collusion with the original defendant nos.3 and 4. Apart from the fact that the issue was not framed by the trial Court and the applicants have not taken any steps to get the issue framed by the trial Court, the submission as made in this regards is irrelevant. It being the case of the non-applicant no.1/plaintiff that he was in possession of the suit shop from 13.4.2007 till 27.1.2009 when he was illegally dispossessed in the night between 27.1.2009 and 28.1.2009 and it having been found that he was dispossessed illegally without taking recourse to law, the fact whether the defendant nos.3

and 4 were in collusion with the non-applicant no.1/plaintiff is irrelevant for the purposes of adjudication of the controversy involved in the suit.

9. The learned trial Judge has exhaustively dealt with the pleadings of the parties and the evidence on the record and has rightly refused to accept the defence of the applicants/defendant nos.1 and 2 that the non-applicant no.1/plaintiff has voluntarily given the possession of the suit shop to the applicants/defendant nos.1 and 2.

10. Shri A.K. Choube, the learned Advocate for the applicants has submitted that the applicants/defendant nos.1 and 2 had been regularly depositing Rs.6,000/- towards the rent of the suit shop and this shows that the non-applicant no.1/plaintiff was not in possession of the suit shop. In support of the submissions, he has relied on the judgment given in Writ Petition No.1388/2010 on 10.8.2010. Writ Petition No.1388/2010 was filed before this Court against the order passed by the trial Court refusing to grant temporary injunction during the pendency of the suit. This Court, considering the fact that the applicants/defendant nos.1 and 2 were in possession of the suit shop from 28.1.2009, to balance the equities directed the applicants/defendant nos.1 and 2 to deposit Rs.6,000/- per month from 1.2.2009 onwards. The learned Advocate for the applicants has not been able to point out any evidence on the record to show that the applicants/defendant nos.1 and 2 had been paying rent in respect of the suit shop from 13.4.2007 till 27.1.2009.

11. In view of the above, I see no reason to interfere with the order passed by the learned trial Judge. The civil revision application is dismissed with costs, quantified at Rs.5,000/-

(Rupees Five Thousand Only) to be paid by the applicants to the non-applicant no.1/original plaintiff. The amount of costs shall be paid within two months.

JUDGE

Wadkar