

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

CRP.No. 383 of 2009 ()

AGAINST THE JUDGMENT IN O.S.NO. 178/2007 of ADDITIONAL MUNSIF
COURT,KOCHI DATED 09-11-2008

PETITIONER/DEFENDANT:

PONNAPPAN, S/O.LATE ITTACHI,
AGED 53 YEARS, MOOTHATTU HOUSE, KUMBALANGI MURI
KUMBALANGI VILLAGE, KOCHI TALUK, KOCHI-7.

BY ADVS.SRI.G.KRISHNAKUMAR
SRI.B.S.SURAJ KRISHNA
SRI.MANOJ KUMAR MALLIA.M

RESPONDENTS/PLAINTIFFS:

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1. PARUKUTTY, W/O.VELAYUDHAN, AGED 69 YEARS
KANNAMPALLIL HOUSE, KUMBALANGI, KOCHI-7.
 2. K.V.SASIKALA MOHAN, W/O.MOHANAN,
AGED 50 YEARS, KEZHEKUTTY, NEAR ST.PETERS HIGH SCHOOL,
KUMBALANGI, KOCHI.
 3. K.V.SHAJI, S/O.VELAYUDHAN,AGED 48YEARS,
KANNAMPALLIL HOUSE, KUMBALANGI, KOCHI-7.
 4. K.V.SHYLAN, S/O.VELAYUDHAN,
AGED 46 YEARS, KANNAMPALLIL HOUSE, KUMBALANGI, KOCHI-7.
 5. SHEELA ASHOKAN, W/O.P.S.ASHOKAN,
AGED 44 YEARS, PMACHICKAL HOUSE, AROOR P.O., ALAPPUZHA.
 6. AJITHA SAJU, W/O.SAJU, AGED 42 YEARS,
PANDARAPARAMBU HOUSE, NEAR ST.PETERS HIGH SCHOOL
KUMBALANGI, KOCHI.
 7. SEENA SANTHOSH, W/O.A.K.SANTHOSH,
AGED 40 YEARS, ARACKAPARAMBIL (H), THANGAL NAGAR
PALLURUTHY P.O., KOCHI-6.
 8. K.V.SABU, S/O.VELAYUDHAN, AGED 38 YEARS,
KANNAMPALLIL HOUSE, KUMBALANGI, KOCHI-7.

R1-R8 BY ADVS. SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.K.SANEESH KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 11-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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'CR'

A.HARIPRASAD, J.

C.R.P.No.383 of 2009

Dated this the 11th day of February, 2015

ORDER

The interesting legal question arising for decision is as follows:

“In a suit under Section 6 of the Specific Relief Act, 1963 (for short the 'Act') in addition to a relief of recovery of possession of property based on previous possession, can any other relief be also claimed?”

2. Facts in short are as follows: The plaintiffs/respondents approached the trial court with a suit under Section 6 of the Act claiming recovery of possession of plaint B Schedule property on the strength of their previous possession. Along with that prayer, they sought for a decree of mandatory injunction directing the defendant (petitioner herein) to demolish a portion of the compound wall and also for a decree of prohibitory injunction restraining the defendant from trespassing into

plaint B Schedule property.

3. The court below decreed the suit in full. Aggrieved by the judgment and decree, the defendant has come up in this revision.

4. Heard the learned counsel for the revision petitioner. The respondents, though served, did not contest.

5. I shall extract Section 6 of the Act for clarity:

“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.”

6. The Section enables a person dispossessed of immovable property otherwise than in due course of law to recover possession thereof. On a reading of the Section, it is clear that any person dispossessed without his consent of immovable property otherwise than in due course of law, or any person claiming through such a person may file a suit for recovery of possession purely based on his possessory title. The Section further says that a decree can be granted in such a suit notwithstanding any other title that may be set up in such suit by any of the parties. The restrictions imposed for granting a relief under the Section are two fold: Firstly, no suit under the provision shall be brought after expiry of six months from the date of dispossession. The second restriction is that no suit under Section 6 of the Act shall be entertained, if it is against the Government. It is therefore clear that the Section itself prescribes a period of limitation for filing such a suit as six months from the

date of dispossession. Sub-section (4) of Section 6 of the Act clearly spells out that nothing in the Section shall bar any person from suing to establish his title to such property and to recover possession thereof.

7. A conjoint reading of the last limb of sub-section (1) and sub-section (4) of Section 6 of the Act will clearly show that even a person claiming title to the property can resort to a suit for recovery of possession based on previous possession, if he is dispossessed not in accordance with law and if he brings the suit within a period of 6 months. He is not precluded from filing a suit for recovery of possession based on his title, even if he fails in a suit under Section 6 of the Act. But, if a plaintiff suffers a defeat in a suit for recovery of possession based on title paramount, he cannot subsequently file a suit under Section 6 of the Act for recovery of possession based on possessory title. Following are the obvious reasons for the above mentioned propositions.

8. It is well settled that absolute title is a bundle of rights in which actual possession is a very important

constituent. Even right to possess is an essential ingredient of absolute title. If the title holder is ejected from property, he can sue on his right to possession either by filing a suit as specified under Section 5 or as provided under Section 6 of the Act. In a suit under Section 6 of the Act, he need not plead or prove his title as the question of title is extraneous to the decision of the suit. Therefore, there cannot be any doubt that in a suit for recovery of possession under Section 6 of the Act the plaintiff is only expected to plead and prove his previous possession. But in a suit for recovery of possession of property based on title, the plaintiff will have to establish his title to claim recovery, of course subject to the law of limitation. It goes without saying that a suit for recovery of possession based on title is a comprehensive suit wherein the plaintiff's entitlement to recover possession is also adjudicated. If a plaintiff loses in such a suit, he cannot later lay a suit under Section 6 of the Act for the reason that his right to claim possession has been negated in the previous comprehensive suit.

9. Going by the averments in the plaint, it can be seen that the plaintiffs herein had set up title by claiming a right under Section 106A of Kerala Land Reforms Act, 1963. In various parts of the plaint, they have asserted title and claimed reliefs not on the basis of previous possession alone, but on the basis of title as well. The question is whether such a suit is maintainable under Section 6 of the Act.

10. Learned counsel for the petitioner strongly relied on two decisions of the Supreme Court to contend that the suit as framed is not maintainable. The Apex Court in **Nagar Palika Jind v. Jagat Singh** [A.I.R 1995 Supreme Court 1377] considered a case wherein a suit for injunction restraining the defendant from interfering with possession was taken upto the Supreme Court. The claim of the plaintiff therein was resisted by the defendant-Municipality contending that the plaintiff was neither the owner of the land nor was in possession thereof. In the plaint the plaintiff asserted title to support his claim of possession. All the courts, including the High

Court, sustained the claim of the plaintiff against which the appeal was preferred. During the course of argument, it was brought out before the apex court that the plaintiff could not establish his title to property. Then the plaintiff took up a contention that based on previous possession, he could claim relief under Section 6 of the Act. In that context the Supreme Court held that disputed questions of title are to be decided by due process of law, but peaceful possession is to be protected from a trespasser under Section 6 of the Act without regard to the question of the origin of possession. Another decision relied on by the learned counsel for the petitioner is **Mahabir Prasad Jain v. Ganga Singh** ([1999] 8 Supreme Court Cases 274). The proposition of law laid down is as follows:

“Apart from granting a decree for possession as prayed for by the respondent, the trial court has granted an additional relief which was not prayed for in that the trial court has directed the appellant to remove the construction put up by him including the dismantling of the glass. Such a relief cannot be granted under the provisions of Section 6 of the Specific Relief Act, particularly when there is no prayer therefor in the plaint”.

11. The indisputable legal position is that in a suit for relief under Section 6 of the Act, the question of possession of the plaintiff within a period of six months prior to the suit alone should be considered. No relief other than one for putting the plaintiff in possession of the property can be claimed in such a suit for the reasons mentioned above. A suit under Section 6 of the Act is adjudicated as summary proceedings. Vexed questions of fact and law are extraneous to the scope of a suit under Section 6 of the Act. That apart, wording in Section 6 of the Act makes it clear that title to property or any relief other than one for recovery of possession cannot be claimed or granted.

12. Noticing all these legal principles, I am of the view that the court below has committed a grave error in granting reliefs which should not have been clubbed or claimed in a suit for possession under Section 6 of the Act. Therefore, I find that decree and judgment are unsustainable in law.

In result, the revision petition is allowed. The

impugned judgment and decree passed by the trial court are hereby set aside. There is no order as to costs. If the revision petitioner has deposited any amount before the trial court, as a condition for stay, it shall be refunded to him.

AS

Sd/-
A.HARIPRASAD, JUDGE.

/True Copy/

P.A. to Judge