

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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TRANSFER APPEAL SUIT No.514 OF 2013

AND

CIVIL REVISION PETITION No.5089 of 2010

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COMMON JUDGMENT:

The appeal and the revision petition are filed against the common judgment and decree, dated 31.08.2010, in O.S.No.264 of 2005 and O.S.No.394 of 2008 respectively, passed by the Principal Senior Civil Judge, Kakinada.

2. Plaintiffs 2 and 3 in O.S.No.264 of 2005 are the defendants in O.S.No.394 of 2008 and the plaintiffs in O.S.No.394 of 2008 are defendants 1 and 2 in O.S.No.264 of 2005. As the property involved in both the suits is one and the same, the trial Court decided both the suits by a common judgment.

3. For convenience, the parties are hereinafter referred to, as they are arrayed in the suit O.S.No.264 of 2005.

4. The allegations made in the plaint in O.S.No.394 of 2008 are identical to the written statement filed in O.S.No.264 of 2005; similarly, the allegations made in the plaint in O.S.No.264 of 2005 are identical to the written statement filed in O.S.No.394 of 2008. Therefore, to void repetition of pleadings of each party, the contentions of both parties in both suits are referred hereunder.

5. Plaintiffs in O.S.No.394 of 2008 sought for the relief of permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit schedule property alleging that they have purchased the property under two possessory agreements-cum-General Power of Attorney on 06.12.2004 from Batchu Saritha @ Sarojini, who in turn, purchased the same from her brother-in-law on 15.02.1982. Since the date of execution of the said possessory agreements, the plaintiffs are in possession and enjoyment of the property by paying property tax and also laid fencing around the property.

6. While the matter stood thus, the defendants started claiming right over

the schedule property and they demanded the vendor of the plaintiffs to sell the schedule property to them, for which he did not accept. Thereupon, the defendants' started pressurizing the plaintiffs to sell the property to them, but the plaintiffs did not agree for the same, for which the defendants grew wild against the plaintiffs stating that they will occupy the schedule property by removing the fencing. Accordingly, on 13.12.2004, while leaving the plaintiff schedule property, the defendants proclaimed that they will come again and take forcible possession. Hence, the suit.

7. The defendants in O.S.No.394 of 2008 filed the suit O.S.No.264 of 2005 for recovery of possession of schedule-B property claiming that they are owners of the schedule property and defendants 1 and 2 therein after obtaining order of interim injunction, trespassed into the schedule property without there being any previous possession. Defendants 1 and 2 in O.S.No.394 of 2008 also pleaded that as to how the plaintiffs therein became the owners of the schedule property when they were in possession and enjoyment of the property till they were dispossessed after filing of the suit by the plaintiffs in O.S.No.394 of 2008 and hence, they prayed to pass a decree in favour of defendants 1 and 2 in O.S.No.394 of 2008 on the strength of their previous possession.

8. Since the plea of both parties is one and the same in both the suits, to avoid repetition, the pleadings in other suit are ignored.

9. In O.S.No.394 of 2008, the trial Court framed the following issues:

- "1. Whether the suit filed by the plaintiffs is not maintainable as alleged by the defendants?
2. Whether the plaintiffs are entitled for permanent injunction against the defendants as prayed for?
3. To what relief."

10. In .O.S.No.264 of 2005, the trial Court framed the following issues:

- "1. Whether the plaintiffs are entitled for recovery of possession of plaintiff B-schedule property?
2. Whether the plaintiffs are entitled for damages at the rate of Rs.216/- p.m., till the date of delivery of B-schedule property?
3. Whether the plaintiffs by suppressing material facts have filed the present suit alleging that in the Will survey number was wrongly mentioned and the same was not pleaded in the written statement filed by them in O.S.No.272 of 1992?

4. Whether the plaintiffs had initiated 2nd round of litigation after A.S.No.121 of 1998 on the file of VII Additional District Judge, Kakinada was dismissed and it became final?
5. Whether the plaintiffs took a false plea that they were dispossessed from B-schedule property on 16.12.2005 under the guise of injunction?
6. Whether the suit was not properly valued?
7. Whether the suit is bad for non-joinder of necessary parties?
8. Whether the suit is bad for mis-joinder of cause of action?
9. To what relief?"

11. During trial, the trial Court clubbed the suit O.S.No.394 of 2008 with the suit O.S.No.264 of 2005 and recorded evidence in a comprehensive suit O.S.No.264 of 2005, as per the order, dated 03.12.2008, in I.A.No.1737 of 2008.

12. During the course of trial, on behalf of the plaintiffs, P.Ws.1 to 6 were examined and Exs.A.1 to A.28 were marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Exs.B.1 to B.7 were marked besides marking Exs.X.1 and X.2.

13. Upon hearing argument of both the counsel and considering the oral and documentary evidence on record, the trial Court decreed the suit O.S.No.264 of 2005 filed under Section 6 of the Specific Relief Act while dismissing the suit O.S.No.394 of 2008 filed for the relief of permanent injunction.

14. Aggrieved by the said common judgment and decree, the defendants 1 and 2 in O.S.No.264 of 2005, preferred C.R.P.No.5089 of 2010; and filed appeal Tr.A.S.No.514 of 2013 being unsuccessful in O.S.No.394 of 2008.

15. The grounds raised in both the Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 (for short, 'CPC') and the Transfer Appeal suit filed under Order XLI Rule 1 CPC, are almost identical. Therefore, to avoid repetition, the contentions in the revision petition and the Transfer appeal suit are mentioned hereunder.

16. The main contention of learned counsel for the appellants/revision petitioners is that in a suit filed under Section 6 of the Specific Relief Act, for the relief sought, the plaintiffs therein have to prove their prior possession and dispossession within six (6) months before filing of the suit. But, the trial Court,

without recording any finding, decreed the suit O.S.No.264 of 2005, erroneously. It is further contended that the trial Court went on deciding the title of the plaintiffs in O.S.No.264 of 2005, though it is unwarranted, in a summary suit filed under Section 6 of the Specific Relief Act. Therefore, the decree and judgment in O.S.No.264 of 2005 passed by the Court below are erroneous.

17. The learned counsel would further contend that the trial Court ignored the tax receipts, evidencing payment of tax, for schedule-B property in O.S.No.264 of 2005 and the schedule property in O.S.No.394 of 2008 and, if those tax receipts are taken into consideration, the trial Court would not have dismissed the suit O.S.No.394 of 2008 and ought not to have decreed the suit O.S.No.264 of 2005. But, on erroneous appreciation of evidence and the finding recorded on several issues with regard to title, decreed the suit O.S.No.264 of 2005 and hence, he prayed to set aside the decree and judgment in O.S.No.264 of 2005 and pass a decree in favour of the plaintiffs in O.S.No.394 of 2008.

18. In addition to the above contentions, the plaintiffs in O.S.No.394 of 2008 raised additional grounds. The appellants/revision petitioners are in possession and enjoyment of the property pursuant to the possessory agreements-cum-General Power of Attorney and in the absence of proof of title of the defendants in O.S.No.394 of 2008, the plaintiffs are entitled to protect their possession being in lawful possession of the property. But, the trial Court did not consider the contentions raised by plaintiffs and thus committed an error and finally, prayed to set aside both the decrees and common judgment in O.S.No.264 of 2005 and O.S.No.394 of 2008 while dismissing the suit O.S.No.264 of 2005, decreeing the suit O.S.No.394 of 2008 in favour of the plaintiffs by granting permanent injunction restraining defendants therein from interfering with their peaceful possession and enjoyment of the suit schedule property.

19. During course of argument, learned counsel for the appellants/revision petitioners would contend that the trial Court did not record any specific finding with regard to prior possession and dispossession within six (6) months before filing of the suit and decided the title of the plaintiffs in

O.S.No.264 of 2005, which is beyond the scope of the suit and, thereby, recording such a finding in a summary suit filed under Section 6 of the Specific Relief Act, is erroneous and prayed to dismiss the suit O.S.No.264 of 2005, while decreeing the suit in O.S.No.394 of 2008.

20. Per contra, learned counsel for the respondents/defendants would contend that the trial Court specifically recorded a finding that the appellants/revision petitioners have encroached the suit schedule property under the guise of interim injunction obtained and thereby, the plaintiffs in O.S.No.394 of 2008 are not entitled to recover possession of the property based on previous possession under Section 6 of the Specific Relief Act and hence, he prayed to dismiss both the Civil Revision Petition and the Transfer Appeal Suit, as there is no illegality or irregularity in the common judgment passed by the trial Court.

21. After considering rival contentions and perusing the material available on record including the judgment and decree, the points that arise for consideration are:

- 1) Whether the plaintiffs in O.S.No.394 of 2008 are in possession and enjoyment of the suit schedule property as on the date of filing of the suit and if so, whether the defendants therein made any attempt to infringe or invade their legal right?
- 2) Whether the plaintiffs in O.S.No.264 of 2005 are entitled to recover possession of the suit schedule property based on previous possession under Section 6 of the Specific Relief Act and if so, the decree and judgment passed by the trial Court be sustained?

22. **POINT Nos 1 and 2 :**

Plaintiffs 2 and 3 in O.S.No.264 of 2005 are seeking recovery of possession of schedule-B property and for damages at Rs.1,600/- per month basing on their title from the years 1981 by virtue of a registered Will, dated 17.06.1981, executed by late Vadrevu Meeraiah. The specific plea of the plaintiffs in O.S.No.264 of 2005 is that defendants 1 and 2 in the said suit claimed that they purchased schedule-B property under possessory agreements-cum-general power of attorney and based on the said possessory agreements, defendants 1 and 2 obtained *ex parte* injunction order by misrepresenting that they are in possession of schedule-B property and under the guise of the said injunction order, defendants 1 and 2 in O.S.No.264 of

2005 highhandedly trespassed into the schedule-B property and dispossessed the plaintiffs. Whereas, the contention of the defendants 1 and 2 in O.S.No.264 of 2005 is that from the date of purchase of the property under Exs.B.1 and B.2, dated 06.12.2004, they are in possession and enjoyment of the property, the question of their dispossessing the plaintiffs from the suit schedule property does not arise. Thus, both parties claimed that they are in possession and enjoyment of the schedule property as on the date of filing of the suit. *Ex parte* injunction order was passed in O.S.No.394 of 2008 on the file of Additional Junior Civil Judge, Kakinda, which was transferred to the Court of Principal Senior Civil Judge, Kakinada vide order in T.O.P.No.714 of 2007, dated 11.12.2008. But, the trial Court after recording evidence, concluded that the plaintiffs in O.S.No.394 of 2008 encroached the schedule property basing on the *ex parte* injunction order and dispossessed the plaintiffs in O.S.No.264 of 2005.

23. In a suit based on prior possession under Section 6 of the Specific Relief Act, it is obligatory on the part of the Court to record a finding as to the previous possession of the party and his dispossession within six (6) months prior to filing of the suit. In the impugned judgment, the learned Principal Senior Civil Judge, Kakinada, concluded that the plaintiffs in O.S.No.394 of 2008 have trespassed into the suit schedule property on 16.12.2004. On a perusal of entire material available on record, the finding of the trial Court is not clear as to the exact date of dispossession whether it is within six (6) months prior to filing of the suit O.S.N.264 of 2005. In the absence of any finding, it is difficult for this Court to sustain the judgment and decree in O.S.No.264 of 2005 passed by the trial Court in a summary suit filed under Section 6 of the Specific Relief Act.

24. The trial Court went on deciding the title of the plaintiffs in O.S.No.264 of 2005 based on the material available on record though referred several judgments of this Court and other High Courts. In all the above decisions, this Court and other Courts succinctly held that the scope of trial in a suit filed under Section 6 of the Specific Relief Act is summary in nature and the Court is expected to a record finding as to the prior possession and dispossession within six (6) months prior to filing of the suit. Even in a judgment reported in

Lal Singh Vs. T.Chander^[1], this Court held as follows:

“In a suit filed under Section 6 of the Specific Relief Act, the issue is very limited. The trial Court is required only to arrive at a finding of fact as to whether the defendant has dispossessed the plaintiff without his consent or not. Question of title is foreign to the suit.”

25. Similarly, in another judgment in **Mohammed Baig Vs. Ismail Begh and others**^[2], at para 11, this Court reiterated the same principle, which reads as follows:

“Regarding the other contention that the learned District Munsif could not have ordered recovery of mesne profits in such a suit, there appears to be some force. The scope of such a suit is limited to holding an enquiry into the question whether the person alleging dispossession was in possession of the property within six months prior to the date of suit and neither the question of title nor the possession based on title can be gone into.”

26. The same principle was reiterated in **Kanti Lai Vs. Smt Shanti Devi and others**^[3] and **Krishna Prasad Sinha and another**^[4].

27. In view of law declared by this Court and other Courts, it is abundantly clear that in a suit filed under Section 6 of the Specific Relief Act, which is summary in nature, the jurisdiction of the Court is very limited and the Court is not supposed to record any finding about the title of the parties to the suit and the Court is under obligation to record a finding as to whether the plaintiffs in such suit were in possession of the property within six months prior to filing of the suit. Therefore, the finding recorded by the trial Court with regard to title of the parties is unwarranted and the said finding is hereby set aside, as the said finding is beyond the scope of the trial in a suit filed under Section 6 of the Specific Relief Act.

28. Insofar as the pleadings with regard to possession and dispossession is concerned, a bare allegation was made in the plaint in O.S.No.264 of 2005 that defendants 1 and 2 therein trespassed into schedule-B property on 16.12.2004 under the guise of *ex parte* injunction order, but, the trial Court did not record any finding as to the specific date of dispossession of defendants 1 and 2 in O.S.No.394 of 2008 except concluding that the plaintiffs were dispossessed from the schedule property after obtaining *ex parte* injunction

order by defendants 1 and 2 in O.S.No.264 of 2005. The said finding is vague and not in accordance with the law declared by this Court in the judgments cited supra. In the absence of any specific finding as to the possession and dispossession within six (6) months prior to filing of the suit under Section 6 of the specific Relief Act, it is difficult to sustain the finding recorded by the trial Court.

29. The trial Court was swayed away with the submission of learned counsel for the defendants 1 and 2 in O.S.No.394 of 2008 and went on deciding the title of the parties in the suit O.S.No.264 of 2005 filed under Section 6 of the Specific Relief Act, which is summary in nature. Therefore, the finding of the trial Court regarding title and dispossession are as vague as possible and in such a case even after reappraisal, it is difficult to come to a definite conclusion as to the prior possession and dispossession within six(6) months prior to filing of the suit, hence, this Court has no other option, except to set aside the judgment and decree in O.S.No.264 of 2005, directing the trial Court to record a specific finding as required under Section 6 of the Specific Relief Act, in terms of law declared by this Court in the decisions cited supra, while remanding both the matters to the trial Court, in exercise of the powers under Order XLI Rule 23-A C.P.C.

30. One of the contentions of learned counsel for the appellants/revision petitioners herein is that though the respondents herein produced Exs.B.1 and B.2 certified copies of possessory agreements of sale-cum-general power of attorney, the title to the property is in dispute between the parties. Even from the allegations pleaded on record, clearly shows that it is a title dispute. But, the trial Court, based on the title of the respondents herein, declined to grant permanent injunction. Since the finding of the trial Court with regard to the title of the respondents herein is erroneous, the common judgment and decrees are liable to be set aside and the trial Court is required to record a fresh finding on the issues framed in O.S.No.394 of 2008, keeping in mind the law declared by the Honourable Apex Court in a judgment in **Sanjay Kumar Pandey V. Gulbahar Sheikh**^[5], discussed scope of the suit Under Section 6 of the Specific Relief Act, held as follows:

“A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six

months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this Section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.”

Keeping the above principles in mind, it is a fit case that the trial Court be directed to decide both the suits, afresh, on remand. Accordingly, the points are answered.

31. In view of the finding on points 1 and 2, I find that it is a fit case to remand both the suits to the trial Court for fresh disposal with the following directions.

- 1) The trial Court is directed to record a specific finding as to the possession and dispossession of the plaintiffs in O.S.No.264 of 2005 within six (06) months prior to filing of the said suit.
- 2) Whether the plaintiffs in O.S.No.394 of 2008 are in lawful possession and enjoyment of the property and whether the defendants therein invaded or infringed the legal right of the plaintiffs and if so, are they entitled to claim permanent injunction under Section 38 of the Specific Relief Act.

32. In view of the above directions, the trial Court is requested to restore both the suits to its original number in the Suit Register, afford reasonable opportunity to both the parties to adduce evidence, if any, keeping in mind the scope of trial in O.S.No.264 of 2005, which is summary in nature.

33. Accordingly, both the appeal and the revision are allowed setting aside the common judgment and decree, dated 31.08.2010, in O.S.No.264 of 2005 and O.S.No.394 of 2008 passed by the Principal Senior Civil Judge, Kakinada, and the matters are remanded to the trial Court for fresh disposal in accordance with law. The trial Court is directed to dispose of the suits within six (6) months from the date of receipt of a copy of this judgment. There shall

be no order as to costs. Miscellaneous petitions, if any, pending in the appeal and the revision shall stand closed.

M.SATYANARAYANA MURTHY, J

AUGUST 24, 2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER APPEAL SUIT No.514 OF 2013
AND
CIVIL REVISION PETIITON No.5089 of 2010

Dt: 24.08.2015

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- [\[1\]](#) 2001 (1) ALT 578
 - [\[2\]](#) 1996 (4) ALT 1119
 - [\[3\]](#) AIR 1997 Rajasthan 230
 - [\[4\]](#) AIR 2007 Patna 112
 - [\[5\]](#) AIR 2004 Supreme Court 3354