

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.558 OF 2008

Ajit Laxman Shevde ... Applicant
Vs.
Hemlata Dhiraj V. Ishrani ... Respondent

Mr. Vishal Kanade i/b. Mr. Deepak Lulia for Applicant.
Mr. Pawankumar Prasad for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 07 & 15, 2016

ORAL JUDGMENT :

Heard Mr. Kanade, learned Counsel for applicant and Mr. Prasad, learned Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant has challenged the judgment and decree dated 01.08.2008 passed by the learned Judge presiding over Court Room No.3 of the Bombay City Civil Court in Small Cause Suit No.989 of 2003. By that order, the learned trial Judge decreed the Suit instituted by the respondent, hereinafter referred to as plaintiff, under Section 6 of the Specific Relief Act, 1963 (for short 'Act') and directed the applicant, hereinafter referred to as defendant, to handover possession of garage No.1 situate on the ground floor of the building known as Mahalaxmi Building No.2, Bhalchandra Road, Dadar (East) (for short 'suit premises') to the plaintiff within 90 days from the date of the order, failing which, plaintiff was at liberty to recover it by executing the decree. Plaintiff was directed to institute separate proceedings for inquiry under Order XX, Rule 12(1) of C.P.C. for mesne profits. Defendant was also directed to pay cost of the Suit to the plaintiff and bear his own. The relevant and material facts that are

necessary for disposal of the present application, briefly stated, are as under:

3. Plaintiff instituted Suit under Section 6 of the Act inter alia contending that she is a monthly tenant in respect of the suit premises owned by the defendant. The monthly rent was Rs.100/-. Originally, rent receipts stood in the name of her husband Dhirajlal V. Ishrani, since deceased. He died on 06.08.1996. Till 09.06.1999, plaintiff was parking her car bearing registration No.MAS 5225 in the suit premises. She sold the vehicle on 09.06.1999. It is the case of the plaintiff that in October 2002, defendant approached her with a request to allow him to keep his car in the suit premises. Plaintiff informed that she was looking for new car and she would require the suit premises for parking her own vehicle. Plaintiff accordingly declined the offer of the defendant. Defendant being the landlord of the building where the suit premises is situate, decided to take forcible possession and threatened that he will take possession of the suit premises as the same was not used by the plaintiff. In pursuance of the threats levelled by the defendant, he removed the locks on the suit premises put by the plaintiff and put his own locks. Plaintiff, therefore, reported the matter to Matunga Police Station. Plaintiff approached Mr. Babubhai Bhawanji, the then Deputy Mayor. Mr.Babubhai Bhawanji, in turn, addressed a letter dated 13.12.2002 to the Deputy Commissioner of Police (Zone-IV). Plaintiff has remitted rent from January 2002 to December 2002 by Money Order. However, defendant refused to accept the Money Order. Plaintiff alleged that she was dispossessed from the suit premises on 18.11.2002 and accordingly instituted Suit under Section 6 of the Act on 14.02.2003.

4. Defendant resisted the Suit by filing written statement dated 02.07.2003. Defendant inter alia contended that the Suit instituted under

Section 6 is not maintainable as plaintiff was not in possession of the suit premises prior to 6 months of the filing of the Suit. Plaintiff had surrendered the suit premises to the defendant on 02.02.2002. Defendant further contended that in the last week of January 2002, plaintiff approached defendant and showed her willingness to surrender her tenancy and possession of the suit premises. She, however, requested him not to charge the rent in respect of the suit premises from 1997 till date. Plaintiff further informed that as she does not have a car since 1997, she does not use the suit premises. She does not require the suit premises. Defendant rejected the offer by informing her that since she was tenant in respect of the suit premises since 1997 till date, she must pay the rent for that period. If she did not want the suit premises, she ought to have surrendered the possession in the year 1997. After the defendant rejected her offer, plaintiff paid the rent on 02.02.2002 and surrendered the possession and tenancy of the suit premises to the defendant. Since 02.02.2002, defendant is in exclusive use, occupation and possession of the suit premises and is parking his vehicle therein. Defendant also referred to Suit instituted by him in the Small Causes Court namely, S.C.Suit No.6910 of 2002 against the plaintiff herein. Plaintiff therein applied for ad-interim order. At the time of applying for ad-interim relief on 23.12.2002, plaintiff herein through Advocate Mr. Tiwari appeared in the matter. Mr. Tiwari made statement that plaintiff herein is in possession of the suit premises. Thus, as on 23.12.2002, plaintiff herein was in possession of the suit premises. In other words, story put up by the plaintiff that she was dispossessed in November 2002 is falsified by the statement made by Advocate Tiwari in that Suit.

5. On the basis of the pleadings of the parties, the learned trial Judge framed issues on 04.07.2005. In support of her case, plaintiff examined herself. In support of his case, defendant examined himself as also other

witnesses. After considering the evidence on record, by the impugned order, the learned trial Judge decreed the Suit. It is against this order, defendant has instituted present C.R.A. under Section 115 of the C.P.C.

6. Mr. Kanade submitted that the Suit under Section 6 of the Act itself is not maintainable. He submitted that the plaintiff has instituted Suit for recovery of possession on the ground that she was illegally dispossessed on 18.11.2002 and the Suit is not filed within 6 months and therefore, is barred by limitation. Plaintiff claims to be the tenant and defendant is the landlord of the suit premises. In view of Section 33 of the Maharashtra Rent Control Act, 1999, only Small Causes Court will have jurisdiction to entertain and try the Suit. He further submitted that even otherwise Civil Court has no pecuniary jurisdiction to entertain and try the Suit. In support of this, he submitted that the Suit is not properly valued by the plaintiff. Plaintiff has valued the Suit on the basis of 150 times monthly rent of Rs.100/- and accordingly valued the subject matter of the Suit at Rs.15,000/- and paid the Court fees. The market value of the suit premises is more than Rs.50,000/- and as the Suit is for recovery of possession, the Civil Court has no pecuniary jurisdiction to entertain and try the Suit. He submitted that by order dated 23.03.2006, the learned trial Judge overruled the objections and held that the City Civil Court has pecuniary and statutory jurisdiction to entertain and try the Suit as also the Suit is within limitation. Aggrieved by that decision, applicant preferred Writ Petition No.5843 of 2006. By order dated 23.01.2007, this Court dismissed the Petition. In view of Section 105(1) of C.P.C., defendant is entitled to agitate this point, even in the present proceedings. He, therefore, submitted that the Suit instituted under Section 6 is barred by limitation as also in view of the relationship of landlord and tenant between the parties, the City Civil Court has no jurisdiction to entertain and try the Suit and that having regard to the

market value of the suit premises, the City Civil Court has no pecuniary jurisdiction.

7. On merits, he submitted that the plaintiff has alleged that she was dispossessed on 18.11.2002 and the Suit is instituted on 17.02.2003. However, it has come on record that in Suit instituted by the defendant herein, namely S.C.Suit No.6910 of 2002 against the plaintiff herein, Advocate Tiwari representing plaintiff herein made statement on 23.12.2002 that plaintiff herein was in possession and she never surrendered the possession of the suit premises in favour of the plaintiff. Thus, the case pleaded by the plaintiff that she was dispossessed illegally on 18.11.2002 is falsified by the statement recorded in the order dated 23.12.2002.

8. Mr. Kanade further submitted that in fact as plaintiff does not own any vehicle and the suit premises is a garage, she surrendered the suit premises to the defendant on 02.02.2002, and since then, defendant is in possession. He has taken me through the evidence of defendant and his witnesses, which conclusively establishes that on and from 02.02.2002, defendant is in possession of the suit premises. He, therefore, submitted that application deserves to be allowed thereby setting aside the decree and dismissing the Suit of the plaintiff.

9. On the other hand, Mr. Prasad supported the impugned order. He submitted that the learned trial Judge rightly disbelieved the theory of surrender put up by the defendant. In fact, the cross-examination of D.W.1 Ajit Laxman Shevde shows that there is no document to show that plaintiff surrendered the suit premises. He also admitted that plaintiff paid rent from 1997 to December 2001 on 01.02.2002. He submitted that defendant came with the case that plaintiff approached

the defendant in the last week of January 2002 for surrendering the suit premises. She expressed her desire to surrender the suit premises and requested to waive the rent from 1997 to December 2001. As defendant admittedly paid rent on 01.02.2002, there is no question of plaintiff surrendering the tenancy on 02.02.2002.

10. Mr. Prasad further submitted that C.R.A., itself, is not maintainable. Apart from that, it is not open to the defendant to challenge the maintainability of the Suit on the ground that - it is barred by limitation; that Civil Court has no pecuniary jurisdiction to entertain and try the Suit, and that in view of the relationship of the parties namely, landlord and tenant between the parties. He submitted that the learned trial Judge dismissed the Chamber Summons. Aggrieved by that order, Writ Petition instituted in this Court was also dismissed. In short, the said order has attained finality.

11. On merits, he submitted that in the Suit, plaintiff specifically came with the case that she was dispossessed on 18.11.2002 and the Suit is instituted on 17.02.2003, which is within a period of six months. He submitted that the Suit is for recovery of possession as contemplated by Section 6 and not for declaration of plaintiff as tenant in the suit premises. He, therefore, submitted that defendant has to follow due process of law thereby approaching the Small Causes Court for evicting the plaintiff. Instead of adopting due process of law, defendant illegally dispossessed the plaintiff from the suit premises. Lastly, he submitted that defendant has not established plea of surrender of tenancy by the plaintiff. He, therefore, submitted that application deserves to be dismissed.

12. I have considered the rival submissions advanced by the learned

Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that plaintiff's husband Dhirajlal V. Ishrani, was a tenant of the suit premises. It is also not in dispute that after his death on 06.08.1996 till 09.06.1999, plaintiff was parking her vehicle in the suit premises. She sold the vehicle on 09.06.1999. On one hand, it is the case of the plaintiff that in October 2002, defendant approached her with a request to allow him to keep his vehicle in the suit premises, on the other, it is the case of the plaintiff that she informed him that she was looking for new car and she would require the suit premises for parking her own vehicle. Plaintiff accordingly declined the offer made by the defendant.

13. It is the case of the plaintiff that as she declined the offer made by the defendant, he wanted to take forcible possession of the suit premises. He gave threats also. Plaintiff reported the matter to Matunga Police Station and also approached Mr. Babubhai Bhawanji, the then Deputy Mayor. Mr. Babubhai Bhawanji, in turn, addressed a letter dated 13.12.2002 to the Deputy Commissioner of Police (Zone-IV).

14. It is the case of the defendant that the plaintiff did not pay the rent since 1997. Plaintiff approached the defendant in the last week of January, 2002 and showed her willingness to surrender the tenancy and possession of the suit premises. She however requested him not to charge the rent from 1997 till January 2002. It is the case of the defendant that plaintiff informed him that since she does not use the suit premises as she does not have a car since 1997, she does not require the suit premises. Defendant rejected the offer by informing her that since she was tenant in respect of the suit premises since 1997 till date, she must pay the rent for the said period. If she did not want to pay the rent since 1997, she ought to have surrendered the possession in the year

1997 itself. Now, in order to consider the rival case set up by the parties, it is necessary to consider the conduct of the parties. It is not in dispute that as the defendant rejected the offer made by the plaintiff, she paid the rent on 01.02.2002. As this fact is not in dispute, in my opinion, it is difficult to accept the case made out by the defendant that plaintiff surrendered the possession of the suit premises on her own volition. It is difficult to digest that after having paid the arrears from 1997 till January 2002, plaintiff will surrender the possession on 02.02.2002 of her own volition.

15. Mr. Prasad invited my attention to cross-examination of D.W.1. In cross-examination, D.W.1 reiterated that in the last week of January, 2002, plaintiff approached him in connection with surrender of suit premises. He denied that plaintiff made no offer to the effect that she would not pay the rent from 1997 onwards and surrender the premises. He admitted that he did not accept the said proposal and that on 01.02.2002, plaintiff paid rent from July, 1997 to December 2001. D.W.1 was specifically put to the question, which was replied by him in the following terms:

“Question: I put it to you that therefore, there was no question of the plaintiff surrendering the tenancy on 02.02.2002. What have to say?

Answer: Because I rejected her proposal she said that she was making the payment and surrendering the premises.”

16. In paragraph 5 of cross-examination, D.W.1 admitted that there is no document to show that the plaintiff surrendered the suit premises as per the case made out by him. He further admitted that there is no further document to show that he has been parking his vehicle in the suit premises from 02.02.2002.

17. This aspect is considered by the learned trial Judge in paragraph 9 of the impugned order. The learned trial Judge observed that admittedly, plaintiff was monthly tenant and was in arrears. Defendant turned down her plea of waiving of previous rent amount to Rs.5,400/- for the period of about 4½ years. Therefore, in such a contingency, whether one person can surrender the tenancy by paying the rent or not is a matter to be considered in the light of the other evidence adduced by the party. After considering the evidence on record, the learned trial Judge disbelieved the case made out by the defendant. In paragraph 17, the learned trial Judge recorded that if the plaintiff really surrendered her tenancy readily then why he has not obtained any document of surrendering tenancy from her. I do not find that the learned trial Judge has committed any error in disbelieving the case made out by the defendant.

18. Mr. Kanade heavily relied upon the statement made by Advocate Tiwari in the Suit instituted by the defendant herein against the plaintiff herein and submitted that plaintiff herein claimed to be in possession of the suit property on 23.12.2002. Whereas in the present Suit, she claimed that she was forcefully dispossessed on 18.11.2002. He submitted that the statement made on behalf of the plaintiff herein in the Suit instituted by the defendant herein clearly falsifies the case of the plaintiff herein that she was dispossessed on 18.11.2002. The learned trial Judge has considered this aspect from paragraphs 11 to 13 and held that the statements, if properly interpreted, would mean that plaintiff did not surrender the tenancy and that she is in possession of the suit premises so long as her tenancy is not terminated. I have already disbelieved the case put up by the defendant that on 02.02.2002, plaintiff had surrendered the tenancy and possession of the suit premises on her own volition. In view thereof, the reliance placed by Mr. Kanade on the

statement made by Advocate Tiwari in the Suit instituted by the defendant against the plaintiff herein does not advance the case of the defendant.

19. Mr. Kanade reiterated the objections as regards maintainability of the Suit on the ground that having regard to the relationship between the parties, namely, landlord and tenant, in view of Section 33 of the Maharashtra Rent Control Act, 1999, the Suit ought to have been instituted in the Small Causes Court. I do not find any merit in this submission as well. Section 6 of the Specific Relief Act, 1963 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.”

20. Sub-section (1) lays down that 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**. Thus, the only requirement under Section 6 is that person should be in possession of the premises in dispute and that he is

dispossessed without his consent otherwise than in due course of law and the Suit is brought within six months from the date of dispossession. In view thereof, while considering the Suit under Section 6, Court need not go into the status of the parties. I, therefore, do not find any merit in this submission. Mr. Kanade further submitted that the Suit is not properly valued and having regard to the market value of the suit premises, which is more than Rs.50,000/-, and as the Suit is for recovery of possession, the City Civil Court has no pecuniary jurisdiction to entertain and try the Suit. I do not find any merit in this submission as well. The learned trial Judge has considered decision of this Court in the case of ***Prem Ratan Vohra V/S Lalitkumar Dayalji Lakhani*, AIR 1988 Bom 264** as also Rule 2(a) of the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983 and held that 12.5 years net income would be proper market value. It is not in dispute that the monthly rent is Rs.100/- and accordingly plaintiff has valued the Suit and paid the Court fees on Rs.15,000/-. In view thereof, I do not find any merit in this submission.

21. Lastly, Mr. Kanade submitted that Suit was not instituted within 6 months from the date of dispossession. I do not find any merit in this submission as well. After appreciating the evidence on record, the learned trial Judge recorded a finding that plaintiff was dispossessed on 18.11.2002 and the Suit is instituted on 06.02.2003, which is within six months.

22. In the case of ***M. L. Sethi Vs. R. P. Kapur*, 1972 (2) SCC 427**, the Apex Court has considered the scope of Section 115 of C.P.C. It was observed in paragraph 12 as under,

“... The jurisdiction of the High Court under Section 115 of the C.P.C. is a limited one. As long ago as 1884, in ***Rajah Amir Hassan Khan v. Sheo Baksh Singh*, [1884] L.R. II I.A. 237**, the Privy Council made the following observation on Section 622 of

the former Code of Civil Procedure, which was replaced by Section 115 of the Code of 1908 "The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In **Balakrishna Udayar v. Vasudeva Aiyar**, AIR 1917 PC 71, the Board observed :

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved." In **N. S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras**, AIR 1949 PC 156, the Judicial Committee said that Section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on those three matters, it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law.

This Court in **Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee and others**, AIR 1964 SC 1336 and **Vora Abbashhai Alimahomed v. Haji Gulamnabi Haji Safibhai**, A.I.R. 1964, S.C. 1341 has held that a distinction must be drawn between the errors committed by sub-ordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said Court, and errors of law which have no such relation or connection. In **Pandurang Dhoni Chougute v. Maruti Hari Jadhav**, 1966 (1) SCR 102, this Court said :

"The provisions of Section 115 of the 'Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the

said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed, to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of *res judicata* is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court under Section 115."

23. In the case of ***Sanjay Kumar Pandey Vs. Gulbahar Sheikh***, (2004) 4 SCC 664, the Apex Court has observed in paragraph 4 thus,

"4. 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."

24. Applying the test laid down in the aforesaid cases, I do not find that any case is made out for invocation of powers under Section 115 of C.P.C. Hence, Application fails and the same is dismissed. Rule is discharged. In the circumstances, there shall be no order as to cost. Order accordingly.

25. At this stage, Mr. Lulia orally applies for stay of this order for the period of 12 weeks from today. He assures that within two weeks from today, he will file usual undertaking in this Court, after giving advance copy to the other side, incorporating therein that,

a. defendant is in possession and nobody else is in possession of the suit premises;

b. defendant has so far not created third party interest and that defendant will hereafter neither create third party interest in respect of the suit premises nor part with possession;

c. in case the defendant does not get suitable orders from the higher Court within 12 weeks from today, he will handover vacant and peaceful possession of the suit premises to the plaintiff;

26. Subject to petitioner's filing undertaking in the aforesaid terms within two weeks from today, after giving advance copy to the other side, this order shall remain stayed for 12 weeks from today. It is made clear that in case defendant does not file undertaking in the aforesaid terms within two weeks from today, the stay shall stand vacated without further reference to the Court and plaintiff will be at liberty to proceed in the matter in accordance with law.

27. Mr. Prasad states that it may be clarified that the stay granted by this Court does not preclude plaintiff from filing proceedings for holding inquiry into mesne profits.

28. It is accordingly clarified that notwithstanding the stay granted by this Court, plaintiff is not precluded from filing proceedings for holding inquiry into mesne profits. Order accordingly.

(R. G. KETKAR, J.)

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