



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

W.P. (MD) .No.6377 of 2016 &
WMP (MD) .No.5580 and 5581 of 2016

Kuthbudeen

..Petitioner

versus

1.The Secretary,
The PWD (RC.Division),
St.George Fort,
Chennai.

2.The Executive Engineer,
Public Works Department,
R.C.Section,
District Court Campus,
Tiruchirappalli.

..Respondents

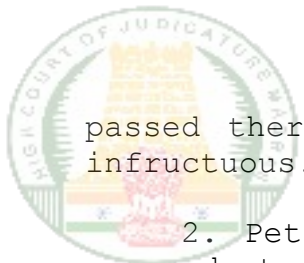
Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents to restore possession on the same terms in MP63 for berm rent on par with other leaseholders in SF350 under the administration of the respondents within the limits Kotappar town Panchayath, Tirverumbur Taluk, Tiruchirappalli District and consequently, award compensation for the loss of the stock in trade damaged by the employees of the respondents on 23.07.2014, at the nominal rate of Rs.1,00,0000/-.

For Petitioner :Mr.S.Jayavel
For Respondents :Mr.M.Govindan
Special Government Pleader

ORDER

(Order of the Court was made by C.T.SELVAM ,J.)

Petitioner claims to be a lessee of an extent of 3400 sq.ft under the second respondent. He informs of having made a representation on 28.01.2014 for renewal of the ground rent on the same terms at rates to be revised by Government, that there was no reply or rejection by the second respondent, he thus was a lessee by holding over and that on 23.07.2014 at about 10.00 a.m. the lease hold land and stock therein, were damaged under the guise of eviction, without notice or enquiry. Alleging that higher officials had an oblique motive in evicting the petitioner, he preferred suit in O.S.No.855 of 2014 before the III Additional District Munsif, Tiruchirappalli, but the respondents had accomplished their objective on 23.07.2014, since no interim orders were



passed therein. Petitioner had abandoned the suit, since it had become infructuous.

2. Petitioner informs of having made a representation to the first respondent on 28.01.2014, seeking that status quo ante be restored and possession be given to him. He contends that others similarly placed, though in arrears of rent, have not been evicted. Property from which he stands evicted has not been leased out yet to any new party.

3. On the above averments and contending that Section 6 of the Specific Relief Act, barred him moving a civil action against wrongful dispossession by Government, the petitioner has sought relief of Mandamus directing the respondents to restore possession on terms at par with other leaseholders in SF350, under the administration of the respondents within the limits Kotappar town Panchayath, Tirverumbur Taluk, Tiruchirappalli District. He also sought compensation for loss of stock in trade allegedly damaged by employees of the respondents on 23.07.2014, at a nominal rate of Rs.10,00,000/-.

4. Learned counsel for the petitioner reiterated the contentions recorded above. In response, Mr.M.Govindan, learned Special Government Pleader, brings to notice that petitioner never was a lessee of property under second respondent. Petitioner claims a right of lessee under one P.K.Mohamed Kasim, who had moved O.S.No.967 of 1973 before the District Munsif, Tiruchirappalli, seeking relief of permanent injunction towards restraining respondents from interfering with his peaceful possession and enjoyment of the suit property. The said suit came to be dismissed under the judgment by the Principal District Munisf, Tiruchriappalli, dated 01.04.1981. Learned Special Government Pleader contends that when an action for permanent injunction moved by one P.K.Mohamed Kasim under whom the petitioner claims himself to be a lessee has been dismissed, the petitioner could have no right whatsoever. Learned counsel submits that the encroachment was removed by the Highways Department.

5. We have considered the rival submissions.

6.The very position of whether petitioner was a lessee under second respondent is in dispute. Petitioner necessarily would have to establish the fact of his being a lessee under second respondent through due civil process. It is only upon establishing such position that he can seek consequential relief. The issue primarily would be a question of fact, which a writ Court would not go into.

7. Seeking justification for remedy of writ by reference to Section 6 of the Specific Relief Act, 1963, is misplaced. Sections 5 and 6 of the Specific Relief Act, 1963 which correspond to Sections 8 and 9 of Specific Relief Act, 1877, read as follows:

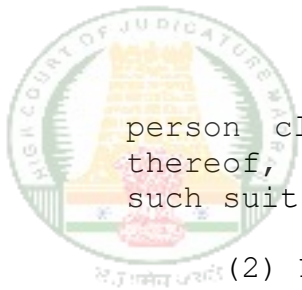
"5. Recovery of specific immovable property.-

A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).

6. Suit by person dispossessed of immovable property.-

<https://hcservices.ecourts.gov.in/hcservices/>

(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."

8. In *Nair Service Society v. K.C.Alexander* (1968(3) SCR 163: AIR 1968 SC 1165), the Hon'ble Supreme Court has explained thus:-

"We agree as to a part of the reasoning but with respect we cannot subscribe to the view that after the period of 6 months is over a suit based on prior possession alone, is not possible. Section 8 of the Specific Relief Act does not limit the kinds of suit but only lays down that the procedure laid down by the Code of Civil Procedure must be followed. This is very different from saying that a suit based on possession alone is incompetent after the expiry of 6 months. Under Section 9 of the Code of Civil Procedure itself all suits of a civil nature are triable excepting suits of which their cognizance is either expressly or impliedly barred. No prohibition expressly barring a suit based on possession alone has been brought to our notice, hence the added attempt to show an implied prohibition by reason of Section 8 (section 7 of the Travancore Act) of the Specific Relief Act. There is, however, good authority for the contrary proposition. In *Mustapha Sahib v. Santha Pillai*⁴ Subramania Ayyar, J. observes

"... that a party ousted by a person who has no better right is, with reference to the person so ousting, entitled to recover by virtue of the possession he had held before the ouster even though that possession was without any title.

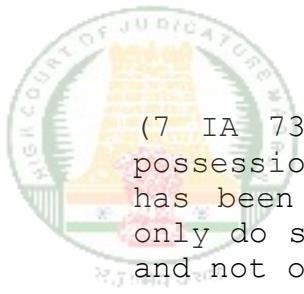
* * *

The rule in question is so firmly established as to render a lengthened discussion about it quite superfluous. *Asher v. Whitlock* (LR 1 Q.B. 1) and the rulings of the Judicial Committee in *Musammat Sundar v. Mussammat Parbati* (16 IA 186) and *Ismail Ariff v. Mahomed Ghouse* (20 IA 99) not to mention numerous other decisions here and in England to the same effect, are clear authorities in support of the view stated above ... Section 9 of the Specific Relief Act cannot possibly be held to take away any remedy available with reference to the well-recognised doctrine expressed in *Pollock and Wright* on possession thus: Possession in law is a substantive right or interest which exists and has legal incidents and advantages apart from the owner's title (p. 19)".

<https://hcservices.ecourts.gov.in/hcservices/>

In the same case O' Farell, J. points out that

"all the dictum of the Privy Council in *Wise v. Ameerunissa Khatoon*



(7 IA 73) appears to amount to is this, that where a plaintiff in possession without any title seeks to recover possession of which he has been forcibly deprived by a defendant having good title, he can only do so under the provisions of Section 9 of the Specific Relief Act and not otherwise".

It is not necessary to refer to the other authorities some of which are already referred to in the judgment under appeal and in the judgment of the same court reported in Kuttan Narayaman v. Thomman Mathai⁵. The last cited case gives all the extracts from the leading judgments to which we would have liked to refer. We entirely agree with the statement of the law in the Madras case from which we have extracted the observations of the learned Judges. The other cases on the subject are collected by Sarkar on Evidence under Section 110.

14. The Limitation Act, before its recent amendment provided a period of twelve years as limitation to recover possession of immovable property when the plaintiff, while in possession of the property was dispossessed or had discontinued possession and the period was calculated from the date of dispossession or discontinuance. Mr Nambiar argues that there cannot be two periods of limitation, namely, 6 months and 12 years for suits based on possession alone and that the longer period of limitation requires proof of title by the plaintiff. We do not agree. No doubt there are a few old cases in which this view was expressed but they have since been either overruled or dissented from. The uniform view of the courts is that if Section 9 of the Specific Relief Act is utilised the plaintiff need not prove title and the title of the defendant does not avail him. When, however, the period of 6 months has passed questions of title can be raised by the defendant and if he does so the plaintiff must establish a better title or fail. In other words, the right is only restricted to possession only in a suit under Section 9 of the Specific Relief Act but that does not bar a suit on prior possession within 12 years and title need not be proved unless the defendant can prove one. The present amended Articles 64 and 65 bring out this difference. Article 64 enables a suit within 12 years from dispossession, for possession of immovable property based on possession and not on title, when the plaintiff while in possession of the property has been dispossessed. Article 65 is for possession of immovable property or any interest therein based on title. The amendment is not remedial but declaratory of the law. In our judgment the suit was competent."

9. In view of the above discussion and decision, the writ petition stands dismissed. No costs. Connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(R)

/True copy/



To

1.The Secretary,
The PWD (RC. Division),
St.George Fort,
Chennai.

2.The Executive Engineer,
Public Works Department,
R.C.Section,
District Court Campus,
Tiruchirappalli.

+1cc to Mr.S.Jayavel, Advocate SR.No.18062/16

+1cc to special Government Pleader SR.No.18583/16

sm:GSV-PM:SAR I:22.04.2016:2P/5c

W.P. (MD) .No.6377 of 2016
31.03.2016