

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4985 of 2014

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful defendant is directed against the Judgment dated 31.10.2014 of the learned VII Senior Civil Judge, City Civil Court, Hyderabad passed in O.S.No.1565 of 2012 filed by the respondent/plaintiff under Section 6 of the Specific Relief Act, 1963 for recovery of possession of the house bearing no.17-2-309/3/1, ground floor, admeasuring 103 square yards situated at Kurmaguda, Hyderabad, more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. To begin with, it is necessary to refer to the pleadings of the parties.

3.1 The plaint averments, in brief, are as follows:

The plaintiff is the owner and possessor of the suit schedule property. He got the property by virtue of a final decree in I.A.No.444 of 1999 in O.S.no.1275 of 1993. Under a panchanama, the Amin of the Court delivered possession of the schedule property to the plaintiff on 29.08.2003, vide orders of the executing Court in E.P.No.65 of 2002. The plaintiff who has obtained possession of the schedule property is enjoying the same since the said date by leasing it out to others. The defendant is the daughter of the plaintiff. He performed her marriage in the year 1999 by spending huge amounts. The defendant had developed indifferent attitude towards her father/the plaintiff and other family members. On the night of 06.09.2012, the defendant had broken open the locks of the suit schedule property and trespassed

into the same illegally and had started living therein. On 07.09.2012, the plaintiff came to know about it. When questioned, the defendant had quarreled with the plaintiff and had threatened him with dire consequences. Thereupon, the plaintiff lodged a complaint with the police on 07.09.2012. As the police did not take any action, he had filed the suit for recovery of possession.

4. The defence of the revision petitioner/defendant in her written statement, in brief, is this:

It is true that she is the daughter of the plaintiff. The defendant filed a case against the plaintiff and her brothers under the provisions of the Protection of Women from Domestic Violence Act ('the DV Act', for brevity). The husband of the defendant deserted her and had failed to provide basic needs for her sustenance. The suit is filed as a counter blast to the DV case filed by the defendant. The plaintiff is not in continuous possession of the suit schedule property. The plaintiff and his family members subjected the defendant to harassment. She is fighting legal battles with her husband. She is starving and is unable to maintain herself. On the instructions of the plaintiff, she is staying in the suit schedule house. She had also filed a DV case in D.V.C.no.388 of 2012. The learned IV Metropolitan Magistrate, Hyderabad passed protection order in favour of the defendant on 06.09.2012 directing the plaintiff herein and his men not to interfere in any manner with the rights of the defendant. The plaintiff is not entitled to any relief of eviction as prayed for in the suit. The suit is liable for dismissal.

5. At trial, the plaintiff and the defendant were examined as PW1 and DW1 and exhibits A1 to A4 and B1 and B2 were marked. Exhibit A1 is the property tax receipt dated 25.06.2012; exhibit A2 is the electricity bill dated 13.05.2011; exhibit A3 is the water charges bill dated 08.08.2011; and, exhibit A4 is the complaint dated 07.09.2012 given to the police by the plaintiff. Exhibit B1 is the order dated 06.09.2012 passed in CrI.M.P.No.1154 of 2012 (Form-III) on the file of IV Metropolitan Magistrate, Hyderabad; and, exhibit B2 is the judgment dated 17.12.2013 in Criminal Appeal No.824 of 2013 passed by the learned V Additional Metropolitan Sessions Judge,

Hyderabad.

6. On merits and by the orders impugned in this revision, the Court below had decreed the suit and directed the defendant to vacate and hand over vacant possession of the suit schedule property within two months from 31.10.2014.

7. Aggrieved of the said judgment, the defendant had filed the present revision.

8. The learned counsel for the defendant while reiterating her case would contend as follows:

By the date of the institution of the suit by the plaintiff, the orders in the DV case are in force. The judgment of the Court below is not a reasoned judgment. As per the provisions of Section 6 of the Specific Relief Act, 1963, a person forcefully and illegally dispossessed from possession of a house property is only entitled to seek restoration of possession of the said property. However, in the present case, the possession of the defendant is legal. Therefore, the judgment ordering the defendant to restore possession to the plaintiff is unsustainable. A competent Court of law, i.e., the learned V Additional Metropolitan Sessions Judge, Hyderabad granted orders in Criminal Appeal No.824 of 2013. The learned IV Metropolitan Magistrate, Hyderabad granted orders in DVC 388 of 2012 in favour of this revision petitioner/defendant. The Court below ought to have seen that the defendant is the daughter of the plaintiff and that by virtue of the protection order granted by a competent Court in a DV case, she is entitled to continue in the suit schedule house property.

9. On the other hand, the learned counsel for the plaintiff supported the orders of the Court below.

10. The relevant facts and pleadings are as follows: "The defendant is the daughter of the plaintiff. She was initially deserted by her husband and her marriage with her husband was dissolved. The plaintiff is the owner of the suit schedule house property, viz., ground floor admeasuring 103 square

yards. According to the plaintiff, after having got the property pursuant to a final decree in a partition suit, he had re-modeled the house including the plaint schedule property and had started enjoying it by leasing it out on rents and that after a tenant had vacated the property, the plaintiff had put up a let-out board on the property kept under lock and key and that on 07.09.2012, he had found that the lock that was put by him on the property was broken open and, that the defendant had trespassed into the property and occupied it. According to his further submission, when he had questioned her, she had abused him and his family members and that she is not paying any amounts though continuing in illegal occupation and that having lodged a complaint with the police, he had brought the summary suit for restoration of possession. The crux of the defence of the defendant is that she had entered into the property with the consent of her father and is continuing after obtaining a protection order in a DV case passed by a competent Court.

11. Be it noted that the suit is a summary suit filed under Section 6 of the Specific Relief Act complaining plaintiff's dispossession from the immovable property otherwise than under due course of law by the defendant. Though the suit was contested, the trial Court found that the plaintiff was entitled to a decree and therefore, directed restoration of possession to the plaintiff. In the facts and circumstances of the case, a revision under Section 115 of the Code of Civil Procedure, 1908 is maintainable and the revision ought to have been filed under the said provision of law. But the present revision is filed under Article 227 of the Constitution of India. Be that as it may. There is no impediment for treating the instant revision as one filed under Section 115 of the Code and adjudicating the same, as fairly conceded by the learned counsel for the parties. Even according to the defendant, she had entered into the property on 06.09.2012. Nevertheless, her case is that she had entered into the property with the consent of her father, the plaintiff, and that her possession is protected by a protection order granted by a competent Court in a DV Case filed by her. According to the plaintiff, the defendant had trespassed into the property. The enquiry in the suit is therefore, confined to finding out the possession and dispossession within a period of six months

prior to the institution of the suit and the question of title need not be considered. The suit is admittedly brought within six months from the date of the plaintiff's dispossession. Be that as it may, the defendant had filed a DV case in D.V.C.No.388 of 2012 against her father *inter alia* alleging as follows: "She was being ill-treated by her father from her childhood. She was never given proper food and clothing and was deprived of love and affection of her parents for several years during her entire life. Her marriage was performed forcefully with a person of the choice of her father. He was a drunkard and was a person of bad vices. Having harassed the defendant, he had divorced her. She was left homeless and penniless with three children. In spite of an order passed by a competent Court, her husband who is absconding is not providing any maintenance to her and her children. Earlier, she was staying in a rented house. She is unable to pay rents. Therefore, she had shifted to her grandfather's house bearing Door no.17-2-309/3/1 at Kurmaguda, Saidabad, which was vacant, i.e., the suit schedule property. However, the plaintiff/her father is not allowing her to stay in the said house and he is beating her. In fact, he had kicked her out of the house and locked the said house. He is repeatedly throwing her out of the house. Her father, the plaintiff, and her two brothers had threatened her to cause injuries to her if she stayed in the house. The plaintiff is a well settled pensioner and he is economically well-off. He is living in his own separate building." Having so contended, she sought protection order, residence order, compensation and other reliefs. Her father having denied all her contentions in his counter in the DV case had stated that he had taken care of his daughter very well and provided food, education and clothing to her and that as per her own wish and consent, he had performed her marriage with a person from a good family in the year 1999 by spending huge amount and that they both lived together happily for some time and that the defendant had given birth to three children under lawful wedlock and that after estrangement from her husband, she had filed M.C.No.156 of 2009 on the file of the Court of the learned Metropolitan Sessions Judge, Hyderabad and is regularly receiving monthly maintenance of Rs.6,600/- from her husband and that the allegations to the contra in her case are all false and that she is originally a resident of a house

bearing door no.4-1-1/32 at King Koti, Hyderabad and that on 06.09.2012, she had mislead the Court and obtained *ex parte* orders and that under the guise of the *ex parte* order, she had illegally entered into the present suit schedule house and thus, dispossessed the plaintiff from his house and that she had obtained *ex parte* orders in the DV case by suppressing the real facts and that she had trespassed into the house taking advantage of the fact that the tenant had vacated the suit schedule house and that the house is lying vacant and was kept under the lock and key of the plaintiff.

12. The DV case filed by her against her father and brothers was dismissed on merits by order dated 03.12.2015 passed by the learned IV Metropolitan Magistrate, Hyderabad. In fact, the *ex parte* order in CrI.M.P.No.1154 of 2012 in DVC 388 of 2012 was granted by the learned IV Metropolitan Magistrate on 06.09.2012. The DV case eventually was dismissed on merits is admitted.

13. In this backdrop, the only question to be considered is as to whether the defendant trespassed into the property by breaking open the locks and forcefully dispossessed her father, the plaintiff [or] whether she had entered into the property with the consent of her father?

14. Admittedly, the defendant had filed criminal cases against her father and brothers. In the said circumstances, her father gave consent for her occupying the suit schedule property cannot be believed. Admittedly, her first husband divorced her having pronounced talaq. Having filed a maintenance case, she is receiving maintenance from her first husband. Further, she had admittedly, re-married another person. But the said fact is not disclosed in her DV case. In her cross-examination in the said case, it is admitted that the 1st husband divorced her by pronouncing talaq in the year 2003 and that she had subsequently married one Vidya Sagar in May 2012 and that she is living with him along with her three children. Further, on the complaint of her father against her, a case in C.C.No.925 of 2012 was taken on file by the learned VII Additional Chief Metropolitan Magistrate, Hyderabad for the offences punishable under Sections 446, 420 and 506 of the IPC. For

quashing the said criminal case, she had filed Criminal Petition No.68 of 2013 before this Court. The said calendar case is an offshoot of the complaint by her father, the plaintiff herein, that the defendant had trespassed into his property by forcefully dispossessing him. This Court found that the learned Magistrate is justified in taking cognizance of the case for the offences punishable under Sections 448, 427 of the Indian Penal Code (IPC) and had allowed the quash petition partly and quashed the calendar case insofar as it related to the offences punishable under Sections 446, 420 and 506 of IPC while upholding the cognizance taken by the learned Magistrate for the offences punishable under Sections 448 and 427 of the IPC. In the said circumstances in which the parties are placed, it is not possible to accept the defence that the defendant has entered into the property lawfully and with the consent or permission of her father, the plaintiff.

15. For the foregoing reasons, this Court finds that the defendant could not establish that she had entered into the suit schedule property either by any lawful means or with the consent of her father and that on the other hand, the plaintiff is able to establish that the defendant had unlawfully and forcefully trespassed into the property and that therefore, the decree and judgment of the Court below ordering restoration of possession to the plaintiff/respondent herein are justified and do not warrant interference.

16. Accordingly, the Civil Revision Petition is dismissed. The Revision petitioner/defendant is directed to vacate the suit schedule property and handover vacant possession of the same to the plaintiff/respondent herein within three months from the date of receipt of a copy of this order. It is needless to mention that failing such compliance, the plaintiff is entitled to recover possession of the property, in accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

15th July, 2016
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