

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 6 OF 2017

Fakirrao S/o Bhivsan Khillare,  
Age : 73 years, Occu.: Labour,  
R/o. : House No. 345, Galli No.19,  
Sanjay Nagar, Mukundwadi,  
Municipal Zone, Aurangabad

.. Petitioner  
(Orig. Plaintiff)

Vs.

Champabai Wd/o Mukund Khillare,  
Age : 42 years, Occu.: Household,  
R/o : House No. 345, Galli No.19,  
Sanjay Nagar, Mukundwadi,  
Municipal Zone No.5, Aurangabad

.. Respondent

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Mr. A.R. Rathod, Advocate for the petitioner  
Mr. K.A. Ingle, Advocate for the respondent  
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CORAM : SUNIL P. DESHMUKH, J.  
DATE : 30/01/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for the parties by consent finally.
3. Unsuccessful plaintiff in regular civil suit no. 538 of 2012, is before this court. It is contended by plaintiff (the parties hereto are referred to by their status in the aforesaid regular civil suit) that he is owner of suit house bearing no.345 admeasuring 20' X 30'

situated at lane no.19, Sanjay Nagar, Mukundwadi, Zone no.5, Aurangabad and as described in the plaint.

4. It is contended that plaintiff has purchased the property for valuable consideration on 14/11/2008 under a written document and has been since the date of purchase, paying the taxes in respect of suit property regularly. Defendant is his daughter-in-law, however, the relations between defendant and her husband are strained and they are estranged wife and husband. It is contended by plaintiff that around January, 2010, she was let in possession of suit property on her plea of performance of marriage of her daughter Kavita. However, in February, 2010, the defendant had purportedly invoked provisions of Domestic Violence Act against the plaintiff and other relatives and filed criminal miscellaneous application. Said proceeding was dismissed, however, finding was recorded that defendant was put in possession and that the plaintiff would be required to obtain possession by due procedure of law.

5. Defendant, on the other hand, contends that she has contributed to the purchase of the suit property and had allowed the purchase to be made in the name of plaintiff. She has been pulling on with life, earning her livelihood by doing labour work. Since her husband had estranged her, she has been staying at Aurangabad in the suit property. She had called the plaintiff and her husband, to

reside at Aurangabad and thus denied the claims made by the plaintiff against her.

6. The suit had been instituted invoking section 6 of the Specific Relief Act. It would not be out of place to refer to that the suit in the first round, had been partly decreed under judgment and decree dated 04/05/2013. In regular civil appeal no. 122 of 2014 filed by defendant, the matter had been remanded for fresh trial giving opportunity of cross-examination of the plaintiff and his witnesses and for leading her evidence.

7. Trial court framed issues to the effect, as to whether the plaintiff proves that he was in settled possession of suit property within a period of 6 months before filing of the suit, does he prove that the defendant dispossessed him of the suit property without his consent and otherwise than in due course of law, is the plaintiff entitled to recover possession of the suit property and *mesne* profits. The trial court gave findings, the plaintiff could not prove that he was in settled possession within a period of six months before filing the suit nor he could prove that defendant dispossessed him without his consent and otherwise in due course of law and held that the plaintiff, as such, is not entitled to recover possession and *mesne* profits. It had been found by the trial court that the defendant has been in possession of suit property from about 21 months before the

institution of the suit and had been in permissive possession of the suit property and that the plaintiff has not been dispossessed by the defendant.

8. Learned counsel Mr. Rathod for plaintiff submits that unsuspecting father-in-law had let in his daughter-in-law allowing her to occupy the suit premises in order to facilitate performance of marriage of her daughter. The situation had been taken disadvantage of by her, by instituting proceedings against him and relatives. It is patently clear, the proceedings were spurious and were initiated to vex and harass the father-in-law. He submits that lot of time has been whiled away in litigation and in the circumstances, if it is being considered that if the suit would not be allowed pursuant to section 6 of the Specific Relief Act, the doors for recovery of the property would be foreclosed on the plaintiff. He therefore urges to grant indulgence to consider the civil revision application.

9. Learned counsel for the defendant / respondent contends that from the pleadings of the plaintiff, it is *ipse dixit* that the claim for possession with reference to section 6 of the Specific Relief Act would not at all be tenable. He submits that none of the ingredients required for section 6 of the Specific Relief Act, are available for the plaintiff to invoke section 6. He refers to the text of section 6,

reading 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.”

10. He purports to point out that the plaintiff specifically has averred in the plaint that defendant had been residing in the suit

premises as allowed by plaintiff. It is not a case at all of forcible entry by the defendant. In the circumstances, it is not a case for plaintiff's dispossession at all.

11. As such, there is no question of dispossession being taking place without consent of the plaintiff nor it can be said that possession had been taken without due course of law.

12. Under the pleadings as are on record, specific requirement of the suit being within 6 months from the date of dispossession from the alleged and contended date of dispossession, is obviously not satisfied. The pleadings do reveal that the defendant has been in possession for over 21 months.

13. He therefore submits that it is not absolutely a case, wherein it can be said that the suit would ever be maintained pursuant to section 6 of the Specific Relief Act and has been rightly so decided by the trial court.

14. He submits that the plaintiff is bent upon evicting / dispossessing his forlorn daughter-in-law, who has been estranged by her husband and thus urges not to give any indulgence, as requested by the counsel for the plaintiff.

15. He submits that the contentions on behalf of the plaintiff about doors being foreclosed for remedial measures, is a situation brought about by the plaintiff's own mis-doings.

16. Having heard learned counsel for the parties as aforesaid, it is very difficult to point out any lacunae in the decision by the trial court taken after considering pleadings by the parties and evidence has been led on behalf of them. The plaintiff has specifically pleaded that the daughter-in-law had been allowed to stay in the suit property by father-in-law for marriage purposes of her daughter. Even according to the pleadings of the plaintiff and the evidence shows that she stayed in the suit property for more than 21 months.

17. In the circumstances, findings under the judgment by the trial court, do appear to be impeccable so far as with regard to dismissal of suit for non-satisfaction of requirements of section 6 of the Specific Relief Act.

18. As far as apprehension expressed by Mr. Rathod, learned counsel for the petitioner about doors being foreclosed on the plaintiff, plaintiff may explore available remedial measures seeking recovery of property on the basis of rights claimed by him, the

proceedings under section 6 may not pose any impediment for prosecution of such remedial measures, if proper remedial recourses are taken.

19. With this, civil revision application stands dismissed.  
Rule stands discharged.

[SUNIL P. DESHMUKH]  
JUDGE

arp/