

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 499 OF 2013

Sabana Mohd. Irshad & Anr. ... Applicants
Vs.
Mohd. Guljar Irshad Shaikh & Ors. ... Respondents

Mr. Rajesh B. Parab, Advocate for the applicants.
Mr. Shashank Choudhary a/w. Ms. Sunitha Palvanaperumal,
Advocate for the respondent no. 1.

CORAM : MRS.MRIDULA BHATKAR, J.
RESERVED ON : 17th July, 2018.
PRONOUNCED ON : 14th August, 2018.

JUDGMENT:

The applicants are the original defendant nos. 3 and 4, who have filed this Civil Revision Application against the judgment and decree dated 7th February, 2013 passed by the learned Judge of the City Civil Court, Greater Mumbai thereby decreeing S.C. Suit No. 2912 of 2011. The said suit was filed by plaintiff/respondent no. 1, who is the step-brother of original defendant nos. 1 and 3, defendant no. 2 is his real brother and defendant no. 4 is the second husband of his mother.

2. It is the case of the respondent no.1/plaintiff that he was residing with the defendants in the suit premises, i.e., Room No. 11

admeasuring 16 X 18 sq.ft. at H-Block, Mehtab Chawl, Indira Nagar, Sanjay Nagar, Sunder Baugh Lane, Kurla. After death of his mother, defendants started quarrelling with him, assaulted him and he had to go to the police station to lodge complaint. Then on 30th June, 2011, defendant nos. 1 and 3 at the instigation of defendant no. 4 forcibly entered the suit premises, assaulted him with fist and kick blows and drove him out of the house. After this forcible dispossession, he went to the police station on 16th July, 2011 and lodged complaint with Ghatkopar Police station. The police did not take steps and informed that it is a civil issue. Therefore, he filed S.C. Suit No. 2912 of 2011 under Section 6 of the Specific Relief Act. The defendants resisted the claim of the plaintiff by filing composite written statement and contended that neither they assaulted him nor dispossessed him forcibly. They claim that the plaintiff never resided in the suit room and thus prayed that the suit be dismissed. The trial Court framed issues. The plaintiff entered the box and adduced documentary evidence and defendant no. 3-Sabana, his sister on behalf of all the defendants lead evidence. The learned Judge after considering the evidence of both the parties and considering the arguments decreed the suit. Hence, this Civil Revision Application.

3. The learned counsel for the applicants, who are original defendant nos. 3 and 4, has submitted that as per the pleadings, the respondent no. 1/plaintiff never claimed his exclusive possession of the suit premises. In his plaint, in paragraph 3 he has stated that he and all the defendants were residing together. Despite these pleadings and admissions given by the plaintiff in the cross-examination, the trial Court has gone beyond the pleadings and has directed the defendants to deliver the vacant possession of the suit premises, as described in the plaint, to the plaintiff forthwith. He has submitted that as per the rough sketch of the plaint, which is Exhibit 5, in fact room no. 11 is not in existence and the plaintiff/respondent no. 1 was neither occupying the suit room nor room no. 11. The defendants were residing in room no. 10 jointly and as room no. 11 was not in existence, there is no question of residence of plaintiff and dispossession of the plaintiff from the alleged suit premises. The learned counsel submitted that the respondent no. 1/plaintiff could not produce any documentary evidence to prove his continuous residence in the suit room and whatever documents like ration card, Identity Card, driving licence, which are produced, they do not prove his possession of the suit premises. The address appearing in all the documents is not correct. The plaintiff has admitted that room nos.

10 and 11 are adjacent to each other. The plaintiff has failed to prove his case on the point of possession and so also on the point of forcible dispossession. The decree passed in S.C. Suit No. 2912 of 2011 by the learned Judge of the City Civil Court on 7th February, 2013 is illegal, bad in law and hence it is to be set aside.

4. The learned counsel for respondent no. 1/plaintiff has relied on the evidence of the plaintiff and has submitted that the plaintiff was in use, occupation and possession of room no. 11, H-Block, Mehtab Chawl, Indira Nagar, Sanjay Nagar Kurla. He submitted that defendant no. 1 is his step-brother born from the third marriage of plaintiff's mother, defendant no. 3 is his step-sister born to his mother from the third marriage and defendant no. 4 is the second husband of the mother of plaintiff. He has submitted that defendants used to abuse the plaintiff and give continuous threats during his stay after death of his mother. He relied on the documents produced by the plaintiff as a proof of his residence and hence submitted that respondent no. 1/plaintiff has also proved his forcible dispossession on 30th June, 2011 and thereafter he has approached the Senior Inspector of Police, Ghatkopar Police Station, narrated the incident and gave complaint on 16th July, 2011, its copy is also produced in

the evidence. The learned counsel has supported the judgment passed by the learned Judge of the trial Court and prayed that the Civil Revision Application be dismissed.

5. The respondent no. 1/plaintiff has filed the suit under section 6 of the Specific Relief Act and asked for restoration of the suit room. The suit filed under section 6 of Specific Relief Act contemplates three basic ingredients. Firstly, the party has to show that he was in possession of the suit premises; secondly, he was forcibly dispossessed; and thirdly, he filed a suit within 6 months from the date of his dispossession. On the background of these ingredients, the order of the trial Court and the evidence tendered by both the parties are to be examined. The plaintiff has stated in his examination-in-chief and also in pleadings that he was occupying the suit room along with his mother. He produced Exhibit 6 Ration card, Exhibit 7 Election Card. He has admitted that on these documents, there is no mention of room no. 11 what he has claimed, however, these documents disclose the address of Indiranagar, Sanjaynagar, Kurla (West). On behalf of the defendants, Sabana has entered the box. She stated that the room premises, which is alleged by the plaintiff, is in possession of original defendant nos. 1 and 2 and which

is next to her room. In her cross-examination she gave admission that it is not correct to say that the plaintiff was not residing in room no. 11 prior to dispossession on 30th June, 2011. She further stated that she did not know where the plaintiff was residing before dispossession. She gave admission that room nos. 10 and 11 are adjacent to each other. This shows that she admits the existence of room no. 11. Her evidence falsifies the stand of the defendants that room no. 11 does not exist. She also admitted that there is a drainage towards the backside of both the rooms and there is lane running in front of both the rooms. She admitted that the property belongs to the mother of the plaintiff. She has also stated that earlier room no. 11 was in possession of defendant no. 2. However, she further stated that suit premises are sold to some third person. This evidence clearly shows that she admits the existence of room no. 11.

6. The respondent no. 1/plaintiff has produced ration card Exhibit 6, Election card Exhibit 7, driving licence issued by RTO Exhibit 8, permit in respect of particular contract Exhibit 9 issued by some authority, NC complaint marked Exhibit 10, copy of complaint in writing Exhibit 11. Room no. 11 though is not mentioned in the driving licence and identity card but it shows the address of

Indiranagar, Sanjaynagar.

7. The relationship between the parties is not disputed. Considering the relationship between the plaintiff and defendants, it appears that the house was initially in the name of mother. The trial Court has considered the documentary evidence and also the evidence of the plaintiff and defendant no. 3/Sabana. The trial Court has rightly assessed the evidence of the defendant in respect of room no. 11, admissions given by defendant no. 11 and therefore, has taken a correct view that mere denial will not prove the existence of room no. 11 especially when it is specifically given in the cross-examination about the existence of the suit room. The trial Judge has also compared the documents produced by the plaintiff and the documents produced by the defendants and in none of the documents either room no. 10 or room no. 11 is shown, however, the address is the same. This, being the suit under section 6 of the Specific Relief Act, the scope of the suit is very limited. The view taken by the trial Court that respondent/plaintiff was in possession of the suit premises and he was dispossessed on 30th June, 2011 appears a correct view. The suit is also filed within 6 months after dispossession. The learned Judge of the trial Court has rightly held

that the plaintiff has proved its case of possession of suit premises before dispossession and therefore, he is entitled to restoration of possession.

8. The suit is decreed. It is argued by the learned counsel that in the pleadings and in evidence, the plaintiff has admitted that the plaintiff and defendant were in joint possession of the suit premises, however, in the plaint, the respondent/plaintiff has asked for vacant possession of the suit premises. As it is discussed earlier, the suit room is room no. 11 and defendant no. 3 has admitted that the petitioners are in possession of room no. 10. Under such circumstances, no illegality is found in the finding given by the trial Court. The decree passed is hereby maintained. Civil Revision Application is dismissed.

(MRIDULA BHATKAR, J.)

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