

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Revision Application No. 44 of 2017
[Geetabai Raju Tomaskar & others Vs. Shashikala Durgananda
Satpute @ Shashikala Shankar Bais & others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. U. J. Deshpande, Adv., for the applicants.
 Mr. M. R. Joharapurkar, Adv., for non-applicant no.1.
 Mr. K. M. Kuthe, Adv., for non-applicant no.5.

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CORAM : A. S. CHANDURKAR, J.

DATE : 24th January, 2018

01. This Civil Revision Application filed under Section 6 (3) of the Specific Relief Act, 1963 [for short, "the said Act"] read with Section 115 of the Code of Civil Procedure, 1908 takes exception to the judgment of the trial Court which has decreed the suit filed by the non-applicant no.1 herein and directed the applicants to deliver possession of the suit property to her.

02. It is the case of the non-applicant no.1-plaintiff that with the aid of the retirement benefits received by her mother, Plot No. 90 from a Co-operative Housing Society came to be purchased in her name. A sale-deed to that effect was executed on 22nd July, 2005. However, at the instance of defendant no.8, the name of the plaintiff in the sale-deed was shown as "Shashikala wife of Raju Tomaskar." According to the plaintiff, she

was residing in the suit house as its lawful owner. On 28th March, 2010, the defendant nos. 1 to 7 forcibly entered the suit premises and dispossessed the plaintiff. A report to that effect was lodged on 30th March, 2010. The suit under Section 6 of the said Act came to be filed on 5th August, 2010.

03. In the Written Statement filed on behalf of the applicants herein, it was denied that the plaintiff had been forcibly dispossessed. It was alleged that the plaintiff had illicit relations with defendant no.8 who was, in fact, the husband of defendant no.1. It was asserted that the defendants had lawfully entered into possession and hence the suit was liable to be dismissed.

04. The parties led evidence before the trial Court and after considering the same, the trial Court came to the conclusion that the plaintiff had been forcibly dispossessed from the suit property. On that basis, it decreed the suit.

05. Shri U. J. Deshpande, learned counsel for the applicants, submitted that except examining herself, the plaintiff did not lead any evidence to substantiate her claim that she had been forcibly dispossessed from the suit property. According to him, as per the sale-deed at Exh.48, the plaintiff had shown her name as "Shashikala wife of Raju Tomaskar", when, in fact, it was the

defendant no.1 who was the legally wedded wife of said Raju Tomaskar. He referred to the evidence of the plaintiff and submitted that this evidence was insufficient to come to the conclusion that the plaintiff had been forcibly dispossessed. Relying upon the decision in **Meera Chauhan Vs. Harsh Bishnoi & another** [(2007) 12 SCC 201] , it was submitted that the plaintiff ought to have substantiated her case by leading further evidence. In absence of such evidence, the suit could not have been decreed. He also referred to the Voter Card issued to the plaintiff which indicated a different address than that of the suit property. It was, thus, submitted that the judgment of the trial Court was not sustainable.

06. Shri M. R. Johapurkar, learned counsel for the non-applicant no.1, supported the impugned judgment. According to him, the defendant no.1 in her deposition that was recorded in Misc. Criminal Case No. 5580 of 2010 had admitted that she had entered the suit property forcibly on 27th March, 2010. In her cross-examination in the present proceedings, she admitted that this evidence recorded earlier was correct. According to him, the title of the suit property stood in her name and if the defendants had any grievance with regard to her title, they ought to have filed appropriate proceedings in that regard. He referred to the First Information Report as well as other documents placed on record to substantiate his contentions. He also

placed reliance on the decision in **Sanjay Kumar Pandey & others Vs. Gulbahar Sheikh & others** [(2004) 4 SCC 664].

Shri K. M. Kuthe, learned counsel for the non-applicant no.5, supported the contentions of the applicants.

07. I have heard the learned counsel for the parties at length and I have gone through the documents filed on record.

08. The plaintiff claims ownership of the suit property on the basis of sale-deed dated 22nd July, 2005 at Exh.48. According to her, since the date of the sale-deed, she was in settled possession of the suit property and this was sought to be substantiated with the help of various documents, such as the Water Meter Charges, Installation Charges, Tax Receipts, Demand Notes etc. The plaintiff also relies upon the admission given by the defendant no.1 in the evidence that was recorded in Misc. Criminal Case No. 5580 of 2010. In the cross-examination in the said criminal proceedings, the defendant no.1 had admitted that she had taken possession of the suit house on 27th March, 2010 and in the cross-examination in the present suit, it was admitted that this evidence was correct.

09. In so far as the defendants are concerned, the defendant no.1 examined herself. Except stating that

she had not taken forcible possession, there is no further evidence to substantiate that claim. When the sale-deed of the suit property stands in the name of the plaintiff and the defendant no.1 admits that she had taken forcible possession on 27th March, 2010, this evidence is sufficient to support the decree for possession in proceedings under Section 6 of the said Act. It is well settled that question of title is not to be adjudicated in these proceedings. If the defendant nos. 1 to 7 have any grievance with regard to aforesaid sale-deed, it is for them to take steps in that regard. In the light of the evidence on record, the observations in *Meera Chauhan* [supra] do not support the case of the applicants.

10. In view of aforesaid, I find that the trial Court has taken into consideration all the relevant evidence and has decreed the suit. There is no jurisdictional error. By clarifying that the observations made in this order are only for deciding the proceedings under Section 6 of the Act, the Revision Application stands dismissed. No costs.

Judge