

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 118 OF 2018

Shri Laxmandas s/o Mansukhram Agrawal

..VS..

Shri Roopsing s/o Mukundlal Juneja

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

Court's or Judge's orders

Shri P.S. Sadavarte, Adv. for applicant.

Shri R.N. Deshpande, Adv. for non-applicant.

CORAM : Z.A.HAQ, J.

DATED : 28th AUGUST, 2019

Heard Shri P.S. Sadavarte, Adv. for the applicant
and Shri R.N. Deshpande, Advocate for the non-applicant.

The applicant had filed civil suit under Section 6 of the Specific Relief Act contending that he was in possession of the property in question till the night intervening 29.07.2006 and 30.07.2006, when the defendant illegally demolished the godown. The civil suit came to be filed on 25.01.2007.

To support the claim that he was in possession of the godown and was illegally dispossessed, the plaintiff relied on rent receipt (Exhibit 49) dated 01.10.2005 and police complaint alleged to have been lodged by the plaintiff in the morning on 30.07.2006. Learned Trial Judge has doubted the genuineness of the rent receipt (Exhibit 49) on the ground that though the plaintiff claimed that he was tenant of the godown since 1996, he produced only one receipt (Exhibit 49) and the earlier receipts were not produced.

I find that the learned trial Judge has rightly refused to rely on rent receipt (Exhibit 49) considering the attendant circumstances. Even before this Court, the applicant (plaintiff) has not taken any steps to produce the rent receipts of the earlier period. Learned Advocate for the applicant heavily relied on the fact that the plaintiff and his witness – Chhaya are not cross-examined on behalf of the defendant and the defendant has not adduced any evidence, and therefore, it should have been held by the trial Court that the plaintiff has proved his case, as the evidence gone unchallenged. Though the submission made by the learned Advocate for the plaintiff appears to be appealing at the first blush, it cannot be overlooked that the plaintiff has to prove his case and he cannot succeed by default. In the civil suit seeking relief under Section 6 of the Specific Relief Act, the plaintiff is under an obligation to prove that he was in possession of the property in question and he was dispossessed illegally without taking recourse to the provisions of law.

After going through the material on record and the impugned judgment, I find that the learned trial Judge has rightly appreciated the evidence on record and the findings of fact recorded by the learned trial Judge that the plaintiff has not been able to prove that he was in possession of the property in question at the time of dispossession as alleged by him cannot be faulted with. The evidence brought on record by the plaintiff is not sufficient to record the findings in his favour that he was in possession at the relevant time.

Hence, it cannot be said that the learned trial Judge has committed any illegality or error of jurisdiction

which necessitates interference by this Court in the extraordinary jurisdiction.

Learned Advocate for the applicant submitted that as the godown has been demolished by the non-applicant/defendant, the decree for possession as sought by the applicant/plaintiff cannot be granted. However, he submitted that, the claim of the plaintiff for damages/compensation should have been considered by the trial Court.

The submission made on behalf of the applicants cannot be accepted. While considering the claim under Section 6 of the Specific Relief Act, the Court cannot examine the entitlement of plaintiff for compensation. The plaintiff may seek such relief, if so advised, by filing separate suit.

In view of the above, the Revision Application is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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