

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

Civil Revision Application No.121/2019
Namdeo Kadu Vs. Ujjawala Chakradeo

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

Court's or Judge's orders

Mr. V.G. Bhamburkar, counsel for petitioner
Mr. Sunil Manohar, Sr. counsel and Mr. Amit Choube, counsel for
respondent

CORAM : MANISH PITALE, J.

DATED : DECEMBER 06, 2019

By this revision application, the applicant (original defendant) has challenged judgment and order dated 15/04/2019, passed by the Court of 16th Jt. Civil Judge (Senior Division), Nagpur (Trial Court), whereby suit filed by the respondent (original plaintiff) under Section 6 of the Specific Relief Act, 1963, has been decreed and the petitioner has been directed to hand over vacant possession of the suit property (an apartment), to respondent within two months from the date of the order.

2. The respondent had filed the aforesaid suit before the Trial Court, claiming that she being the owner of the suit property i.e. flat bearing No. G/002 Shubham Apartments, Ujjwal Housing Society, Narendra Nagar, Nagpur, was shocked to find on 18/11/2012 that the lock put by her on the said flat as

the owner was missing and on further enquiry she came to know that the petitioner was in occupation of the said flat. According to the respondent, keys of the said flat were handed over to one Sanjay Kandge, who also lived in the said society of apartments and that since her husband met with an accident in the middle of the year 2012 and he was bed ridden for almost six months, she could not visit the said flat during that period. According to the respondent, the said Sanjay Kandge and the petitioner herein assured that the suit flat would be vacated within a few days, but, when it did not happen, on 25/11/2012, she was constrained to register a police complaint in respect of her dispossession and the illegal occupation of the said flat by the petitioner.

3. The petitioner denied the claims made by the respondent. He claimed that on 01/03/2012, there was an oral agreement entered into between the parties regarding purchase of the said flat by the petitioner from the respondent and in view thereof the petitioner was inducted as tenant for monthly rent of Rs.3500/- in the said suit flat. It was claimed that attempts were made for execution of written agreement of sale between the parties for which draft agreement was prepared, but, later the respondent had resiled from the same by asking for further amount of consideration and that the proposed transaction did not materialize. On this basis, it was contended that

since the petitioner had been inducted into the suit flat with the consent of the respondent through the said Sanjay Kandge, there was no question of illegal dispossession of the respondent within the period of six months prior to filing of the suit and, therefore, the claims made by the respondent could not be accepted.

4. The respondent as the plaintiff examined herself and her husband as witnesses while the petitioner examined himself, his wife, the said Sanjay Kandge and two other witnesses in support of his defence.

5. On the basis of oral and documentary evidence brought on record by the rival parties, the Trial Court found that the case put up by the respondent was made out while the petitioner had failed to support the defence raised on his behalf. On this basis the suit was decreed, which is subject matter of challenge before this Court.

6. Mr. V.G. Bhamburkar, learned counsel for the petitioner submitted that a perusal of Section 6 of the aforesaid Act would show that the suit filed by the respondent in the present case was not maintainable. It was submitted that such a suit could be filed only by a person occupying the premises in question and that since the respondent was seeking to claim the possession in the suit flat on the basis of ownership,

such a suit under Section 6 was not maintainable. It was submitted that the respondent could have proceeded under Section 5 of the aforesaid Act for recovery of specific immovable property. It was submitted that the respondent failed to make good her claim that she was dispossessed within six months prior to filing of the suit under Section 6 of the aforesaid Act and that, therefore, the suit ought not to have been entertained by the Trial Court. It was further submitted that when the respondent herself had claimed that said Sanjay Kandge (examined as DW 3 on behalf of the petitioner) had been handed over keys to the lock put on the said flat, it was incumbent upon the respondent to have examined him to prove her claim and having failed to do so, the entire story put up by the respondent ought not to have been accepted by the Trial Court. It was further submitted that the petitioner had deposited amount towards rent in two suits filed by him, one being a suit claiming right to be dispossessed only through due process of law and the other being suit for specific performance of agreement entered into between the parties. It was claimed that deposit of such amounts in the aforesaid suits was proof of the bonafide of the petitioner, which the Court below completely failed to appreciate. It was submitted that there was sufficient material to show that the petitioner was lawfully in possession of the suit flat and that the story put up by the respondent was not sustainable. On this basis, it was submitted that the

impugned judgment and decree passed by the Trial Court deserved to be reversed.

7. On the other hand, Mr. Sunil Manohar, learned senior counsel with Mr. Amit Coubey, learned counsel for the respondent submitted at the outset that revisional jurisdiction being exercised by this Court required that interference in the impugned judgment and decree was warranted only if the petitioner was able to satisfy that revisional jurisdiction could be invoked in the facts and circumstances of the present case. It was submitted that the very nature of the suit under Section 6 of the Act was summary and that, therefore, the evidence and material on record was correctly appreciated by the Trial Court, while passing the decree in favour of the respondent. It was further submitted that the respondent had been able to support her case on the basis of oral and documentary evidence on record and that the witnesses produced by the petitioner in support of his defence were completely discredited, which was a factor taken into consideration by the Court below while passing the judgment and decree. On this basis, it was submitted that no interference was warranted in the present revision application.

8. Heard learned counsel for rival parties and perused the material on record. The principal contention raised on behalf of the petitioner is that

being owner of the suit flat, the respondent was not entitled to maintain a suit under Section 6 of the aforesaid Act, particularly, when she had not been able to support her case of having been in possession of the suit flat prior to the date on which she discovered that the petitioner was allegedly, illegally occupying the suit flat. It was submitted that the respondent ought to have been illegally dispossessed without her consent and otherwise than in due course of law.

9. A bare reading of Section 6 of the aforesaid Act would show that it starts with the words “Any person who is dispossessed”. It is also relevant that the said provision also uses the words “notwithstanding any other title that may be set up in such suit”. There is nothing in the said provision to show that an owner of the premises, who is in possession and has put his own lock on such premises can never maintain a suit under Section 6 of the aforesaid Act. It is also not acceptable that the owner of the premises, who is not physically in possession of the premises in question, but, has put his lock thereon can maintain a suit only under Section 5 of the said Act and not under Section 6 thereof. It would be a travesty to accept the submission made on behalf of the petitioner in the present case because it would lead to a situation where the owner in possession and occupying a premises by having put a lock thereon would not be entitled to file a suit under Section 6 of the Act if a third person

barged into such property by breaking open the lock. Therefore, the said contention regarding inapplicability of Section 6 of the Act cannot be accepted. The learned senior counsel appearing for the respondent is justified in relying upon judgment of the Hon'ble Supreme Court in the case of **Sanjay Kumar Pandey and others Vs. Gulbahar Sheikh and others (2004) 4 SCC 664**, wherein the Hon'ble Supreme Court in paragraph No.4 held as follows :

“A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.”

10. Therefore, this Court is required to examine the correctness or otherwise of the impugned judgment and decree passed by the Trial Court within limited parameters of exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure. In this

backdrop, a perusal of the impugned judgment and order passed by the Trial Court shows that the oral and documentary evidence placed on record by the rival parties has been appreciated. The Trial Court has found that the respondent herself appeared as a witness in support of her case and her husband appeared as a second witness. It is also on record that the husband of the respondent was only partially cross-examined and despite repeated opportunities the petitioner failed to complete the cross-examination. On the basis of evidence placed on record on behalf of the respondent, the Trial Court came to the conclusion that she came to know about her being illegally dispossessed as she found the lock open and the petitioner occupying the said flat. The evidence led on behalf of the husband of the respondent about his being bed-ridden for six months in the year 2012, due to an accident, was not countered by the petitioner in any manner, particularly because of the fact that he was not even cross-examined on that aspect. The Trial Court accepted the claim of the respondent that due to these reasons she was not been able to visit the suit flat and that when she visited on 18/11/2012, she found that she was illegally dispossessed. The Trial Court further accepted the contention raised on behalf of the respondent to hold that since she was dispossessed within six months prior to filing of the suit without her consent and otherwise than in due course of law, she was entitled to claim decree under Section 6 of the

aforesaid Act.

11. As opposed to this, the evidence and material on record produced on behalf of the petitioner was found by the Trial Court to be insufficient to support the defence raised on behalf of the petitioner. It was found that the evidence of DW 3 Sanjay on which the petitioner heavily relied, was completely washed out in cross-examination as he gave statements that were completely contrary to what was stated in the affidavit in evidence. Similarly, the Trial Court found that the witness DW 5, who claimed that possession of the suit flat was handed over by the respondent and her husband to the petitioner, himself made completely contrary statements in the evidence and that, therefore, such a witness was not believable. Upon analysis of the evidence adduced by all the witnesses in support of the case of the petitioner, the Trial Court came to a considered conclusion that the defence raised on behalf of the petitioner that he was inducted by the respondent in the suit flat, could not be accepted.

12. This Court on perusal of the material on record is unable to agree with the learned counsel for the petitioner that the findings rendered by the Trial Court were erroneous or perverse or suffered from such material irregularities that revisional jurisdiction could be invoked. The facts appreciated by the Trial

Court on the basis of evidence and material on record are found to be based on proper interpretation of the material and, therefore, no case for interference under the revisional jurisdiction is made out. Moreover, there is not an iota of evidence on record to show that the petitioner was in possession of the suit flat as a tenant because not a single rent receipt was placed on record. The amounts deposited allegedly towards rent in the aforesaid two suits filed by the petitioner were also unilaterally deposited by the petitioner before the Court in the said proceedings. It is also significant that both the suits were dismissed in default, although the application for restoration of the suit for specific performance is currently pending. All these facts indicate that the respondent had clearly made out a case for grant of decree in her favour by the Trial Court by exercising jurisdiction under Section 6 of the aforesaid Act and such exercise of jurisdiction by the Trial Court could not be said to be either without jurisdiction or beyond jurisdiction vested in it.

13. As noted above, the findings of the Trial Court cannot be said to be erroneous, perverse or passed on any inappropriate appreciation of evidence.

14. In view of above, no case for interference under revisional jurisdiction is made out. Accordingly, the revision application is dismissed.

15. At the stage the learned counsel for the petitioner requested for time to vacate the suit flat. In the facts and circumstances of the case, the petitioner is directed to vacate the suit flat on or before 31/12/2019. Failure to comply with this direction will lead to consequences provided in law.

JUDGE

MP Deshpande