

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2019

Delivered on : 18.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.2993 of 2018

and

C.M.P.No.17377 of 2018

V. Manoharan

...Petitioner/Plaintiff

Vs

- 1.Valli
- 2.Koteeswari
- 3.R. Leelavathi
- 4.J. Murali
- 5.D. Srinivasan
- 6.D. Harivendan
- 7.D. Selvam
- 8.D. Manikandan
- 9.J. Kollapuri
- 10.K. Sathish
- 11.K. Vimal
- 12.S. Revathi
- 13.S. Monika
- 14.S. Rishika

...Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 16.03.2018 in O.S.No.212 of 2013 on the file of the learned District Munsif, Ambattur.

For Petitioner : Mr.S. Thanka Sivan

For Respondents: Mr.S.R. Raghunathan
for Mr.D. Senthil Kumar
for R1 to R6 and R8 to R11

No appearance for R7, R12 to R14

ORDER

The plaintiff is the revision petitioner before this Court. The Civil Revision Petition is filed challenging the dismissal of the suit filed under Section 6 of the Specific Relief Act, hereinafter referred to as the Act, for recovery of possession and for an injunction from alienation.

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2.The suit property is an extent of 0.50.2 cents out of a total extent of 1.25 acres comprised in Old Survey No.303/2B

and New Survey No.303/2B1A, as per Patta No.529 situate at Vellanur Village, Ambattur Taluk, Thiruvallur District.

3.The parties are referred to in the same litigative status as in the suit.

Plaintiff's case:

4.The plaintiff had instituted the above suit on the following contentions:

The plaintiff would contend that on 28.12.2012, he had purchased the suit schedule property which was a portion of a total extent of 1.25 cents from Meenakshi Ammal and three others. The sale deed was executed on their behalf by their Power of Attorney one P. Ramadoss. It is the case of the plaintiff that after his purchase, he had executed a Power of Attorney in favour of one Meganathan and by a registered Sale Deed dated 06.02.2013, Meganathan had sold 367.5 sq.ft. to one S.Kandhan and thereby, the plaintiff was left with the remaining extent of

the suit property. He has, since then been in possession and enjoyment of the same.

5.It is the further case of the plaintiff that the Power Agent of the original owners, the said Ramadoss had in the year 1987 developed an extent of 74 cents out of the extent of 1.25 acres into house sites. The said layout was called "Priya Nagar". The plaintiff would further contend that recognizing the right, title and interest of the plaintiff's vendors to the property comprised in S.No.303/2, the 1st defendant's husband and the 4th and 9th defendants, had purchased house sites in Priya Nagar. The 1st defendant's husband Janakiraman had purchased Plot Nos.8 and 8A measuring 3090 sq.ft. in the said lay out under Sale Deed dated 10.11.1995. The said Janakiraman had further purchased Plot No.6 under the Sale Deed dated 22.05.2016. Thereafter, the said Janakiraman had settled the property on his son J. Murali, who has been arrayed as the 4th defendant herein. The 1st defendant had attested this Settlement Deed as witness. Apart

from the property settled on him, the 4th defendant individually purchased Plot No.5 and the 9th defendant had also purchased a plot in the said layout.

6.While so, on 10.02.2013, when the plaintiff's power agent had visited the suit property he found that the defendants had forcibly entered into the suit property and put up a fencing. The Power Agent immediately protested the same and also lodged a Police Complaint on 18.02.2013. On 18.03.2013, notice was issued by the plaintiff to the 4th defendant. Despite receipt of the notice, the 4th defendant refused to hand over the vacant possession. Therefore, left with no other alternative, the plaintiff had come forward with the above suit under Section 6 of the Act as he had been illegally disposed.

Defendants' case:

7.The first defence which has been raised by the defendants for recovery of possession was that the plaintiff did not have a

valid title to the suit property. It was their case that the Sale Deed in favour of the plaintiff had been executed by P.Ramadoss as power agent when two of the Principals, namely, Meenakshi Ammal and Vadivelu had died on 27.01.2001 and 13.12.2006, respectively. [However, the defendants have not let in any evidence to prove that the principals had died prior to the purchase by the plaintiff].

8.The defendants would contend that an extent of 2.24 acres comprised in Survey No.303/2, Vellanur Village, belonged to the father of the defendants 1 to 3, namely, Ranganathan Mudaliyar and Kuppuswamy Mudaliyar and they were issued with a joint Patta bearing No.447. In the oral Partition between the two, 44 cents abutting the Main Road was given to Kuppuswamy Mudaliyar and the remaining 1.80 acres of land was allotted to the father of the defendants 1 to 3, namely, Ranganathan Mudaliyar. On 11.02.1997, Ranganathan Mudaliyar died leaving behind him surviving the defendants 1 to 3 and their brother

Dharman, who is none other than the father of the defendants 5 to 8 as his legal heirs. The defendants 1 to 3 had constructed a small house in the said property and they were assessed to property tax. It is the further case that one Mani who was a political leader of that locality, had trespassed into the property, constraining the defendants 1 to 3 to institute a suit O.S.No.32 of 2013 on the file of the learned District Munsif, Ambattur and they had also obtained an *ad-interim* injunction in I.A.No.117 of 2013. It is their further case that the plaintiff had no cause of action for filing the suit and had come forward with the suit on the basis of a non-existent right and therefore, they prayed that the suit has to be dismissed.

Trial Court:

9.The learned District Munsif, Ambattur, had framed the following issues:

*"(1)Whether the plaintiff was entitled to a relief
of recovery of possession of the suit and restitution?"*

(2)Whether the plaintiff was entitled to a relief of permanent injunction as prayed for?"

10.During the trial, the plaintiff's power agent Meganathan had examined himself as P.W.1 and the plaintiff examined himself as P.W.2 and Ex.A.1 to Ex.A.14 were exhibited on the side of the plaintiff. On the side of the defendants, the 5th defendant was examined as D.W.1 and the 11th defendant as D.W.2 and Ex.B.1 to Ex.B.12 were exhibited on their side.

11.The learned District Munsif, Ambattur, after an elaborate enquiry, came to the conclusion that the plaintiff was not in possession of the property and therefore had not been dispossessed either prior to six months or within six months from the date of the suit and consequently, dismissed the suit. It is aggrieved by this Judgment and Decree that the plaintiff has invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

Submissions:

Preliminary submission as to maintainability:

12.Mr.S.R.Raghunathan, learned counsel appearing for the defendants had raised the preliminary issue of maintainability of the Civil Revision Petition. He would contend that Section 6(3) of the Act clearly placed a fetter on the filing of an appeal or a review. He would argue that the only remedy which was open to the revision petitioner/plaintiff was to file a regular suit for a declaration and for recovery of possession.

13.The learned counsel for the defendants had relied upon the following Judgments of the Hon'ble Supreme Court:

**1.(2004) 1 Supreme Court Cases 769
Ramegowda (dead) by LRs v. M.Varadappa
Naidu (dead) by LRs and another.**

**2.(2004) 4 Supreme Court Cases 664
Sanjay Kumar Pandey and others v. Gulbahar
Sheikh and others**

**3.(2013) 10 Supreme Court Cases 169
ITC Limited v. Adarsh Co-operative Housing
Society Limited**

14.Per contra, Mr.S. Thanka Sivan, learned counsel for the revision petitioner would contend that Section 6(3) places a bar only on the filing of an appeal or a review, however, this Court's jurisdiction to entertain a revision has not been ousted. He would rely on the Judgment of this Court in **Petchimuthu @ Mani [2009 (5) CTC 894]** and the Judgment of Delhi High Court in **Savyasachi K. Sahai v. Union of India and others [245 (2017) DLT 101]**. He would therefore contend that the revision was very much maintainable.

Arguments on the main issue:

15.The learned counsel would also advance his arguments on the core issue, namely, the challenge to the Judgment and Decree in O.S.No.212 of 2013 on the file of the learned District Munsif, Ambattur. The plaintiff's counsel would submit that the trial Judge has failed to appreciate the plethora of evidence that has been produced on the side of the plaintiff to show their

possession and enjoyment of the suit property as on the date of filing of the suit.

16.The learned counsel would argue that the Court below had failed to appreciate the registered Sale Deed standing in the name of the plaintiff and further, the revenue records standing in the name of the predecessors in title to the plaintiff as well as the plaintiff. He would argue that considering the fact that the suit is one filed under Section 6 of the Act and considering Ex.A.4 to Ex.A.6, the learned District Munsif, Ambattur, ought to have decreed the suit. He further argued that the suit property being a vacant land possession followed title. He would further contend that the husband of the 1st defendant Janakiraman had purchased from P.Ramadosh himself. The recital clearly states that P.Ramadosh is executing the Sale Deed as Power Agent of Meenakshi Ammal and others, this, according to the learned counsel, would clearly prove the plaintiff's case that the properties originally belonged to Meenakshi Ammal and others.

Therefore, the learned counsel would contend that the defendants cannot question the title of the plaintiff's vendor.

17.The learned counsel for the defendants, on the other hand, would argue that the plaintiff has not proved his possession of the property and that the plaintiff has not pleaded as to when he had been forcibly/illegally dispossessed from the suit property. He would further argue that in Ex.A.7 - Letter which was addressed only to the 4th defendant, the plaintiff had contended that the fence was already in place when the power agent visited the suit property. He would therefore contend that the plaintiff has not come to Court with clean hands as to the alleged date on which he had been dispossessed.

18.The learned counsel would further contend that the plaintiff's power agent is none other than the brother of P. Ramadoss. He would further contend that the plaintiff's oral evidence as P.W.2 would clearly demonstrate how the plaintiff

has come to Court with a false case.

19. Heard the learned counsel appearing on either side and perused the material available on record.

DISCUSSION:

20. The plaintiff has come to Court with a case that he was in possession of a vacant site which he had purchased under Ex.A.1 - Sale Deed dated 28.12.2012 from which property he has been illegally dispossessed and therefore he has been constrained to institute the instant suit. The defendants on the other hand have denied the very title of the plaintiff to the suit property. The suit was ultimately dismissed as against which the plaintiff has come forward with this Civil Revision Petition.

21. Since a preliminary objection as regards the maintainability of the revision has been raised by the defendants, I shall first deal with that issue. The counsel for the respondent

has contended that under Section 6 of the Act, any appeal, review or revision is barred and had relied on the Judgments detailed in Paragraph 12 supra.

22. Section 6 of the Specific Relief Act, 1963, would read as follows:

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 2 [through whom he has been in possession 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."

23. Therefore, from a reading of Section 6(3) of the Act, it is clear that no appeal or review would lie not only from a decree but also from any order passed in a Section 6 suit. In the Judgment relied on by the counsel for the respondent, viz., ***Sanjay Kumar Pandey and others v. Gulbahar Sheikh and others [(2004) 4 Supreme Court Cases 664]***, the Apex Court has 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 is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision 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."

24. This Judgment has also been referred to in another Judgment of the Supreme Court in ***ITC Limited v. Adarsh Co-operative Housing Society Limited [(2013) 10 Supreme***

Court Cases 169].

25. In another Judgment of the Supreme Court reported in **2014(2) RCR (Rent) 508 = MANU/SC/1239/2014 {Aarti v. Aruna Gautam}**, the Supreme Court which was called upon to reconsider the order of the High Court of Madhya Pradesh passed in a Revision challenging the decree in a suit filed under Section 6 of the Act, the Hon'ble Supreme Court upheld the exercise of the revisional jurisdiction of the High Court but set aside the order of the High Court on the ground that the High Court had exceeded its revisional jurisdiction.

26. Therefore, from a reading of the above Judgements, it is evident that as against a decree passed in a suit filed under Section 6 of the Act, a revision under Section 115 of the Code of Civil Procedure is available to the unsuccessful party and the High Court exercising its revisional jurisdiction is only concerned with the legality/propriety of the exercise of jurisdiction and not re-

appreciate the evidence.

27. However, the revision before this Court has been filed invoking the superintending jurisdiction of this Court under Article 227 of the Constitution of India and not under Section 115 of the Code of Civil Procedure. There is no quarrel to the proposition that where an Act expressly bars a remedy by way of an appeal or otherwise, the superintending power of the High Court under Article 227 of the Constitution of India can be invoked. In the instant case Section 6 (3) of the Act has placed a bar to a further appeal or review. Therefore the invocation Article 227 is in order.

28. Having now held that the revision is maintainable, this Court is considering the legality of the order passed.

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29. Considering the fact that the suit in question is one filed under Section 6 of the Act, the plaintiff is bound to prove two main ingredients, namely (a) his possession of the suit property just prior to dispossession and (b) the factum of dispossession. Therefore, I will now examine as to whether the plaintiff has proved the above. This Court is not touching upon the question of title as this is immaterial to a suit filed under Section 6 of the Act.

30. The plaintiff has come forward with the specific case that he and prior to him, his predecessors in title are in possession of the suit property. However, he has not let in evidence whatsoever to prove the possession of the property prior to his dispossession. However, the defendants have let in evidence to show their possession of the suit property by filing Adangal, Tax receipts from the year 1986 and the electricity consumption charges card, house tax receipts as well as A Register, etc., i.e., Exs.B2, 3, 7, 8 and 12, respectively. Further, the plaintiff has

not clearly stated as to when he had been dispossessed from the suit property. In the Plaint, in Paragraph 7, the plaintiff would contend that on 10.02.2013, when his power agent had inspected the property, he found the defendants and their men, were erecting an iron fencing around the suit property and he would further submit that within a few days thereafter the defendants had trespassed and encroached into suit land. Therefore, from a reading of this paragraph, it appears that the dispossession was subsequent to 10.02.2013 whereas in Paragraphs 8 and 10, the plaintiff would state that the dispossession was on 10.02.2013. Likewise, in Ex.A.7 - Legal notice dated 18.03.2013, the plaintiff has stated that fencing had been completed when his power agent visited the suit property. Therefore, the dispossession has taken place prior to 10.02.2013. Therefore the plaintiff has not come with a specific case as to the date of dispossession. Further the plaintiff as P.W.2 has stated that he is not aware of where the property is situate. The plaintiff unfortunately has failed to prove two essential ingredients of a suit under Section 6

of the Act and therefore the learned District Munsif was right in dismissing the Suit.

31. Therefore, I do not find any infirmity in the order passed by the learned District Munsif, Ambattur. In the result, this Civil Revision Petition is dismissed. No costs. However, this does not preclude the plaintiff from filing a regular suit for declaration and recovery of possession as per the language of Section 6(4) of the Act. Consequently, connected Miscellaneous Petition is closed.

18.06.2019

Index : Yes/No
Internet : Yes/No
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To

The District Munsif,
Ambattur.

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P.T. ASHA, J,

mps



Pre-Delivery Order in
C.R.P.(NPD).No.2993 of 2018
& C.M.P.No.17377 of 2018

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