

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CIVIL REVISION PETITION No.7051 of 2018**

**ORDER :**

This Civil Revision Petition is filed challenging the order dt.26-10-2018 in Transfer O.P.No.614 of 2018 of the Principal District Judge, Warangal.

2. Petitioner herein had filed O.S.No.71 of 2016 before the II Additional Senior Civil Judge, Warangal for several reliefs including recovery of possession originally. But later he amended the plaint converting the said suit into a suit under Section 6 of the Specific Relief Act, 1963 (for short “the Act”) seeking only recovery of delivery of possession alleging that she was forcibly dispossessed by respondents from the suit schedule property on 20-01-2016.

3. She later filed O.S.No.120 of 2018 alleging that by such illegal dispossession, she has been deprived of rents from the suit schedule property and she is entitled to a sum of Rs.20.00 lakhs from respondents. This latter suit was filed before the II Additional District Judge, Warangal.

4. Respondents then filed Tr.O.P.No.614 of 2018 to club both the suits stating that parties are one and the same and property in relation to which reliefs are sought for, are one and the same, and therefore there is likelihood of conflicting judgments and both suits should be tried together.

5. Counter-affidavit was filed by petitioner opposing the said transfer contending that suit under Section 6 of the Act has to be tried summarily and such suit cannot be clubbed with any other suit; that the suit O.S.No.71 of 2016 is for recovery of possession whereas O.S.No.120 of 2018 is for recovery of money; that suit O.S.No.71 of 2016 is coming up for cross-examination of D.W.1 as chief-examination affidavit was already filed, whereas O.S.No.120 of 2018 is at summons stage and both suits therefore cannot be clubbed together.

6. By order dt.26-10-2018, the Court below allowed the Transfer O.P. and transferred O.S.No.71 of 2016 from the Court of the II Additional Senior Civil Judge's Court, Warangal to the Court of II Additional District Judge, Warangal. It stated that parties are one and the same and averments in both the suits are one and the same; that respondents had dispossessed the petitioner and are using the suit schedule property for their own benefit; that one suit is for evicting the respondents and the other suit is for recovery of money for usage of the building by respondents; and the issue involved in both the suits are inter-linked and so both suits should be tried together.

7. Assailing the same, this Revision is filed.

8. Learned counsel for petitioner reiterated the stand of the petitioner in the Court below. He pointed that the only point to be considered in Summary suit under Section 6 of the Act is whether

dispossession of the petitioner took place within six months prior to the date of filing of the suit and whether such dispossession is otherwise than by procedure prescribed by law and no other issues are relevant for consideration, and the Court below erred in clubbing both the suits.

9. Learned counsel for respondents on the other hand contended that there is no error in the order passed by the Court below clubbing both the suits since even according to the petitioner there was a Memorandum of Understanding (MoU) obtained from her by respondents and *prima facie* it has to be presumed that dispossession is in accordance with law.

10. I have noted the contentions of both sides.

11. It cannot be disputed that a Summary suit under Section 6 of the Act entitles the plaintiff to recover possession of the property from which he claimed to have been illegally dispossessed. It has to be adjudicated independently of the question of title that may be set up by defendant in such suit. This principle has been laid down by the Supreme Court in **ITC Limited Vs. Adarsh Cooperative Housing Society Limited**<sup>1</sup>. The Court observed:

*“9. ... A bare reading of the provisions contained in Section 6 of the Act of 1963 would go to show that a person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him recover such possession by filing a suit. In such a suit, the entitlement*

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<sup>1</sup> (2013) 10 SCC 169

*of the Plaintiff to recover possession of property from which he claims to have been illegally dispossessed has to be adjudicated independently of the question of title that may be set up by the Defendant in such a suit. In fact, in a suit under Section 6, the only question that has to be determined by the Court is whether the Plaintiff was in possession of the disputed property and he had been illegally dispossessed therefrom on any date within six months prior to the filing of the suit. This is because Section 6(2) prescribes a period of six months from the date of dispossession as the outer limit for filing of a suit. As the question of possession and illegal dispossession therefrom is the only issue germane to a suit under Section 6, a proceeding thereunder, naturally, would partake the character of a summary proceeding against which the remedy by way of appeal or review has been specifically excluded by Sub-Section 3 of Section 6. Sub-Section 4 also makes it clear that an unsuccessful litigant in a suit under Section 6 would have the option of filing a fresh suit for recovery of possession on the basis of title, if any.”*

12. In the instant case, no doubt there is a mention of MoU in the plaints filed by petitioner herself, but it is her specific contention that the said MoU was obtained by coercion. Therefore, the defence of the respondents about acquisition of title under the said MoU cannot be gone into in the Summary suit O.S.No.71 of 2016.

13. No doubt the parties are one and the same and the property in relation to which the suits are filed may be one and the same, but since the nature of O.S.No.71 of 2016 is fundamentally different from the suit O.S.No.120 of 2018, both the suits need not be tried together particularly when O.S.No.71 of 2016 is at an advanced stage of cross-examination of D.W.1, when transfer is affected by the Court below.

14. Therefore, the Civil Revision Petition is allowed and the order dt.26-10-2016 in Transfer O.P.No.614 of 2018 of the Principal District Judge, Warangal is set aside and the said Transfer O.P. is dismissed. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 15-04-2019

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