

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.960 OF 2019

Smt. Maria Monica Rodrigues,
 wife of Amiato Rodrigues,
 aged 64 years, Indian National,
 married, housewife, resident
 of House No.346/B, near Dias
 Flats, Alto Mangor, Vasco-da-Gama, Goa. ... Petitioner

Versus

1. Shri Elvino Dias,
 son of Shri Joao Dias,
 aged 50 years, married,
 self employed, Indian National,
 resident of House No.345,
 near Dias Building,
 Mangor Hill,
 Vasco-da-Gama, Goa,
2. Shri Agostinho Jose Silva Furtado,
 son of late Arfano De Loyola Patricio Furtado,
 of major age,
 occupation – Retired,
 Person of Indian Origin,
 resident of Rua Professor
 Ernesto Neves, N-5,
 3840-302, Ouca Vagos,
 Portugal,
3. Smt. Garmina Angela Sergio
 De Almeida Neves Furtado,
 wife of Shri Agostinho Jose
 Silva Furtado, aged 80 years,
 occupation – Housewife,
 Portugal National,
 resident of Rua Professor Ernesto Neves,
 N-5, 3840-302, Ouca Vagos,
 Portugal.

4. Shri Tajuddin Shaikh,
 son of Shri Hamid Shaikh,
 aged 72 years, married,
 occupation – retired,
 Indian National, resident of
 Building No.1, Flat No.8,
 Beach View Housing Colony,
 Opposite M. P. T.
 Work Shop, Baina, Vasco-da-Gama, Goa. ... Respondents

Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. Abhijeet Kamat, Advocate for the Respondent No.1.

Mr. A. D. Bhobe, Advocate for Respondent No.4.

Coram:- M. S. SONAK, J.

Date : 23rd June 2021

ORAL JUDGMENT

Heard Mr. C. Padgaonkar, learned counsel for the Petitioner, Mr. A. Kamat, learned counsel for the Respondent No.1 and Mr. A. D. Bhobe, learned counsel for the Respondent No.4.

2. The learned counsel for the parties point out that the Respondent Nos. 2 and 3 are not contesting parties in so far as this petition is concerned. They point out that even otherwise the Respondent Nos. 2 and 3 have been marked *ex parte* before the learned Trial Court where Regular Civil Suit No.78/2015/D is presently pending. Accordingly, Rule is granted in this petition and the same is made returnable forthwith at the request and with the consent of the learned counsel for the parties.

3. The challenge in this petition is to the order dated 15th July 2019 by which the learned Trial Judge has stayed the proceedings in Regular Civil Suit No.78/2015/D on the ground that the issues involved in the said suit are directly and substantially in issue in a previously instituted civil suit bearing No. 52/2015/A.

4. Mr. Padgaonkar, learned counsel for the Petitioner submits that previous suit bearing No.52/2015/A was instituted by the Respondent No.4 herein seeking a declaration that he is the owner in respect of the suit premises and for several other reliefs based on this fundamental premise. He submits that Regular Civil Suit No.78/2015/D which has now stayed by the impugned order was only a suit under Section 6 of the Specific Relief Act seeking restoration of the Petitioner's possession of the suit premises because the Petitioner was dispossessed from the same by the Respondent No.1 without following due course of law. He submits that the issue involved in the suit which has been stayed is extremely narrow and in such a suit, no issue of title or for that matter any other issues are even remotely involved. He therefore submits that the suit could not have been stayed particularly when the legislative mandate that such suits have to be expeditiously disposed of.

5. Mr. A. Kamat, learned counsel for the Respondent No.1 who had moved the application under Section 10 of the Civil Procedure Code submits that the Petitioner is claiming through the Respondent No.4. He points out that the Respondent No.4 has instituted a

substantive suit bearing No.52/2015/A by claiming that the Respondent No.4 was in constructive possession of the suit premises through the Petitioner herein. He relies on the decision of the Hon'ble Apex Court in *Sadashiv Shyama Sawant [Dead] Through L.Rs., & Ors. Vs. Anita Anant Sawant*¹ to submit that the landlord can maintain a suit under Section 6, if the tenant of such landlord is unlawfully evicted from the suit premises. He submits that now the Respondent No.4 has already instituted a substantive suit claiming title to the suit premises as also recovery of possession, it is obvious that the issue involved in such previous suit is directly and substantially in issue in the present suit as well. He therefore submits that the application under Section 10 was quite correctly allowed by the Trial Judge and the impugned order warrants no interference.

6. Mr. Bhobe, learned counsel for the Respondent No.4 supports the contentions raised by Mr. Padgaonkar. He submits that even otherwise Section 6(4) of the Specific Relief Act makes it clear that nothing in the said section bar any person from suing to establish his title to such property and to recover possession thereof.

7. The rival contentions now fall for my determination.

8. Section 10 of the Civil Procedure Code provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted

¹ 2010(3) SCC 385

suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

9. Therefore, the question is whether the issue involved in Regular Civil Suit No.52/2015/A (previous suit) instituted by the Respondent No.4 herein is also the issue directly and substantially in issue involved in the present suit which is stayed by the impugned order.

10. From the perusal of the pleadings in previous suit, it is apparent that the Respondent No.4 has sought for several reliefs primarily based upon his claim of title to the suit premises. In contrast, in the present suit the issue of title is quite irrelevant because this is a suit under Section 6 of the Specific Relief Act where the only issue is whether the Petitioner was dispossessed without his consent of immovable property otherwise than in due course of law. Section 6(4) of the Specific Relief Act makes it clear that nothing in this section bar any person from suing to establish his title to such property and to recover possession thereof. This means that even if the Petitioner was to succeed in the suit under Section 6 of the Specific Relief Act, the superior title holder can always recover the possession from the Petitioner by establishing his title.

11. Further, any findings recorded in the present suit will also not affect the prosecution of the previous suit which is a substantive suit. The scope of previous suit is substantially wide and therefore, the issue involved in the said suit cannot be said to be directly and substantially involved in the present suit.

12. The object of Section 6 of the Specific Relief Act is to discourage the people from taking law into hand however good their title may be. Therefore, inquiry which is to be undertaken in such a suit is quite limited. The main issue is whether the plaintiff was indeed in possession of the suit premises and was dispossessed by the defendant without his consent otherwise than due course of law.

13. In the context of the present two suits, this Court in its order dated 24th November 2017 in Civil Revision Application No.34 of 2017 instituted by the Respondent No.1 herein had rejected this Respondent's application moved under Order VII Rule 11 of CPC. This Court had held that while deciding the applications of this nature, one cannot be unmindful of Section 6 of the Specific Relief Act providing a speedy remedy.

14. It appears that the Respondent No.1 is raising objections in the suit in installments so as to halt the progress in the suit which is otherwise required to be decided expeditiously. This aspect has also not been considered by the learned Trial Judge.

15. For all the aforesaid reasons, the impugned order is set aside and the application of the Respondent No.1 under Section 10 of the CPC is hereby dismissed. The Trial Court shall now dispose of the suit as expeditiously as possible and in any case within a period of maximum six months from today.

M. S. SONAK, J.

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