

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2390 of 2017

R.Subbaiyan

... Petitioner

Vs.

1. A.Manickam
2. A.Ponnusamy
3. Radha
4. Latha
5. P.Jayaram

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 03.03.2017 made in O.S.No.192 of 2015 on the file of the District Munsif Court, Sathyamangalam.

For Petitioner : Mr.N.Manokaran

For Respondents : Notice Served (No Appearance)

ORDER

This Civil Revision Petition is directed against the judgment and decree dated 03.03.2017 passed in O.S.No.192 of 2015 on the file of the learned District Munsif, Sathyamangalam. thereby, dismissing the suit for recovery of possession filed under Section 6 of the Specific Relief Act.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for recovery of possession with mesne profits in respect of the suit property.

3. The case of the plaintiff is that the suit property is agricultural land and it was originally purchased by Ammasai Gounder with common 1/4th share in the Well, Cart tracts etc., by the registered sale deed dated 11.06.1975 vide document No.1485/1975. His wife Kannammal also purchased the remaining extent of the property ad-measuring 2.33 acres with common 1/4th share in the Well, Cart track etc., by the registered sale deed dated 11.06.1975 vide document No.1486/1975. Both jointly

purchased the remaining common 1/2 share in the same Survey Number with a Well and Cart tracts etc., by the sale deed dated 11.06.1984 vide document No.1021/1984. The said Kannammal died on 10.01.1991 and after her demise, the said Ammasai Gounder, who is her husband and two sons have partitioned the property by the partition deed dated 19.12.1994. In the partition deed 'A' schedule property was allotted to Ammasai Gounder, which is the suit property herein. The plaintiff had purchased the suit property from the said Ammasai Gounder for valid sale consideration by virtue of registered sale deed dated 09.06.2004 and from the date of purchase, the plaintiff was in peaceful possession and enjoyment of the suit property.

4. The first and second defendants are none other than the sons of the plaintiff's vendor viz., Ammasai Gounder. The defendants 3 and 4 are the daughters of the first defendant. The 5th defendant is the son of the 2nd defendant. In fact, the first defendant had filed a suit in O.S.No.286 of 2004 for permanent injunction as if he was in possession and enjoyment of the suit property as a tenant to his father viz., the said Ammasai Gounder.

Thereafter, the suit was dismissed by the judgment and decree dated 12.04.2013. The said deceased/Kannammal also executed a Will dated 07.06.1990 in respect of her property purchased through sale deed dated 11.06.1975 in favour of the said Ammasai Gounder and he was only given life estate. After life time of the said Ammasai Gounder, the children of the first and second defendants would be entitled for absolute right over the property. She died on 10.01.1991 and as such, the plaintiff's vendor stepped into possession of the property as life estate right holder. On the strength of the Will, the defendants 3 and 4 herein filed a suit for partition in O.S.No.474 of 2004. The same was decreed by the judgment and decree dated 11.03.2013 and the same was also confirmed by the Appellate Court in A.S.No.36 of 2013. Aggrieved by the same, the plaintiff is taking steps to prefer a Second Appeal before this Court. At this juncture, on 01.04.2015, when the plaintiff was away from the suit property, the defendants joined together and occupied the suit property. Hence, the suit.

5. The learned counsel for the petitioner submitted that the plaintiff was forcibly dispossessed from the suit property and as such, the suit is very

much maintainable under Section 6 of the Specific Relief Act. He further submitted though the defendants 3 and 4 alone filed a written statement and no written statement was filed by the other defendants, they did not examine any of the witness on their side and no documents were marked on their side. Even then, the Court below dismissed the suit for the reason that the plaintiff had given up the defendants 2 and 5 as if they did not encroach the suit property only the defendants 1, 3 and 4 alone trespassed into the suit property on 01.04.2015, when the plaintiff was away from the suit property. When there is no cross examination by the defendants, the trial Court has erroneously presumed the possession of the plaintiff prior to 01.04.2015 as not proved by the plaintiff. In support of his contentions, he relied upon the judgment reported in AIR 1999 SC 1441 (*Vidhyadhar -vs- Mankikrao*), wherein, the Hon'ble Supreme Court of India has held as follows:-

“15. It was defendant No.1 who contended that the sale deed, executed by defendant No.2 in favour of the plaintiff, was fictitious and the whole transaction was a bogus transaction as only Rs.500/- were paid as sale consideration to defendant No.2. He further claimed that payment of Rs.4,500/- to

defendant No.2 at his home before the registration of the deed was wholly incorrect. This plea was not supported by defendant No.1 as he did not enter into the witness box. He did not state the facts pleaded in the written statement on oath in the trial Court and avoided the witness box so that he may not be cross examined. This, by itself, is enough to reject the claim that the transaction of sale between defendant No.2 and the plaintiff was a bogus transaction.

*16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbaksha Singh v. Gurdial Singh*, AIR 1927 PC 230. This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh*, AIR 1930 Lahore 1 and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhobai Krishnarao Deshmukh*, AIR 1931 Bombay 97. The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat*, AIR 1970 Madh Pra 225, also followed the Privy Council decision in *Sardar Gurbakhsh Singh's case* (AIR 1927 PC 230) (*supra*). The Allahabad High Court in *Arjun Singh v. Virender Nath*, AIR 1971 Allahabad 29 held that if a party*

abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand, AIR 1974 Punj and Har 7, drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.”

6. The Hon'ble Supreme Court of India held that when the defendants refrained from entering into the witness box, the Court can draw adverse inference against the defendants.

7. In the case on hand, the plaintiff filed a suit under Section 6 of the Specific Relief Act. It is a summary suit and the trial Court ought not to have gone into the question of title and should have examined in respect of who was in possession six months prior to the filing of the suit property and whether the plaintiff was forcibly dispossessed from the suit property.

8. Section 6 of the Specific Relief Act states that the plaintiff is bound to prove the main ingredients viz., his possession in the suit property which is six months prior to the suit and the factum of dispossession in this case.

9. The learned counsel for the petitioner also relied upon the judgments in ***Sanjay Kumar Pandey & Ors Vs. Gulbahar Sheikh & Ors*** reported in ***2004 (4) SCC 664:-***

A. Specific Relief Act, 1963 – S. 6 – Nature and scope of proceedings under – Held, are summary in nature, limited to finding out question of possession within period of six months of institution of suit, ignoring question of title.

“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.”

“5. A perusal of the order of the High Court shows that the High Court has for the purpose of reversing the decree of the trial court relied on the oral statements of Natai Sheikh, PW 3 and Ram Sevak Ram, PW 5. One sentence each from the two depositions has been extracted and set out by the High Court in its order for the purpose of forming an opinion that it was not the plaintiffs but the defendants who were in possession of the suit property before six months from the date of the institution of the suit. The High Court has not looked into all the material available on record and has also not indicated clearly the availability of any of the grounds within the parameters of Section 115 of the Code so as to exercise revisional jurisdiction calling for reversal of the decision of the trial court under Section 6 of the Act. The revision filed before the High Court cannot be said to have been satisfactorily disposed of.”

Petchimuthu @ Mani Vs. Anitha Sruthi reported in 2009 (5) CTC

894:-

“12. The proceeding contemplated under Section 6 of the Specific Relief Act (hereinafter referred to as “the

Act”) is summary in nature. The Court was concerned only with the factum of dispossession otherwise than in due process of law. The question of title is immaterial in such proceedings. In case the Court was of the view that the materials produced by the plaintiff clearly shows that he was dispossessed within six months of the institution of the suit, the Court was obliged to permit him to recover possession. This provision was intended to enforce the rule of law as otherwise there would be attempt to recover possession without approaching the Court of law and through the means forbidden by law. The unsuccessful defendant in such a summary suit was not without remedy. It would enable him to establish his title by way of a comprehensive suit and to recover possession.

13. *The remedy under Section 6 of the Act being one intended to take care of an emergent situation on account of forcible dispossession, the parties so dispossessed should be given immediate relief. Though Section 6(4) of the Act permits the title holder to institute a suit to establish his title and to recover possession, execution of a decree under Section 6 of the Act cannot be postponed, as otherwise there would be attempt on the part of the title holder to retain his possession under the guise of pendency of the suit on title as permitted by Section 6(4) of the Act. It is evident*

from the very proviso itself as it gives liberty to the title holder to recover possession. The concern of the law makers to put the persons, who have been dispossessed, without re-course through the process known to law, is also evident by the fact that no appeal is provided against a decree passed in a suit under Section 6 of the Act and not even a review is permitted. Therefore the Court deciding the suit under Section 6 of the Act was obliged to execute the decree with all its seriousness, as otherwise the very purpose in enacting such a provision would be defeated.

25. The question of filing a suit under Section 6 of the Act arises only when a party was dispossessed unceremoniously and without taking recourse of law. Therefore Section 6 of the Act as well as Order 21 Rule 99 of the Code of Civil Procedure operates in two separate spheres. The cause of action for filing a suit under Section 6 of the Act is an act of dispossession otherwise than in due process of law. However all cases of dispossession cannot be challenged by taking recourse to this provision. It was only those acts of recent dispossession made within six months, can be challenged by way of a suit under Section 6 of the Act. However such a condition was not found mentioned in Rule 99 of Order 21 of the Code of Civil Procedure. Section 6 of the Act contemplates forcible

dispossession. However Rule 99 of Order 21 of the Code of Civil Procedure does not prescribe any such condition. It would enable a party, who was dispossessed by the holder of a decree or possession or his assignee to represent before the Court complaining of such dispossession. Dispossession contemplated by Order 21 Rule 99 of the Code of Civil Procedure was related to a decree, for possession obtained by the decree-holder. It also arises in a situation where he was dispossessed by the subsequent purchaser, who purchased the property in execution of decree. Therefore Order 21 Rule 99 of the Code of Civil Procedure has nothing to do with forcible dispossession or dispossession otherwise than in due process of law.”

10. It is settled law that the proceedings contemplated under Section 6 of the Specific Relief Act is summary in nature. The Court is concerned only with the factum of dispossession, otherwise than due process of law. The remedy for a person who is unsuccessful under Section 6 of the Specific Relief Act is to file a regular suit establishing his title to the suit property and in the event of succeeding, he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. The remedy of filing a revision is available, but that is

only by way of exception and the High Court would not interfere with the decree under Section 6 of the Act except on a case for interference being made out. Therefore, it is evident that as against the decree passed in the suit filed under Section 6 of the Specific Relief Act, revision under Section 115 of C.P.C., is available for the unsuccessful party and this Court exercising revision jurisdiction is only concerned with the legality/proprietary of the exercise of jurisdiction and not re-appreciate the evidence.

11. In the case on hand, the petitioner failed to prove the two ingredients as contemplated under Section 6 of the Specific Relief Act viz., the petitioner failed to prove his possession of the suit property six months prior to the suit and also failed to prove that he was forcibly dispossessed from the suit property on 01.04.2015. According to the petitioner, when he was away from the suit property on 01.04.2015 all the defendants joined together and occupied the suit property forcibly and remained in illegal possession of the entire suit property. Even according to the plaintiff, he was not forcibly dispossessed from the suit property and as such, the suit

itself is not maintainable under Section 6 of the Specific Relief Act. As such, the Court below rightly dismissed the suit and this Court finds no infirmity or illegality in the judgment passed by the Court below.

G.K.ILANTHIRAIYAN,J.

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12. In view of the above discussion, this Civil Revision Petition is dismissed. However, the petitioner is at liberty to file a suit for recovery of possession in the manner known to law, if he is so advised. No costs.

19.03.2021

Speaking/Non-speaking order

Index : Yes/No

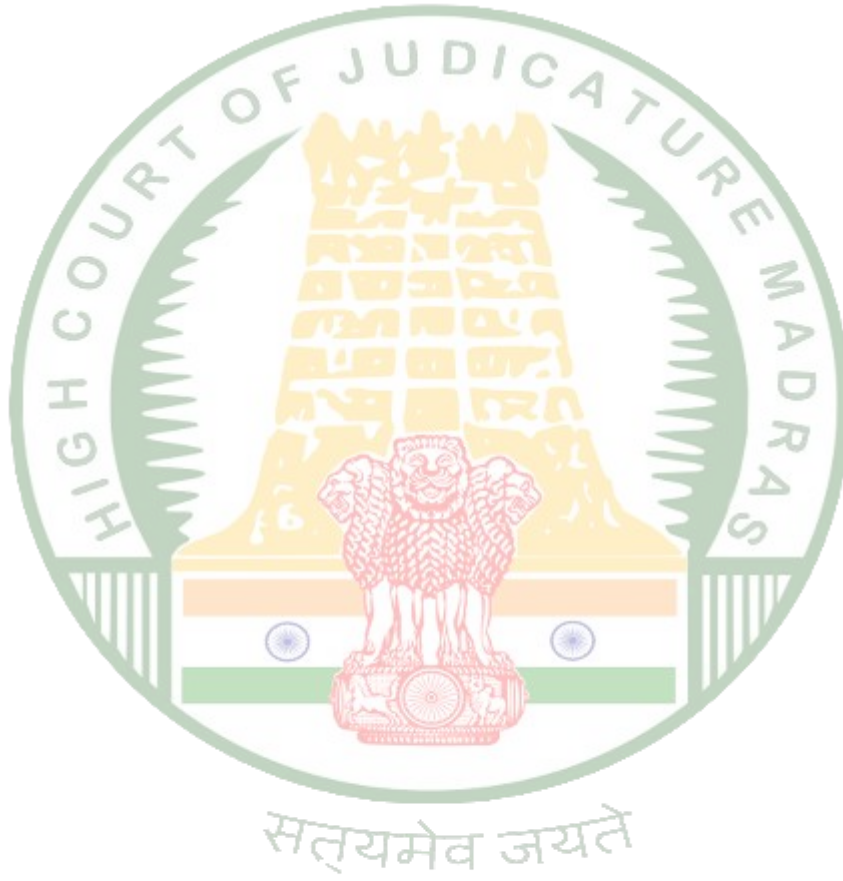
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To

1. The District Munsif Court, Sathyamangalam.
2. The Section Officer,
V.R.Section, High Court of Madras.

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