

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

WRIT PETITION NO. 2313 OF 2021

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| <p>1) Shri Anandraj S/o Khemraj Dhariwal
Aged about 63 years, Occ : Business,
R/o. Mulik Complex, Somalwada, Nagpur</p> <p>2) Smt. Santoshidevi wd/o Khemraj Dhariwal,
Aged about 82 years, Occ : Nil,
R/o. Ward No. 67, Near Police Chowki, Sadar,
Nagpur</p> | } | .. Petitioner |
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Versus

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| <p>Shri Nemichand Gulabchand Parekh (Dead)
Through his Legal Heirs</p> <p>i) Shri. Vinod S/o Nemichand Parekh
Aged about Major, Occ : Business,
R/o. Opp Hanuman Mandir, Goleccha Marg,
Sadar Bazar, Sadar, Nagpur</p> <p>ii) Smt. Vimaladevi W/o Subhashchand Ranka
Aged about Major, Occ : Housewife,
R/o. Main Road Khidkiya, Via Itarsi,
Tal. Itarsi, Dist. Khandwa (M.P.)</p> <p>iii) Shri. Vivek S/o Hukumchand Surana,
Aged about Major, Occ: Business,
R/o. C/o. Abhaychandji S/o Fulchandji
Khiwsara,
Jama Masjid Square, Lonar, Tal. Lonar,
Dist. Buldhana</p> | } | .. Respondents |
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Mr. Devendra Chauhan along with Mr. Aditya Chaudhari
Advocate for petitioners.

Mr. Kamal Satuja, advocate for respondent Nos.1(i).

CORAM : **MANISH PITALE, J.**
RESERVED ON : **12/04/2022**
PRONOUNCED ON : **29/04/2022**

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel appearing for the rival parties.

(2) The present writ petition challenges order dated 23/09/2016, passed by the Court of 6th Joint Civil Judge Junior Division, Nagpur, whereby an application filed by the respondent under Order 7 Rule 11 of the Code of Civil Procedure (CPC) was allowed and the plaint stood rejected. The petitioners had filed a suit for restoration of possession under Section 6 of the Specific Relief Act, 1963 and on the basis of the statements made in the plaint, it was found that the suit was filed beyond the period of limitation of six months.

(3) Initially, the petitioners had filed revision application before this Court and when an objection regarding the tenability of the same was raised, it was converted into a first appeal. Due to change in pecuniary jurisdiction by way of amendment, the

appeal stood transferred to the District Court. But, by order dated 10/02/2021, the said appeal was permitted to be withdrawn with liberty to avail appropriate remedy. It was thereafter, that the petitioners filed the present writ petition.

(4) Upon notice being issued for final disposal in the writ petition, the respondents entered appearance through counsel.

(5) As per the case pleaded by the petitioners in the suit for restoration of possession under Section 6 of the aforesaid Act, the suit house property was occupied by the petitioners and the petitioner No.1 put his lock on the suit property as his mother i.e. petitioner No.2 continued to reside in the said house, despite the petitioner No.1 having shifted to an apartment. It was claimed that the defendants are related to the petitioners as the father of the petitioner No.1 was brother-in-law of the father of original defendant No.1. It was stated in the plaint that on 28/04/1995, the respondents had put another lock over the lock of the petitioner on the suit premises.

(6) On this basis, the petitioner filed Regular Civil Suit No.784/1995 for injunction, wherein an application for grant of

temporary injunction was also filed. The said application was rejected. The petitioner filed appeal against the rejection of application for temporary injunction. It was claimed that during pendency of the said appeal, the respondents on 11/06/1996, illegally broke open the lock on the suit house premises, thereby giving cause of action to the petitioners to file the suit for restoration of possession. The said suit was filed on 05/12/1996 and accordingly, it was claimed that since the dispossession was within six months of filing of the suit, the same was within limitation, as prescribed in Section 6 of the said Act.

(7) The respondents filed an application under Order 7 Rule 11 of the CPC, contending that even on the basis of the statements made in the plaint, the suit was clearly barred by limitation, as the cause of action actually arose on 28/04/1995 and the suit was filed well beyond the limitation of six months on 05/12/1996. The said application was opposed by the petitioner, but, by the impugned order the contentions of the respondents were accepted and the plaint was rejected.

(8) Mr. Devendra Chauhan, learned counsel appearing along with Mr. Aditya Chaudhary, learned counsel for the petitioners

submitted that the impugned order deserves to be set aside because actual dispossession of the petitioners took place on 11/06/1996, when the respondents illegally broke open the lock on the suit house premises. The suit was admittedly filed on 05/12/1996, which was within the period of limitation of six months. It was submitted that the earlier date of 28/04/1995, was irrelevant for calculating the period of limitation for the reason that illegal dispossession of the petitioners actually took place on 11/06/1996.

(9) The learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of *Sudhir Jaggi Vs. Sunil Akash Sinha Choudhary (2004) 7 SCC 515*, to elaborate on the true purport of the expressions "possession" and "dispossession".

(10) On the other hand, Mr. Kamal Satuja, learned counsel appearing for the respondents contended that statements made in the plaint demonstrated that when the respondents put another lock on the suit house premises on 28/04/1995, the petitioners stood dispossessed and the cause of action accrued on that very date. On this basis, it was claimed that the suit, admittedly filed on 05/12/1996, was beyond the period of limitation of six months and

that therefore, the impugned order rejecting the plaint was justified. It was claimed that the proceedings under Section 6 of the aforesaid Act were necessarily a remedy of summary nature for a person dispossessed within six months and it was for this reason that the provision of appeal was also taken away against orders passed in such suit. It was submitted that the aggrieved party could then file a fresh suit for establishing title or for any other claim. It was submitted that even symbolic dispossession was covered under the expression “dispossessed” used in Section 6 of the said Act and in this case, even as per the pleadings of the petitioners themselves, they were actually dispossessed from 28/04/1995 itself. On this basis it was submitted that the writ petition deserved to be dismissed.

(11) In order to examine the rival contentions in the present case, it would be appropriate to refer to Section 6 of the Specific Relief Act, 1963, which reads 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 ¹[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.”

(12) As per the above quoted provision, a person who is dispossessed without his consent from immovable property, may file a suit for recovering possession only within six months from the date of dispossession. It is specifically provided that no appeal shall lie from any order or decree passed in such a suit and that nothing in the Section would bar any person from suing to establish his title to such property and to recover possession thereof.

(13) The very nature of remedy provided in the above quoted Section 6 of the said Act is summary in nature, to ensure that the person who has been illegally dispossessed within six months can approach the Court to seek redressal of his grievance and for being restored with possession.

(14) The key word in the aforesaid Section is

“dispossessed”. The period of six months limitation specifically provided in the above quoted provision starts at the point when the aggrieved person is dispossessed from the property. Both the parties have not disputed the position of law that under Section 6 of the aforesaid Act, summary proceedings are contemplated and that a person aggrieved by the order passed in such a suit can indeed institute a fresh suit to establish title and seek recovery of possession. The crucial question is, as to when can an aggrieved person be said to have been dispossessed, triggering cause of action for filing such a suit of summary nature under Section 6 of the aforesaid Act.

(15) The learned counsel appearing for the petitioners placed much emphasis on judgment of the Supreme Court in the case of Sudhir Jaggi (supra). In the said judgment the Supreme Court has referred to its earlier judgment in the case of *Superintendent and Rememberancer of Legal Affairs W.B. vs. Anil Kumar Bhunja* (1979) 4 SCC 274, wherein the word “possession” has been deliberated upon. A reference is also made to earlier judgment of *Kumar Kalyan Prasad Vs. Kulanand Vaidik* of the Patna High Court reported in *AIR 1985 Pat 374*. It is recorded in the judgment of the Supreme Court in the case of Sudhir Jaggi (supra), after referring to the said earlier judgments,

that the word “possession” implies a right and a fact. It involves power of control and intention to control. It is also found that the word “dispossessed” would not only mean actual physical dispossession but, it would not exclude violation of other forms of possession including symbolic possession.

(16) The word “dispossess” or “dispossessed” have been defined in Cambridge dictionary as taking away of property. In the Merriam Webster dictionary it is defined as being deprived of homes or possession. In Collins dictionary it is defined as being ousted from land or property. In Black’s Law dictionary, Eighth Edition, the word “dispossess” means to oust or evict someone from property and the word “dispossession” means deprivation of or eviction from rightful possession of property.

(17) Therefore, a crucial aspect of the word “possession” is control over the property. The word “dispossession” means being deprived of or being ousted from such property. In the present case, in the plaint itself the petitioners stated that on 28/04/1995, the respondents put their lock on the suit property. The moment the respondents put their lock on the suit property, the petitioners could

not have entered the said property even if they opened their lock on the said property. In other words, on 28/04/1995 itself, even as per the statement made in the plaint, the petitioners were clearly deprived of entering into the said property. Till the respondents put their lock on the said property, the petitioners were in control of the same and the moment the said lock was put by the respondents, the petitioners stood effectively ousted physically from the suit property. Therefore, the cause of action accrued on 28/04/1995 itself, for the petitioners to avail of the summary remedy under Section 6 of the aforesaid Act and they could have availed of the same only within six months from 28/04/1995. It is a different matter that the petitioners chose to file a Suit for injunction, wherein they filed an application for temporary injunction which was rejected by the trial Court and the appeal against the same also failed.

(18) Once the cause of action stood triggered on 28/04/1995 for filing a suit under Section 6 of the aforesaid Act, the petitioners could not claim later that when the respondents, on 11/06/1996, illegally broke open the lock of the suit premises that they were dispossessed and that the cause of action accrued on 11/06/1996, further claiming that the suit filed on 05/12/1996 was

within the limitation period of six months.

(19) This Court is of the opinion, that the Court below correctly found that the cause of action for filing the suit under Section 6 of the aforesaid Act, accrued to the petitioners on 28/04/1995 itself and the suit having been admittedly filed on 05/12/1996, was clearly beyond the period of limitation of six months. The rejection of plaint was therefore, justified.

(20) Reliance placed on judgment of the Supreme Court in the case of *Sudhir Jaggi* (supra) on behalf of the petitioners is misplaced. On the contrary, the position of law clarified in the aforesaid judgment supports the contentions of the respondents that in the present case, the suit was clearly barred by limitation, on the basis of the statements made in the plaint itself. Therefore, no error can be attributed to the impugned order passed by the Court below, allowing the application under Order 7 Rule 11 of the CPC and rejecting the plaint.

(21) In view of the above, the writ petition is dismissed.
Rule discharged.

[MANISH PITALE J.]