

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

CIVIL REVISION APPLICATION NO. 108 OF 2017

Nilkanthrao s/o Bhujangrao Deshmukh -- Applicant

Vs.

Kausalyabai Janrao Deshmukh and others -- Non-applicants

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.G. Kavimandan, Advocate for Applicant

Mr. V.B. Bhise, Advocate for Non-applicant Nos.1,2, 4 & 5

CORAM : MANISH PITALE, J.

DATE : 06th JUNE, 2022

By this Revision Application, the original plaintiff before this Court has challenged judgment and order dated 01/02/2017, passed by the Court of Civil Judge, Junior Division, Akot, whereby a suit filed by the applicant under Section 6 of the Specific Relief Act, 1963, stood dismissed.

2. It was the case of the applicant that he was in possession of the suit property and that in May / June, 2005, he stood illegally dispossessed at the hands of the non-applicants i.e. original defendants. It was claimed that on 07/06/2005, a First Information Report (FIR) was registered

at the behest of the applicant, wherein an incident of assault on the photographer deputed by the applicant was recorded. It was submitted that there were sufficient pleadings in the plaint, read with the plaint map and other documents on record to indicate that the applicant was indeed in possession of the suit property and that he was illegally dispossessed therefrom in May / June, 2005.

3. The non-applicants disputed the claim made on behalf of the applicant and it was contended that they had been in possession of the suit property on the basis of their claim to the suit property through their ancestors. The parties led oral and documentary evidence in support of their respective stands.

4. By the impugned judgment and order dated 01/02/2017, the Court below came to a conclusion that the applicant had failed to satisfy the requirements of Section 6 of the aforesaid Act and that no case was made out for granting any relief to the applicant.

5. The applicant filed the present Revision Application, wherein notice was issued for final disposal and record and proceedings were called.

6. Mr. Kavimandan, learned counsel appearing for the applicant extensively referred to the findings rendered in the impugned judgment and order, in the context of oral and documentary evidence available on record along with the pleadings. It was claimed that a proper appreciation of the material on record would indicate that the findings rendered by the Court below were perverse and in the teeth of the evidence available on record. It was submitted that the applicant had not only pleaded about having been in possession of the suit property and thereafter being illegally dispossessed by the defendants within six months of the filing of the suit, but sufficient evidence was also placed on record to support such claim made on behalf of the applicant.

7. It was submitted that although the jurisdiction of this Court under Section 115 of the Code of Civil Procedure (CPC) is indeed limited, the applicant had indeed made out a case for interference in the impugned judgment and order. Specific reliance was placed on the judgments of the Hon'ble Supreme Court in the cases of **Yunus Ali (Dead) through his L.Rs. Vs. Khursheed Akram, 2008(7) SCC 293** and **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, 2014 (9) SCC 78**.

8. On the other hand, Mr. V.B. Bhise, learned counsel appearing for the contesting non-applicants submitted that a proper and reasonable view had been taken by the Court below on the basis of pleadings, evidence and material on record. It was submitted that the findings could not be said to be perverse as claimed on behalf of the applicant. The learned counsel further submitted that while exercising jurisdiction under Section 115 of CPC, this Court ought not to interfere, even if the Court below had erred in its decision on a question of fact or law, which had no relation to the question of jurisdiction of that Court. It was submitted that considering the restricted jurisdiction available under Section 115 of CPC, no case was made out by the applicant for interference in the impugned judgment and order.

9. The learned counsel for the contesting non-applicants relied upon the judgments of the Hon'ble Supreme Court in the cases of **Major S.S. Khanna Vs. Brig. F.J. Dillon, AIR 1964 SCC 497; Sher Singh (dead) by Lrs Vs. Joint Director of Consolidation and others (1978) 3 172 and Sanjay Kumar Pandey and others Vs. Gulbahar Sheikh and others (2004) 4 SCC 664.**

10. In order to appreciate the rival contentions, it would be necessary to appreciate the position of law as regards the

extent of jurisdiction available to this Court under Section 115 of CPC. As far back in the year 1964, the Hon'ble Supreme Court in the case of **Major S.S. Khanna Vs. Brig. F.J. Dillon** (supra), held that the power under Section 115 of CPC available to this Court is limited to keep the Subordinate Courts within the bounds of their jurisdiction. It is held that the aforesaid power is also not a full power akin to certiorari and that interference would be warranted only if a question of jurisdiction arises in the matter and this Court would be justified in refusing to exercise jurisdiction where merely a factual error is sought to be made out, as long as the view adopted by the Subordinate Court is a possible view.

11. In the case of **Sher Singh (dead) by Lrs Vs. Joint Director of Consolidation** (supra), the Hon'ble Supreme Court in the context of Section 115 of CPC held as follows :

“The position that emerges from these decisions is that section 115 of the Code of Civil Procedure empowers the High Court to satisfy itself on three matters : (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to have exercised jurisdiction; and failed to do so (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the)

ultimate decision. And if the High Court is satisfied that there is no error in regard to any of these three matters, it has no power to interfere merely because it differs from the conclusions of the subordinate court on questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding question of law which have relation to, or are concerned with, questions of jurisdiction of the said courts, and errors of law which have no such relation or connection. An erroneous decision on a question of fact or of law reached by the subordinate court which has no relation to question of jurisdiction of that court, cannot be corrected by the High Court under Section 115”.

12. The said position was further clarified by the Hon’ble Supreme Court in the case of **Sanjay Kumar Pandey and others Vs. Gulbahar Sheikh and others** (supra) 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.”

13. The aforesaid view in the case of **Sanjay Kumar Pandey and others Vs. Gulbahar Sheikh and others** (supra), was specifically rendered by the Hon’ble Supreme Court in the context of the suit filed under Section 6 of the Specific Relief Act.

14. Thus, it becomes clear that interference in an order while exercising revisional jurisdiction under Section 115 of CPC, would not be justified even if there is an error on a question of fact or law so long it has no relation to question of jurisdiction of that Court.

15. There cannot be any quarrel with the proposition relied upon on behalf of the applicant that in the case of perversity of findings, this Court could be justified in exercising power under Section 115 of CPC. To that extent reliance placed on the judgments in the cases of **Yunus Ali (Dead) through his L.Rs. Vs. Khursheed Akram** and

Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, (supra) can be justified. The learned counsel for the applicant also sought to rely upon the judgment in the case of **S.F. Engineer Vs. Metal Box India Ltd. And Anr. 2014 (6) SCC 780**, for the very same proposition.

16. Thus, it becomes clear from the position of law clarified by the Hon'ble Supreme Court in the context of Section 115 of CPC that orders of the subordinate Courts can be interfered with only if an error of jurisdiction is pointed or there is perversity in the findings rendered by the Court below.

17. Thus, it becomes clear that the applicant before this Court has to satisfy a stringent test for successfully invoking jurisdiction of this Court under Section 115 of CPC.

18. Applying the aforesaid stringent standards to the facts of the present case, this Court is of the opinion that the applicant has failed to make out a case for interference. A perusal of the impugned judgment and order shows that there is no question of any error of jurisdiction by the Court below. In fact, the Court below was clearly aware of the parameters in which jurisdiction was to be exercised under Section 6 of the aforesaid Act. After quoting the aforesaid

provision in paragraph 19, the Court below has correctly enumerated the factors necessary to be proved for the plaintiff to claim relief under Section 6 of the aforesaid Act. Thereafter, the Court below has extensively considered the pleadings, as also the oral and documentary evidence on record.

19. On the basis of appreciation of the material on record, the Court below has found that the applicant i.e. the original plaintiff has failed to successfully prove the exact portion which was in his possession and from which he was allegedly dispossessed in May / June, 2005. The pleadings, as also the oral and documentary evidence and the plaint map were taken into consideration to reach conclusions against the applicant. The conclusions reached by the Court below can be said to be a possible view in the matter.

20. The applicant has not been able to demonstrate how the findings rendered by the Court below could be said to be perverse or that the findings could be said to be in the teeth of material available on record.

21. So long as the view adopted by the Court below on the basis of material available on record can be said to be a

reasonable and possible view, it cannot be said that a case is made out for interference under revisional jurisdiction.

22. In that view of the matter, the Revision Application is dismissed.

JUDGE