

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 58 OF 2017

Devrao s/o. Ram Sukte,
Age : 55 years, Occu. Agril.,
R/o. Shirur Tajband, Tq. Ahmedpur,
Dist. Latur.

....Petitioner
(Ori. Plaintiff)

Versus

Shivraj s/o. Dhondiba Kapse,
Age : 39 years, Occu. Agril.,
R/o. Chobli, Tq. Ahmedpur,
Dist. Latur.

....Respondent
(Ori. Defendant)

Mr. J.R. Patil, Advocate for the petitioner.

Mr. C.D. Biradar, Advocate for respondent.

CORAM	: ARUN R. PEDNEKER, J.
RESERVED ON	: 11/07/2023
DELIVERED ON	: 14/07/2023

JUDGMENT :

1) By the present Civil Revision Application, the petitioner/plaintiff challenges the judgment and decree dated 4.7.2016 passed by the learned Civil Judge, Senior Division, Ahmedpur in Special Civil Suit No. 18/2011 filed under section 6 of the Specific Relief Act for recovery of possession.

2) The facts giving rise to the institution of the present CRA can be summarized as under :-

The plaintiff claims to be owner and possessor of Gram Panchayat plot No. 2178 of village Shirur Tajband. The plaintiff contends that he purchased the aforesaid plot from one Bashir Jainuddin Kumthekar by registered sale deed dated 28.1.2011. It is the case of plaintiff that on 2.10.2011, the respondent, taking advantage of the absence of the petitioner, forcibly dispossessed the plaintiff from the plot. Therefore, the

plaintiff filed suit for possession of the suit property under section 6 of the Specific Relief Act on 9.12.2011.

3) The suit is contested by the present respondent/original defendant by filing written statement. It is the case of the respondent that he is in possession of the suit property much prior to the sale deed of plaintiff and that he is in occupation of the suit property. The defendant specifically contended in the written statement that the plaintiff is not the owner of the suit property on the portion claimed by the plaintiff. Therefore, he prayed to dismiss the suit.

4) The Trial Court, after consideration of material on record, formulated following issues for determination and recorded answer against each issue, is as under :-

मुद्दे	निष्कर्ष
१. वादपत्र परिच्छेद क्र. ९(i) मध्ये दर्शविलेल्या मिळकतीचा मालक असल्याचे वादीने सिध्द केले काय ?	होय.
२. वाद मिळकतीवर दि. ०२.१०.२०११ पर्यंत वादीचा ताबा होता हे वादीने सिध्द केले काय ?	होय.
३. प्रतिवादीने दि. ०२.१०.२०११ रोजी वादीस बेदखल केल्याचे त्यांनी सिध्द केले काय ?	नाही.
४. दाव्याचे योग्य मुल्यांकन करून योग्य कोर्ट फी दिली आहे काय ?	होय.
५. वादी, मागणीप्रमाणे मिळण्यास पात्र आहे काय ?	नाही.

5) The Trial Court held that plaintiff on the basis of sale deed is the owner of the suit property. The Trial Court also held that respondent has not dispossessed the plaintiff from the suit land on 2.10.2011. As per the sale

deed the plaintiff appears to be owner and in possession of the suit property. However, the plaintiff is not held to be in defacto possession of the suit property. The possession of plaintiff is only on paper i.e. the sale deed. The Trial Court specifically in para Nos. 19, 20 and 21 of the judgment has held that there is no evidence as contended by the plaintiff that respondent has encroached upon the plaintiff's plot and has made construction thereon. The Trial Court held that the plaintiff has not exactly established which portion of the suit property has been encroached, how much area is in possession of either party. As such, the Trial Court held that there is non identification of encroached portion and held that suit for specific performance under section 6 of the Act cannot be decreed. The Trial Court further held that it was not established by the plaintiff on which side of the plot the respondent has encroached. The plaint also does not indicate as to the plot of the respondent, so also it does not further indicate how much land is encroached by the respondent. No evidence is given of any construction made by the respondent/ defendant. In view of the absence of identification of the exact portion of property encroached by the defendant, so also any evidence as regards date of dispossession being given by the plaintiff, the suit for recovery of possession was dismissed by the Trial Court against which present CRA is filed.

6) The learned counsel for the applicant/petitioner submits that the Trial Court has rendered finding on the issue that the petitioner is the owner of the middle portion of the suit property and the map annexed with the plaint shows the same and that the Trial Court has also held that plaintiff is in possession of the property as on 2.10.2011. On going through the findings recorded by the Trial Court and examination of the evidence, the Trial Court

has held that in terms of sale deed, the plaintiff is the owner and possessor of the land, however, factual ground reality is different. The possession of the plaintiff is only on paper. The defendant is in factual possession of the suit land. The Trial Court has held that there is no evidence as regards the dispossession of the appellant from the suit property. The Trial Court has held that the plaintiff has not been able to prove the specific and exact encroached portion and that no evidence is lead as to the date of dispossession and disbelieved that the plaintiff is dispossessed on 2.10.2011 from the encroached portion. The Trial Court also held that defendant's property is not shown along with map in the plaint and in which portion respondent has entered into the property.

7) The suit under section 6 of the Act is summary in nature. Prior possession has to be shown and the eviction has to be shown at the instance of some third person. In the instant case, since the Trial Court was not able to exactly identify the encroached portion, so also there is no evidence of dispossession on the given date, the suit for possession which has to be filed within six months from the date of dispossession cannot be said to be filed within the time frame and within the limitation. In view of the discussion made above, I see no error in the impugned judgment by the Trial Court in a suit filed under section 6 of the Specific Relief Act. In the result, the CRA is dismissed. Record and proceedings be sent back.

[ARUN R. PEDNEKER J.]

SSC/