

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.61 OF 2023

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Nitin Balasaheb Kudhale & Ors.

... Applicants

V/s.

Ravindra Baburao Angre & Ors.

... Respondents

Mr. Shekhar Jagtap with Ms. Sairuchita Choudhary
i/by J. Shekhar and Co. for the applicants.

Ms. Payal Pawshe with Mr. Omkar Mangde for
respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

P.C.:

1. The defendants in a suit under section 6 of the Specific Relief Act is challenging order passed by the Trial Court rejecting application under Order 7 Rule 11 of the Civil Procedure Code, 1908.

2. According to the respondents-original plaintiffs, they were to be in possession based on oral agreement to sell on acceptance of various amounts. In paragraph 6, the plaintiffs pleaded that they are in actual and physical possession of the suit premises. According to the plaintiffs, defendants assured to execute lease deed for period of thirty years and accepted Rs.7 Lakh.

3. According to the plaintiffs, on 24th August 2021, the plaintiffs

were dispossessed without following due process of law. They, therefore, filed suit under section 6 of the Specific Relief Act on 21st February 2022.

4. The applicants filed an application under Order 7 Rule 11 contending that such suit based on oral agreement to sell is not maintainable under section 6 of the Specific Relief Act, 1963. According to the applicants, plaintiffs have no right to claim any enforceable right in the suit premises. In support of his contention, he relied on following judgments:

- (i) **T. Arivandandam vs. T. V. Satyapal and Another** reported in (1977) 4 SCC 467.
- (ii) **Saleem Bhair and Others vs. State of Maharashtra and Others** reported in (2003) 1 SCC 557.
- (iii) **Liverpool & London S.P. & I Association Ltd vs. M. V. Sea Success I and Another** reported in (2004) 9 SCC 512.
- (iv) **Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others** reported in (2004) 3 SCC 137.
- (v) **Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust** reported in (2012) 8 SCC 706.
- (vi) **Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others** reported in (2020) 7 SCC 366.

5. Having considered the submission made on behalf of the applicants, for consideration of application under Order 7 Rule 11

of the Civil Procedure Code, 1908, following essential ingredients are required to be followed:

- (i) The plaintiffs must be in settled possession of suit premises.
- (ii) He must be dispossessed without following due process of law.
- (iii) The suit must be filed within six months from such dispossession.

6. On perusal of the averments in the plaint, all three ingredients of the maintainability of suit under section 6 of the Specific Relief Act, 1963, are made out.

7. The contentions raised by the applicants as to whether the applicants had enforceable right to reclaim possession under general law needs to be considered by the Trial Court at the time of hearing of the suit. Ultimately, while considering suit under section 6 of the Specific Relief Act, the parameters laid down by the Apex Court on the case of **Rame Gowda (Dead) By Lrs. vs. M. Varadappa Naidu (Dead) By Lrs. And Another** reported in (2004) 1 SCC 769 are required to be followed. Therefore, in my opinion, the plaint as it stands, makes out a case under section 6 of the Specific Relief Act, 1963. Therefore, the Trial Court was justified in rejecting the application. There is no merit in the revision application.

8. The civil revision application is dismissed. No costs.

9. At this stage learned advocate for the applicants prays for continuation of ad-interim relief. Considering the issue involved, in

my opinion, no case for continuation is made out.

(AMIT BORKAR, J.)