

AGK

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

CIVIL REVISION APPLICATION NO.208 OF 2023

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2023.11.09
14:18:50 +0530

Digambar Trilokchand Ahirwar & Anr. ... Applicants

V/s.

Chandrakant Mulchandabhai Patel
& Anr. ... Respondents

Dr. Abhinav Chandrachud i/by Mr. Satyajeet P. Dighe
for the applicants.

Mr. Nitin Thakker, Senior Advocate with Mr. Pradeep
Thorat i/by Ms. Aditi Naikare for respondent Nos.1 &
2.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2023

P.C.:

1. By this civil revision application under Section 115 of the Code of Civil Procedure, 1908, the applicants (plaintiffs) are challenging the dismissal of the suit filed under Section 6 of the Specific Relief Act, 1963, for restoration of possession.

2. Plot No.1, described in paragraph 1 of the plaint, is the suit property. According to the plaintiffs, they, along with other family members, were in possession of the suit property and adjoining portion as tenants of the agricultural lands. The predecessor-in-title of the defendants purchased suit property along with adjoining plots without seeking permission under the provisions of

the Bombay Tenancy and Agricultural Lands Act, 1948. Therefore, the sale deeds are void ab initio. It is alleged that the defendants' predecessor, by practicing fraud and misrepresentation, forced plaintiffs and other co-sharers to compromise Special Civil Suit No.262 of 2001 and obtained illegal orders from the Tehsildar. According to the plaintiffs, despite such compromise and handing over possession on paper in favour of the predecessor-in-title of the defendants, they continued to possess the suit property along with adjoining plots.

3. According to the plaintiffs, the predecessor of the defendants got suit property converted into non-agricultural lands in the years 2012 and 2013. However, plaintiffs continued their possession over the suit property despite a compromise decree entered into in 2003. Till 20 August 2015, the plaintiffs were using structures for dairy purposes, and the plaintiffs' servants were residing in the suit property.

4. Defendants Nos.1 and 2 purchased suit property on 20 June 2014. However, possession of the suit property was never handed over to the defendants. On 23 May 2015, defendants Nos.1 and 2 filed a police complaint alleging disturbance of possession. However, the defendants were not successful in taking over possession. On 20 August 2015, the defendants, with the help of police officials, dispossessed the plaintiffs. The plaintiffs recorded the incident of dispossession by video recording and took photographs of it. The plaintiffs, therefore, filed suit under Section 6 of the Specific Relief Act, 1963, on 26 October 2015.

5. The defendants contested the suit by filing a written statement. The defendants averred that on 8 October 2003, compromise consent terms/decreed was executed in Special Civil Suit No.262 of 2001 whereby the plaintiffs, along with others, handed over physical possession of the suit property along with adjoining plots to the predecessor-in-title of the defendants by accepting the amount of Rs.4 crore. The plaintiffs were allowed to continue with possession of 2,000 square yards. The defendants denied possession of the plaintiffs over the suit property and prayed for dismissal of the suit.

6. The Trial Court dismissed the suit, holding that the plaintiffs failed to prove their possession over the suit property. The plaintiffs, therefore, filed a present civil revision application.

7. Learned advocate for the applicants submitted that the plaintiffs had settled possession of the suit property. Their status was tenant till 2003, and thereafter, they continued their possession over the suit property. According to the learned advocate, the photographs and police complaint filed on 1 July 2014 indicate settled possession of the plaintiffs over the suit property. The photographs have been proved by plaintiff No.2 and the photographer. The police complaint dated 1 July 2014 indicates the plaintiffs' possession on the date of filing of the complaint. The document in the form of a cattle shed license and plaintiffs' dairy business is evidenced by the photographs. The market value of the suit property is Rs.16 crore, but the defendants purchased it for Rs.2 crore in 2014 as the plaintiffs had the suit property. He relied on the judgment of the Apex Court in **Rame**

Gowda (Dead) by LRs v. M. Varadappa Naidu (Dead) by LRs & Anr. reported in (2004) 1 SCC 769.

8. Per contra, the learned Senior Advocate for the defendants submitted that the legal representatives of the original tenant Trilokchand, after due deliberations and negotiations before the Mediator, amicably resolved to settle the dispute in Special Civil Suit No.262 of 2001. Parties arrived at a Memorandum of Understanding dated 4 March 2003. In furtherance of such a Memorandum of Understanding, parties moved for surrender of tenancy rights and possession of plaintiffs and others. Tenancy rights were surrendered before authorities under the Bombay Tenancy and Agricultural Lands Act 1948. The document in the form of possession receipt dated 23 June 2003 coupled with panchnama was executed. The legal representatives themselves applied before the Tenancy Court on 19 September 2004 to withdraw tenancy proceedings accepting compromise between the predecessors of defendants, plaintiffs and others. The legal representatives Trilokchand received Rs.4 crore and retained possession of plot No.2. On 20 June 2014, the defendants purchased suit property and another plot No.3 for consideration of Rs.2,26,66,000/- and possession was delivered to the defendants. The documents of the consent decree, possession receipt and other documents evidencing delivery of possession by the plaintiffs in 2003 have been admitted by the defendants, and, therefore, the plaintiffs have failed to show settled possession over the suit property. Hence, it is prayed that the civil revision application deserves to be dismissed.

9. The suit is filed under Section 6 of the Specific Relief Act, 1963. According to the applicants, they were dispossessed from the suit property on 20 August 2015. The suit was filed on 29 October 2015, i.e. within six months.

10. The parameters for adjudication of suit under Section 6 of the Specific Relief Act are well settled. The plaintiffs need to show settled possession; the dispossession of plaintiffs must be without his consent; such dispossession must be otherwise than in due course of law; and the suit must be filed within six months from the date of dispossession.

11. The concept of settled possession has been explained by the Apex Court in the case of **Rame Gowda** (supra). The Apex Court, in paragraph 9, after considering earlier judgments, laid down attributes of settled possession as follows:

“9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.* (AIR 1968 702 : (1986) 2 SCR 455 : 1968 Cri LJ 806), *Puran Singh v. State of Punjab* ((1975) 4 SCC 518 : 1975 SCC (Cri.) 608), *Ram Rattan v. State of U.P.* ((1977) 1 SCC 188 : 1977 SCC (Cri.) 85). The authorities need not be multiplied. In *Munshi Ram case*, it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray

or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself, provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh case* the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The “Settled possession” must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the power or without any attempt at concealment by the trespasser. The phrase “settled possession” does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined to a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of “settled possession” (SCC p. 527, para 12):

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

12. In light of the parameters laid down in the case of **Rame Gowda** (supra), I have scrutinized the evidence produced on record by the plaintiffs. The plaintiffs have relied on the following documents to prove their settled possession: (a) photographs (Exhibits-90, 93, 120 to 132); (b) certified copy of judgment and decree in Civil Appeal No.326 of 1996; (c) certified copies of a police complaint filed by the defendants for grant of police protection; and (d) extract of assessment (Exhibit-117) and dairy license (Exhibit-116).

13. It is, therefore, necessary to consider the plaintiff's case that despite a compromise decree in 2003, they continued possession of the suit property. In my opinion, the admissions by the plaintiffs in their cross-examination are sufficient to conclude that the plaintiffs, along with others, handed over entire properties, except plot No.2, which was handed over in their possession under the said consent terms. Plaintiff No.1 admitted receipt of Rs.4 crore as per consent terms. He further admitted to the signature on the possession receipt, which mentions the surrender of possession of

the entire property, excluding 2,000 square yards. He further admits signature on the Memorandum of Understanding dated 4 March 2003. He admitted that he did not apply to enter his name to assess the suit property. He admitted that the dairy is in plot No.2, contrary to his pleading that the dairy is in plot No.1 (suit property). He further admitted the existence of the house as shown in photographs Exhibits 68, 69 and 70 on plot No.2, which, according to the averments in the plaint, exists in plot No.1 (suit property). He admitted that the photographs produced by the defendants indicate the existence of a compound around the suit plot, and except plot No.2, the remaining plot is vacant.

14. Moreover, the plaintiffs failed to give details of fraud as required under Order 6 Rule 4 of the Code of Civil Procedure, 1908, to take away the effect of compromise terms and documents evidencing delivery of possession in 2003.

15. The documents produced on record by the defendants conclusively indicate delivery of possession by the plaintiffs and others to the predecessor of the defendants in the year 2003 which are (a) Memorandum of Understanding dated 4 March 2003 executed between predecessor of defendants and plaintiffs and others on 4 March 2003 and signed by plaintiff No.1 and their father accepted Rs.4 crore and retention of 2,000 square yards plot; (b) possession receipt signed by the plaintiffs' family in favour of the defendants' predecessor dated 23 June 2003 which is also signed by plaintiff No.1; (c) consent terms dated 3 July 2003 filed in Special Civil Suit No.262 of 2001 wherein the plaintiffs family admitted delivery of possession of entire plot in favour of

the predecessor of the defendants; (d) decree passed in Special Civil Suit No.262 of 2001 on 8 October 2003 which indicates delivery of possession to the predecessor of the defendants after receipt of Rs.4 crore; (e) deed of confirmation executed by the plaintiffs family of entire property along with the suit property in favour of the defendants' predecessor on 17 May 2004. The deed of confirmation below Exhibit-72 dated 17 May 2004 indicates acceptance of Rs.4 crore amount and amount of possession signed by plaintiff No.1; and (f) on 19 May 2004 (Exhibit-74), plaintiffs' family applied the Tehsildar in Tenancy Case surrendering possession over Survey No.750, 751 and 755 (which includes suit property) which is signed by plaintiff No.1.

16. The aforesaid documents conclusively indicate delivery of possession by the plaintiffs and their family to the predecessor of the defendants in the year 2003 itself after accepting an amount of Rs.4 crore and retaining plot admeasuring 2,000 square yards.

17. The plaintiffs have not pleaded that they came in possession of the suit property after 2003. In the absence of such pleadings, the plaintiffs cannot claim that they are in settled possession of the suit property.

18. The document below Exhibit-147 relied upon by the plaintiffs does indicate a complaint filed on behalf of the defendants alleging encroachment by the plaintiffs on 26 October 2014. However, such a complaint needs to be construed in the context of the admitted fact that adjoining plot No.2 is in possession of the plaintiffs and, therefore, temporary

encroachment by the plaintiffs over the suit property as referred in the police complaint dated 4 June 2015 cannot be elevated to the status of settled possession creating a right to claim possession under Section 6 of the Specific Relief Act. The photographs produced on record by the plaintiffs do not indicate the plaintiff's possession over the suit property as plaintiffs Nos.1 and 2 have admitted in their cross-examination that the structures referred to in the photographs stand in adjoining plot No.2.

19. In the absence of proof of settled possession, the ingredients of Section 6 of the Specific Relief Act, 1963 are not fulfilled. Once the plaintiffs failed to prove their settled possession over the suit property, in my opinion, the Trial Court was justified in dismissing the suit of the plaintiffs.

20. As a result, the civil revision application is rejected. No costs.

21. At this stage, learned advocate for the applicants prays for ad-interim order. In view of the reasons stated in the impugned order, no case for continuation of ad-interim order is made out. The oral request is, therefore, rejected.

(AMIT BORKAR, J.)