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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 5 OF 2023

MARIA MONICA RODRIGUES ... APPLICANT

Versus

ELVINO DIAS AND 3 OTHERS ... RESPONDENTS

Mr. Sarvesh Dinker Kamat Malyeker, Advocate for the Applicant.

Mr. Abhijeet Kamat, Advocate for Respondent No. 1.

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates for Respondent No. 4.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 9th OCTOBER 2024

ORAL ORDER:

1. Heard Mr. Malyeker for the Applicant, Mr. Abhijeet Kamat for Respondent No. 1 and Mr. Bhobe for Respondent No. 4.

2. The present Revision is filed challenging the impugned judgment dated 26.09.2022 passed by the learned Trial Court while deciding the suit filed under Section 6 of the Specific Relief Act. The learned Trial Court dismissed the said suit filed by the Applicant holding that the Applicant was not in possession of the suit property.

3. Mr. Malyeker submits that while deciding the said suit, the learned Trial Court has discussed the aspect of ownership of Defendant No. 4, who handed over the possession of the suit property to Plaintiff and accordingly, travelled beyond the scope of Section 6 of the Specific Relief Act, which has to be purely decided on the basis of possession.

4. Mr. Malyeker while elaborating his submissions invited the attention of this Court to various observations of the Trial Court wherein elaborate discussion is found recorded in respect of the title/possession of Defendant No. 4/Respondent No. 4 so as to hand over the possession to Plaintiff/Applicant.

5. Mr. Malyeker would further submit that when no other evidence is produced by the Defendants and the fact that Defendant No. 4 has supported the contentions of the Applicant, adverse inference ought to have been drawn and the suit was required to be decreed. He submits that the learned Trial Court at every stage considered the aspect of the title, even though, initially reminded itself that the suit has to be decided only on the basis of the possession.

6. Per contra Mr. Kamat appearing for Respondent No. 1 while supporting the findings would submit that there is a sale deed in

favour of Respondent No. 1 which shows that the possession was handed over. He would submit that the memorandum of understanding was created only to claim possession over the suit property and on that basis, the suit was filed. He submits that Respondent No. 1 has already instituted a suit claiming injunction wherein there are findings that Respondent No. 1 is in possession. He submits that though the learned Trial Court has discussed about the title of Respondent No. 4, the finding is based only on previous possession.

7. Mr. Bhobe appearing for Respondent No. 4 supported the contentions of the Applicant. The written statement filed by Respondent No. 4 before the Trial Court also clearly shows that the possession of the suit property was handed over to the Plaintiff on the basis of a memorandum of understanding.

8. The rival contentions fall for determination.

9. Section 6 of the Specific Relief Act is a special procedure, that too in summary nature for the purpose of a person who has been dispossessed from the immovable property without following the due process of law. The twin conditions to be proved are required to be pleaded before such relief could be granted.

10. Section 6 of the Specific Relief Act reads thus:

6. Suit by person dispossessed of immovable property.

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(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person 4[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 suit to establish his title to such property and to recover possession thereof.

11. In the case of **Rame Gowda Vs. M. Varadappa Naidu, (2004) 1 SCC 769**, the Apex Court while discussing the provisions of Section 6 of the Specific Relief Act, observed that the suit under the said provisions has to be decided only on the basis of the settled possession.

12. The Applicant filed a suit making specific allegations that the Applicant was dispossessed illegally by Respondent No. 1 from the suit property and accordingly, it is prayed that the Plaintiff be put back in possession. The said suit has been resisted only by Respondent No. 1/Defendant No. 1 whereas Respondent No. 4/Defendant No. 4, supported the said suit.

13. The Applicant/Plaintiff claimed that she was put in possession of the suit property by Defendant No. 4 in view of the memorandum dated 28.06.2013. This fact has been admitted by Defendant No. 4 and more specifically in paragraph 7 of the written statement. There is also an averment that the Plaintiff/Applicant applied with the Municipal Council for permission to repair the dilapidated structure existing in the suit property. Such permission was granted and when the Petitioner was in the process of repairing, she was dispossessed illegally and without following the due process of law by and on behalf of Defendant No. 1.

14. It is an admitted fact that only the Applicant stepped into the witness box whereas the Defendants failed to lead any evidence. The learned Trial Court framed in all six issues. The

findings on all these issues have been recorded as found in paragraph 15 of the impugned order.

15. It is necessary to remind that the only issue, which cropped up in such proceedings is whether the Plaintiff proves that she was in possession of the suit property as on the date of the alleged dispossession and if such issue is answered in the affirmative, then what relief is to be granted.

16. The observations of the learned Trial Court and more particularly, paragraph 17 onwards would go to show that there is elaborate discussion with regard to the ownership of the suit property and basically, the ownership of Defendant No. 4 so as to hand over the possession of the suit property to the Plaintiff. Paragraph 28 as well as paragraph 30 disclose about the ownership of the suit property as far as Defendant No. 4 is concerned and even that the Authority of the Municipal Council issued a renovation license. The above discussions clearly go to show that the learned Trial Court though initially reminded itself in paragraph 19, however, completely lost sight of its limited jurisdiction and travelled to consider the ownership of Defendant No. 4 as well as the ownership of Defendant No. 1 on the basis of certain documents.

17. It is clear from the record that even the possession of Defendant No. 4 up to a certain point of time is not disputed by Defendant No. 1. Admittedly, there is a separate suit filed by Defendant No. 1 since the injunction against the present Plaintiff and others is required to be decided on the basis of the title documents. However, the learned Trial Court failed to consider the limited jurisdiction and travelled to discuss the title documents of the parties in question. Accordingly, the findings in the impugned order that the Plaintiff is not in possession as on date as claimed in the suit is arrived at by considering the title documents and the ownership aspect of Defendant No. 4, which is clearly beyond the scope of Section 6 of the Specific Relief Act.

18. The only recourse available to this Court is therefore to quash and set aside the impugned judgment and to remand the matter to the learned Trial Court to decide the said suit afresh, keeping in mind that the decision shall be only on the aspect of previous possession of the Plaintiff as claimed in the suit.

19. Since the evidence is already led by the parties, the only recourse available is to re-argue the matter and then decide it. Accordingly, the Revision is required to be allowed in the following terms:

(a) The impugned judgment dated 26.09.2022 is hereby quashed and set aside.

(b) The Regular Civil Suit No. 78/2015/D is restored to the file of the learned Trial Court.

(c) The learned Trial Court shall hear the matter afresh and decide only issue nos. 1, 2, 3 and 5, as expeditiously as possible and preferably within a period of two months from the date the parties appear before it.

(d) The parties shall appear before the Trial Court on 21.10.2024 and produce a copy of this order so that the matter could be heard and decided as expeditiously as possible.

(e) The learned Trial Court shall not be influenced by the observations of this Court made herein above and shall decide the matter on its own merits.

20. The Revision stands disposed of in the above terms.

BHARAT P. DESHPANDE, J.