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SA(MD)No.414 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	02/08/2024
Date of Pronounced	17/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

SA(MD)No.414 of 2021

1.M.Kasiviswanathan

2.Alwarammal

: Appellants/Respondents/
Plaintiff

Vs.

Saraswathi

: Respondent/Appellant/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 14/08/2020 in AS No.34 of 2019 on the file of the Additional Sub Court, Tirunelveli, reversing the judgment and decree, dated 04/08/2018 in OS No.423 of 2012 on the file of the Principal District Munsif, Tirunelveli.

For Appellants : Mrs.V.Muthukamatchi

For Respondent : Mr.Arjun Varman
for Mr.S.Rajasekar

J U D G M E N T

This second appeal is filed against the judgment and decree, dated 14/08/2020 passed in in AS No.34 of 2019 by the Additional Sub Court, Tirunelveli, reversing the judgment and decree, dated 04/08/2018 in OS No.423 of 2012 passed by the Principal District Munsif, Tirunelveli.



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2. The plaint averments in brief:-

The suit property belonged to the defendant. 1st item building was leased out to the second plaintiff on 11/09/1991. The present rent is Rs.1,300/-. The rent is properly paid. The defendant stated that the 1st item of the suit property must be remodelled and repaired and so, he must vacate the premises and hand over the vacant possession. Notice was issued on 23/05/2012. The 2nd item is a vacant site and leased out on 11/09/1991 and the defendant put up superstructure and used the same for her business purpose. The defendant refused to receive the rent. So it was sent through demand draft. On 19/09/2012, the 1st plaintiff went to the property, he found some articles found damaged and they removed the structure. A complaint was lodged with the Perumal Puram Police Station. So the suit is filed for recovery of possession and for costs.

3. The defendant filed written statement stating that the first plaintiff was a lessee in the 2nd item and the 1st item is in possession of the plaintiff as a tenant. The notice dated 23/05/2012 is admitted. The damage alleged by the plaintiffs is denied as false. The plaintiffs are not in possession of the property. The plaintiffs never used the property and kept it locked for



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several years. So demand was made to vacate the possession. The lease period for the 1st and 2nd items already expired. When the demand was made for vacating the premises, they sent the rent through Demand Draft. A false case was registered on 18/08/2012. After the police complaint, the plaintiffs voluntarily vacated the premises on 19/09/2012 and handed over the possession. The defendant is in possession of the property and prayed for dismissal of the suit.

4.The amendment petition filed seeking recovery of possession, it was allowed and the plaint was also amended. Further statement was filed by the defendant. The alleged occurrence is denied as false. The date of demand is not properly mentioned. Without proper cause of action the suit is amended. Prayed for dismissal of the suit.

5.On the basis of the pleadings, the trial Court has formulated the following issues:-

(1)Whether the plaintiffs are in possession of the properties?

(2)Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?



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(3)What other relief?

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6.Since the plaint is amended seeking the relief sought for by the plaintiffs, the issues were recasted by the trial court as follows:-

1.Whether the plaintiffs are entitled to get the relief of recovery of possession?

2.To what other reliefs, the plaintiffs are entitled to?

7.Before the Trial court, on the side of the plaintiffs, 2 witnesses were examined and 10 documents were marked. On the side of the defendant, 2 witnesses were examined and 4 documents were marked.

8.At the conclusion of the trial process, the trial court decreed the suit as prayed for and the defendant is directed to hand over the possession to the plaintiffs within 30 days.

9.Against which, AS No.34 of 2019 was preferred by the defendant before the Additional Sub Court, Tirunelveli. The appellate court allowed the appeal and set aside the judgement and decree passed by the trial court.



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10. Against the finding of the first appellant court, this second appeal has been preferred by the plaintiffs.

11. At the time of admission, the following substantial questions of law is framed:-

1. Whether in law the First Appellate Court is erred in reversing the well considered judgment of the learned trial court after holding that the suit is deemed to be instituted under Section 6 of the Specific Relief Act when there is a specific bar for appeal?

12. Heard both sides.

13. It is not in dispute that the property belongs to the defendant. At the time of filing the original suit the prayer was that they should not be evicted otherwise than under due process of law and subsequently, the statement was filed stating that they forcibly evicted the plaintiffs from the suit property and so plaint was amended for recovery of possession. That application was filed and allowed and the prayer is with reference to Section of 6 of the Specific Relief Act.



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14. Before we go further we will extract Section 6 of the Specific Relief Act.

6. Suit by person dispossessed of immovable property.—

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



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15.As per the above said provision, if a person who was in possession of the property and whatever basis if he is dispossessed illegally, he can file a suit for recovery of possession based upon the prior possession. It is not necessary that the title in respect of the property must be taken into account. Here there is no such issue of title. No doubt that as per Section 6 of the Act, the suit will lie. Reference to bar under Section 6(3) of the Specific Relief Act, as per that provision, any order or decree passed under the Section, even review is not permitted. The reason being that it is summary procedure, if the person dispossess otherwise under this due process of law restore the possession pending issue with regard to the title or other right as the case may be. Section 6(4) of the Act makes the position very clear. So even if a decree is passed directing restoration of the possession to the plaintiffs on the basis of the prior possession, the title holder or other persons having their right, any order or finding is not binding upon the subsequent proceedings to be initiated by the other person on the basis of the title or right as the case may be. When there is no specific provision for filing the appeal, how the appeal was entertained by the appellate Court is not clear on records.



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16.We will straight away go to the finding of the appellate Court. Stopping a movement here, I am not going to discuss the merits of the matter, because the second appeal can be disposed of on the legal issue. So whether pending the suit process, the plaintiffs have dispossessed otherwise than under due process of law or whether the plaintiffs voluntarily surrendered the possession, which are alien to the discussion, now which are going to be made. So I am not discussing that issue.

17.The appellate Court allowed the appeal stating that within 6 months from the date of dispossession, the suit might have been filed. The plaintiff did not state either in the plaint or in the evidence about the date of dispossession. So when that is not established on the side of the plaintiff that they are entitled for the relief under Section 6, on that ground the appellate Court allowed the appeal, dismissed the suit filed by the plaintiff.

18.As mentioned above, the appellate Court has not considered the bar under Section (3) of 6 as extracted above. So entertaining of appeal itself is not proper. On that ground the decree passed by the appellate Court also



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requires to be interfered as not legal.

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19. Another aspect is that the suit is of the year 2012, now we are in 2024. 12 years lapsed. It appears that the appellants are squatting over the property without even resorting to payment of rent etc. Similarly, the respondent has also not filed any suit so far for eviction. In such circumstances, due to the lapse of time also the appeal itself is not maintainable and respondent has to workout his remedy through appropriate proceedings as indicated under Section 6 of the Act. So the substantial question of law framed does not arise at all.

20. But, as mentioned above because of the bar under Section 6(3) of the Specific Relief Act, the appeal ought not to have been entertained by the appellate Court. But, entertained and allowed the appeal, which is not permissible under law.

21. On the sole ground, the second appeal stands **allowed** and decree and judgment of the appellate Court is set aside and that of the Trial Court decree and judgment is restored, but subject to the right that is



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available to the respondent under Section 6(4) of the
Specific Relief Act. No costs.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal District Munsif,
Tirunelveli.
- 2.The Additional Sub Judge,
Tirunelveli.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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