

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3932 OF 2025

Manish Kirit Salot

...Petitioner

vs.

Hitesh Kirit Salot and Others

...Respondents

Mr. Kaushal Tamhane a/w. Mr. Nihar Chitre i/b. Dhanuka and Partners, for the Petitioner

Mr. P.V. Nelson Rajan, AGP for the State.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 26, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 17th August, 2024 passed by the learned Civil Judge, Belapur whereby the application preferred by the petitioner/ plaintiff under the provisions of Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 to restrain the defendant Nos. 1 and 2 from creating third party rights in the suit property, and to deposit interim profit till decision of the suit instituted by the petitioner for regaining possession of the suit property under section 6 of the Specific Relief Act, 1963, came to be rejected.
3. The learned Civil Judge was of the view that, in a suit under section 6 of the Specific Relief Act, 1963 the Court was required to consider the aspect of dispossession of the plaintiff within six

months of the institution of the suit. Since the plaintiff has already instituted a title suit being SCS No. 419 of 2019, the prayer for injunction can be legitimately considered in the said suit and not in a suit for recovery of possession under Section 6 of the Specific Relief Act, 1963.

4. Mr. Tamhane, the learned counsel for the petitioner, submitted that the defendant has admitted, in the communication addressed to the Cooperative Housing Society on 21st March, 2022, that the plaintiff was in possession of the subject flat. Yet, taking the law in hand, the defendant has dispossessed the plaintiff. It was, therefore, necessary to restrain the defendant from creating third party right in the suit property till the decision of the suit.

5. The learned counsel for the petitioner fairly submitted that the petitioner had filed an application for interim injunction in title suit being SCS No. 419 of 2019 and the said application came to be rejected.

6. The remit of inquiry in a Suit under Section 6 of the Act is limited. The factum of prior possession and dispossession of the plaintiff are required to be adjudicated. The question of title of the parties is immaterial. In the case at hand, the plaintiff had already instituted a title suit, being SCS No. 419 of 2019, assailing the legality and validity of the Gift Deed, purportedly executed by the

father of the plaintiff in favour of the defendant. It was alleged that the said Gift Deed has been fabricated. In the said suit relief of partition has also been sought.

7. In these circumstances, the learned Civil Judge was fully justified in recording a view that in the instant suit for regaining possession under section 6 of the Specific Relief Act, the prayer for interim injunction was not tenable.

8. So far as the submission on behalf of the petitioner that, subsequent to the letter dated 21st March, 2022, acknowledging the possession of the plaintiff, the later has been forcibly dispossessed, nothing precludes the plaintiff from filing a fresh application in the title suit being SCS No. 419 of 2019 seeking interim relief based on those subsequent events.

9. With the aforesaid clarification, the petition stands disposed.

(N. J. JAMADAR, J.)