



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CIVIL REVISION APPLICATION NO.93 OF 2019

1. Smt.Ranjana w/o Ravindra Mendhe,
age about - 45 years, occupation
household.

2. Shri Ravindra s/o Balaji Mendhe,
age about 50 years, occupation
private work.

Both r/o 156, Shastri Nagar, Nagpur. **Applicants.**

:: VERSUS ::

1. Shri Kishor Baburao Dakhode, aged
about – 50 years, occupation business.

2. Smt.Meena w/o Kishor Dakhode,
aged about 45 years, occupation
household.

Both r/o 144, Shastri Nagar, Nagpur. **Non-applicants.**

Shri K.B.Ambilwade, Counsel for Applicants.

Shri S.PKshirsagar, Counsel for Non-applicants.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 07/02/2025

PRONOUNCED ON : 03/03/2025

JUDGMENT

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1. The present revision application is filed challenging judgment and decree dated 13.9.2017 passed by learned 27th Joint Civil Judge Junior Division, Nagpur in Regular Civil Suit No.5017/2012 by which the suit filed under Section 6 of the Specific Relief Act, 1963 is dismissed.

2. The applicants herein are original plaintiffs who filed the suit for possession under Section 6 of the Specific Relief Act, 1963 and for occupation charges for illegal use of the property. The suit property involved in the suit is plot No.156 having Corporation House No.500, City Survey No.1, Sheet No.327/246, and 144 admeasuring 1080 square feet bounded as towards East - house of Shri Dongre, towards West - house of Shri Prabhu Chavan, towards North - house of Shri Shankar Moharle, and towards South - Road and ground.

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3. The plaintiff Nos.1 and 2 are husband and wife and defendant Nos.1 and 2 are also husband and wife. The suit property is originally owned by Narayan Ramaji Wakekar who died issueless. Deceased Narayan Ramaji Wakekar obtained the suit property from the NIT on lease and constructed the house on the suit property. Deceased Narayan Ramaji Wakekar during his life time, initially, executed a Will dated 23.11.2011 which was subsequently revoked by him by executing another Will dated 1.8.2012 by which the house property was divided between the plaintiffs and the defendants. In view of the said Will, half portion of the house property was given to the plaintiffs and half portion was given to the defendants. As per contentions of the plaintiffs, they were already in occupation and possession of the property. However, 15.10.2012, when they were out of station, the defendants broke the lock and entered into the premises and obtained

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illegal possession of the suit property. The entire household articles belonging to the plaintiffs and deceased Narayan Ramaji Wakekar were in the suit property. The plaintiffs got knowledge about possession taken by the defendants On 22.10.2012. Initially, the plaintiffs requested the defendants to hand over the possession, but the defendants have not paid any heed towards it. Therefore, the plaintiffs issued notice on 23.10.2012 asking the defendants to open the lock and hand over the possession of the suit property. After receipt of the notice also, the defendants have not handed over the possession and, therefore, the plaintiffs were constrained to file the suit.

4. In response to the suit summons, the defendants contested the suit by filing his written statement vide Exh.10. The contents of the plaint are admitted only to the extent that deceased Narayan Ramaji Wakekar executed a

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Will and partitioned the property. As per the contentions of the defendants, deceased Narayan Ramaji Wakekar was residing in old constructed portion and the new constructed portion was given by him on a rent. After the death of wife of deceased Narayan Ramaji Wakekar, the defendants started residing with deceased Narayan Ramaji Wakekar. Defendant No.1 has also performed all banking transactions on behalf of deceased Narayan Ramaji Wakekar. Deceased Narayan Ramaji Wakekar executed a Will dated 28.11.2011. The said Will was opened on 14.10.2012. As per the terms and conditions of the said Will, the possession of one backside room and one room of pakka construction were given to the plaintiff No.1 and possession of two rooms of old construction was given to the defendant No.2. Accordingly, both beneficiaries occupied their respective possession. Since then, the plaintiffs shifted their residence in the pakka constructed

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portion of the house, whereas the defendants are residing in old constructed rooms and the panchas confirmed their possession. The defendants have denied that they have obtained any possession of the premises which is given to the plaintiffs. It is contended by the defendants that the plaintiffs were in possession of the entire suit property and the possession of the plaintiffs was only to the extent of two rooms out of four rooms in view of the Will.

5. The plaintiffs and the defendants have adduced their evidence respectively and also placed reliance on documents. After appreciating the evidence on record, learned Judge below has observed that the plaintiffs have failed to that defendants dispossessed them from the suit property. In fact, the oral evidence is contrary to the documentary evidence as report filed by the plaintiffs with the police is only to the extent that defendants try to take

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possession of the suit property, which indicates that the plaintiffs are not dispossessed and dismissed the suit.

6. Heard learned counsel Shri K.B.Ambilwade for the applicants and learned counsel Shri S.P.Kshirsagar for the non-applicants.

7. Learned counsel for the applicants submitted that question to be answered is, whether the plaintiffs are in possession of the suit property. The plaintiffs have examined two witnesses to prove the dispossession. The complaint is also lodged by the plaintiffs as to the dispossession. The possession of the plaintiffs as well as the dispossession by the defendants are also established and, therefore, judgment impugned is erroneous and illegal.

8. *Per contra*, learned counsel for the non-applicants submitted that the suit filed under Section 6 of the Specific Relief Act, 1963 is a summary suit and the enquiry in the

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suit under Section 6 is confirmed to find out the possession and dispossession within a period of six months from the date of institution of the suit ignoring the question of title. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.

In support of his contentions, he placed reliance on **Sanjay Kumar Pandey and ors vs. Gulbahar Sheikh and ors**, reported in (2004)4 SCC 664.

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9. The suit was filed by the plaintiffs under Section 6 of the Specific Relief Act, 1963. In order to establish a claim under Section 6 of the Act, three things are required to be established - (1) the plaintiffs were in possession of the suit property; (2) the plaintiffs has been dispossessed otherwise than in due course of law, and (3) the suit for recovery of possession is filed within six months from the date of alleged dispossession.

10. It is not in dispute that the suit property is originally owned by deceased Narayan Ramaji Wakekar who died issueless. Deceased Narayan executed a Will and half portion of the house property was given to the plaintiffs and half portion was given to the defendants. Deceased Narayan Ramaji Wakekar was residing in old constructed portion and the new constructed portion was given by him on lease. As per the Will, pakka constructed portion was given to plaintiff Ranjana and rest of the constructed

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portion was handed over to defendant No.2. It is specifically mentioned that old constructed portion was given to the defendant No.2. Whereas new constructed house was given to the plaintiff. The said Will at Exh.52 is executed on 1.8.2012. Thus, as far as hand over of the possession of the suit premises is concerned, as per the Will, it was handed over by the panchas and the plaintiffs and the defendants were in possession of the suit properties respectively.

11. The oral evidence of the plaintiffs by way examination-in-chief is the reproduction from the averments in the plaint and defendant No.2 also examined herself as a witness. She has also examined one Pramod @ Chotu Murlidhar Midkatwar vide Exh.71, Archana Mohurle vide Exh.70.

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12. Thus, as per the oral as well as the documentary evidence, the suit property is divided between the plaintiffs and the defendants as per the Will and one room from the old construction and one room from pakka construction were given to the plaintiffs. Whereas, two rooms of old construction was given to the defendant No.2. Now, the plaintiffs have come with a case that they were dispossessed by the defendants by entering into the suit property on 15.10.2012 and they got knowledge about the said incident on 22.10.2012. The dispossession alleged was of 15.10.2012. It is further contended by the plaintiffs that he made a complaint to the police about the said incident. If the complaint given to the police is considered, it shows that the defendants by entering into the premises attempted to obtain the possession of the suit property, but the plaintiffs restrained them, snatched locks from their hands and applied their own lock. Thus, the complaint

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given to the police is concerned, the allegation is only to the extent of attempt to take possession.

13. The notice Exh.41 shown to have served upon the defendants. The incident of dispossession is narrated in the said notice. By the said notice, defendants were asked to open the lock and hand over the possession.

14. As observed earlier, the Will Exh.52 is registered before the Sub Registrar at Nagpur. The Will was opened in presence of plaintiffs, defendants, and panchas on 14.12.2012. As per the contents of the Will, the possession was handed over to the respective persons.

15. The plaintiffs filed the electric bill in the name of plaintiff No.1. Whereas, defendants relied upon their oral evidence. The plaintiffs have come with a case that deceased Narayan Ramaji Wakekar was residing at the suit property. Whereas, the defendants claimed that after the

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death of deceased Narayan Ramaji Wakekar, the plaintiffs came to stay at the suit property. The plaintiffs have filed document i.e. identity card of their son who is admitted in school which shows that the plaintiffs are residing at 156, Shastri Nagar, Nagpur from 2011 to 2014. Thus, on the day of the incident admittedly the plaintiffs were not residing in the suit premises. Moreover, the complaint lodged by the plaintiffs is only to the extent that the defendants tried to take possession of the suit property. Nothing is on record to show that the defendants have obtained the possession without following due process of law.

16. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of

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dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any time six months prior to the date of filing of the suit. The legislative concern underlying Section 6 of the Specific Relief Act, 1963 is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.

17. As far as the facts of the present case are concerned, there is no dispute as to the possession over two rooms of the plaintiffs. As far as dispossession is concerned, the evidence of the plaintiffs is falsified by his own document which is complaint filed with the police station after the

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alleged incident on 15.10.2012 which nowhere shows that the possession was obtained by the defendants.

18. Thus, considering the material on record, the fact of dispossession itself is not proved by the plaintiffs.

19. In view of the decision in the case of **Sanjay Kumar Pandey and ors** *supra*, remedy available to the present plaintiffs is not of a revisional jurisdiction. The Hon'ble Apex Court specifically held that The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case

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for interference being made out within the well settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code

20. Thus, the plaintiffs have failed to prove his dispossession by the defendants. Moreover, the revision itself is not maintainable in view of the decision of the Hon'ble Apex Court.

21. In this view of the matter and in view of the observations of the Hon'ble Apex Court in the case *supra*, the present revision is devoid of merits and liable to be dismissed and the same is **dismissed**.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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