
(2013) 06 MP CK 0016
In the Madhya Pradesh High Court
Case No : Civil Revision No. 95 of 2009

Doma	Vs	APPELLANT
Saya Bai and Another		RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Specific Relief Act, 1963 — Section 6

Citation : (2013) 06 MP CK 0016

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Subodh Kathar, for the Appellant; Santosh Jain, for the Respondent

Judgement

N.K. Gupta, J.—The applicant has preferred the present civil revision against the judgment and decree dated 14.2.2006 passed by the Civil Judge, Class II, Bhainsdehi, District Betul in Civil Suit No. 3A/2002 whereas the suit u/s 6 of the Specific Relief Act, 1963 filed by the applicant/plaintiff was dismissed. In the trial Court the applicant/plaintiff had preferred a civil suit that he had the possession of Survey No. 125/2, area 0.425 hectare since last 35-40 years. On 5.11.2001 when he was sowing the crop of wheat the respondents entered in the suit premises and dispossessed him. The plaintiff has also pleaded that the aforesaid land was given to his wife Shanta Bai on 18.10.1968 by registered sale deed alongwith an agreement dated 15.10.1968 that Shanta Bai could not sell the property. Two years after execution of the sale deed Shanta Bai left the village and thereafter, the plaintiff/applicant was in possession of the property. Under such circumstances, he had filed a suit u/s 6 of the Specific Relief Act.

2. The respondents denied the allegations made by the plaintiff in their written statement. According to them the sale deed was executed in favour of the respondents on 2.8.2001 by Shanta Bai and thereafter, possession was given. Under such circumstances, before filing of the suit the plaintiff was not in possession of the property and Shanta Bai was the necessary party in the case.

3. The learned Civil Judge after framing of the issues and recording the evidence concluded the suit with the observation that the plaintiff was in formal possession at the time of dispute whereas Shanta Bai was the necessary party in the case and therefore, the suit was dismissed.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the applicant has submitted that the applicant gave the land in dispute to his wife in the year 1968. Two years after that agreement the wife of the applicant left the village and thereafter, he was in possession of the land. For seeking a relief u/s 6 of the Specific Relief Act it was not necessary for the applicant to establish his title. He was admittedly dispossessed by the respondents on the date when cause of action arose and therefore, he was entitled for a decree u/s 6 of the Specific Relief Act. The learned counsel for the applicant has also placed his reliance upon the judgment passed by the single Bench of this Court in the case of Aruna Gautam (Smt.) and Others Vs. Smt. Arti and Others, and therefore, it is prayed that the revision be allowed and a decree of possession be directed against the respondents.

6. On the other hand the learned counsel for the respondents has submitted that the applicant was required to show his lawful possession at the time of dispute. The land was in the name of Shanta Bai, first wife of the applicant and the respondents purchased the land from Shanta Bai who gave the possession of the land in a legal manner and therefore, the applicant could not get any decree u/s 6 of the Specific Relief Act. On the other hand the applicant was required to file a civil suit for declaration of his title and to get possession of the land in a proper manner. Hence, it is prayed that the revision filed by the applicant may be dismissed.

7. According to the ratio laid in the case of Aruna Gautam (supra) it was for the applicant to prove that he had lawful possession at the time when he was dispossessed and secondly he was dispossessed illegally.

8. If the submissions made by the learned counsel for the parties are considered in the present case and the averments made by the applicant himself in the plaint are considered then it would be apparent that the applicant had given that land to his wife Shanta Bai and thereafter, Shanta Bai was in possession of the property. It was the pleading of the applicant that Shanta Bai left the village after two years and he was in possession since the year 1970. He has submitted some revenue entries to show his possession. By the revenue record, it is apparent that the concerned land was shown in the name of Shanta Bai and thereafter, in the year 1973-74, it was mentioned that the crop was sown by the applicant Doma but, the applicant could not submit a documentary evidence for that period which was shown prior to the quarrel took place between the parties. According to the pleadings the applicant was dispossessed in November 2001 but, no document is shown that he was in possession of the particular land in November 2001.

9. Secondly when he has given that land to his wife then his possession was not legal unless he could establish that he obtained the possession in a legal manner. If his wife left the village then he encroached the land of his wife. He could not prove any reason as to how he legally obtained the land. Hence the trial Court has rightly found that Shanta Bai was a necessary party in the case to establish the lawful possession of the applicant upon the suit land.

10. Under such circumstances, the applicant could not establish that he was in the lawful possession of the property soon before he was dispossessed. On the other hand the respondents took a plea that the land was sold to them by Shanta Bai, first wife of the applicant, and they got the possession. Since the land was of Shanta Bai and therefore, at the most the possession of the applicant could actually be claimed that it was of Shanta Bai through the applicant and if she sold the land to the respondents then possession was transferred legally by Shanta Bai. If the applicant was of the view that Shanta Bai could not sell the land to anyone then certainly the case against Shanta Bai and respondents should have been filed on merits. It was for the applicant to file a civil suit by claiming his rights on the basis of revival of his land from Shanta Bai or on the basis of his adverse possession.

11. According to the own pleadings of the applicant prima facie the property was of Shanta Bai and the possession of the applicant was on behalf of Shanta Bai and therefore, the applicant could not prove that he was in lawful possession of the suit property since he was dispossessed. Under such circumstances, the applicant could not get a decree u/s 6 of the Specific Relief Act. The trial Court has rightly dismissed his case. Looking to the complexity of the case, it was for the applicant to establish his title due to conduct of his first wife Shanta Bai and thereafter, he should have fought for the possession. There is no ground by which any interference can be done in the judgment and decree passed by the trial Court. Therefore, the civil revision filed by the applicant cannot be accepted. Consequently, it is hereby dismissed with costs. The applicant shall bear his own costs as well as the cost of the respondents. Advocate's fees may be computed in the memo of cost at the rate of Rs. 5000/-, if certified. The copy of the order be sent to the trial Court along with its record for information.