

(1987) 09 OHC CK 0022

In the Orissa High Court

Case No : Civil Revision No. 301 of 1984

Gangadhar Somarath and Others

APPELLANT

Vs

Honu Majhi and Others

RESPONDENT

Date of Decision : 02-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 4
Specific Relief Act, 1963 — Section 6

Citation : AIR 1988 Ori 141

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : B.L.N. Swamy and B.K. Mohapatra, for the Appellant; B.B. Ratho, P.K. Bhuyan, Manoj Misra, R.P. Mohapatra and R. Bose, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Defendant 11 is the petitioner in this Civil Revision.

2. Plaintiffs filed the suit where in para 14, they prayed for the reliefs. It reads as follows : --

"Therefore, the plaintiffs pray the Honourable Court to be pleased to pass a decree in favour of the plaintiffs and against the defendants, declaring the plaintiffs' possession over the suit land, and

(b) to pass orders restraining the defendants from entering into the "B" & "C" schedule land which is a part of "A" schedule land and

(c) to appoint a receiver for the suit land and crop to deliver to plaintiff."

3. In the suit, ad valorem court-fee was paid describing the same in para 13 of the plaint which reads as follows :

"That the suit is valued for the purpose of court-fee and jurisdiction being the ten times of the rental value at Rs. 150/- u/s 7(v)(b) of the Court-fees Act and affixed court-fee stamps worth Rs. 25/- as required u/s 7 of the Court-fees Act

as amended to Orissa."

The suit was described to be one u/s 6 of the Specific Relief Act, 1963 stating -

"Plaint presented by the plaintiffs u/s 6 of the Specific Relief Act, 1963."

4. Schedule I, Article 2 of the Court-fees Act provides that half of the court-fee payable is to be paid in a suit u/s 6 of the Specific Relief Act. Payment of higher court-fee would not determine the nature of the suit. The same is to be determined from the nature of relief sought on the assertion in the plaint.

5. The trial Court settled seven issues in this case of which issues Nos. 5, 6 and 7 are material.

They read as follows : --

"5. Whether the suit land is the ancestral property of the plaintiffs and they are possessing the same?

6. Whether the defendants have perfected their right, title and possession over the suit land by adverse possession?

7. To what relief the plaintiffs are entitled?"

6. In the impugned judgment it has been stated that the suit has been filed u/s 6 of the Specific Relief Act for declaration of possession of the plaintiffs and restraining the defendants from entering into the suit lands. With such assertion, the ordering portion of the judgment reads as follows : --

"The suit is preliminarily decreed on contest against the defendants with costs. The possession of the plaintiffs over the suit land is declared. The defendants are restrained permanently from entering into the suit land."

7. In this background, it is to be examined if the suit is one u/s 6 of the Specific Relief Act which reads as follows : --

"(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."

8. Admitted dispossession of the plaintiffs is the basis for a suit u/s 6 of the Act. When a person is dispossessed from property, there is no scope for declaration of possession. The necessary prayer, therefore is for recovery of possession. Appointment of a receiver or permanent injunction are not necessary reliefs in such a suit. In this respect, Order 2, Rule 4 Civil P.C. clearly provides for the nature of claims which can be joined in a suit for recovery of immovable property. Each one of the aforesaid grounds might have been of insignificant value if the trial court would have kept in mind the nature of relief it can grant in the suit- It, however, passed a preliminary decree which is not envisaged in a suit u/s 6 of the Act. The relief of recovery of possession which is the main relief available u/s 6 of the Specific Relief Act has not been specifically granted. Permanent injunction has been granted in a suit u/s 6 of the Specific Relief Act which can be granted in a regular suit.

9. If the judgment is treated to be a decree in a regular suit, the petitioner shall be prejudiced since he has not preferred an appeal believing that the suit is u/s 6 of the Act. If the suit is treated to be one u/s 6 of the Act, in this revision it will not be possible for the petitioner to challenge the finding of fact. In such circumstances, the decision reported in *Smt. Sobhabati Vs. Lakshmi Chand and Others*, would not be applicable. If the trial court would have confined the scope of the suit only to possession, I would have followed the decision. It is submitted that in view of the decision reported in *Arakhita Swain Vs. Kandhuni Swain*, I can grant the lesser relief. Where the plaintiff has framed the suit for all reliefs as in a regular suit but the court treated the same to be one u/s 6 of the Act, the decision would not be applicable.

10. In conclusion, the trial court not having considered the materials on record in accordance with Section 6 of the Specific Relief Act and having not granted relief as envisaged thereunder the order is set aside. It is open to the plaintiffs to make amendments to the pleadings either bringing it in the form of a regular suit or bringing the same u/s 6 of the Specific Relief Act. It is open to the defendants depending upon the plaint either to file additional written statement or to raise such objection as to the maintainability as may be available to them. In case, the plaintiffs bring the suit within the scope of a regular title suit further evidence may have to be adduced by both the parties.

If, however, the plaintiffs seek relief u/s 6 of the Specific Relief Act, necessary evidence required for the purpose shall be permitted to be adduced by both the parties.

11. In the result, the Civil Revision is allowed and the suit is remanded to the trial Court. There shall be no order as to costs in this Civil Revision.