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(2016) 03 RAJ CK 0112

In the Rajasthan High Court

Case No : Civil Revision Petition Nos. 182 and 181/2008

Gordhan Singh and Others — APPELLANT

Vs

Kanhaiyalal and Others — RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:
Specific Relief Act, 1963 — Section 6

Citation : (2016) AIR(Raj) 112 : (2016) 2 RLW 996 : (2016) 4 WLC 152

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : R.K. Thanvi, Sr. Advocate and Narendra Thanvi, for the Appellant; Shreyansh Mardia on behalf of Sandeep Shah, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—1. These two revision petitions filed by the petitioners/ defendants, Gordhan Singh and Veer Singh, against the respondent/plaintiff, Kanhaiylal (In C.R. No. 182/2008) and the plaintiff, Ratanlal (In C.R. No. 181/2008) are directed against the decree dated 02.05.2008 of learned trial court of Additional District Judge, Barmer, under Section 6 of the Specific Relief Act, 1963 (Act of 1963) directing possession of the plots of land in question to be handed over to the plaintiffs/respondents.

2. Brief facts of the case giving rise to the present revision petitions are like this. The two portions of plot of land were sold by the defendants, namely, Gordhan Singh and Veer Singh, by two separate registered sale-deeds on 25.10.1988 to the plaintiffs, Kanhaiyalal and Ratanlal respectively. The size of the residential plot in question was 58'' x 19'' each situated in Sardarpura, Barmer. The present suit was filed by the respondents/plaintiffs in the trial court on 16.12.2002 with the averments that after the sale in the year 1988, since the plaintiffs remained out of town in connection with their business away to Surat most of the times, taking advantage of their absence, the sellers (defendants) had taken back the forcible possession of the plots of land in question three months before the date

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of filing of the suit and the plaintiffs being the owners and in constructive and actual possession of the plots in question, were entitled to seek possession under Section 6 of the Specific Relief Act, 1963. The suit was contested by the defendants/petitioners, however, the learned trial court decreed the same vide its judgment dated 02.05.2008 with the following findings in favour of plaintiffs:

3. Mr. R.K. Thanvi, Sr. Advocate assisted by Mr. Narendra Thanvi, learned counsel for the petitioners/defendants submitted that Section 6 of the Act of 1963 permits such suit to be filed only if the plaintiff has been dispossessed forcibly within six months prior to the date of filing of the suit and irrespective of the title of the plaintiff/s, person who establishes that he was in possession of the land in question, but has been so dispossessed forcibly, without due course of law, can file the suit for possession under Section 6 of the Act. He, however, submitted that in the present case, the plaintiffs had approached the court in 2002 and in the statement recorded by the learned trial court, they had admitted that soon after the purchase of the plot of land in question in 1988, the defendants had forcibly taken over the possession on account of bad intention and increase in the price of the land. He, therefore, submitted that the suit could not have been maintained under Section 6 of the Act of 1963 and it is not a suit for possession based on title of the plaintiff(s) and thus, the decree given by the court below deserves to be set aside. He relied upon the judgment of Andhra Pradesh High Court in the case of M. Narasimha Reddy & Ors. v. Smt. K. Vinobha Devi & Ors. reported in 2003 AIHC 618 and judgment of this Court in the case of Ashok Kumar Gupta v. Surindra Rakyan & Anr. reported in AIR 2007 (NOC) 932 (Raj.).

4. On the other hand, Mr. Shreyansh Mardia, on behalf of Mr. Sandeep Shah, learned counsel appearing on behalf of respondents/plaintiffs vehemently submitted that the suit was competent and rightly maintainable before the learned trial court and the plaintiffs had proved before the court below that the defendants had forcibly taken the possession of the plots taking advantage of the absence of the plaintiffs from the town of Barmer in connection with their business at Surat and in view of undisputed fact of sale made by the defendants themselves by registered sale-deed (Ex. 1) produced before the court below, the suit was not only within limitation but has rightly been decreed by the learned court below and the present revision petitions of the defendants are devoid of any merit and same deserve to be dismissed.

5. I have heard the learned counsel for the parties at length and perused the record and judgments cited at Bar.

6. The learned trial court examined PW.1, Kanhaiyalal, PW.2, Ratanlal, both plaintiffs and purchasers of the suit land in question, and PW.3, Peerchand and PW.4, Gangaram, whereas the defendants examined defendant, Gordhan Singh as DW.1, and one Swaroop Singh as DW.2. From the statements recorded by the learned trial court, it is clear that the plot of land in question was sold by the defendants themselves to the plaintiffs by registered sale-deeds on 25.10.1988 and the plaintiffs had also obtained permission from the Municipal Council vide

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Exhibit-2A dated 18.05.1992 for raising construction thereon, which was given by the Municipal Council on 10.02.1993 vide Exhibit-3A and the maps were also approved by the municipal authorities. With the execution of the registered sale-deeds, it can be safely presumed that the plaintiffs were put in physical possession by the sellers (defendants themselves) in the year 1988 and there is a clear stipulation to this effect in the sale-deed also. The plaintiffs have also stated in the plaint as well as in their statements that they were dispossessed by the defendants taking advantage of their absence from the city of Barmer in connection with their business. In the cross-examination also, PW.2, namely, Ratanlal one of the plaintiffs have also stated that the forcible possession by the defendants was taken in the year 2002 when they put up the stone Patti/s on the said plot of land. The relevant portion of the said cross-examination of PW.2, Ratanlal, is also quoted herein below for ready reference:--

7. A close perusal of Section 6 of the Act of 1963 would clearly show that dispossession of plaintiff(s) has to be established to be ''otherwise than in due course of law''. The plaintiff(s) in the present case are admittedly the registered owners of the suit land in question can be presumed in law to be in the possession of the suit land and thus the burden was upon the defendants to show that they were in possession of the suit land in question by adopting due process of law and not otherwise because they denied the registered sale-deeds and claimed to be in long possession of the suit land. The point time of dispossession within six months prior to the date of filing of the suit was also amply proved by the plaintiffs in the present case. Even if a deviation by any witness that the defendants dispossessed them soon after the sale was there that also does not dislodge the claim of the plaintiff(s) to claim back the possession under Section 6 of the Act of 1963, if they have proved that the defendants are in possession of the suit land without any due process of law adopted by them. In the present case, not only the plaintiffs'' averments but the examination and cross-examination of the plaintiffs'' witnesses have proved that they were dispossessed forcibly without any due process of law adopted by defendants within six months prior to filing of the suit.

8. The evidence of the defendants, DW.1 Gordhan Singh, himself and PW.2 Swaroop Singh, in the present case does not inspire any confidence. The defendants in the present case, even denied and disputed the registered sale-deeds of 25.10.1988 itself. Para 3 of the affidavit of defendant, namely, Gordhan Singh is quoted herein below for ready reference:--

In Para 8, the defendant, Gordhan Singh claimed to be in long possession of the suit land in question. Para 8 of the affidavit of defendant, Gordhan Singh is also quoted herein below for ready reference:

9. Similarly, other witness viz. DW.2 Swaroop Singh, an acquaintance of the defendant in his cross-examination also denied the fact of sale-deeds. The relevant portion of the said statement is also quoted herein below for ready reference:--

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10. The defendants/petitioners thus failed to dislodge the claim and evidence of the plaintiff(s) that they were in legal and peaceful possession of plots of land in question and the defendants without any due process of law adopted by them dispossessed the plaintiffs and thus Section 6 of the Act of 1963 was clearly attracted in the present case. The judgments relied upon by Mr. R.K. Thanvi, Sr. Advocate, are not applicable to the facts of the present case, as the plaintiffs have amply proved their case of illegal and forcible dispossession from their own purchased plots by the sellers themselves within six months prior to filing of the suit in 2002.

11. This Court is, therefore, of the considered opinion that the plaintiffs are entitled to succeed and the decree passed by the learned court below in their favour deserves to be upheld. The present revision petitions of the defendants are thus found to be devoid of any merit and the same are hereby dismissed with costs, which is quantified at of Rs. 10,000/- in each case. The defendants shall hand over the possession of the plots of land to the plaintiffs/respondents within three months from today i.e. on or before 10.06.2016 and they shall also pay mesne profit for the use and occupation @ 300/- per month from the date of filing of the suit till the actual possession is handed over, and in case there is any default in payment of mesne profit or costs, the period granted for handing over the vacant possession of the suit plots of land, shall stand reduced and the decree of possession would become executable forthwith. The appellants/ defendants shall also clear all the arrears of mesne profit and pay the same to the plaintiffs/respondents, within three months from today, otherwise the same will bear interest @ 9% per annum. The appellants/defendants shall also not sub-let, assign or part with the possession of the suit land any part thereof in favour of any one else and would not create any third party interest in the same during the aforesaid period and if it is so done, the same would be treated as void and such third parties will also be bound by this decree. It is made clear that if the peaceful and vacant possession of the suit land is not handed over to the plaintiffs/respondents on or before 10.06.2016 or mesne profits are not paid as directed above, besides the expeditious execution of the decree in normal course, the plaintiffs/respondents shall also be entitled to invoke the contempt jurisdiction of this Court. A copy of this judgment be sent to both the learned courts below and both the parties forthwith.

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