

(2010) 04 AP CK 0033

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 839 of 2007

Habeebunnisa Begum

APPELLANT

Vs

Mohammed Abdul Khadeer rep. by GPA Holder Shaheen Begum

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Specific Relief Act, 1877 — Section 9
Specific Relief Act, 1963 — Section 6, 6(3)

Citation : AIR 2010 AP 220 : (2010) 5 ALT 37 : (2011) 1 CivCC 336

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : M. Basith Ali Yavar, for the Appellant; A. Suryanarayana, for the Respondent

Final Decision : Dismissed

Judgement

G. Chandraiah, J.—Heard both the counsel.

2. Aggrieved by the judgment and decree dated 17.1.2007 passed by the court of VIE Junior Civil Judge, City Civil Court, Hyderabad in O.S. No. 4027 of 2004, in partly decreeing the suit filed for recovery of possession u/s 6 of the Specific Relief Act and thereby directing the defendant to "vacate the suit schedule premises within one month from the date of the order, the defendant in the suit, filed the present revision.

3. For the sake of convenience, the parties will be referred to as per their array in the suit.

4. The plaintiff filed the suit u/s 6 of the Specific Relief Act for recovery of the suit schedule property after dispossessing the defendant and to award mesne profits of Rs. 5,880/- and for future mesne profits at the rate of Rs. 30/- per day from the date of filing the suit, till the date of recovery of possession and for suit

costs.

5. The plaintiff is working at Saudi Arabia and in the plaint his case is that his wife is looking after all his affairs in India and that he has appointed her as his G.P.A. holder. The defendant was the tenant of the plaintiff in the house No. 19-4-279/C/26 situate at employees colony Mir Sagar, Nawab Saheb Kunta, Hyderabad since last more than three years agreeing to pay Rs. 800/- per month. As the defendant committed default in payment of rent for the period from 1.3.2002 to the end of August, 2002, he filed R.C. No. 358/2002 on the file of Principal Rent Controller, Hyderabad and the same was allowed. The plaintiff filed E.P. No. 14/2003 and the same was executed and defendant was evicted on 8.8.2003. The further case of the plaintiff is that his family is in possession of the schedule premises and on 25.11.2003, they left the house for a week to Kamareddy to attend Ramzan Idd and returned on 30.11.2003 and in the meanwhile, the defendant broke open the lock and entered into the house and never handed over the possession, in spite of demands. His wife rushed to the police station, but they advised to file suit and hence suit for recovery of possession was filed within six months from the date of dispossession and also sought mesne profits.

6. The defendant filed written statement and while denying the averments made in the plaint, contended that the suit as fg/med, is not maintainable and the plaintiff approached the court with unclean hands and that the suit filed by G.P.A is not maintainable, as the person who verified the plaint is not having any right to file the suit. The defendant denied the landlord and tenant relationship and the filing of the R.C. No. 353/2002 and delivery of possession on 8.8.2003. The case of the defendant is that he purchased the suit schedule premises under agreement of sale dated 12.12.2002 from one Mohd. Burhan for a valuable consideration and that he is in possession of the property since 12.12.2002. With these averments, the suit was sought to be dismissed.

7. Based on the above pleadings, the court below framed the following points for consideration:

1. Whether the plaintiff is entitled for recovery of vacant possession of schedule property after evicting the defendant?

2. Whether the plaintiff is entitled for recovery of Rs. 5,880/- towards mesne profits?

3. Whether the plaintiff is entitled for future mesne profits at the rate of Rs. 30 per day till the date of eviction?

4. To what relief?

8. In support of the case of the plaintiff, he got examined himself as P.W.1 and examined his wife who is the G.P.A. holder, as P.W.2. He also examined the Court balief as P.W.3 and through him got marked Exs.X-1 to X-4. On his behalf, the plaintiff got marked Exs.A-1 to A-7.

9. On behalf of the defendant, he got examined himself as D.W.1 and also got examined his daughter as D.W.2. No documents were marked on his behalf.

10. Appreciating the entire evidence, both oral and documentary, the court below partly decreed the suit and directed the defendant to vacate the schedule premises and as no evidence is produced by the plaintiff with regard to mesne profits, rejected the said claim.

11. Aggrieved by the decree of the court below in directing to vacate the suit schedule premises, the defendant filed the present revision.

12. The learned Counsel appearing for the petitioner/defendant contended that the court below did not appreciate the entire evidence on record and erroneously decreed the suit. He submitted that the plaintiff as P.W.1, categorically deposed that "I went to Saudi Arabia in September, 2002. I returned back to India on 26th December, 2005.". Therefore, it is clear that as on the alleged date of dispossession of the plaintiff on 25.11.2003, the plaintiff was out of the country and hence the question of his dispossession does not arise. He further contended that though the plaintiff alleged that he purchased the suit schedule property, no document has been produced to prove his title. He further contended that the wife of the plaintiff who was examined as P.W.2 also categorically deposed that she has not filed any document to show that she was in possession of the property from 8.8.2003 to 30.11.2003 and hence it cannot be said that the plaintiff is in possession of the property prior to six months of filing of the suit. In view of these circumstances, as the plaintiff is neither an owner, nor a possessor of the suit schedule property, the suit cannot be decreed and the impugned order is liable to be set aside.

13. On the other hand, the learned Counsel for the respondent/plaintiff supporting the impugned judgment, submitted that if a person is forcibly dispossessed from the property, he can file suit u/s 6 of the Act within six months from the date of dispossession, irrespective of question of title. In support of this contention, here life on the judgment of a learned single Judge of this Court reported in Mohd. Ibrahim and Others Vs. Smt. Munni @ Zainab Bee, He submitted that in the present case, the plaintiff has proved that he is forcibly dispossessed from the suit premises and, therefore, the court below rightly considering this aspect, decreed the suit. Therefore, the impugned order does not warrant any interference. With these submissions, he sought to dismiss the revision.

14. In view of the above rival contentions, the point that arises for my consideration is whether the impugned order warrants any interference?

15. The case of the plaintiff is that he is the owner of the suit schedule property and the said premises was given to the defendant on rent and that when he committed default in payment of monthly rent of Rs. 800/-, for the period from 1.3.2002 to the end of August, 2002, he filed R.C. No. 358/2002 on the file of Principal Rent Controller, Hyderabad and the same was allowed and he filed E.P.

No. 14/2003 for execution and the decree was executed and vacant possession was delivered by the court on 8.8.2003. His family was in possession of the property and that on 25.11.2003 when, they went to Kamareddy for Ramzan festival and returned on 30.11.2003, found that the defendant broke open the lock and entered into the house and in spite of demands, he failed to vacate the premises and as they were forcibly dispossessed, he filed the suit for recovery of possession and for mesne profits.

16. On the other hand, the defendant while denying the jural relationship of landlord and tenant and that he illegally entered into the suit schedule premises, stated that he purchased the property from one Mohd Burhan under agreement of sale dated 12.12.2002 by paying valuable consideration and ever since the date of purchase, he is in possession of the property.

17. In order to prove the case of the petitioner, he got examined himself as P.W.1 and also got examined his wife as P.W.2. They deposed as per the plaint averments and their cross-examination is also consistent with that of chief examination. Further in order to prove that the defendant was the earlier tenant and that when he committed default, the plaintiff filed suit in R.C. No. 358/2002 on the file of Principal Rent Controller, Hyderabad and. the same was allowed and that in the execution in E.P. No. 14/2003, the property was delivered through court on 8.8.2003, he got examined the court balief as P.W.3 and Exs.X-1 to X-4 were got marked through him. He categorically deposed that E.P. No. 14/2003 was filed in pursuance of R.C. No. 353/2002 and the property was duly delivered to the plaintiff by way of court order by the court bailaf. Therefore, from the evidence adduced on behalf of the plaintiff, he could prove that the defendant was his earlier tenant and he was evicted from the suit schedule property by the order of the court. On the other hand, though the defendant stated that he purchased the suit schedule property by way of agreement of sale, no document was produced. Therefore, from these circumstances, it is clear that the possession of the defendant over the suit schedule property is not legal and further these circumstances probablizes the case of the plaintiff that when they went to Kamareddy for festival, the defendant broke open the lock and occupied the suit schedule premises illegally and failed to vacate, in spite of demand from the plaintiffs.

18. The contention of the defendant is that as per the evidence of the plaintiff as P.W.1, he went to Saudi Arabia in September, 2002 and returned back to India on 26.12.2005 and therefore, his averment that he left for Kamareddy on 25.11.2003 and returned on 30.11.2003 and in the meanwhile defendant broke open the lock and entered the premises; is self contradictory, since he was away from India as per his own evidence and hence his going to Kamareddy, is invented for the purpose of this suit.

19. The case of the plaintiff is that he is working at Saudi Arabia and his wife is his G.P.A. holder and she filed the suit on his behalf and that his wife is looking after all his affairs in India and he appointed her as his G.P.A. holder. It is his

case that the family of the plaintiff was in possession in suit house and left the house on 25.11.2003 for a week, to Kamareddy Nizamabad, District, A.P. to attend Ramzan Idd of 2003 and came back on 30.11.2003, but found that the defendant has entered into the house by breaking open their lock and refused to vacate and to handover the possession to the family of the plaintiff; that G.P.A. holder on his behalf rushed to police station, but police instructed to file suit. From this it is clear that the case of the plaintiff is that his family is residing in the suit house. Therefore, in view of these circumstances, the statement of the plaintiff in the cross-examination referred to by the counsel for the defendant, is not contrary to his case in the plaint and it cannot be taken advantage of by the defendant in the light of the above facts and circumstances.

20. The other aspect to be noticed is whether the suit is filed within six months from the date of forcible dispossession. The case of the plaintiff is that their family went to Kamareddy on 25.11.2003 and returned back on 30.11.2003 and in the meanwhile the defendant broke open the lock and gained possession, The court below based on record, rightly found that the suit is filed on 14.6.2004 on the reopening day of summer vacation and after deducting summer vacation, from calculating the period of limitation, found that the suit is filed within limitation.

21. The other contention of the counsel for the defendant is that the plaintiff has not produced any document of title and he has to succeed on his own strength and cannot rely on the weaknesses of the defendant. The submission of the counsel for the defendant is unexceptionable. But it is to be noticed that the suit is filed u/s 6 of the Specific Relief Act, 1963 on the ground that the plaintiff was forcibly evicted from the suit schedule property and the suit is filed within six months. In a suit for recovery of possession of this nature, the plaintiff has to prove his possession and the question of title of either party need not be gone into. A learned single Judge of this Court in Mohd. Ibrahim and Others Vs. Smt. Munni @ Zainab Bee, held as under:

6. Though arguments are advanced on the question of title relating to the plaint schedule property, since the suit is u/s 6 of the Act, I need not go into the questing of title as a Full Bench of Allahabad High Court in Yar Muhammad and Another Vs. Lakshmi Das and Others, held that no question of title either of the plaintiff or of the defendant can be raised or gone into in a suit u/s 9 of the Specific Relief Act, 1877 (corresponding to Section 6 of the Specific Relief Act, 1963) and that plaintiff would be entitled to succeed without providing any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the best of all titles, and that the restoration of possession, in such a suit, is however always subject to a regular title suit and the person who has the real title, or even the better title cannot therefore be prejudiced in any way by a decree in such a suit, as it is always open to him to establish his title in a regular suit and to recover back possession. Therefore, it is not necessary for me to go into the question of title relating to the plaint

schedule property in this case. The person who feels that he has a title to the property, if aggrieved by the judgment in the suit, can always file a suit for declaration of title and recovery of possession.

7. As rightly contended by the learned Counsel for the revision petitioners the only point for consideration in this revision would be whether the respondent was in possession of the property and if so whether she was forcibly dispossessed from the property within six months prior to the date of filing of the suit.

22. The Apex Court in the decision reported in *Sanjay Kumar Pandey v. Gulbahar Sheikh* 2004 (2) AWC 2132 held as under:

4. A suit u/s 6 of the Act is often called a summary suit inasmuch as the inquiry in the suit u/s 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order to decree passed in any suit instituted under this Section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit u/s 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 recovery possession of the property notwithstanding the adverse decision u/s 6 of the Act. Thus, as against a decision u/s 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. 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 u/s 6 of the Act except on a case for interference being made out within the well settled parameters of the exercise of revision jurisdiction u/s 115 of the Code.

23. Therefore, from the above judgments it is clear that in a suit filed for recovery of possession u/s 6 of the Specific Relief Act, the question relating to title cannot be gone into and the person who feels that he has got title, is always at liberty file a suit for declaration of title and recovery of possession and that the only question to be considered is, whether the plaintiff was in possession of the property and whether he was forcibly dispossessed from the property within six months prior to the date of filing of the suit. In other words the remedy" of an unsuccessful party in a suit filed u/s 6 of the Act, is only to file a suit based on title. The Apex Court further held that the remedy of filing a revision is available, but it is only by way of an exception and that High Court would not interfere with a decree or order u/s 6 of the Act, except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction u/s 115 of the Code.

24. As per the facts and circumstances noted above, the plaintiff could prove his possession over the suit schedule property based on the oral and documentary evidence on record and also that he was forcibly dispossessed from the property within six months prior to the filing of the suit. Further, the petitioner could not make out any ground for exercise of revisional jurisdiction u/s 115 of Code of

Civil Procedure. In these circumstances, the revision is devoid of any merit and the same is liable to be dismissed.

25. Accordingly the revision is dismissed. No costs.

26. After pronouncing the order dismissing the revision petition, the learned Counsel for the petitioner submitted that having regard to the facts and circumstances of the case and having regard to the position in which the petitioner is placed, a reasonable time of four months may be granted for vacating the premises in question. On the other hand, the learned Counsel for the respondent concedes for grant of two months time for vacating the premises.

27. Having regard to the facts and circumstances of the case, three months time is granted to the petitioner for vacating the premises in question.