
(2011) 08 BOM CK 0068

In the Bombay High Court

Case No : Civil Revision Application No. 62 of 2011

Kishore Deshpande

APPELLANT

Vs

Sarang Patil

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Specific Relief Act, 1963 — Section 6

Citation : (2012) 1 ALLMR 131 : (2012) 3 BomCR 405 : (2012) 1 MhLj 934

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : M.P. Khajanchi, for the Appellant; S.Y. Deopujari, for the Respondent

Final Decision : Dismissed

Judgement

R. K. Deshpande, J.—This civil revision application challenges the judgment and order dated 18.3.2011 passed by the Civil Judge, Junior Division, Maregaon, decreeing the Regular Civil Suit No. 34 of 2009, filed by the Respondent/Plaintiff u/s 6 of the Specific Reliefs Act.

2. Notice for final disposal of the matter was issued by this Court on 21.6.2011. Shri S.Y. Deopujari, the learned Counsel appears for the Respondent/Plaintiff.

3. Admit. Heard the matter finally by consent of the learned Counsels appearing for the parties.

4. The contention of Shri M.P. Khajanchi, the learned Counsel appearing for the applicant/Defendant, is that there is nothing on record to show that the Respondent/Plaintiff has been in continuous possession of the suit property. He further submits that there is nothing on record to show that on 20.6.2009, the Respondent/Plaintiff was dispossessed from the suit property. He therefore, submits that the suit was filed on 29.7.2009, which was beyond period of six months and hence, the Trial Court ought to have, dismissed the suit.

5. With the assistance of the learned Counsels appearing for the parties, I have

gone through the findings recorded by the Trial Court. The Trial Court has framed the issue No. 2 as to whether the Plaintiff prove that he was in possession over the suit field? The issue No. 3 was framed as to whether the Plaintiff prove that the Defendant has dispossessed him? Both these issues are answered in the affirmative. In paras 11, 12 and 13 of the judgment, the documents filed on record showing continuous possession for the year 200001 and 200708 have been referred to. In para 13, the finding is recorded that the 7/12 Extract at Exh.4, was issued by the Talathi on 24.11.2009. After discussing the evidence on record, the finding is recorded in para 20, that the Plaintiff was dispossessed on 20.6.2009 and the Plaintiff was in continuous possession from 1970, as per the revenue records. The suit was admittedly filed on 29.7.2009 i.e. within a six months from the date of dispossession. No perversity or jurisdictional error in recording such finding has been brought to my notice. In view of this, no fault can be found with the finding recorded by the Trial Court.

6. Shri M.P. Khajanchi, the learned Counsel appearing for the applicant/Defendant, has relied upon two judgments, reported in Shri Mahabir Prasad Jain Vs. Shri Ganga Singh, , to urge that for the purposes of considering the plea of limitation in a suit u/s 6 of the Specific Reliefs Act, it is necessary to consider the question whether the Plaintiff was in exclusive possession as claimed by him, Tajul Islam and Anr. v. Shariyatullah Mansoorali Sheikh, 1994 Mh.L.J. 1191, for the proposition that the Plaintiff must prove the "previous possession" and "wrongful dispossession".

7. The propositions laid down in both the judgments cannot be disputed. The questions involved in this case are whether the Plaintiff was in continuous possession of the suit property till the date of dispossession and whether the suit was filed within a six months from the date of dispossession. These are the questions of facts and required to be established and it depends upon the facts circumstances of each case. Here, the findings on these questions are recorded in the affirmative. Hence ,the judgments cited are not applicable.

8. In view of above, the revision application is dismissed. No order as to costs. It is open for the applicant to file suit based upon title, if it is permissible in law.