

(1958) 11 KAR CK 0011

In the Karnataka High Court

Case No : Civil Revision Petition No. 188 of 1958

Krishnaji Madhavarao Khannukar

APPELLANT

Vs

Mahmed-Husen Budansaheb and Others

RESPONDENT

Date of Decision : 25-11-1958

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : AIR 1959 Kar 127 : (1958) 36 MysLJ 945

Hon'ble Judges : A.R. Somnath Iyer, J

Bench : Single Bench

Advocate : B.V. Krishnaswamy Rao, for the Appellant; K.I. Bhatta and S.V. Mahajan, for the Respondent

Judgement

1. This revision petition arises out of a suit brought by one Mohamad Hussain, who is the respondent in this revision petition, under the provisions of Section 9 of the specific Relief Act. His case was that he was the tenant of the petitioner in this revision petition. That landlord was defendant 3 in the original suit.

2. The case of the plaintiff was that one Kashimsaheb Gavas, who was not a party to the suit brought by the plaintiff, was the agent of the plaintiff who, under an agreement Exhibit 81, had to manage a hotel which the plaintiff was running in the leased premises, under the terms and conditions incorporated in that agreement. The plaintiff's allegation was that on 4-1-1956, defendant 3 the landlord took possession of the leased building otherwise than in due course of law in collusion with that agent Kashimsaheb Gavas. The plaintiff, therefore, brought a suit for recovery of possession of the leased property of which he was so dispossessed.

The suit was resisted by defendant 3 on various grounds. The principal contention that was urged on his behalf was that Kashimsaheb Gavas was not an agent of the plaintiff but was a subtenant. Defendant 3 therefore contended that the plaintiff, having sublet the property to Kashimsaheb Gavas, the landlord became entitled to recover possession of the property and that the plaintiff was,

therefore, not competent to bring the present suit. It was also contended by defendant 3 that this was not a case to which the provisions of Section 9 of the Specific Relief Act applied since the plaintiff could not properly bring this suit as he was bound by the acts done by his agent Kashimsaheb Gavas.

3. The Civil Judge made a decree in favour of the plaintiff and it is against that decree that this revision petition has been presented.

4. In this revision petition, Mr. Krishnaswamy Rao, the learned Advocate for defendant 3, has urged three contentions. His first contention is that the allegations of the plaintiff, even if believed, do not amount to an allegation of dispossession such as what is contemplated by Section 9 of the Specific Relief Act. The 2nd contention is that even if there was any such dispossession, it is only Kashimsaheb Gavas that could bring a suit. His third contention is that even if the plaintiff's allegations are believed, since those allegations amount to his agent acting in excess of the scope of his authority, the only remedy open to the plaintiff was to sue his agent.

5. I find no substance in any of these three contentions. Taking the first contention first, Mr. Krishnaswamy Rao's argument is that Kashimsaheb Gavas was a sub-tenant of the plaintiff. In support of that argument, Mr. Krishnaswamy Rao relies on Ext. 81. But, the Civil Judge was of the view that Kashimsaheb Gavas was not a sub-tenant of the plaintiff but was only his manager or an agent. In my opinion, the Civil Judge has construed Ext. 81 correctly.

Ext. 81 clearly shows that it was the plaintiff that had to continue to be the tenant of the property; he had to pay the rent to defendant 3, the business had to continue to be that of the plaintiff and Kashimsaheb Gavas who had to be in charge of that business and who had to run it had to pay a certain sum of money every month to the plaintiff.

That document provides that while the plaintiff had not only a right to inspect the property whenever he wished to do so the tenant should do no act which would impair the tenancy of the plaintiff or the license under which the hotel was being run in that building. In my opinion, the effect of the agreement is to make Kashimsaheb Gavas only the mere agent of the plaintiff and not to make him his sub-tenant. That, this, is the correct inference to be drawn is also clear from the fact that when defendant 3 was in the box, he did not himself give evidence that Kashimsaheb Gavas was the sub-tenant of the plaintiff.

6. If, therefore, Kashimsaheb Gavas was only an agent of the plaintiff, and defendant 3, as a result of a conspiracy between Kashimsaheb Gavas and himself, obtained possession of the leased premises, can it or can it not be said that the plaintiff was dispossessed without his consent of the leased property otherwise than in due course of law? Mr. Krishnaswamy Rao's contention is that if at all any one was dispossessed, it was Kashimsaheb Gavas and not the plaintiff.

His argument is that Kashimsaheb Gavas was not dispossessed because it was he who gave defendant 3 possession. So, Mr. Krishnaswamy Rao urges, that no one was dispossessed without his consent otherwise than in due course of law, and so, no suit u/s 9 was competent, I am quite unable to accept this contention.

Kashimsaheb Gavas was in possession of the property only for and on behalf of the plaintiff. The plaintiff never ceased to be in possession of the leased property. So far as the property was concerned, the plaintiff it was that was the tenant and it was he who was in possession of it.

If, as a result of collusion between Kashimsaheb Gavas and defendant 3, defendant 3 got possession of the suit property, it is, I think, clear that it was the plaintiff who was dispossessed of that property without his consent and otherwise than in due course of law. It cannot be said that by the fact that Kashimsaheb Gavas was appointed to manage his business in accordance with the provisions and stipulations contained in Exhibit 81, plaintiff lost possession of the property or discontinued being in possession of it.

7. But Mr. Krishnaswamy Rao relies in support of his contention on the decision of the Court of the Judicial Commissioner at Peshawar in *Abdulla Khan v. Faizulla* AIR 1950 Pesh 9. That was a case in which a house which was in occupation of the plaintiff's wife and son was forcibly taken possession of by the defendant. In a suit brought by the father u/s 9 of the Specific Relief Act. it was contended on behalf of the defendant that such a suit did not lie since it was only the wife and the son that could have brought that suit

The learned Judges who decided that case accepted that contention and held that the proper persons who could have sued u/s 9 of the Act were the wife and the son. With great respect, I am unable to accept that view. It has also to be pointed out that the learned Judge did not express that view in any unqualified way since he himself observed that the plaintiff who brought that suit could institute the suit if the persons actually dispossessed were not willing to sue.

8. The other case on which Mr. Krishnaswamy Rao relied is *The Official Receiver v. Hira* AIR 1950 Raj 38. In that case, the Official Receiver who was in possession of the property handed over possession of it to a Thekedar Ahmed Hussain and when defendants took possession from that Thekedar, the Official Receiver brought a suit u/s 9 of the Specific Relief Act. The learned Judicial Commissioner who decided that case took the view that the suit by the Official Receiver was incompetent. It is not clear from the report as to the circumstances in which the Thekedar was handed over possession of the property by the Official Receiver, and that being so, it is difficult to apply the rule that was enunciated in that case to the facts of the present case.

9. But the principle that really applies to this case is what is enunciated in *Ratanlal Ghelabhai v. Amarsing Kupsing* ILR 53 Bom 773 : AIR 1929 Bom 467. In that case, the learned Judges of the High Court of Bombay pointed out that even when exclusive occupation of Immovable property is given to the tenant, who is

subsequently dispossessed, it is open to the landlord to bring a suit in his own name u/s 9 of the Specific Relief Act. At page 775 (of ILR Bom): (at p. 467 of AIR), while referring to the provisions of Section 9 of the Specific Relief Act, this is what Kemp, C. J. said :

"There is nothing in this section to show that possession is confined to actual physical possession. In the case of a landlord and tenant, the landlord is in possession through his tenant, and, as pointed out in *Virjivandas Madhavdas v. Mahomed Ali Khan* ILR 5 Bom 208, the proper remedy where exclusive occupation of Immovable property is given to a tenant is for the tenant to file a suit for possession. In the case of the landlord, if he desires to sue immediately on the possessory right, can sue in the name of the tenant and further, for an injury to the reversion, the land-lord can sue in his own name."

Applying that principle to this case, it seems to me that Kashimsaheb Gavas being only an agent and not even a tenant, it was fully competent for the plaintiff in this case to bring a suit u/s 9 of the Specific Relief Act, in his own name. In my opinion, the argument of Mr. Krishnaswamy Rao that the suit is incompetent has to be rejected as unsound.

10. The next contention urged by Mr. Krishnaswamy Rao is that the only remedy that was open to the plaintiff in this case was to sue the agent for payment of compensation. It may be that Kashimsaheb Gavas in this case was liable to pay to the plaintiff compensation for the wrongful act done by him in allowing defendant 3 to dispossess the plaintiff in the manner he did. But the mere fact that the plaintiff had that remedy against Kashimsaheb Gavas does not mean that he was incompetent to bring a suit u/s 9 of the Specific Relief Act if he was otherwise entitled to do so.

11. The result is that this revision petition which is without substance has to be dismissed.

12. But Mr. Krishnaswamy Rao has pointed out that there is one matter in regard to which the decree made by the Court below requires rectification, and that is, in regard to the decree made by the Civil Judge, awarding mesne profits to the plaintiff. Mr. Krishnaswamy Rao is quite right in contending that the Civil Judge could not have made any provision for mesne profits in the decree which he made u/s 9 of the Specific Relief Act. That part of the decree by which the plaintiff was awarded mesne profits by the Civil Judge is deleted and the decree made by him is otherwise confirmed. Defendant 3 is granted a month's time to deliver possession of it to the plaintiff.

13. Since each party has succeeded in part in this revision petition, I direct that they shall bear their own costs in this Court.

14. Order accordingly.