

(1987) 03 BOM CK 0052
In the Bombay High Court
Case No : Second Appeal No. 95 of 1981

Laxman Pandu Khadke

APPELLANT

Vs

Pandharinath Purushottam Rane

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Limitation Act, 1963 — Section 27
Specific Relief Act, 1963 — Section 10, 37
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1988 Bom 296 : (1987) 2 BomCR 640 : (1989) MhLj 752

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : M.V. Sali, for the Appellant; K.N. Velankar, for P.M. Pradhan, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal arises out of the suit filed by the present respondent (hereinafter referred to as the plaintiff) for injunction against the defendant (present appellant) with a view to protect his possession in respect of the suit land.

2. Facts are very simple. Admittedly, the suit land belonged to the defendant. By an agreement dated 31-5-1971 the plaintiff agreed to purchase the said land from the defendant for the total sum of Rs. 11,500/-. A sum of Rs. 8,500/- was paid as earnest money and it is now a finding recorded by the lower appellate Court that the possession of the land was made over by the defendant to the plaintiff by way of part performance of the agreement. The land was agricultural land and one of the terms of the agreement, naturally, was that the permission for sale of the land was to be obtained by the parties from the Collector. It is the case of the plaintiff which is accepted by the Court below that an application was made by the plaintiff to the revenue authorities for the necessary permission for sale of the land. On the date fixed for the consideration of the application, the plaintiff even remained present before the revenue authority but the defendant

played hockey and just chose not to remain present before the authority. The result was that the revenue authority had no other alternative but to pass an order to the effect that application was disposed of. The plaintiff thereafter wrote a registered letter to the defendant expressing his willingness to pay the balance of the amount and to take the conveyance from the defendant but all this correspondence turned futile and the plaintiff got information that the defendant was intending to transfer the land to some one else. Hence, the instant suit was filed by the plaintiff for declaration about his right under the agreement and for injunction restraining the defendant from interfering with his possession.

3. There was some dispute as regards the nature of the plaintiffs suit. The dispute is now set at rest because Mr. Sali has made a categorical statement before the Court that the plaintiff had confined his claim only to injunction, if not in the trial Court, at least in the appeal Court. I will, therefore, proceed on the assumption that the suit was for injunction simpliciter.

4. The defendant's defence was that the permission to sell the land was not taken by the plaintiff. Implication, therefore, was that the Agreement of Sale was ineffective. Further contention appears to be that the suit for injunction was not competent for various reasons, one of the reasons being that the plaintiff was not in possession of the suit property.

It appears that the defendant's said contentions were accepted by the trial Court and the plaintiffs suit was dismissed by the trial Court with costs.

5. As stated above, the plaintiff has filed the suit stating that he had confined his prayers only to the relief of injunction. His contention was that he was in possession of the suit land on the basis of the agreement, Exhibit 63, dated 31-5-1971. His further plea was that he was always ready and willing to pay the balance of the amount and that his possession which was initially lawful related to the Agreement of Sale, Exhibit 63 and that as such he was in lawful possession of the suit land. He, therefore, submitted that he was entitled to injunction from the Court against the defendant because his right to remain in lawful possession was being threatened by the defendant.

6. This contention has been accepted by the District Court. The appeal has been allowed and the plaintiffs suit for injunction has been decreed by the appeal Court. Hence, this second appeal.

7. In this second appeal, Mr. Sali for the appellant contended that the position today is that there is no permission given by the revenue authorities for sale of the land and in the absence of such permission the possession of the plaintiff cannot be said to be lawful. Secondly, he contends that the suit for injunction simpliciter by a person who is in possession of the property in pursuance of the Agreement of Sale only is not competent. According to him, the real remedy for such person is to file a suit for specific performance, not for mere injunction.

8. I will firstly deal with the second argument. For the purpose of this argument,

it has to be assumed that the continuance of the plaintiffs possession is lawful. Question then arises as to whether a person who enters into possession lawfully on the basis of Agreement of Sale can maintain a suit for injunction simpliciter without adding a prayer for specific performance of the agreement.

My attention was not invited to any authority taking the view that such a suit is incompetent. A suit for injunction is always maintainable for protection of plaintiffs possession, if the plaintiff can make good his case before the Court that he is in lawful possession of the property. In the instant case, we are proceeding upon the assumption that the plaintiffs initial possession and his subsequent continuation of the same are both lawful. If that is the position, then he is in possession rightfully. Only the strangers having better titles not the defendant can disturb his possession save by the process of law. As is well-known by now, the Courts have gone a step further and have shown their inclination to hold that even a trespasser can maintain a suit for injunction if his possession is of long-standing character. Such suit is justified on the basis of what is called possessory title. Such person claiming such possessory title can maintain such suit for injunction. In the instant case, the plaintiff had a right to remain in possession not only against the rest of the world but also against the present defendant. He was initially inducted into possession of the suit premises on the basis of the Agreement, Exhibit 63. Nothing has transpired subsequently which makes that lawful agreement unlawful by the occurrence of any subsequent event. It may be that if the plaintiff was not ready and willing to pay the balance of the amount of the price he would not be entitled to claim the protection u/s 53A of the T.P. Act on the basis of part performance; but in the instant case the plaintiff has issued notices after notices to the defendant expressing his readiness and willingness to pay the balance of the amount. Entire equity is in favour of the plaintiff. In these circumstances, nothing can be perceived from the record which could give rise to the inference that there is any infirmity about the plaintiffs right to remain in possession. If he has present right to remain in possession, he has every right to ask for suitable remedies in that behalf.

9. Question then comes whether plaintiff is in lawful possession of the land or not. As pointed out above, the lower Court has held that the order of the revenue authorities holding that their application made by the plaintiff for permission to sell the land had to be disposed of was the result of recalcitrants and obstinacy of the defendant himself. Plaintiff had done everything in his hand to obtain the permission but unless the defendant cooperated, the revenue authorities could not grant permission for sale of the land. The defendant remained absent in those proceedings. He cannot now turn round and contend that it was the plaintiff who was in fault for not obtaining the permission of the sales of the land. There is no reason why application cannot be made by him even at this stage for permission for sale of the land. If the permission is refused on some lawful ground by the revenue authorities, the position of law might have been somewhat different, but that is not a matter which can be disposed of by assumption. The contention of Mr. Sali that on this account the plaintiffs

possession of the suit land cannot be held as lawful must, therefore, be rejected.

10. The next argument is that the plaintiff has no right to remain in possession of the suit land because if he was to file a suit for specific performance at this stage, it would be barred by limitation.

11. To my mind, the fact that if such a suit was filed by the plaintiff, it would be dismissed on the ground of bar of limitation is no ground for holding that the plaintiff's initial legal possession has converted itself into an illegality. Moreover, provisions of Section 27 of the Limitation Act have no application to this suit. May be that the plaintiff's right to file the suit for specific performance is barred but the substantive right is not extinguished. Section 27 of the Limitation Act refers to a suit for possession, not to a suit for specific Performance. If a suit for possession is barred by limitation, the very substantive right in respect of the property is extinguished. But that is not the position when the suit is not required to be filed only for possession but only for specific performance. In the instant case, the plaintiff need not file a suit for possession at all. His right to have specific performance cannot, therefore, be said to have been extinguished. That right exists. His possession which was relatable to the Agreement of Sale also exists. The lawful character of that possession continues to exist. The plaintiff thus has got the present right to remain in possession. He is, therefore, entitled to approach a Court of equity to ask for injunction with a view to protect that legal right.

12. I, however, make it clear that the remedy for injunction is an equitable remedy and if the defendant was to file a suit for specific performance and recovery of the balance of the amount, his suit might face with the difficulty of limitation. This means that the plaintiff would be allowed to continue to be in possession on the strength of the present decree of injunction without payment of the balance of the amount of Rs. 3000/-. On his own showing the plaintiff has paid only a sum of Rs. 8500/- to the defendant. He has yet to pay the balance of the amount. He has entered into possession of the suit land almost immediately after the date of the agreement. This means that he has been in possession of the property worth Rs. 11,500/- by payment only of a sum of Rs. 8500/-. If he wants the injunction, the Court should see to it that the equitable remedy of injunction I should not be made available to the plaintiff I unless he pays the balance of the amount to the defendant. Miss Velankar appearing for the defendant, however, contended that the plaintiff was always ready and willing to pay the balance to the defendant provided the defendant executed the conveyance in respect of the suit land in favour of the plaintiff.

13. Having regard to all the circumstances mentioned above, the appeal fails and the same is hereby dismissed. There shall be no order as to costs.