

(1983) 08 GUJ CK 0016
In the Gujarat High Court

Case No : A.F.O. No. 30 of 1983 with Civil Application No. 543 of 1983

Mohammad Hussain Suleman Shaikh and Another	APPELLANT
Vs	
Batukbhai Vaijibhai and Others	RESPONDENT

Date of Decision : 22-08-1983

Acts Referred:

Specific Relief Act, 1963 — Section 6

Citation : AIR 1984 Guj 66 : (1984) GLH 156 : (1984) 1 GLR 184

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : G.N. Desai, for the Appellant; P.B. Majmudar and M.V. Chokshi, for the Respondent

Judgement

1. The appellants-plaintiffs have preferred this appeal against the judgment and order dated 25th Jan. 1983 passed by the Chamber Judge, Court No. 12, City Civil Court, Ahmedabad, on Ex. 2 being an injunction application filed by them.
2. Against the appellants a decree under S. 6 of the Specific Relief Act was passed in Civil Suit No. 2013/80 filed by the respondents Nos. 1 and 2. Respondent No. 3, Darveshali Masjid, Ahmedabad, is a Public religious trust which is managed by respondents Nos. 3/1 to 3/7 as its trustees. Respondents Nos. 1 and 2 claim that they are the tenants in respect of, some portion situated between two pillars of a wall of Darveshali Masjid on Pirmohmed Shah Road, Pankornaka, Ahmedabad which is near the footpath. Respondents Nos. 1 and 2 have filed the above said suit for recovering the possession of the suit premises under S. 6 of the Specific Relief Act, 1963, as the appellants took the possession of the said premises unlawfully. The said suit was decreed and the revision application filed before this Court and the Special Leave Application against the said judgment was dismissed. As the respondents Nos. 1 and 2 were trying to execute the said decree, the appellants filed the aforesaid Civil Suit No. 123/83 before the City Civil Court, Ahmedabad, for a declaration of their right, title and interest over the suit premises and for an injunction restraining the defendants

from executing the decree passed in Civil Suit No. 2013/ 80. In the said suit they filed an interim injunction application. The learned Chamber Judge, rejected the Notice of Motion and refused to grant the interim relief on the ground that by grant of interim injunction the decree passed under S. 6(1) of the Specific Relief Act would be frustrated and by relying upon the judgment in the case of Parma Nand and Others Vs. Sm. Chhimmawati and Another, , held that if such an injunction is granted the very object and purpose of the suit for possession under S. 6 of the Specific Relief Act would be frustrated and the person who takes the law in his own hand and forcibly dispossesses another -otherwise than in accordance with law, would be in a position to frustrate the execution of the decree. Without discussing evidence on merits, the learned Judge held that once a judgment and decree under S. 6(1) of the Specific Relief Act is passed, the appellants would not have any prima facie case. He held that the persons who are forcibly dispossessed should be restored, to the possession of the property in question when they have obtained the judgment and decree in their favour from the competent Court and hence the balance of convenience will be in their favour.

3. The learned advocate appearing on behalf of the appellants had pointed out that the learned Judge had relied upon a judgment of the Allahabad High Court which is overruled by the said Court in 1972 in the case of Chunni and Another Vs. Sullahar and Another, , wherein the Allahabad High Court has relied upon the judgment in the case of Mari Doddattamma Markundi v. Santaya Ram Krishna Pai Kolle AIR 1922 Born216.

4. In the case of Mari Doddattamma Markundi v. Santaya Ram Krishna Pai Kolle, AIR 1922 Born 216, the Court has held that the order or decree which is passed under S. 9 of the Specific Relief Act (now S. 6 of the Specific Relief Act, 1963) is not open to appeal or to review at the instance of the defeated party and the section expressly provides that nothing contained therein shall bar any person from going to establish his title to such property and to recover possession thereof. There the appellant had brought Suit No. 293/17 in the Court of the Subordinate Judge for restoration of possession under S. 9 of the Specific Relief Act and a decree was passed in his favour. But before he could execute the said decree, the respondent of that case instituted a suit to establish his title to the lands in dispute and to obtain an injunction to restrain the appellant from dispossessing him by enforcing the decree passed in Suit No. 293/17. Rejecting the contention of the appellant the Court held as under:-

"It was therefore competent to the respondent to institute this suit to establish his title to the lands in dispute; and being in possession thereof, the only further relief which he could seek was an injunction to restrain the appellant from disturbing his possession. The terms of the decree passed by the lower Court are, in my opinion, unobjectionable."

The Court further held that the sole object and purpose of the suit would be to obtain a reversal of the judgment and decree which is passed in Suit No. 293/17 treating it as of a summary nature.

5. Relying upon this judgment, the Division Bench of the Allahabad High Court in the aforesaid case of Chunni and Another Vs. Sullahar and Another, held:

"A person in possession against whom a decree under S. 9 of the Specific Relief Act has been passed in favour of another person can bring a suit to establish his title to the land, and for an injunction restraining the other person from executing his decree."

The Court also interpreted the phrase "and to recover possession thereof occurring in S. 6 of the Specific Relief Act and held that the phrase does not preclude or bar a suit on title in which a consequential relief other than the relief for recovery of possession is claimed. In a case where the plaintiff is dissatisfied with a decree under S. 6 he can immediately institute a suit for declaration of his title and can claim the available consequential relief. That is, if he is in possession of the suit property, all that he can pray for is that status quo be maintained and an injunction be issued restraining the defendant from dispossessing him. The Court distinguished Parmanand's case and held as under:-

"In Parma Nand and Others Vs. Sm. Chhimmawati and Another, it was held that permitting a person to sue to obtain an injunction restraining the other side from executing the decree would defeat the object of S. 9. That may be so. It may also be urged that a suit simpliciter for such a relief, namely, to restrain the respondent from executing the decree, may be barred by S. 41(a) and S. 41(b) of the Specific Relief Act. But the position will not be the same in a suit for declaration of title and consequential relief for preservation of plaintiff's possession."

The Madras High Court has also taken the similar view in the case of R. Gopalkrishna Pillai v. P. S. Venkatesam Pillai (1967) 1 Mad LJ.346. There the Court after distinguishing the judgment of Parmanand's case held as under:-

"There is nothing in the language of the section to take away the remedies available to a person in possession of property as of right, and entitled to "remain in possession. Of course it goes without saying that when there is a valid decree for possession against a plaintiff, he will not be granted an injunction from executing that decree. If the legality of the decree is not questioned a decree holder cannot be restrained from executing the decree as between the parties to the decree. In the Allahabad case as I see it the relief being only for injunction the suit had necessarily to be dismissed. Section 9 provides only a summary and speedy remedy to a person dispossessed. The title to the possession is outside the scope of the suit. When a suit on title questioning the order in the summary suit is filed, in one sense the decree or order for possession is impugned, and in manner provided by law as no appeal is competent. The object of the title suit, is in substance to have the summary order for possession set aside on the basis of title and right to present possession. In such a suit if the plaintiff in possession has claimed declaration of his title, in my view it may properly be followed by the

consequential relief of injunction : see Mari v. Santaya, S. 56 of the Specific Relief Act, 1877 will be no bar."

6. In view of this settled legal position it is clear that the plaintiffs' suit for declaration of their title to the suit property and consequential relief of injunction is maintainable. However, while granting interim injunction the Court is required to consider all the relevant facts i.e. prima facie case, balance of convenience and irreparable injury to either party. The learned Judge has not decided the appellants' case on merits. He has held that the appellants were not having prima facie case because the decree was passed in summary suit. He further held that there cannot be any balance of convenience in favour of the appellants because the decree was passed in favour of respondents Nos. 1 and 2. The learned Judge has not decided the prima facie case on the documents which were produced before him and also the interim injunction application on its merits. The question whether on facts the appellants were entitled to an interim injunction of the kind prayed for is entirely a different matter. The Court would be required to consider by applying its mind whether the appellants have a prima facie case and whether balance of convenience is in their favour and, also may consider the judgment and decree passed against the appellants as a most relevant piece of document, but at the same time the Court is required to decide it on merits after considering the documentary evidence produced and affidavits produced by the parties. As the trial Court has not applied its mind to the facts of the case, it would be necessary to send back this case to the trial Court for determining it on merits.

7. In the result, the appeal from order is partly allowed and, the impugned order dated 25th January, 1983 passed by the Chamber Judge, Court No. 12, City Civil Court, in Regular Civil Suit No. 123 of 1983 on Notice of Motion Ex. 2 is quashed and set aside. The matter is remanded to the trial Court and the learned Judge is directed to dispose of the said application for interim injunction on merits and in accordance with law after considering all the relevant documents including the judgment and decree passed in favour of respondents Nos. 1 and 2 under S. 6 of the Specific Relief Act. There will be no order as to costs. The learned Judge may dispose of this application as far as possible within one month from the date of receipt of the record from this Court.

8. Civil Application is disposed of accordingly with no order as to costs.

9. Appeal partly allowed.