

(2010) 11 DEL CK 0092

In the Delhi High Court

Case No : C.R.P. No. 45 of 2010 and C.M. No. 4697 of 2010

Mrs. Sarvesh Kumari Yadav

APPELLANT

Vs

Sh. H.C. Ahjua

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 115
Specific Relief Act, 1963 — Section 6, 6(3)

Citation : AIR 2011 Delhi 61 : (2010) 174 DLT 380

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Ranjan Kumar and Manoj Kumar, for the Appellant; M.L. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Present revision petition has been filed by the petitioner (Defendant in the trial court) against judgment dated 24th July, 2009 passed by Civil Judge, vide which suit u/s 6 of the Specific Relief Act, 1963 (for short as Act?) for possession filed by respondent (Plaintiff in the trial court) was decreed.

2. Brief facts of this case are that respondent purchased property bearing No. 500, DDA Janta Flat, Ground Floor, Pul Prahaladpur, New Delhi from its owner Sh. Jagdish Chander Mehendiratta for sale consideration of Rs. 75,000/- on 13th August, 1996. The possession of the said property was handed over to the respondent by its owner on receipt of the whole of the sale consideration. The said owner executed the possession letter showing the delivery of possession of the said property to the respondent and also executed other documents in favour of the respondent.

3. After purchase of the property, respondent has been letting out the same to different tenants and ultimately got the same vacated in December, 2000 and occupied it in January, 2001 and shifted his house-hold goods and started living in the said house.

4. Respondent also owns another house at 251, MIG, Suraj Apartments, Pul Prahaladpur, New Delhi and shifted to that house in order to get the suit property repaired. While respondent was living at house No. 251, MIG Suraj Apartments, Pul Prahaladpur, New Delhi, he came to know on 29th March, 2001 that petitioner has broken open the lock and trespassed into the property. Immediately, respondent lodged a report with the police.

5. It is further alleged that petitioner on the other hand, filed a false suit against him and his wife to the effect that she (petitioner) has purchased the said property from his wife for a sum of Rs. 2,42,500/- and have paid a sum of Rs. 1,27,500/- on 10th February, 2001 to his wife.

6. It is stated that his wife has got nothing to do with the property in question and property is owned by him, which fact has been admitted by petitioner in the suit filed by her. All the house-hold goods of respondent are lying in the suit property. Thus, petitioner has illegally trespassed in to the suit property unauthorisedly, without any legal right and as such respondent filed a suit for possession u/s 6 of the Act.

7. Petitioner in her written statement filed before the trial court has taken preliminary objections that suit of respondent is devoid of any cause of action and same is barred u/s 10 of the CPC (for short as ?Code?). Petitioner has already filed a suit for injunction against respondent and his wife, which is pending before the Civil Court.

8. On merits, it is stated that respondent misrepresented to the petitioner that alleged flat was of his wife-Smt. Raj Kumari and accepted part payment of Rs. 1,27,500/- and handed over possession to her on 10th February, 2001. Balance payment of Rs. 1,15,000/- was received by respondent on behalf of his wife, on 22nd March, 2001.

9. It is further alleged that respondent never resided in the Flat No. 500 and had been residing in Flat No. 226, MIG, Suraj Apartment, New Delhi, from where he got his ration card, which clearly shows his residence to be as above stated.

10. It is also alleged that respondent did not give receipt for the earnest money and started demanding Rs. 60,000/- extra and threatened the petitioner of dispossession along with balance amount. Fearing dispossession, petitioner filed a suit for injunction which is pending for disposal.

11. It is further alleged that respondent also got signed from her on ten blank papers for giving the property documents, which was never done by the respondent.

12. After framing of the issues and recording of the evidence, trial court decreed the suit for possession in favour of the respondent.

13. It is contended by learned Counsel for the petitioner that petitioner has purchased the flat in question from respondent's wife, for which price was fixed

at Rs. 2,42,500/-. Accordingly, petitioner paid Rs. 1,27,500/- as an advance and earnest money to the respondent's wife, on 10th February, 2001. The physical and peaceful possession of the flat was also given to the petitioner immediately on that date and balance amount of Rs. 1,15,000/- was also paid by the petitioner to respondent's wife, on 22nd March, 2001.

14. Petitioner being an illiterate lady signed certain blank papers and gave the same to respondent for further processing. Despite repeated request made by petitioner, papers were not given to her and instead respondent demanded more money.

15. It is also contended that respondent and his wife threatened the petitioner that if more money was not paid, then she shall be evicted out. Fearing eviction, petitioner filed a suit for permanent injunction against respondent's wife in February, 2001. Thereafter, respondent filed suit for possession u/s 6 of the Act.

16. It is further contended that trial court did not consider the written arguments filed by the petitioner. Respondent has failed to prove the basic ingredients of Section 6 of the Act, qua his possession before 29th March, 2001 as claimed by him. In cross-examination, respondent admitted that on 28th March, 2001, he was staying at flat No. 251, Suraj Apartments, Prahlad Pur. This goes on to show that respondent was not in possession of the flat in question, prior to the alleged dispossession on 29th March, 2001. It is the petitioner, who is living in flat in question since 10th February, 2001 and possession of the flat was given to her after taking due consideration by the respondent.

17. It is also contended that respondent in cross-examination before Sub-Divisional Magistrate admitted that he remained in possession of the flat in question till February, 2001. Thus, Section 6 of the Act is not applicable to the facts of the present case and impugned judgment is liable to be set aside.

18. On the other hand, it is contended by learned Counsel for the respondent that petitioner has not placed any document on record to sustain her claim. When admittedly dispute has been arisen between the parties in February, 2001, then how petitioner could pay the balance amount in March, 2001.

19. It is further contended that it is the respondent who is the owner of flat in question and necessary documents in this regard have been duly proved on record. Since, petitioner has not placed any document with regard to the alleged sale consideration, trial court rightly decided the suit in favour of the respondent.

20. In support of its contention, learned Counsel cited following judgments:

i) Prasanna Kumar Singh v. Golak Chandra Madhulal and Anr. 1 (1996) CLT 18 and

ii) Sudhir Jaggi and Anr. v. Sunil Akash Sinha Choudhury and Ors..

21. The main controversy in the present case is as to whether respondent is entitled to decree for possession of the suit property, u/s 6 of the Act or not. This

Section read as under:

6. Suit by person dispossessed of immovable property.-(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

22. In the present case, essential conditions for grant of relief of possession u/s 6 of the Act are that respondent has to prove his previous possession and dispossession by the petitioner, otherwise than in due course of law, within six months of the suit. Thus, sole point for determination is whether respondent was in possession of the disputed property within six months previous to the institution of the suit or not and whether he had been deprived of such possession by the petitioner, otherwise in due course of law.

23. Supreme Court in Sanjay Kumar Pandey and Others Vs. Gulbahar Sheikh and Others, while dealing with Section 6 of the Act observed:

A suit u/s 6 of the Act is often called a summary suit inasmuch as the enquiry 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 or 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 recover 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 the revisional jurisdiction u/s 115 of the Code.

24. Petitioner has not disputed the ownership of the suit property. As per her defence in the written statement, respondent declared to the petitioner who was keen to buy the flat in question that it was of his wife (Smt. Raj Kumari). Thus, it

caused petitioner to believe about respondent's wife property and deal was struck at the shop of the respondent. Hence, petitioner herself admits that respondent's wife was the owner of suit property.

25. Further, the case of petitioner is that cost of suit property was fixed at Rs. 2,42,500/-, out of which Rs. 1,27,500/- was paid by her on 10th February, 2001 and physical possession of the suit property was handed over to her. The balance payment was made on 22nd March, 2001 and respondent got signed upon ten blank papers from her and promised her to give the property documents. After some time with malafide intention, respondent's wife tried to dishonestly usurp the flat in question. Respondent fabricated a false story that petitioner break open the lock of the flat in question and trespassed into the same on 29th March, 2001.

26. As per petitioner's case, balance payment was made on 22nd March, 2001. However, petitioner in her written statement states that fearing dispossession of the flat by respondent she filed an injunction suit dated 26th February, 2001, which is pending before the Civil Judge. In that suit for injunction, petitioner took the stand that cause of action arose in her favour on 24th February, 2001 and against respondent when they came along with unknown persons to flat in question and threatened that they would dispossess her from the said flat.

27. When on 24th February, 2001, respondent threatened petitioner to dispossess her from the flat in question then it does not appeal to the common sense that, on 22nd March, 2001 (when other litigation between the parties was pending) petitioner would make payment of balance amount to the respondent and that too without any receipt.

28. Further, defence of petitioner is that respondent has got her signatures on ten blank papers. There is nothing on record to show that any complaint to this effect was lodged with the police immediately thereafter or petitioner ever demanded back those blank papers purported to have been signed by her.

29. Petitioner's case is that she has purchased the flat in question at the cost of Rs. 2,42,500/-, but she has not placed even single document on record.

30. Trial court in this regard observed:

It is deposed by the plaintiff that on 29th March, 2001 the defendant has forcibly dispossessed him from the suit property by breaking open the locks and trespassed into the property and he immediately lodged report with the Police Station Sangam Vihar but no action was taken. It is further deposed that he had never sold the suit property to the defendant on 11.02.2001 and his wife was never the owner of the suit property nor she could have sold the suit property on 11.02.2001. Nothing has come in the cross examination of the plaintiff which goes against the testimonies of the plaintiff regarding wrongful dispossession and institution of suit within six months.

Admittedly, the defendant is in possession of the suit property. No documents

has been produced by the defendant to prove that her possession qua the suit property is legal. The defendant has simply deposed that she purchased the suit property from the wife of the plaintiff for a total consideration of Rs. 2,42,500/-, however, she has produced no documents to prove that she had purchased the suit property. The defendant has failed to prove her contention to the fact that the plaintiff never resided in the suit property, moreover, her contention is without any substance as it is not necessary that the plaintiff had actual physical possession of the suit property as the possession may be symbolic. The plaintiff was dispossessed from the suit property on 29.03.2001 and he has instituted the present suit on 04.08.2001 which is within limitation period.

31. Thus, it stand established from the record that respondent is the owner of flat in question and it is proved that he was in possession of the flat in question within six months prior to the filing of the suit. Respondent has also proved that on 29th March, 2001, he was dispossessed without his consent from the flat in question by the petitioner otherwise than in due course of law. The present suit has been instituted by the respondent within six months of such wrongful dispossession.

32. Under these circumstances, no ambiguity or illegality can be found in the impugned judgment. Present petition is therefore not maintainable and same is hereby dismissed.

33. Parties shall bear their own costs.

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34. Dismissed.

35. Trial court record be sent back.