

(1998) 03 MAD CK 0185
In the Madras High Court

S. Gururajan and Another

APPELLANT

Vs

P.M. Duraisamy

RESPONDENT

Date of Decision : 25-03-1998

Acts Referred:

Specific Relief Act, 1963 — Section 6

Citation : (2000) 1 CivCC 654 : (1998) 2 LW 392 : (1998) 3 MLJ 7

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—The defendants in O.S.No. 329 of 1987 on the file of the II Additional District Munsif, Erode are the appellants. The suit filed by the plaintiff was to restore possession of the suit property to him and also for recovery of Rs. 5,100 towards the value of the articles unauthorisedly removed by the defendants and for costs.

2. In the body of the plaint, it is said that the defendants are the owners of the building in door No. 19, Prakasam Street, Erode town. It is a lodging house consisting of several rooms and the plaintiff has taken room No. 212 on a monthly rent of Rs. 120 and has been carrying on his banking business in that room. He was paying rent regularly.

3. It is the further case of the plaintiff that the defendants were trying to evict the plaintiff by illegal and unlawful means from June, July of 1983. He also filed a Rent Control Application No. 8 of 1984 against the plaintiff for eviction, on the file of the Rent Controller, Erode. The plaintiff also filed a counter and the case was adjourned from time to time. While the eviction petition was pending, the defendants gathered men and materials and successfully prevented the plaintiff from entering into the room on 30.8.1986.

4. Even though the plaintiff filed a petition before the police authorities, they advised the defendants to seek appropriate civil remedies for eviction and the said petition was closed. The plaintiff also presented a representation before the

District Collector that in spite of the warning given by the police, the plaintiff was prevented from entering into the building and occupying the room from 13.8.1986 onwards.

5. It is further stated that the defendants also threw away the furniture, account books and other articles were removed, the room was totally ransacked and even the telephone which was installed in the room and which stood in the name of his brother was disconnected. It is under the above circumstances, the plaintiff has filed the above suit to recover possession of the building for which he is a tenant.

6. In the written statement filed by the defendants, they admitted that the plaintiff was in occupation of the room, but he voluntarily surrendered the room to the defendant and they have not forcibly entered into the room and removed the belongings of the plaintiff therefrom. They also contended that the suit is barred by limitation.

7. According to them, if it is a case of forcible dispossession, the suit ought to have been filed within a period of six months from the date of dispossession and the suit, was filed only after the expiry of six months. Therefore, the suit is liable to be dismissed at the threshold.

8. The trial Court took oral and documentary evidence. On the side of the plaintiff Exs.A-1 to A-14 have been marked. The plaintiff got himself examined as P.W.1 and two independent witnesses were also examined on the side of the plaintiff. The first defendant got himself examined as D.W.1. There is no documentary evidence on the side of the defendants.

9. The main issue raised before the trial Court was whether the plaintiff was entitled to occupy the building which was in his possession. The trial Court, after evaluating the entire evidence, came to the conclusion that the plaintiff was a tenant and the contention that the plaintiff voluntarily surrendered the building or room to the defendants is not true and the defendants have forcibly entered into the possession of the plaintiff. The trial Court held that the plaintiff is entitled to get back the room which he was occupying and at the same time it was also held that there is no evidence regarding the alleged damages to the plaintiff.

10. When the appeal was taken by the defendants before the lower Appellate Court in A.S.No. 17 Of 1991 on the file of the District Judge, Erode, the lower Appellate Court confirmed all the reasonings of the trial court and dismissed the appeal with costs.

11. The concurrent judgments are assailed in the second appeal. Notice of motion was ordered by a learned Judge and after notice, the respondent also entered appearance. The substantial questions of law raised in the memorandum of appeal was treated by both the sides as substantial questions of law raised by the Court and the matter was argued by them.

12. The substantial question of law which are to be answered in the second

appeal are as follows:

(1) Whether the suit filed by the plaintiff for repossession is maintainable in law in as much as the same has been filed after six months from the date of alleged dispossession?

(2) Whether the Courts below are correct in treating the plaintiff as a lessee though the defendant has established that the plaintiff is the licensee?

I feel that both these contentions could be considered together.

13. One of the grounds that is urged by the appellants is that the plaintiff is not entitled to get back the possession of the room, as his status is only that of a licensee and not of a lessee. No suit is maintainable against a licensor. The licensee is also not entitled to get back the possession, since no possession was given to a licensee. It is only a right to occupy that is given, which is only a privilege.

14. The argument seems to be attractive. But, I do not think that the said contention could be accepted so far as the facts of this case are concerned.

15. Admittedly, the defendants themselves have filed eviction petition against the plaintiff as R.C.O.P.No. 8 of 1984 on the file of the Rent Controller, Erode. Once the appellants themselves filed an eviction petition before the Rent Controller, it amounts in admission that the plaintiff is a tenant of the building. The reason for taking such a contention that the plaintiff is only a licensee is that it is a room in a lodge. It is true that the law presumes that the room in a lodge is, under normal circumstances, given only on a licence basis, but, that is only a presumption. The law does not prohibit that the rooms in a lodge could not be given on a lease.

16. In this case, the defendants themselves admit that they were receiving monthly rent and the plaintiff was also in possession of that room for years together. This is not a temporary occupation that was given to the plaintiff. It must also be noted that the plaintiff was doing a business in that room and there were financial transactions. If that be so, he must have exclusive possession, i.e. to exclude others, including the owner of the building. The room was under his lock and key. Being a financial business in which more security is required, the room must be under his control.

17. It is also not disputed that the plaintiff has installed a telephone in that room, though it stands in the name of his brother. A telephone connection is given only to one who has got a permanent address. Exclusive possession or control over the building is necessary for having a telephone connection.

18. I take guidance from the decision in H.V. Mathai v. Sub Judge, Kottayam and Ors. (1969) 2 S.C.W.R. 1193. Though this case is for eviction under the Kerala Buildings (Lease and Rent Control) Act, 1965 on the ground that the tenant has sublet the building, at para 5 of the judgment it could be seen that the building

was used as a lodging house and one of the rooms was occupied by an advocate who had been there for years together. He had also placed a name board outside his room and also had a telephone connection in his name. An inference was drawn from the above circumstance that this is not a case of licence, but of lease. Para 5 of the judgment reads thus:

Lastly, Mr. Daphtary argued that on the facts the Courts below should not have come to the conclusion that there was a sub-letting within the mischief of the Act. The buildings were let out as a lodging house and the evidence showed that one of the rooms was in the occupation of a lawyer who had been there for years and had put up his name board outside the room. Besides the name board of the lawyer, there were the name boards of other persons and the lawyer paid rent on a daily basis. The lawyer had installed a telephone in his room (*Italics laid*). In our opinion, there was sufficient evidence to hold that the lawyer was in exclusive possession of the room and although the rent was paid on a daily basis it was not a case of the grant of licence.

18-A. The circumstances in this case also show that the plaintiff was in exclusive possession of the room. He was also paying rent monthly and doing business there. The conclusion that he is a lessee and not a licensee is sustainable. If he is a lessee, naturally, he is entitled to the benefit of the Tamil Nadu Buildings (Lease and Rent Control) Act, and a tenant is liable to be dispossessed only in accordance with the statute and on the various grounds referred thereto.

19. Even though the defendants contended that the plaintiff has voluntarily surrendered the building, that contention has been found against the defendants by the Courts below. Learned Counsel for the appellants also does not seem to urge the question before me. Once it is found that he is the tenant, who as entitled to the benefit of the Tamil Nadu Buildings (Lease and Rent Control) Act, he cannot be forcibly evicted. He is in lawful possession and the landlord is also not entitled to forcibly dispossess, the tenant.

20. Learned Counsel for the appellants would contend that the suit is based on possessory title and u/s 6 of the Specific Relief Act, the suit ought to have been filed within a period of six months. In this case, the suit has been filed long after the expiry of six months and therefore, the suit should not have been entertained.

21. The said submission is also without any basis. The suit is not based on a possessory title alone. The plaintiff has filed the suit claiming that he is a tenant of the building and that is a title which the landlord is also bound to respect.

22. Under Article 64 of the Limitation Act, a person who is dispossessed, can file a suit within 12 years from the date of dispossession even though it is beyond six months. The provision of Article 64 of the Limitation Act which contemplates the suit to be filed within six months is not a bar in such cases.

23. It is better that I quote from U.N. Mitra's Law of Limitation and Prescription -

10th Edition at page 1092 Note No. 5, wherein the learned author has stated thus:

Suit u/s 6, Specific Relief Act and suits governed by Article 64: A person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the latter does not come forward and assert his title by the process of law within the period prescribed by the statute of limitation applicable to the case his right is for ever extinguished and the possessory owner acquires an absolute title. In the event of disturbance of possession by a third party and not the owner, the plaintiff can maintain a possessory suit under the provisions of the Specific Relief Act in which the title would be immaterial or a suit for possession within 12 years in which the question of title could be raised. If Section 6 of the Specific Relief Act, 1963 (Section 9 of the Act of 1877) is utilised the plaintiff need not prove title and the title of the defendants does not avail him. When, however, the period of six months has passed, question of title can be raised by the defendant and if he does so, the plaintiff must establish a better title or fail. In other words, the right is only restricted to possession only in a suit u/s 6 but that does not bar a suit on prior possession within 12 years and title need not be proved unless the defendant can prove one. Articles 64 and 65 of the Limitation Act bring out the difference. Both Section 6, Specific Relief Act and Article 64 of the Limitation Act afford relief to a person on dispossession, though such person may not be able to prove any title to the property. The basis of the suit under both provisions is the factum of possession had and not the right of the person dispossessed to be in possession. The plaintiff's suit cannot be resisted even if the defendant has a better title. The resemblances go no further and a number of differences between the two provisions are to be found. The object of Section 6 is to prevent persons taking law into their own hands and so it provides for a special, summary and speedy remedy for protecting the possession held. A suit under Article 64 is not summary in character and is designed to protect previous possession. In a possessory suit under the Specific Relief Act to adjudication on the question of title can arise. In a suit based on prior possession but not on title the defendant can plead *jus tertii* in which case the inquiry into title becomes a justiciable issue. The limitation for a suit u/s 6 is a short period, six months from dispossession - whereas the period of limitation for a suit under Article 64 is 12 years. Further there is no right of appeal or review in respect of suits u/s 6; nor can a suit be brought against the Government under that section.

[Italics supplied]

24. In a recent decision in *Thirumala Thirupathi Devasthanam v. K.M. Krishnaiah J.T.* (1998) 2 S.C. 231 : (1998) 2 S.C.W.R. 1193 : (1998) 2 L.W. 310, this question has been again considered wherein their Lordships, citing the decision in *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others*, have held thus:

In that case the respondent was the plaintiff and he was dispossessed. He sued for possession but the suit was filed more than one year after dispossession. Under the Specific Relief Act, 1877 Section 9 permitted a dispossessed plaintiff to sue for possession within one year and if he so sued, question of title of the defendant was immaterial. Now u/s 6 of the new Specific Relief Act, 1963 the said period of one year has been reduced to six months. Question arose whether the suit by the dispossessed plaintiff, after expiry of the one year period was maintainable. It was held by this Court that even if the time for filing a summary suit u/s 9 of the Specific Relief Act, 1877 expired, the dispossessed person could still file a suit for possession on the basis of prior possession. Such a suit is described as one based on "possessory title" But, in such a suit filed by the dispossessed plaintiff beyond the period specified in Section 9 of the Specific Relief Act, 1877 (or Section 6 of the 1963 Act) defendant who dispossessed the plaintiff could defend himself by proving title and if he proved title, he could remain in possession. After an exhaustive examination of the law on this aspect

Hidayathulla, J. (as he then was) observed as follows (p.1173):

When, however, the period of six months has passed, question of title can be raised by the defendant and if he does so, the plaintiff must establish a better title or fail.

The difference between the right to possession in summary suit under the Specific Relief Act and a regular suit based on "possessory title" was explained further as follows (p.1173).

the right is only restricted to possession only in a suit u/s 9 of the Specific Relief Act, but does not bar a suit on prior possession within 12 years and title need not be proved unless the defendant can prove one.

On the question whether the defendant, in spite of dispossessing the plaintiff, could, by proving title, remain in possession, it was held that the defendant could, in such a situation, be permitted to retain his possession if he proved title. It was stated that the law was so laid down in *Asher v. Whitcock* (1865) 1 Q.B. 1 and was accepted by the House of Lords in *Perry v. Clissold* 1907 A.C. 73, that was also the law applicable in our country and it was this principle that was engrafted into Articles 64 and 65 of the Indian Limitation Act, 1963. The said Articles were, it was held, declaratory of the law. The following observations of Hidayatullah (as he then was) place the matter beyond any shadow of doubt, (p. 1175 Col.1)

Asher v. Whitcock (1865) 1 Q.B. 1 lays down that a person in possession of land has a good title against all the world except the true owner and it is wrong in principle for any one without title or authority of the true owner to dispossess him and relying on his position as defendant in ejectment to remain in possession.

A defendant in such a case must show in himself or his predecessor a valid legal

title or...

[Italics supplied]

25. In this case, the defendants can show a better title, if only they are successful to prove that the tenancy has been surrendered by the plaintiff and thereafter the plaintiff either trespassed or after termination of the tenancy, the plaintiff wanted to continue in possession. Both the Courts below have concurrently found that the voluntary surrender pleaded by the defendants was not proved and that plea was found against the defendants and the same is also not challenged in this appeal. That means the title of the plaintiff stands on the basis of possession. Even if it is a possessory title, defendants have no better title so long as the statutory right of the plaintiff stands in his favour. Consequently, the contention that the suit is barred by limitation is also without any merits.

26. Therefore, the substantial questions of law raised in this second appeal are answered against the appellants and the second appeal is dismissed with costs. Consequently, C.M.P.No. 9748 is also dismissed.