
(1999) 03 BOM CK 0010

In the Bombay High Court

Case No : Civil Revision Application No. 148 of 1998

Shri Hermano D'Souza and another

APPELLANT

Vs

Shri Abelardo Rodrigues Medeiros

RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 40

Specific Relief Act, 1963 — Section 6

Citation : (1999) 4 ALLMR 703 : (1999) 3 BomCR 635

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : S.K. Kakodkar, S.A. and R.V. Kamat, for the Appellant; A.A. Agni, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—This is a revision application against the Order dated 27th July, 1998 passed in Special Civil Suit No. 246/85/A by the Civil Judge S.D., Margao. By the impugned judgment, order and decree, the trial Court has directed the petitioners to put the respondent in possession of the suit room within a period of one month from the date of the order.

2. The brief facts of the case are that the respondent herein filed the said suit in terms of the provisions contained in section 6 of the Specific Relief Act, 1963 (hereinafter called as the said Act) complaining that he was the tenant for nine years in respect of Rooms No. 7 situated on the first floor of the building "Casa Menezes" situated opposite Gandhi Market, Margao and that all of a sudden for no reason, on 20th November, 1985 the petitioners along with their sons and employees in a high-handed manner, entered the suit premises and removed the goods and equipment of the respondent from the suit room and when the respondent questioned about the said acts, he was threatened with dire consequences and thereafter the room was locked along with the staircase door and the respondent was wrongfully restrained of his movements for about one

and half hour. The respondent then lodged a police complaint on the very day and the police conducted panchanama on 21-11-85 during which various articles of the respondent were found lying outside Room No. 7. It is further the case of the respondent that when he tried to enter the suit room on 22-11-85 he found that the door leading to the said room was locked and thus the respondent was forcibly dispossessed by the petitioners from the said room without recourse to law.

3. As against this, it is the case of the petitioners that they are running a hotel by name "Royal Hotel" and the same is lodging and boarding hotel, wherein the petitioners also run a bar and restaurant. It is their further case that their business is not restricted only to the few rooms, but it is being carried out in the entire premises taken on lease by the petitioner No. 1 who is defendant No. 1 in the suit and the petitioners have never sub let the suit premises to anybody including the respondent. It is their further case that the respondent was lodged in Room No. 7 and lodging charges prevailing from time to time was charged of him. It is their further case that it was the respondent himself with the help of another person removed his articles from the suit room as the petitioners had asked him to occupy an other room. It is further case of the petitioners that the respondent was in arrears of lodging charges and when the same were demanded, the respondent filed a false police complaint.

4. Shri S.K. Kakodkar, learned Senior Advocate, appearing for the petitioners, while assailing the impugned order, submitted that undisputedly, the suit was filed in terms of the provisions of section 6 of the said Act and therefore only two issues were relevant for the purpose of decision in the matter, one relating to dispossession without consent of the respondent from the suit room and the other that such dispossession had been otherwise than in due course of law within six months prior to the filing of the suit. Considering the provisions of section 6 of the said Act and considering the fact that the suit was filed in terms of the said section 6 of the said Act, the trial Court clearly misdirected himself in law in framing the issues in the manner they have been framed and by considering totally irrelevant matters for the decision of the suit u/s 6 of the said Act. He further submitted that the trial Court miscast the burden of proof in the matter on the petitioners and that is apparent not only from the manner in which the issues were framed, but the same is evident from the entire analysis of the materials on record disclosed from the impugned judgment. He further submitted that issue No. 3 though refers to removal of belongings and locking of the room, that itself is not in compliance with the requirements of law u/s 6 of the said Act and in no case it can be said to be an issue relating to dispossession otherwise than in due course of law by the petitioners. He further submitted that issue No. 3 as framed was totally misleading issue and under no stretch of imagination it can be said to be an issue relating to dispossession of the respondent from the suit premises and therefore there was no compliance regarding the requirement of framing proper issue in the matter. The issues as framed do not give proper idea or knowledge to the parties of the evidence which was required to be

produced in the matter. He further submitted that even on merits, the respondent is not a tenant and all the materials on record clearly disclose that he was a lodger and the possession of a lodger cannot be exclusive possession so as to claim right of restoration of possession in respect of any particular room in a lodging house. A lodger can always be shifted from one room to the other depending upon various circumstances. In support of his contention, he sought to rely upon the judgment of Mahboob Pasha Vs. A.R. Viswanatha Chetty and others, .

5. Mrs. A.A. Agni, the learned Advocate appearing for the respondent, on the other hand, submitted that even if the trial Court had not framed the issues in the manner it was required to be framed, nevertheless the issue framed gives a clear idea as to what was required to be proved by the parties and it was to the knowledge of both the parties that the suit was u/s 6 of the said Act and, therefore, no grievance can be made at this stage about either of framing improper issues or of absence of any material issue being framed in the matter. According to her, perusal of the impugned order, discloses that the parties were fully aware about the case of each other and what was required to be produced in support of their respective contentions and therefore no complaint can be made regarding improper or wrongful framing of issues as such. She sought to rely upon the judgment of the Apex Court in the matter of Shaik Mohammed Umar Saheb Vs. Kaleskar Hasham Karimsab and Others, . She further submitted that the trial Court has clearly held on analysis of the materials on record that the respondent was dispossessed from the suit room on 20th November, 1985. Referring to the analysis in relation to Issue No. 3 in the impugned judgment, learned Advocate submitted that the trial Court, after taking into consideration the evidence produced by the parties and referring to the Commissioner's report, has held that various articles belonging to the respondent were found outside the room on 4-12-85 when the inventory was conducted by the Commissioner. It is her contention that the fact that the respondent had been staying in Room No. 7 for more than seven years has been clearly established by the evidence on record apart from the fact that the said point has not been seriously disputed by the petitioners. She further submitted that in a suit u/s 6 of the said Act, the character of the person dispossessed from the premises is immaterial as well as the relationship between the parties to the suit and what is relevant is only the factum of dispossession of the plaintiff otherwise than in due course of law within six months prior to the filing of the suit. She sought to rely upon the judgment of the Division Bench of this Court in the case of Faijulbee Hajeel and Others Vs. Yadali Amir Shaikh Ansari, . Referring to section 40 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, the learned Advocate submitted that in terms of the provision contained in the said section, even a lodger cannot be dispossessed from the room in which he is lodged without following the procedure laid down under the said Rent Act. Being so, once the respondent is admitted to be a lodger it was necessary for the petitioners to establish that they had followed the necessary procedure for

dispossessing the respondent from the suit room. She tried to distinguish the judgment of the Karnataka High Court relied upon by the petitioners by submitting that the said decision was in a suit where the same was decided on totally unconnected issues regarding dispossession of the party in possession of the premises and therefore the same is not relevant to the case in hand.

6. Section 6 of the said Act clearly provides that if any person is dispossessed without his consent of an immovable property otherwise than in due course of law, then such a person may by a suit recover the possession thereof notwithstanding any other title that may be set up in such a suit. The section further provides that no suit under the said section shall be brought after the expiry of six months from the date of dispossession. No suit can lie under the said section against the Government. It also provides that any order or decree passed in such a suit cannot be subjected to an appeal or review. Sub-section (4) thereof further provides that nothing in the said section shall bar any person from filing a suit to establish his title to such property and to recover the possession thereof. The learned Single Judge of the Karnataka High Court in *Mahboob Pasha v. A.R. Viswanatha Chetty* (supra) considering the decisions, the Madras High Court as well as Karnataka High Court while considering the scope of section 6 of the said Act has held that:-

"Where a suit is filed for possession u/s 6 of the Act, what is required to be decided by the Court is the factum of possession of the plaintiffs of the suit property and their dispossession therefrom without his consent otherwise than in due course of law and the institution of suit for possession within six months thereof. Section 6 does not require the Court to decide any question either as to the title of the parties to the suit property or as to any other right of any party with respect to the suit property."

7. Indeed the learned Single Judge of the Karnataka High Court has summarised the exact function of the Court while dealing with the suit u/s 6 of the said Act. At this stage it is worthwhile to refer to a judgment of the learned Single Judge of our High Court, though it has not been referred to by either of the Counsels, in the matter of *Tajul Islam and Another Vs. Shariyatullah Mansoorali Shaikh*, which is a very relevant decision in the matters pertaining to the suits u/s 6 of the said Act. The learned Single Judge of our High Court therein while dealing with the scope of section 6 of the said Act, has held thus :--

"It is clear from a plain reading of the above section that the object of this section is to discourage forcible dispossession and to enable the person dispossessed to recover possession by merely proving his previous possession and wrongful dispossession without proving title. This remedy is in addition to the normal remedy of filing a suit for possession on the basis of title under the Civil Procedure Code. But to avail of relief in such summary proceeding, the person concerned must prove his "previous possession" and "wrongful possession". The question of proving wrongful dispossession will naturally arise if and only if the "previous possession" is proved. It is only persons who were in

"possession" who can sue under this section, if the previous possession of the person claiming relief under this section is itself in dispute, the Court should attribute possession to the person with better title. No relief can be given in such a case under this section to the person who alleges dispossession but fails to prove his "previous possession" itself. Section 6 is not intended to be invoked in such cases."

8. It is also necessary to refer to yet another decision though not relied upon by either of the parties, but relevant for the matter in issue. The decision is of the Apex Court in the matter of M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, . The Apex Court therein while dealing with the concept of "lawful possession" has observed thus :--

"Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it.We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession."

9. Bearing in mind the provisions of law and the decisions referred to above and reverting to the facts of the matter in hand, it is evident from the impugned judgment as well as the copy of the pleadings placed on record, that apart from being an undisputed fact, the suit was filed u/s 6 of the said Act and was tried and disposed as such. It was the complaint of the respondent that he was in possession of Room No. 7 of the first floor of the building "Casa Menezes" situated Opposite Gandhi Market, Margao in the capacity as the tenant thereof, paying rent to the petitioners. As against this, it was the case of the petitioners that the said room was never let out to the respondent and the respondent was merely a lodger in the said room and was subjected to paying lodging charges prevailing from time to time. It was the grievance of the respondent that on 20th November, 1985, his belongings in the said room were forcibly removed and the room was locked. An attempt by the respondent even thereafter to enter the said room could not yield fruitful result as the room being kept under lock by the petitioners. The contention was seriously denied and disputed by the petitioners on the ground that it was the respondent himself with the help of some other persons had removed the articles from the suit room as the petitioners had asked the respondent to occupy another room. The trial Court had framed five issues. There is no doubt that there was no attempt to frame the issues in the manner they were required to be framed bearing in mind the provisions of Order XIV of C.P.C. and section 6 of the said Act. There was no specific issue framed as to whether the plaintiff/respondent was in prior possession of the suit room and whether he was dispossessed without his consent otherwise than in due course of law by the petitioners within six months prior to the date of the filing of the suit. Blindly applying the ratio of the judgment of the learned Single Judge of the Karnataka High Court there can be no doubt that it can be safely observed that

the trial Court erred in not framing the said issue in the manner it was otherwise required to frame for the purpose of decision in a suit u/s 6 of the said Act. Moreover, the question arises in the case is whether in the facts and circumstances of the case, was it necessary for the trial Court to frame the issues in the manner as stated by the learned Single Judge of the Karnataka High Court. On perusal of the pleadings" in the plaint filed by the respondent, clearly discloses that it was a clear case of the respondent that he was in possession of the suit room till 20th November, 1985 when his belongings therefrom were removed by the petitioners and thereafter the room was locked and as a result thereof the respondent was dispossessed from the suit room. In answer thereto, the petitioners have stated that the respondent was a lodger in the suit room paying prevailing lodging charges and he himself removed the articles from the said room as he was asked to do so by the petitioners in order to enable him to occupy another room. These pleadings apparently disclose that the fact that the respondent was in occupation of the suit room till 20th November, 1985 was not in dispute. Once the factum of possession of the respondent in respect of the suit room was not in dispute there was no occasion for the trial Court to frame the issue regarding the possession of the respondent on the date he was stated to be dispossessed from the suit room. The question of framing of issue would arise when the material fact asserted by the plaintiff is disputed by the person who is contesting the claim of the plaintiff. The pleadings in this case filed by the petitioners clearly disclose that the fact of possession of the respondent in relation to the suit room was not in dispute. In any case the decision is to be understood in the context of the facts of a particular case. The ratio of the decision of the learned Single Judge of our High Court in the matter of Tajul Islam and another v. Shariyatullah Mansoorali Sheikh (supra) as well as of the Karnataka High Court in the matter of Mahboob Pasha v. A.R. Viswanatha Chetty and others, (supra) are to be understood in the context of the facts-of these cases where prior possession was disputed. If the fact of prior possession is not disputed there can be no question of framing an issue in that regard and calling upon the parties to lead evidence in that regard unless the Court considers it appropriate to frame such an issue and call the parties to lead evidence in that regard. In the instant case the very fact that the trial Court has thought it appropriate not to frame such an issue apparently discloses that the trial Court was satisfied from the pleadings that the point regarding factum of possession of the respondent in relation to the suit room prior to the date of 21st November, 1985 was not required to be established by any further evidence in the matter and therefore framing of issue in that regard was not called for.

10. Moreover, the trial Court did frame the issue regarding the contention of the respondent relating to the acts of dispossession of the respondent by the petitioners. The Issue No. 3 reads thus :--

"Whether the plaintiff proves that the defendants on the 20th November, 1985 by removing all his belongings locked the room ?"

The pleadings disclose that it was the contention of the respondent that he was dispossessed by forcible removal of his goods and articles from the suit room on 20th November, 1985 and locking of the room. As against this, the contention of the petitioners was that the goods were removed by the respondent himself and some other persons as he was asked to do so by the petitioners in order to enable the respondent to occupy another room. These pleadings clearly disclose that the factum of removal of the goods from the suit room was not in dispute. What was disputed was as to who had removed the goods and whether the room was locked so as to prohibit the respondent from entering the same. In the background of these pleadings, I do not find any fault on the part of the trial Court in framing of Issue No. 3 in the manner it was framed. Whether a person is in possession or not of any particular premises is a conclusion to be drawn based on various facts which are necessary to be established by producing cogent evidence regarding the ingredients of possession in relation to the suit premises. What is relevant in any such dispute before the Court is the material which can lead to the conclusion of the factum of possession and dispossession. There is no doubt that the issue if framed in the manner as to whether a person was dispossessed on a particular day without his consent and otherwise than in due course of law would give an idea to the parties about the requirement of law which are to be met in order to establish their rival contentions in the matter. However, merely because the issue gives further details regarding the acts or nature of the possession or some other details which lead to the establishment of the factum of possession or dispossession, that itself will not result in improper framing of issues once it is seen that the issue sufficiently gives idea to the parties as to the case put forth by each other and which the parties are required to prove in order to establish their rival contentions.

11. In the background of the case, it was abundantly clear to the parties that it was the case of the respondent that he was dispossessed on 20th November, 1985 by removal of his belongings from the suit room and by locking the same. As against this, it was the case of the petitioners that the goods were removed by the respondent himself with the help of another person in order to shift to another room as per the directions of the petitioners. In other words, the factum of removal of the goods was not at all in dispute. What was disputed was as to who had removed the goods. In that context, the Issue No. 3 was correctly framed by the trial Court to give the idea to the parties as to the requirement of the case to be met by them and the materials to be placed before the Court.

12. It was sought to be contended on behalf of the petitioners that the onus was wrongly shifted on the petitioners and in that regard attention was sought to be drawn to the finding of the trial Court, particularly in para 10 wherein it was observed that :

"The defendant has totally failed to discharge the onus regarding the production of document to prove that the plaintiff was paying the charges of the room per day at Rs. 8/- ... and no register or bill book was produced before this Court to

show that the plaintiff was occupying the Room No. 7 or other room as a regular customer of defendant No. 1".

In para 11 it was stated to the effect that :

"The defendant has admitted in the cross-examination that the letters addressed to the plaintiff were delivered to him by the person sitting on the counter of the hotel and that the defendant has not denied of the receipts of these letters which have been produced on record showing the address of Room No. 7". In para 12 it was stated to the effect that "In rebuttal the defendant has not produced any evidence to support his contention. Not a single person employed in the said hotel or a customer who were present at the relevant time was examined by the defendant."

In para 13 it was stated to the effect that :

"Similarly there is no other evidence to support the contention of the defendant that the entire first floor was occupied for the purpose of hotel business".

In this respect it cannot be forgotten that the fact that the suit room was in occupation of the respondent till 20th November, 1985 was not in dispute. It was the contention of the petitioners that the occupation was in capacity as a lodger. There is no doubt that the respondent has claimed to be in possession as a tenant which was disputed and contended by the petitioner to be the possession of a lodger. In that context Shri Kakodkar, learned Senior Advocate also submitted that the possession of a lodger cannot be an exclusive possession or a settled possession. As to the specific inquiry from the Court as to from which part of the materials on record we could conclude that a possession of a lodger was never exclusive possession or settled possession, only answer which the learned Senior Advocate could give was that it was to the common knowledge and it is to be presumed considering the nature of the concept of "hotel" or "lodging", Moreover, apart from the said submission nothing was produced or relied upon in support of that submission. The perusal of the record however does not support in any manner the said submission on the part of the learned Counsel. Whether a lodger can be in exclusive possession or not is a question of fact and therefore it was necessary for the parties contending that a person is a lodger, to establish the same by producing necessary evidence in that regard and there cannot be any presumption as such that a lodger cannot be in exclusive possession of the suit premises. Even otherwise, as rightly submitted by learned Advocate for the respondent that section 40 of the Rent Act in force in the State does not permit the Manager of a lodging house to take law in his hands to evict a person in occupation of a room in the lodging house. In other words, even a lodger cannot be dispossessed by taking law into his hands at the whims and fancies of the owner of the lodging house. He is required to follow certain procedure of law. This, along with the law laid down by the Apex Court in the matter of. M.C. Chockalingam v. M. Manickavasagam (supra) it is clear that for the purpose of recovery of possession in terms of provisions contained u/s 6 what is necessary

is only juridical possession and not necessarily lawful possession. The Apex Court therein has clearly observed as quoted above that the juridical possession is possession protected by law against unlawful dispossession, but cannot be per se equated with lawful possession. In other words a person who has been wrongfully dispossessed can approach the Court in terms of provision u/s 6 of the said Act for restoration of his possession irrespective of the fact whether such a possession was lawful possession or not. It is required to prove that such person was in juridical possession of the premises from which he was dispossessed. Considering the fact that the respondent was in possession of the suit room till 20th November, 1985 being not disputed, and the fact of removal of the goods was also not disputed, it was primarily necessary for the petitioners to establish that the respondent was a mere lodger without any exclusive possession of the suit room.

13. The trial Court, on analysis of the evidence produced before it, has clearly held that there is ample evidence to show that the plaintiff/respondent was carrying on business in the name of "Sterling Enterprises" from Room No. 7. The trial Court has also held that though the petitioners claimed the respondent to be lodger and inspite of opportunity being given, no attempt was made by the petitioners to establish that the respondent was a lodger in respect of the suit room and in that regard no register or bill book was produced inspite of specific directions from the Court to produce the same. The trial Court has also observed that the receipts issued to the respondent towards the payment of consideration for occupation of the suit room by the respondents were of different nature from the receipts issued to the persons who occupy other rooms in the said premises of the petitioners. The trial Court has also observed that the witness examined by the respondent was working with the respondent in the said premises and he had corroborated the case of the respondent. The trial Court has also found that the witness examined as D.W. 2 on behalf of the petitioners himself has also specifically admitted that the respondent was residing in the suit room while the said witness was residing in the next room in the premises from 1980 till 1983. Considering this finding arrived at by the trial Court based on analysis of the evidence and the same by no stretch of imagination can be said to be perverse or arbitrary, there is no case made out for interference in the impugned judgment directing restoration of possession of the respondent in relation to the suit room.

14. Once it is not in dispute that the suit was u/s 6 of the said Act and the materials on record clearly establish that the respondent/plaintiff was in possession of the suit room till 20th November, 1985 and was dispossessed on the said day without his consent and not in due course of law and the suit being filed within six months therefrom, the respondent was entitled for the relief of restoration prayed for and granted by the trial Court.

15. In the result, therefore, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

16. Petition dismissed.