
(2010) 10 BOM CK 0226

In the Bombay High Court

Case No : Civil Revision Application No. 124 of 2004

Subhash Sambhashiv Bona Pawar

APPELLANT

Vs

Kantabai Sambhaji Landge

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Specific Relief Act, 1963 — Section 6

Citation : (2010) 10 BOM CK 0226

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

Bench : Single Bench

Advocate : M.M. Patil Beedkar, for the Appellant;

Judgement

S.S. Shinde, J.—This revision application is filed challenging the judgment and order dated 25th February, 2004 passed by the 2nd Joint Civil Judge, Junior Division, Parbhani in R.C.S. No. 169 of 2000.

2. The respondent herein filed R.C.S. No. 169 of 2000 in the Court of 2nd Jt. C.J.J.D., Parbhani against the present petitioner ? original defendant claiming recovery of possession of shop admeasuring 9"x15" situated in Plot No. 112, Ward No. 13 of Sadguru Nagar, Parbhani. It was contention of the respondent ? original plaintiff in the said suit that the defendant is owner of the suit property. The plaintiff had obtained STD-PCO for the purpose of running the said business. Accordingly the plaintiff occupied one shop i.e. suit property from the defendant on the basis of tenancy in the year, 1995. The rent of the suit shop was settled at Rs. 500/- per month and since the date of occupation till October, 1999 she had regularly remitted the rent to the defendant. However, the dispute started by the defendant on the ground that payment of rent was not made by the plaintiff.

It is further stated that in the month of November, 1999 the defendant on one or the other ground started obstructing in peaceful possession of the plaintiff and started threatening to vacate the suit premises. The defendant is serving in M.S.E.B. The plaintiff was constrained to file the R.C.S. No. 351 of 1999 for

perpetual injunction against the defendant. It is further stated that taking undue advantage of the situation of the plaintiff, during pendency of the said suit, the defendant forcibly dispossessed the plaintiff from the suit shop without adopting lawful procedure.

3. The defendant filed written statement denying the allegations. The learned trial Judge framed as many as five points for its determination and held that the plaintiff had occupied the suit premises on the basis of tenancy from the year, 1995. It is further held that the plaintiff has proved that in the month of November, 1999 the defendant started obstructing in her peaceful possession and lastly on 12th May, 2000, forcibly dispossessed the plaintiff from the suit shop. The learned trial Judge, in paragraph 10 of the judgment, also held, thus:

Though the plaintiff has not adduced specific evidence regarding cost of the assets but, at least, the said furniture to be worth of Rs. 10,000/- to 12,000/-. It is proved that the defendant took the possession of suit shop behind the back of plaintiff. Further, there is no evidence on the part of the defendant that, the said furniture was given in the custody of plaintiff safely. In these circumstances, it can be presumed that, the defendant thrown out the said furniture of the suit shop and therefore, caused damage to it.

The suit filed by the plaintiff/respondent herein came to be decreed with costs. It was further ordered by the trial Court that the plaintiff is entitled to recover the possession u/s 6 of the Specific Relief Act, in respect of the shop admeasuring 9x15 feet situated within the Plot No. 112 Ward No. 13, Sadgurunagar, Parbhani. The plaintiff has also been held entitled to recover the amount of Rs. 10,000/- towards the damages from the defendant.

4. This revision application was heard by this Court for admission on 29th September, 2004 and this Court admitted the revision and ad interim relief granted on 27th August, 2004 came to be confirmed. The petitioner ? defendant has deposited an amount of Rs. 10,000/- in the Registry of this Court. Though the respondent is duly served with the notices issued by this Court, none appears for the respondent. Therefore, the contention of the petitioner ? defendant in the revision application remained un-controverted on behalf of the respondent. The learned Counsel for the petitioner submits that the respondent on her own vacated the premises. He invited my attention to the complaint filed by the wife of the revision petitioner on 1st March, 2000, which is at page 38 of the compilation and contended that the plaintiff respondent was all the while threatening the petitioner and family members and was not paying rent regularly and, therefore, appropriate action was sought to be taken against the respondent. The learned Counsel for the petitioner further invited my attention to the statement of the plaintiff dated 27th April, 2000 recorded by the P.S.I., Kotwali Police Station, Parbhani, wherein she stated that she would vacate the suit premises within two-three days. There is another statement at page 43 dated 27th April, 2000 of the husband of the plaintiff. In the said statement, it is stated that they would vacate the premises within two-three days and the

landlord may be asked to forgo eight months rent, which was not paid by the plaintiff. There is another statement of husband of the plaintiff at page 44 dated 10th May, 2000 before the Sr. P.S.I. Of the said police station stating that he is inclined to vacate the premises within short period. The learned Counsel also invited my attention to the application forwarded by the wife of the defendant on 11th May, 2000 to the Sr. P.S.I., Kotwali Police Station, Parbhani intimating that the original plaintiff has left the suit premises without informing the defendant and they have not paid arrears of rent for about one year. There was request in the said application for necessary enquiry and investigation. It is specifically mentioned in the said application that the original plaintiff left the suit premises with all belongings.

5. The learned Counsel for the petitioner submitted that there is no forcible dispossession as alleged by the plaintiff in the suit. The proceedings u/s 6 of the Specific Relief Act are of summary nature. There is no provision for awarding damages. The learned Counsel further invited my attention to the fact that in absence of any cogent evidence brought on record by the plaintiff, the learned Judge has passed the order awarding damages. According to the learned Counsel for the petitioner, perverse findings are recorded by the Court below while awarding damages. It is further argued that when the plaintiff and her husband, on their own, consented for vacating the premises and on the relevant date when they left the suit premises voluntarily with all belongings, it cannot be said that there was forcible dispossession of the plaintiff by the defendant. On the contrary, the defendant is put to loss by not receiving the rent of about one year by the plaintiff. The learned Counsel further invited my attention to the averments and grounds taken in the revision application and submitted that in view of the un-controverted pleadings in the revision application and also on merits, the civil revision application deserves to be allowed.

6. As already stated, though the respondent is served, none appears for her. On going through the impugned judgment and order, it appears that two findings are recorded by the Court below. Firstly, the original plaintiff was tenant of the suit premises from 1995. The said fact was never disputed by the defendant. Second finding recorded by the trial Court is about forcible dispossession of the plaintiff by the defendant.

On considering the statement of the plaintiff and also the application of the wife of the defendant to the Police authorities and the subsequent report of the police authorities, it clearly reveals that there was no forcible dispossession as such. However, in the revisional jurisdiction, it is not possible for this Court to go into those aspects. Suffice it to hold that the evidence, which was brought on record by the plaintiff, was too short to hold that the defendant has forcibly dispossessed the plaintiff. That apart, perusal of the annexures to the revision application would clearly indicate that all the time, the plaintiff was ready and willing to vacate the premises on the condition that the landlord forgoes the arrears of rent. The action of the defendant to promptly lodge report with the

police officer on the day on which the plaintiff vacated the premises, assumes importance. Therefore, taking into consideration the documents and evidence, which was brought on record, the learned trial Judge was not right in holding that the plaintiff was forcibly dispossessed by the defendant. That apart, the findings recorded by the concerned Court in para 10 about awarding damages to the plaintiff are without any evidence on record. I find considerable force in the argument advanced by the learned Counsel for the petitioner that in absence of any provision, the learned trial Judge awarded damages of Rs. 10,000/- to the plaintiff.

7. In the light of discussion herein above and in view of the fact that the order passed by the concerned Court awarding damages to the plaintiff is not tenable under the provisions of the Specific Relief Act. As already stated, the original plaintiff has not appeared before this Court and in that sense, the pleadings in the revision application remained un-controverted.

8. Taking overall view of the matter, the impugned judgment and order dated 25th February, 2004 passed by the 2nd Joint Civil Judge, Junior Division, Parbhani in R.C.S. No. 169 of 2000, is quashed and set aside. The revision petitioner ? defendant is permitted to withdraw the amount of Rs. 10,000/- deposited in the Registry of this Court. Civil Revision Application is allowed in above terms and disposed of.