
(1994) 03 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 2593 of 1992

Tajul Islam and Another

APPELLANT

Vs

Shariyatullah Mansoorali Shaikh

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Specific Relief Act, 1963 — Section 6

Citation : (1995) 1 BomCR 313 : (1994) 96 BOMLR 630 : (1994) MhLj 1191

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : V.R. Sutraleo, for the Appellant; P.R. Baldota and A.A. Munshi, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—This writ petition is directed against the judgment and order dated 30th April, 1992 of the Bombay City Civil Court decreeing the suit of the respondent against the petitioners u/s 6 of the Specific Relief Act, 1963 for recovery of possession of a room bearing No. 206 situated at Shivajinagar Zoppadpatti, Borivli (the suit premises).

2. The facts of the case, briefly stated, are as under: The respondent Shariyatullah Mansoorali Shaikh filed a suit against the petitioners u/s 6 of the Specific Relief Act. The case of the respondent was that he had taken exclusive possession of the suit premises on 23 January, 1984 as per an affidavit dated 23 January, 1984 executed by petitioner No. 2, Janubibi, wife of petitioner No. 1 Tajul Islam. Since then, according to the respondent, he was in occupation of the suit premises till 11-3-1986 when the petitioners, with the help of some others, broke open the lock of the suit premises, threw out the articles of the respondent and took forcible possession of the same. Next day, on 12 March, 1986, when the respondent went to the suit premises, he found the petitioners in possession of the same and his articles lying outside. He lodged a complaint with the Borivli

Police Station on 12 March, 1986 and a case was registered on his complaint under sections 454, 448 and 341 read with section 114 of the Indian Penal Code. The criminal case was, however, dismissed by the Metropolitan Magistrate, Borivli on the ground that the prosecution hopelessly failed to prove the allegations.

3. The petitioners (original defendants), in their written statement in the suit for specific relief, denied all the allegations of the respondent. The case of the petitioners was that they were residing in the suit premises along with their children since 1975. It was stated by petitioner No. 1 that the respondent was known to him and his family and he had promised that he would help him in getting the passport. It was under that pretext that he got the affidavit signed by his wife on which reliance was sought to be placed in support of the claim of possession of the suit premises and allegation of dispossession. According to him, on 23rd January, 1984 when he returned home he was told by his wife Janubibi that the respondent herein had taken an affidavit from her. He thereupon called the respondent immediately and got the affidavit read. On knowing the contents of the affidavit, he could realise the evil intention of the respondent. He, therefore, took away the said affidavit from him. The petitioners denied that the possession of the suit premises was ever given to the respondent by Janubibi as alleged by him. The trial Court framed issues, examined the witnesses and decreed the suit which is subject matter of challenge in this writ petition.

4. I have perused the impugned judgment and order of the trial Court and the document relied upon by the respondent in support of his claim of possession. It appears that though the respondent claimed possession of the suit premises on the basis of the affidavit signed by Janubibi, he produced only a copy of the same without stating anything as to what happened to the original. The original affidavit was produced by petitioner No. 1 who was the defendant in the suit as according to him he had taken back the same on the very day of execution from the respondent as it had been obtained by misrepresentation and fraud. It may be expedient to set out the affidavit in extenso because the respondent, original plaintiff, claims to have entered into possession of the suit premises on the strength of the said affidavit. It reads :

" I say that I am in use, occupation and possession of the aforesaid premises since 1975.

I say that one Shri SHARYATULLA S/o. MANSURALI, aged 51 years who is my relative also residing with us at the above mentioned address since very beginning.

I say that due to my ill health I am leaving Bombay and going to my native place for my permanent settlement there and as such I no longer require the aforesaid premises for my personal use, occupation and possession.

I say that I am handing over the aforesaid premises to Shri Sharyatulla S/o Mansurali for his exclusive use, occupation and possession. I say that I have no

any objection whatsoever nature if the aforesaid premises is transferred in the name of Shri Sharyatulla S/o. Mansurali in the records of concerned authority.

I say that I have no any claim, right, title or interest of the aforesaid premises and I further state that none of my family member shall claim any right whatsoever nature of the aforesaid premises.

I am making this affidavit as the same is to be submitted before the concerned authority for the effective transfer of the aforesaid premises in the name of Sharyatulla S/o. Mansurali in their records."

The affidavit thus says that the respondent is a relative of Janubibi and had been residing with her at the address mentioned in the affidavit "since very beginning". The affidavit further says that Janubibi was in use, occupation and possession of the suit premises since 1975. It goes on to say that as due to ill health she was going to native place for permanent settlement, she no longer required the premises and as such she was handing over the possession of the said premises to the respondent for his exclusive use, occupation and possession. Let us see what the respondent himself has to say in this regard. In his examination in chief the respondent stated that he had purchased the suit premises from the petitioners. In his cross-examination he also stated that the petitioners were not known to him prior to the purchase of the suit premises by him in 1984 by means of an affidavit in question. He also made a categorical statement that the petitioners were not related to him, not even distantly. He also stated that I do not know since when defendants were residing in the suit premises prior to the purchase of the room from them in 1984." On being questioned about the original affidavit being in possession of the petitioners he stated "the original of the affidavit dated 23-1-1984 was in my possession after it was executed by defendant No. 2 but when the defendants forcibly entered the suit premises they took away the original affidavit". It may be observed that this statement was made for the first time in the cross-examination. Never before at any time the petitioner had stated that he had filed the copy of the affidavit because the original had been taken away by the petitioners at the time of his alleged dispossession. From the statements of the respondent himself the affidavit in question falls to ground. All the averments therein are patently wrong according to the respondent himself. Such an affidavit cannot be relied upon for any purpose more so in a summary proceeding u/s 6 of the Specific Relief Act as a proof of possession of the respondent.

5. The other evidence produced by the respondent in support of his claim for possession was a ration card which was obtained some time in the later part of 1984 and some credit memo showing some purchase of cement etc. wherein in the column "Name of the purchaser" name of the respondent was shown along with room No. 8 the name of the building etc. of the suit premises. These memos were produced to show that the respondent had purchased these materials for repairs of the suit premises. These documents, in my opinion, cannot establish the possession of the respondent. So far as the memos are concerned less said

the better. Suffice it to say that such memos in any event cannot be used as evidence of possession of the suit premises, more so when the very foundation of the claim, the affidavit itself falls to ground on the statement of the respondent himself in his examination and cross-examination. In such a situation, the trial Court was not justified in holding that the respondent was in possession and that he was dispossessed by the petitioners and decreeing the suit u/s 6 of the Specific Relief Act.

6. Section 6 of the Specific Relief Act provides a quick remedy to a person who is dispossessed by use of force or otherwise without any authority of law which is evident from the very language of section 6, which reads as under :

"Section 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."

7. 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 dispossession". 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. In view of the above discussion, I am of the clear opinion that the finding of the Court below in regard to possession of the suit premises by the respondent from 1984 is not tenable in law and is perverse and the order and decree passed

on such a finding therefore, cannot be sustained. I, therefore, set aside the same. In the result this writ petition is allowed. The impugned decree of the Court below is set aside.

9. There shall be no order as to costs.

Certified copy expedited.