
(1983) 12 BOM CK 0033
In the Bombay High Court
Case No : First Appeal No. 1067 of 1979

Veeramma B. Babu

APPELLANT

Vs

Janardhan

RESPONDENT

Date of Decision : 07-12-1983

Acts Referred:

Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975 — Section 5, 8
Specific Relief Act, 1963 — Section 6

Citation : (1984) 2 BomCR 46 : (1984) MhLj 276

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : V.R. Shetty, for the Appellant; D.D. Kapadia, for the Respondent

Judgement

H.H. Kantharia, J.—This appeal arises from a judgment and order passed by the learned Judge of the City Civil Court, Bombay, on 28th January, 1977 in S.C. Suit No. 2930 of 1976 rejecting the plaint on the ground that City Civil Court had no jurisdiction to entertain and try the suit.

2. The facts are that the appellant (hereinafter referred to as "the plaintiff") filed the suit against the respondent (hereinafter referred to as "the defendant") in the City Civil Court, Bombay, that she was in possession of a hut bearing No. 283 (ACW) situate at Geeta Nagar, Holiday Camp, Colaba, Bombay-5, which was constructed by her on the land belonging to Government of Maharashtra. Somewhere in the last week of December 1975, the defendant approached her and said that he was in dire need of temporary accommodation and he and the members of his family be allowed to stay with her. The plaintiff acceded to his request and allowed him, his wife and a child to stay along with her. However, on 24th February, 1976 the defendant dispossessed her of the said hutment otherwise than by the course of law by removing her articles and by putting up his own lock. She, therefore, took proceeding u/s 145 of the Criminal Procedure Code, 1973, which came to be rejected summarily on the ground that she was in

joint possession of the hut along with the defendant. Thereafter she filed the suit in the City Civil Court, Bombay, for a relief that the defendant be directed to restore the possession of the above-mentioned premises to her. When the suit was taken up for hearing a contention was raised before the learned trial Judge, on behalf of the defendant, that if the land on which the structure was situate, was vacant land within the meaning of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975, would the City Civil Court have jurisdiction to entertain the suit ? It was submitted on behalf of the plaintiff that it was not a suit challenging an order of eviction made by the Competent Authority but was a suit between two private individuals regarding possession of premises and the question of title was not involved. The learned trial Judge framed a preliminary issue as under :---

"Does this Court have jurisdiction to entertain and try this suit in view of the provisions of the Maharashtra Vacant Land Act ?"

On consideration of the provisions of section 8 of the Maharashtra Vacant Land (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975 (hereinafter referred to as "the Act") which read ;

"No Court shall have jurisdiction to entertain any suit, prosecution or other proceedings in respect of the eviction of any person from any vacant land under this Act or in respect of any order made or to be made or any action taken or to be taken by the Competent Authority in exercise of the powers conferred by or under this Act or to grant any stay or injunction in respect of such order or action. If any such suit or other proceedings in respect of eviction of any person from any vacant land is pending on the appointed date in any Court, it shall abate; and it shall be lawful for the Competent Authority to evict such person from unauthorised occupation of the vacant land under the provisions of this Act and to remove and forfeit any property from such land as provided in this Act", and

bearing in mind the submissions made before him at the Bar, the learned trial Judge came to the conclusion that the City Civil Court had no jurisdiction to entertain and try the suit and rejected the plaint. Aggrieved by his judgment and order, the plaintiff preferred the present appeal.

3. Mr. Shetty, learned Counsel appearing on behalf of the plaintiff, submitted that after the impugned judgment and order was passed by the learned trial Judge on 28th January, 1977, the Supreme Court decided the point involved in this appeal in case of Chandu Naik and Others Vs. Sitaram B. Naik and Another, and has held that when the dispute is between two private parties in respect of possession of premises, the provisions of section 8 of the Act are not attracted and the Civil Court has the jurisdiction to entertain and try the suit of the kind with which we are dealing. Mr. Kapadia, learned Counsel appearing on behalf of the respondent, conceded this position in law in view of the judgment of the Supreme Court.

4. Now, the Supreme Court in the above quoted case was dealing directly with

the provisions of section 8 of the Act in a matter arising out of the provisions of section 145 of the Criminal Procedure Code, 1973. In that case, the Magistrate held that in view of section 8 of the Act, he did not have jurisdiction to proceed with a case u/s 145 of the Criminal Procedure Code, 1973. The aggrieved party filed a revision application in this Court. This Court agreed with the view taken by the Magistrate and dismissed the revision application. Hence an appeal was filed in the Supreme Court. The Supreme Court held as under :

"In our opinion the courts below have committed an error of law in applying the Bar of section 8 to the present proceeding. Firstly in the context of the Act the Bar is not attracted to any suit or proceeding in respect of the eviction of any person from any vacant land started in relation to a dispute of possession between to private persons. The Bar is attracted if the suit or proceeding concerns the eviction of any person from any vacant land by the Competent Authority. In other words, no suit or proceeding for eviction can be entertained by any Court if the Competent Authority is entitled to evict the person u/s 4. He will be entitled to evict any person if he is in unauthorised occupation of vacant land, but not in the case of dispute between two private persons, either of them claiming to be in authorised occupation. For deciding such a dispute, the Competent Authority does not come into the picture."

5. As stated above the proceedings before their Lordship of the Supreme Court were u/s 145 of the Criminal Procedure Code, 1973, and the proceedings before us are u/s 6 of the Specific Relief Act, 1963. The provisions of section 145 of the Criminal Procedure Code are identical to the provisions of section 6 of the Specific Relief Act. The purpose of a proceeding u/s 145 of Criminal Procedure Code is not for evicting any person from any land but for prevention of breach of peace and for declaring that the party found in possession be entitled to remain in possession till such time it is evicted in due course of law. In the same manner u/s 6 of Specific Relief Act if any party is dispossessed, without its consent, of the immovable property otherwise than in due course of law, that party or any person claiming through him may, by a suit, recover possession of the said property notwithstanding any other title that may be set up in such a suit. Hence in view of the law laid down as above by the Supreme Court, it is now settled that any dispute between the private persons, may be with regard to the land covered by the Act, the suits or proceedings are not barred u/s 8 of the Act. Therefore, the City Civil Court has the necessary jurisdiction to entertain and try the suit. In the result, the impugned judgment and order passed by the learned trial Judge will have to be set aside.

6. The appeal, therefore, succeeds. The impugned judgment and order are set aside. The matter is remanded back to the trial Court for disposal according to law. It appears from the record that before the suit came to be disposed of by the impugned judgment and order this Court had directed that the suit be expedited. Hence, it is again directed to expedite the suit. The trial Court shall allow the defendant to file written statement and the parties to file the document

on which they want to rely. No order as to costs.