

(1964) 06 KL CK 0001
In the High Court Of Kerala
Case No : C.R.P. NO. 11 of 1963

Venkitasubramonia Iyer

APPELLANT

Vs

Krishna Iyer and Others

RESPONDENT

Date of Decision : 02-06-1964

Acts Referred:

Specific Relief Act, 1963 — Section 12, 16, 9

Citation : (1964) KLJ 1002

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : T.S. Krishnamoorthy Iyer, for the Appellant; V.R. Krishna Iyer, K.R. Kurup, for the Respondent

Final Decision : Dismissed

Judgement

Vaidialingam, J.—In this Revision Mr. T.S. Krishnamoorthy Iyer, learned counsel for the defendant in O.S. 479/62 on the file of the court of the Munsiff, Ernakulam, challenges the decree of that court directing his client to put the plaintiffs in the suit in possession of the properties. The suit itself was instituted by the plaintiffs u/s 9 of the Specific Relief Act. The material part of section 9 of the Specific Relief Act is as follows:

Section 9. 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.

and it is also provided in the latter part of the section that no appeal shall be instituted under that section nor shall any review of the order be allowed. I am referring to the last aspect because that is why the defendant-petitioner has come up to this court in Revision challenging the decree of the trial court passed u/s 9 of the Act.

2. The averments in the plaint will show that the defendant-petitioner was the

owner of a building in Ernakulam and that the first plaintiff became his tenant in respect of a part of the property from June 1941 at a monthly rent of Rs. 20/- Similarly, the second plaintiff became a tenant under the defendant in respect of another portion of the property from March 1942 on a monthly rent of Rs. 20/-.

3. According to the plaintiffs, in or about February 1962 the defendant-petitioner represented to them that he wants the plaintiffs to vacate the building temporarily so as to enable him to remodel and repair the building. There is also a Statement to the effect that the defendant assured the plaintiffs that immediately after repair and remodelling was over, they will be put back in possession of the premises. Then it is mentioned by the plaintiffs that they also agreed to pay any reasonable enhanced rent that may be found necessary with the nature or modification that may be done by the defendant. The plaintiffs implicitly believed the statements of the defendant and vacated the house for purposes of repair on 16th February 1962.

4. Later on, no doubt in paragraph 6, after referring to the fact that the defendant was doing nothing towards effecting any repair, the plaintiffs stated that the various representations were made by defendant only with the ulterior object of making the plaintiffs vacate the house.

5. Then they refer to the fact that their tenancy rights could not have been terminated under the provisions of the Kerala Buildings (Lease and Rent Control) Act as amended by Act 29 of 1961 nor could the defendant get possession of the building under the Act. Ultimately the plaintiffs pray for a decree being passed in their favour directing the defendant to surrender possession of the premises mentioned in the schedule to the plaint and also for costs.

6. But it must be noted that the suit was essentially one u/s 9 of the Specific Relief Act and there was no prayer for granting any specific performance of any agreement or contract. Though certain averments have been made regarding same agreement, the suit was a simple suit u/s 9.

7. The petitioner raised the contention that the suit as instituted u/s 9 of the Specific Relief Act, even on the basis of the averments contained in the plaint is not maintainable. No doubt the defendant took a very large stand that the plaintiffs voluntarily surrendered possession and vacated the premises and therefore the agreement pleaded by them was disputed and denied. Then the other averments in the plaint are also controverted by the defendant.

8. The trial court in the judgment which is under attack is of the view as could be gathered from what is stated in paragraph 8 that the fact remains that possession was surrendered by free consent. In fact, paragraph 8 contains a discussion of the essential requirements that the plaintiffs will have to establish in a suit instituted u/s 9 of the Act. After setting out the requisites that the plaintiffs will have to establish in a suit under that section, one of the findings recorded is what is referred to by me earlier namely, that the possession of the building was surrendered by the plaintiffs by free consent. Then there is the

further statement that even the plaintiffs admit that possession was surrendered on an agreement and the trial court further states that the fact remains that the plaintiffs were consenting parties to the dispossession.

9. The trial court then adverts to the fact that the complaint of the plaintiffs is that the defendant, after getting voluntary surrender of the building, did not repair or give back the building. That is a case of the defendant not keeping up his promise to give back the building to the plaintiff. But the trial court categorically mentions in that paragraph that the claim of the plaintiffs is not u/s 9 of the Specific Relief Act, but u/s 12 of the said Act for specific performance of the agreement, and that once the dispossession occurred on consent in this case, section 9 is not attracted.

10. Then the trial court goes into the question as to whether the claim of the plaintiffs for having specific performance of the agreement set up by them can be considered and granted. Ultimately the trial court after a consideration of the provisions of section 12 and section 16 of the Specific Relief Act, as well as certain provisions of the Indian Contract Act is of the view that in this case, the court has got a discretion of granting specific performance and that in this particular case, that discretion has to be exercised in favour of the plaintiffs; and it is the further view of the court that it is the only proper and equitable remedy. Ultimately the decree for possession as against the defendant was granted by the trial court.

11. Mr. T.S. Krishnamoorthy Iyer, learned counsel for the petitioner urged that on the findings recorded by the trial court itself in paragraph 8 of its judgment and detailed by me in the earlier part of my order, the only course that was available to the trial court was to dismiss the suit filed by the plaintiffs u/s 9 of the Specific Relief Act. The learned counsel urged that when once a finding has been recorded that the plaintiffs voluntarily surrendered possession of the building with free consent, no further question arises for consideration in the suit and section 9 will not apply to enable such a plaintiff to get possession of the properties in a summary manner.

12. Mr. V.R. Krishna Iyer, learned counsel for the respondent quite naturally urged that the defendant in this case has acted fraudulently by making false representations and induced the plaintiffs to part with possession of the properties. The learned counsel urged that in this case, the reasoning of the trial court will clearly show that even at the time when the defendant wanted the plaintiffs to vacate the premises on an assurance of remodelling the house, the defendant had a dishonest intention of not complying with his assurance. The learned counsel also naturally relied upon the other findings recorded by the trial court, one of which is disbelieving the case of the defendant that the plaintiffs have voluntarily surrendered possession of the premises.

13. The learned counsel urged that even in a suit filed u/s 9 of the "Specific Relief Act, the question as to whether the consent is vitiated by fraud or

misrepresentation or cheating can be considered. The findings recorded by the trial court show that the vacating of the premises by the plaintiffs was not by free consent "and therefore this court should not interfere with the findings that have been categorically recorded as against the defendant.

14. The question that will have to be decided is whether the contention urged before me by the learned counsel for the petitioner should be accepted by this court or not. So far as that is concerned, in my view, the scope of jurisdiction exercised by a court u/s 9 of the Specific Relief Act is very limited and it is intended to serve a limited purpose. Now in this case, it is not really necessary for me to embark upon the principles underlying the application u/s 9 because the trial court itself has enumerated the various matters as well as the essential requisites. Those are found in paragraph 8 of the trial court judgment.

15. No doubt Mr. V.R. Krishna Iyer, learned counsel for the respondent relied upon a decision of a Single Judge of the Mysore High Court reported in *Annoopchand v. Amerchand* (A.I.R. 1951 Mysore 101-Balakrishnaiya J.). Going through that judgment, in my view, that decision does not at all assist the learned counsel for the respondent in this case.

16. Having found in paragraph 8 of the trial court's judgment, that the vacating of the buildings by the plaintiffs was voluntary and with free consent in my view, the contention of Mr. T.S. Krishnamoorthy Iyer, learned counsel for the petitioner that the suit filed u/s 9 of the Act is not maintainable, will have to be accepted by this court. Even exercising the limited jurisdiction u/s 115, there is a duty on the part of this court to see whether the trial court had jurisdiction u/s 9 to pass a decree for specific performance, directing the defendant to give possession of the property. In my view the trial court has acted either without jurisdiction or beyond the jurisdiction conferred u/s 9 of the Specific Relief Act.

17. I do not propose to express any opinion regarding the various other findings recorded by the trial court on several other matters because they are to be agitated before a proper tribunal and a proper tribunal will have to investigate. Therefore, the judgment and decree of the trial court are set aside, and this Civil Revision Petition allowed. The result will be that the suit instituted by the respondents-plaintiffs will stand dismissed. Parties will bear their own Costs in the trial court and in this Civil Revision Petition.