

(2011) 177 DLT 159

Delhi High Court

Case No: Regular Second Appeal No. 72 of 1991

Shri Madan Lal through
L.Rs. and Others

APPELLANT

Vs

Shri Ram Pratap
through L.Rs. and
Others

RESPONDENT

Date of Decision: Dec. 2, 2010

Acts Referred:

Limitation Act, 1963 " Article 64, 65#Specific Relief Act, 1963 " Section 5, 6, 9

Citation: (2011) 177 DLT 159

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: O.P. Aggarwal, for the Appellant; Rajiv Kr. Ghawana, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

The present suit has the impugned judgment and decree dated 19.09.1991 which had endorsed the finding of the trial

judge who vide judgment and decree dated 01.02.1986 had dismissed the suit of the plaintiff.

2. Briefly stated the matrix of the case is as follows:

i. plaintiffs, Suraj Prasad and Madan Lal, had filed a suit for possession of shop No. 1467, Fountain, Chandni Chowk, Delhi. It had been alleged

that the plaintiffs i.e. Suraj Parsad - Madan Lal are tenants under Madan Lal since 1943 at a monthly rent of Rs. 57.50/- which had been

increased to Rs. 80/-. Rent note dated 11.07.1945 had been executed in the favour of the landlord.

ii. plaintiffs and Defendant No. 1 are real brothers. Defendant Nos. 2 to 4 are the sons of Defendant No. 1.

iii. plaintiff No. 2 was carrying on business of "paan", "cigarette" etc. in Shop No. 1469/1, Fountain, Chandni Chowk, Delhi. There was no

electricity in that shop. plaintiff was utilizing electricity from the adjoining shop. He got his electricity connection 10 to 12 years ago.

iv. In 1952, plaintiffs allowed their brother Chhagan Lal (now deceased) to carry on the plaintiffs business in the said shop which he continued till

the time of his death. After his death, plaintiffs continued their business through their sons till 1965.

v. Defendant No. 1 was well acquainted with accounts; he used to visit the disputed shop to write the accounts.

vi. In 1966, plaintiffs employed Defendant No. 3 to carry on his business at Rs. 3/- per day which arrangement continued till January, 1967.

Thereafter, Defendant No. 3 misappropriated the money of the plaintiffs. plaintiffs came to know about this and rebuked Defendant No. 3 who

was dismissed from their service on or about 1967. As a revenge on 17.03.1967, Defendants broke open the locks of the shops of the plaintiffs

and illegally took possession of the said shop including the goods therein.

vii. Criminal complaint was lodged and proceedings u/s 145 of the Code of Criminal Procedure were initiated.

viii. Present suit was thereafter filed.

ix. Defendants contested the suit; they denied that the possession of the suit property had been taken by them forcibly. They claimed title in their

own right.

x. Trial judge framed 8 issues. Issue No. 2 was the crucial issue. It inter alia reads as follows:

Whether the plaintiff is a tenant in the suit premises or whether the plaintiff is only a tenant as benamidar? OPD

xi. While disposing of this issue, trial court dealt with the 13 witnesses examined on behalf of the plaintiff, of whom PW4, Sh. Dinesh Dayal, PW-6

Jaidev Gupta, PW-7 Ram Kishan and PW-10 Madan Lal were the relevant witnesses. PW-7 had proved Ex.P21, the rent receipt issued by the

landlord, Sh. Madan Lal, in the name of Sh. Suraj Prasad. The landlord had been examined as PW-10. He had proved the other rent receipts as

Ex.P28 to P37; these were issued in the name of the firm "Suraj Prasad Madan Lal".

xii. Trial court on the basis of the oral and documentary evidence held that the tenancy was created in the name of the plaintiffs and Defendant No.

1 had only acted as a mediator. All issues were decided in favour of the plaintiff except issue No. 4 i.e. the issue of limitation on the basis of which

the suit of the plaintiff had been dismissed. Trial Judge while deciding Issue No. 4 held that the plaintiff, as per his own averment, had been

dispossessed from the suit premises on 17.03.1967; suit was filed on 12.06.1968 i.e. after the expiry of more than one year; dispossession was on

17.03.1967 i.e. 15 months before the date of the filing of the suit; suit was held to be barred by time. Provisions of Section 6 of the Specific Relief

Act had been relied upon to non-suit the plaintiffs. It was accordingly dismissed.

xiii. In first appeal, the first appellate court vide the impugned judgment and decree dated 19.9.1991 dismissed the appeal.

Issue No. 5 i.e.

whether the Defendant took the possession illegally on 17.05.1967?

was modified.

It was held that the plaintiffs were in possession but not in exclusive possession. On Issue No. 4 i.e. on the point of limitation, the finding of the trial

Judge had been endorsed. Suit was held to be barred by limitation. The contention of the Appellant that the provisions of Articles 64-65 of the

Indian Limitation Act would be applicable had been repelled. xiv. The finding of the first appellate court, in this context, inter alia reads as follows:

In the present case, the plaintiffs have not filed the suit on the basis of title. It was on the basis of possession. That possession was disrupted by

Defendants as alleged in the plaint on 17.03.1967 and Section 6 of the Specific Relief Act was the right Section to apply and Id. Sub Judge rightly

did so. Section 5 of the Specific Relief Act uses the words "'entitled to possession'". That means that the plaintiff has a legal right to title to

possession on the basis of ownership. In order to succeed the plaintiff has to show that he is a person entitled to get possession. The title in the

present suit obviously must be held to be possession if Section 5 could be attracted.

12. The exclusive possession of the plaintiff to the exclusion of the Defendants is no-where proved on record. As observed above, so long the

relations amongst the brother were cordial, there were no differences. The rent receipts of the shop, which was admittedly taken on rent by

Defendant No. 1, were signed by plaintiff No. 1. The mail of both the parties was received on the address of the suit shop. The minor brother of

the parties was at the shop for ten to eleven years (managing the shop and receiving income. Defendant No. 1 Ram Partap admittedly was writing

accounts. It would be thus too far-fetched a contention that the plaintiffs were in exclusive possession of the premises till 15.03.1967- the crucial

date on which Ganga Charan was allegedly dismissed from service by the plaintiffs. The locks were allegedly broken by the Defendants on

17.03.1967 when the plaintiffs were dispossessed. Surprisingly there are receipts even of the year after 1967 while the dispossession was

complete as per the plaintiff in March, 1967. The receipts No. 468067 (page 269 of the lower Court record) is dated 31.05.1968 and so is

receipt dated 31.05.1968 bearing No. 51090 (page 271) of the lower court record). The only conclusion that can be thus reached, on the basis of

facts, circumstances and evidence is that the plaintiffs did not have the exclusive right or possession in the shop. It was sort of family business

based on some understanding amongst the brothers. The plaintiffs, however, asserted that they had possession as well as right and that they were

illegally and forcibly dispossessed on 17.03.1967. In the background of such categorical pleading, the suit could be brought within a period of six

months of such dispossession u/s 6 of the Specific Relief Act. Even if Section 5 was to apply, there was nothing on record for this Id. Sub Judge to

hold that the plaintiffs were in exclusive possession throughout within 12 years prior to the dispossession. The finding on the point of limitation,

therefore, is perfectly sound and no interference is warranted. The Appeal No. 49/90 in consequence merits dismissal only and the same is hereby

dismissed

3. This is a second appeal. On 05.11.1991; appeal was admitted and the following substantial question of law was formulated which inter alia as

follows:

Whether possessory right of a tenant can be enforced by a suit u/s 5 of the Specific Relief Act carrying the longer period of limitation?

4. On behalf of the Appellant, it has been urged that the judgment of the Trial Court is illegal and arbitrary. The impugned judgment had wrongly

held that the provisions of Section 6 of the Specific Relief Act would be applicable; the said provision would be applicable only if a dispute arose

between a landlord and a tenant which is not so in the instant case. In this case, the plaintiff himself has averred that he is a tenant of the suit

property; he was in possession of this property right from 1943 and his exclusive possession had in fact been endorsed by trial Judge. He has been

non suited only on the ground of limitation; the plaintiff having established by oral and documentary evidence that he was in possession of this

property since the year 1943 provisions of Section 5 of the Specific Relief Act would be applicable and in this view of the matter such a suit for

possession of this immovable property could be filed within a period of three years in terms of Article 65 of 1st Schedule of the Indian Limitation

Act, 1963. It is within time. Counsel for the Appellant has placed reliance upon a judgment of the Apex Court reported in Nair Service Society

Ltd. Vs. Rev. Father K.C. Alexander and Others, . to support his submission that under Article 64 of the Indian Limitation Act a suit can be filed

within 12 years from the date of dispossession which is a suit to be based on possession and not on title.

5. Arguments have been countered by the learned Counsel for the Respondent. Attention has been drawn to the version of various witnesses who

had been examined before the trial Court. It is pointed out that the first Appellate Court had re-appreciated the oral and the documentary and had

drawn a conclusion that the plaintiff was not in exclusive possession of the suit property; the impugned judgment had correctly held that the

provision of Section 6 of the Specific Relief Act (hereinafter referred to as the ""SPRA"") is the applicable provision which is relatable not only to a

dispossession between a landlord and tenant; it speaks of ""any person"".

6. Perusal of the record shows that the Trial Judge had non-suited the plaintiff only on the ground of limitation; all the other issues had been

decided in favour of the plaintiff. While disposing of issues No. 4, it had held that the plaintiff as per his own averment had been dispossessed from

the suit property on 17.3.1967; suit filed on 12.6.1968 was barred by time in view of the provisions of Section 6 of the Specific Relief Act.

7. Relevant would it be to extract the said provision of law; it inter alia reads as follows:

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.

8. The averments made in the plaint are relevant. The suit property is a shop bearing No. 1467, Fountain, Chandani Chowk, Delhi. As per the

plaintiff in 1943 the two plaintiffs had taken on rent the aforestated shop from its owner Madan Lal at monthly rental of Rs. 57.50. Defendant No.

3 being well versed in accounts used to sit in the shop to write accounts of the firm; the firm name was "Suraj Parsad - Madan Lal". On 17.3.1967

the Defendants (of whom Defendant No. 1 is brother of the two plaintiffs and Defendants No. 2 to 4 are his sons) had taken illegal and

unauthorized possession of the aforestated shop. The cause of action has been detailed in para 21; it also states that on 17.3.1967 the Defendants

had illegally dispossessed the plaintiff. Suit was admittedly filed on 12.6.1968 i.e. after a lapses of about 15 months.

9. The impugned judgment had modified the finding on issue No. 5 holding that the plaintiff is not in exclusive possession of the suit premises. Ex.P-

21 to P-23 which were rent receipts relied upon by the trial Judge related to property situated in Bhagirath Palace, Chandni Chowk, Delhi as is

evident from the version of PW-4; the present property is a shop situated at Fountain, Chandni Chowk which is a distinct property. Reliance by

the Trial Judge on Ex.P-21 to P-23 to hold that the plaintiff was the tenant in the suit property is thus a clear illegality. PW-7 Ram Kishan had

brought the record from the Municipal Corporation; in his cross-examination he had stated that the Defendant had made payments on several

occasions of the taxes due to the department. PW-10 Madan Lal is the owner of the disputed shop; rent receipts Ex.P-28 to P-37 issued by him

were in the name of the firm ""Suraj Parsad- Madan Lal; in his cross-examination he had admitted that Defendant No. 1 has come to him take the

shop on rent in the name of the plaintiffs; PW-12 (also) Madan Lal, the plaintiff in his cross-examination admitted that Defendant No. 1 had

deposited the arrears of rent of Rs. 3500/- in the Court qua this suit property; his mail was also addressed at the suit premises. DW-1 Lachhi

Ram, DW-5 Thakur Dass and DW-6 Dwarka Nath were witnesses of the neighbourhood who had proved the possession of the Defendant in the shop since 1954-55.

10. It was on the basis of this oral and documentary evidence which had been re-appreciated in the impugned judgment that the first Appellate

Court had held that the plaintiffs are not in exclusive possession of the suit shop.

11. The question which thus arises and has to be answered is whether the suit of the plaintiff was one u/s 5 of the SPRA or u/s 6 of the Act.

12. Section 5 of the SPRA reads as follows:

Recovery of specific immovable property- A person entitled to the possession of specific immovable property may recover it in the manner

provided by the Code of Civil Procedure, 1908.

13. Provisions of Sections 5 and 6 of the said Act are not mutually exclusive. A suit based on purely possessory title can be filed and can be

decreed if the fact of possession is proved in favour of the plaintiff and dispossession by the Defendant is established within 12 years before filing

of the suit. The findings in the impugned judgment that the plaintiff was not in exclusive possession of the suit property are based on a sound

reasoning. The oral and documentary evidence had been re-appreciated; there is no perversity in this finding. It had on the basis of the cogent and

coherent evidence drawn a conclusion that the plaintiff does not have a exclusive possession over the suit property; the suit property i.e. the shop

had been rented out in the name of the firm "Suraj Parsad - Madal Lal"; Defendant had gone to take this shop on rent from its owner Madan Lal.

Defendant No. 3 was looking after the accounts of the firm; mail of the Defendants was received at this address; there were admissions by the

plaintiff himself. It was a sort of a family business which was being carried out from these premises. A positive finding was thus returned that the

plaintiffs and the Defendants are both in joint possession of the suit property. The case of the Defendant stood on an equal if not a better footing as

that of the plaintiff; both were in possession; plaintiff not having a better title than that of the Defendant. In these circumstances, the plaintiff not

being in exclusive possession of the suit property, the suit u/s 5 of the said Act did not lie.

14. The averments made in the plaint also essentially show that this was a suit filed u/s 6 of the Act. The note at the end of the plaint stated that the

plaintiffs had reserved their right to file a separate suit for recovery of the goods lying in the said shop and also for recovery of mesne profits.

Contention of the learned Counsel for the Respondents that the plaintiffs knew that they are filing a suit u/s 6 of SPRA is evident from this note

which has been given at the end of the plaint; a suit u/s 6 of SPRA could not include a claim for mesne profits whereas a suit filed u/s 5 of the said

Act, relief of mesne profits could have claimed. This argument also carries force.

15. The limitation for filing a suit u/s 6 was six months from the date of dispossession which as per the averments in para 21 of the plaint was on

17.3.1967. Suit filed on 12.6.1968 was rightly held to be barred by limitation.

16. In Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, where the plaintiff had alleged that he had been dispossessed from the suit property;

plaintiff having filed a suit for possession beyond six months of dispossession, such a suit was not maintainable; it being barred by limitation.

17. The judgment of Nair Service Society Ltd. (supra) does not come to the aid of the plaintiff. In this case Apex Court had laid down the

proposition that in a suit u/s 6 (Section 9 of the Specific Relief Act, 1977) the plaintiff need not prove title; however, if the period of six months has

passed the question of title can be raised and if it is so done; the plaintiff has to establish a better title or else his suit must fail. In the instant case,

the plaintiff has not been able to establish a better title. Suit of the plaintiff must fail.

18. There is no merit in the appeal. It is dismissed.