Puran Chand Khandelwal Vs Kewal

C.M.(M) No.1525-26/2006

Court: Delhi High Court

Date of Decision: Nov. 18, 2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 97, Order 21 Rule 99, Order 41 Rule 24, 115#Constitution of India, 1950 â€" Article 227#Delhi Rent Control Act, 1958 â€" Section 25#Specific Relief Act, 1963 â€" Section 6

Citation: (2015) 1 AD 243

Hon'ble Judges: Valmiki J. Mehta, J

Bench: Single Bench

Advocate: Prakash Gautam, Advocate for the Appellant; Vishal Bhatnagar, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.
At the outset, at the request made on behalf of the petitioners, this petition is treated instead of as a petition under

Article 227 of the Constitution of India invoking which provision the petition has been filed, instead as a petition under Section 115 of the Code of

Civil Procedure, 1908 (CPC) because the impugned judgment which is challenged is the judgment of the civil court dismissing the suit of the

petitioners/plaintiffs under Section 6 of the Specific Relief Act, 1963.

2. The present revision petition is filed impugning the judgment of the trial court dated 4.7.2006 which has dismissed the suit of the

petitioners/plaintiffs under Section 6 of the Specific Relief Act, 1963. Petitioners/plaintiffs claimed to have been illegally dispossessed on 6.1.2001

from the suit property being shop no.2, building no.H-44, Rajouri Garden, New Delhi. The case of the petitioners/plaintiffs is not based on title but

is based on possession of the suit property till 6.1.2001 and the petitioners/plaintiffs claim that since they were in peaceful settled possession of the

suit property, they could not have been illegally dispossessed by the respondent/defendant by using force on 6.1.2001. The case of the

respondent/defendant however was that in the suit property there was one tenant by the name of Sh. B.L. Kalra (referred to as B.L.K. in the

impugned judgment) . Respondent/defendant had filed an eviction petition against Sh. B.L. Kalra on 21.4.1999 on the ground of subletting of the

premises by Sh. B.L. Kalra in favour of the present petitioner no.1. In that petition, Sh. B.L. Kalra appeared and informed the court that he had

already handed over possession to the petitioner no.2/plaintiff no.2 through her attorney being petitioner no.1/plaintiff no.1 and thereafter Sh. B.L.

Kalra absented himself in the eviction petition proceedings. An ex parte eviction decree was passed in favour of the respondent/defendant on

23.10.2000 by the court of Additional Rent Controller, Delhi. Respondent/defendant then filed an execution petition bearing no.61/2000 and when

the petitioner no.1/plaintiff no.1 came to know of this he filed objections under Section 25 of the Delhi Rent Control Act, 1958 against execution of

the decree dated 23.10.2000. These objections (Ex.PW1/V) were filed by the petitioner no.1/plaintiff no.1 on 23.12.2000 but these objections

were ultimately not pursued and hence were dismissed as withdrawn on 16.2.2002. The respondent/defendant in the meanwhile in execution of the

judgment and decree dated 23.10.2000 is stated to have taken possession through court bailiff on 14.12.2000, however, the

respondent/defendant states that the petitioner no.1/plaintiff no.1 again illegally took possession and consequently when the police failed to register

an FIR against the petitioner no.1/plaintiff no.1, respondent/defendant filed a writ petition before this Court and on which petition being allowed the

FIR no.9/2001 was registered against petitioner no.1/plaintiff no.1 on 4.1.2001 and to avoid the consequences of the FIR petitioner no.1/plaintiff

no.1 surrendered peaceful possession of the suit property to the respondent/defendant on 6.1.2001. The petitioners/plaintiffs on the contrary claim

that there is no question of surrendering peaceful possession to the respondent/defendant on 6.1.2001 especially if the FIR against the petitioner

no.1 was not withdrawn.

3. After completion of pleadings, the trial court framed the following issues:-

1. Whether the suit is barred under Section 25 DRC Act? OPD

2. Whether the suit is barred under Order 21 Rule 97 and 99 CPC? OPD

3. Whether the suit is not maintainable in its present form? OPD

4. Whether the suit is not maintainable in view of the statement stated to have been given by the Counsel for the Plaintiff no.1 as alleged in para 7

(in fact it is para 6) of the preliminary objection in the written statement? OPD

5. Whether the Plaintiff no.1 is dispossessed from the property without due process of law on 06-01-2001? OPP 1

6. Whether the Plaintiff is entitled for the decree of possession, as so prayed in para 1 of the prayer clause of the plaint? OPP

7. Whether the Plaintiff is entitled for the damages amounting to Rs.3,71,400/- as so prayed in para ii of the prayer clause of the plaint? OPP

8. Whether the Plaintiff is entitled to interest, if so, then at what rate and to what extent? OPP

9. Relief.

4. The trial court in the present case has held that no possession was taken in execution proceedings from petitioner no.1/plaintiff no.1

on14.12.2000, however, the court below has held that petitioner no.1/plaintiff no.1 voluntarily surrendered possession to respondent/defendant on

6.1.2001 and hence dismissed the suit under Section 6 of the Specific Relief Act, 1963 which requires forcible dispossession. Trial court has

refused to place any emphasis on the photographs Ex.PW1/W, filed by the petitioners/plaintiffs, to urge illegal dispossession on 6.1.2001. Trial

court has also noted that petitioner no.1/plaintiff no.1 does not claim any title to the property because in a civil suit between the parties the

petitioner no.1/plaintiff no.1 had made a statement on oath on 20.9.1999, Ex.PW1/DB, whereby petitioner no.1 conceded that he had no concern

with the suit shop no.2 i.e no title/rights were claimed and that the petitioner no.1/plaintiff no.1 had no concern with the suit shop no.2. Trial court

therefore dismissed the suit after arriving at a finding that there was no illegal dispossession of the petitioner no.1/plaintiff no.1 on 6.1.2001 because

petitioner no.1/plaintiff no.1 had voluntarily surrendered possession of the suit premises to the respondent/defendant/decree holder.

5. Learned counsel for the petitioners argued before this Court the following points:-

(i) The court below has committed a grave error in holding against the petitioners/plaintiffs that the case of the petitioners/plaintiffs lacks credibility

only because it was held by the trial court that the suit was filed after two and a half months of the alleged dispossession on 6.1.2001 and this

conclusion of the trial court could not have been arrived at because the legislature has prescribed a period of six months in filing of a suit for

possession under Section 6 of the Specific Relief Act, 1963.

(ii) Counsel for the petitioners relies upon the document Ex.PW1/T and which is the letter dated 14.12.2000 written by the petitioner no.1/plaintiff

no.1 to the police on 14.12.2000 alleging that petitioner no.1/plaintiff no.1 was sought to be dispossessed on 14.12.2000 and as per the counsel

for the petitioners this document clearly shows that petitioner no.1/plaintiff no.1 was not dispossessed in execution of the judgment and decree

dated 23.10.2000 on 14.12.2000 and there was no question of voluntarily handing over possession on 6.1.2001 without getting the FIR against

the petitioners/plaintiffs compromised/quashed.

(iii) Trial court in its finding in para 23 of the impugned judgment held that the respondent/defendant was not given possession on 14.12.2000 and

once that is so then there was no reason why the trial court should have held that the possession was given by petitioner no.1/plaintiff no.1 to the

respondent/defendant on 6.1.2001.

6. Though, in my opinion, the trial court has committed various errors in arriving at different conclusions, the impugned judgment in my opinion will

have to be sustained for the reasons which I am giving and which reasons are derived by me from the existing record of the trial court by using the

spirit of provisions of Order XLI Rule 24 CPC.

7. Firstly, I completely disagree and therefore set aside the finding of the trial court that the petitioner no.1/plaintiff no.1 was not dispossessed in

execution of the judgment and decree dated 23.10.2000 on 14.12.2000 inasmuch as I fail to understand as to how the trial court could have

overlooked unimpeachable judicial record in the execution proceedings and the statement which was given by the bailiff Sh. Babu Ram Sharma

(sic: Sh. Balram Sharma) who had deposed in favour of the respondent/defendant as DW2. Once the Court bailiff, undisputedly a Government

servant, comes and deposes as per the judicial record of execution proceedings that in the execution proceedings he gave possession of the suit

shop to the respondent/defendant, such a deposition could not have been overlooked by the trial court for arriving at a finding that the

respondent/defendant did not take actual physical possession through court proceedings of execution on14.12.2000. The document Ex.PW1/T

being the report dated 14.12.2000 written by the petitioner no.1 to the police on 14.12.2000 at best is a self- serving document, and a self-serving

document stating that petitioner no.1/plaintiff no.1 was in possession of the suit shop on 14.12.2000 and he was sought to be dispossessed cannot

carry any weight in view of the deposition of Sh. Balram Sharma/bailiff as DW2 and who proved the possession of the suit shop having been

delivered by the petitioners/plaintiffs in execution proceedings no.61/2000 filed for execution of the judgment and decree dated 23.10.2000

passed by the court of Additional Rent Controller, Delhi. The fact of the matter therefore is that once the respondent/defendant had taken

possession on 14.12.2000 and the petitioner no.1/plaintiff no.1 was in fact found again to be in possession of the suit shop, the possession of the

petitioner no.1/plaintiff no.1 in the suit shop was not in the opinion of this Court settled possession which could have been protected and

possession granted under Section 6 of the Specific Relief Act, 1963. The law in this regard is now settled and stated by the Supreme Court in the

judgment in the case of Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, . Supreme Court in the judgment in the case

of Rame Gowda (supra) holds that a person who is in legal possession is entitled to protect such possession by using of reasonable force to throw

out a trespasser. Supreme Court states that an original owner who has been wrongly dispossessed may retake possession if he can do so

peacefully without use of unreasonable force i.e use of reasonable force is permissible. Supreme Court holds that trespass does not result into a

settled possession and unless the possession is settled possession and effective possession such a possession cannot be protected as against the

true owner. Supreme Court has made it clear that an act of trespass or a possession which has not matured in settled possession can be removed

by the true owner even by using necessary force. Paras 8 to 10 of the judgment in the case of Rame Gowda (supra) are relevant and these paras

read as under:-

8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to

protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of

land may retake possession if be can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the

property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the

trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful

owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to

the law of limitation) , if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior

peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property

may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy

character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have

recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true

owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the

true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by

a catena of decisions. Illustratively, we may refer to Munshi Ram and Others Vs. Delhi Administration, , Puran Singh and Others Vs. The State of

Punjab, and Ram Rattan and Others Vs. State of Uttar Pradesh, . The authorities need not be multiplied. In Munshi Ram & Ors."s case (supra) , it

was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land

and in such a case unless he is evicted in the due course of law, he is, entitled to defend his possession even against the rightful owner. But merely

stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend

against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A

casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-

instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his

possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or

removed by the true owner even by using necessary force. In Puran Singh and Ors."s case (supra) , the Court clarified that it is difficult to lay

down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i)

effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase settled

possession does not carry any special charm or magic in it nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of

the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid

down the following tests which may be adopted as a working rule for determining the attributes of "settled possession":

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express of implied) of the owner or without any attempt at concealment by the trespasser

and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the

facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser,

after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy

the crop grown by the trespasser and take forcible possession.

10. In the cases of Munshi Ram and Ors. (supra) and Puran Singh and Ors. (supra) , the Court has approved the statement of law made in Horam

and Others Vs. Rex, , wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had

already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in: while the former can be

obstructed and turned out by the true owner even by using reasonable force , the later, may be dispossessed by the true owner only by having

recourse to the due process of law for re-acquiring possession over his property.

(underlining added)

8. Learned counsel for the petitioners/plaintiffs did seek to argue that there was no reason why the petitioner no.1/plaintiff no.1 would ""peacefully

surrender"" possession on 6.1.2001 once an FIR stood registered against him on 4.1.2001 and which FIR would stand, however, I do not find this

argument to be convincing because there may be various reasons why the petitioner no.1/plaintiff no.1 may have chosen not to pursue the matter

and would have instead chosen to handover peaceful possession to the respondent/defendant especially considering that possession was taken by

the respondent/defendant through due process of law in execution proceedings. Also, on specifically asking counsel for the petitioners/plaintiffs that

if the petitioner no.1/plaintiff no.1 was illegally dispossessed on 6.1.2001 then whether on 6.1.2001 or thereafter the petitioner no.1/plaintiff no.1

had made any complaint to the police as was made vide Ex.PW1/T on 14.12.2000 or the petitioners/plaintiffs had lodged an FIR against the

respondent/defendant, however, counsel for the petitioners had no other option but to concede that neither any complaint was filed on 6.1.2001 or

thereafter of any illegal dispossession nor any FIR was registered by the petitioners/plaintiffs against the respondent alleging the illegal/forcible

dispossession of the petitioner no.1/plaintiff no.1 on

6.1.2001.

9. In view of the above, I do not find any merit in the petition which is therefore dismissed, leaving the parties to bear their own costs.