Thomas Kuruvilla Vs P.S. Rajan and Another

Court: High Court Of Kerala

Date of Decision: May 27, 1997

Acts Referred: Specific Relief Act, 1963 â€" Section 6

Citation: (1997) 1 KLJ 750

Hon'ble Judges: P.K. Balasubramanyan, J

Bench: Single Bench

Advocate: T.R. Ramachandran Nair, for the Appellant; M. Narendra Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.K. Balasubramanyan, J.
The first Defendant in a suit u/s 6 of the Specific Relief Act is the Petitioner. The suit for recovery of possession

u/s 6 of the Specific Relief Act was filed by the first Respondent herein as Plaintiff alleging that the first Defendant had dispossessed the Plaintiff

within six months of the suit and he was entitled to recover possession of the property. The plaint schedule property is a shop room. According to

the Plaintiff he was the owner of the shop room. The shop room was reconstructed in the year 1990. Prior to its reconstruction the first Defendant

was a tenant of the shop room under him. When the Plaintiff requested the first Defendant to vacate the shop room for the purpose of enabling him

to reconstruct the entire building, the first Defendant surrendered the shop room to the Plaintiff on 10th September 1988. The building was

reconstructed by the Plaintiff and it was rented out to the second Defendant for a period of four months on a monthly rent of Rs. 500. That lease

was subsequently renewed. While the transaction of lease with the second Defendant was subsisting, the first Defendant trespassed into the plaint

schedule property on 28th August 1991 and dispossessed the second Defendant forcibly and thereafter the first Defendant is in illegal possession.

The first Defendant had filed a suit O.S. 691 of 1991. for an injunction restraining the present Plaintiff from evicting him by force from the shop

room. That suit was tried jointly with the suit u/s 6 of the Specific Relief Act. The first Defendant contended that the suit u/s 6 of the Specific Relief

Act was not maintainable. He admitted that he had surrendered the old shop room to the Plaintiff but pleaded that that surrender was on the basis

of a specific agreement with the Plaintiff that on reconstruction of the building the southeastern corner room in the newly constructed building would

be leased out to the first Defendant and it was pursuant to such an agreement that after reconstruction he was put in possession of the disputed

shop room by the Plaintiff. He therefore contended that there was no forcible dissension of the Plaintiff as alleged. The maintainability of the suit u/s

6 of the Specific Relief Act was questioned by the first Defendant by contending that since even according to the Plaintiff the shop room was not in

his direct possession but was in the possession of the second Defendant as a tenant when the alleged dispossession took place, the Plaintiff could

not maintain the suit u/s 6 of the Specific Relief Act.

2. The Court below held that even the landlord of a building which is in the possession of a tenant can file a suit u/s 6 of the Specific Relief Act in a

case where the tenant is forcibly dispossessed by Anr. and on the evidence in the case it is clear that there was a forcible dispossession by the

Defendant entitling the Plaintiff to a decree u/s 6 of the Specific Relief Act. The Court also awarded compensation to the Plaintiff at the fate of Rs.

500 per month which was found to be the rent payable by the tenant to the Plaintiff. In challenging the decision of the Court below in this revision,

learned Counsel for the Defendant contends that the scope of Section 6 of the Specific Relief Act has been misunderstood by the Court below that

the suit ought to have been dismissed as not maintainable at the instance of the Plaintiff and that in any event the decree for compensation for use

and occupation in the suit u/s 6 of the Specific Relief Act is not justified. Learned Counsel for the Plaintiff on the other hand submitted that there

was no reason to whittle down the scope of Section 6 of the Specific Relief Act and can confine it to actual physical dispossession and that in the

circumstances of the case the award of compensation was justified and in any view in view of the interim order of this Court while admitting the

revision, the contention in that regard cannot be countenanced.

3. Though learned Counsel for the first Defendant attempted to challenge the finding of the Court below that there was a forcible dispossession of

Defendant No. 2 from the building by Defendant No. 1 while Defendant No. 2 continued as the tenant of the Plaintiff, on the materials I am not

satisfied that I would be justified in interfering with the finding of the Court below in that behalf. The evidence clearly indicates that the first

Defendant had forcibly got into possession of the building within six months of the filing of the suit by the Plaintiff and if the suit u/s 6 of the Specific

Relief Act at the instance of the Plaintiff is maintainable, the decree of the Court below for recovery of possession would be justified. The any view

of the matter, it cannot be said that there is any error in the finding rendered by the Court below warranting interference in revision especially

considering the nature of the suit and the limited jurisdiction of this Court in revision in such matters.

4. Section 6 of the Specific Relief Act enables a person who is dispossessed, without his consent, of immovable property otherwise than in due

course of law, to sue for recover of possession of that property notwithstanding any other title that may be set up by the Defendant in the suit. The

question is whether the landlord of a building who even according to him had let a tenant into possession, can approach the Court with a suit u/s 6

of the Act on the averment that his tenant had been dispossessed without his consent, by the Defendant. The argument on the side of the Defendant

is that in such cases, the landlord is only in constructive possession and not physically dispossessed from the property which alone would entitle a

person to approach the Court for recovery of possession u/s 6 of the Specific Relief Act. By constructive possession, it is generally meant

possession as distinguished from actual possession through a tenant or agent. In Bhupendra v. Rajeshwar AIR 1931 P.C. 162 the Privy Council

had stated that the expression constructive possession may be understood as a right to take physical possession. The question is whether there is

any need to whittle down the scope of Section 6 of the Act by confining it only to a person who is actually and physically dispossessed and not to

a person who is legally or constructively dispossessed. The contention in the present case is that a suit u/s 6 of the Act could be maintained only by

the second Defendant, the alleged tenant of the Plaintiff who was actually dispossessed and not by the Plaintiff himself who is only the landlord of

the building. On the scheme of Section 6 of the Specific Relief Act I do not see why in the absence of compelling circumstances, the scope of the

section should be restricted or whittled down by accepting this argument on behalf of the first Defendant. In the early case of Ghulam v. Sheodin

Ram 48 Indian Cases 415 the Judicial Commissioner"s Court of Nagpur took the view that a person even in constructive possession can maintain

an action under the section. The decision in Raghuvar Dayal v. Hargovind AIR 1958 Raj. 287 taking the same view was followed by the Court

below in the case on hand to hold that even a landlord who is in constructive possession can invoke Section 6 of the Specific Relief Act. That view

has also been taken by the High Court of Bombay in Ratanlal v. Amarsing AIR 1929 Bomb. 467 and by the High Court of Andhra Pradesh in

Syed Kaseemuddin v. Syed Fasiuddin 1976 (1) An. W.R. 385. The same view is also taken in the decision in Bhojraj v. Sheshrao AIR 1949

Nag. 126. After referring to Ratanlal''s case AIR 1929 Bom. 467 and the earlier decision in Veerasami Mudali v. Venkatachala Mudali AIR 1926

Mad. 18, all that the Madras High Court held in Ramamanemmo v. Basavayya AIR 1934 Mad. 598 was that in such a suit by the landlord against

the trespasser, the tenant must also be impleaded. That decision does not lay down an absolute proposition that a landlord who has let out his

property, cannot sue u/s 6 of the Specific Relief Act against a trespasser, during the currency of the lease.

5. Considering the object of enacting Section 6 of the Act and seeing that it is intended to be a remedy against any person who takes forcible

possession of immovable property, even if it be under colour of title, I do not see any reason why the scope of Section 6 should be whittled down,

or the word ''dispossession'' occurring therein, narrowly construed. Any possible objection based on the non-impleading of the tenant who was

actually dispossessed, has also been met in this case by the person who was actually dispossessed being impleaded, as Defendant No. 2 in the

suit. In such circumstances, I hold that the Court below was right in holding that the suit at the instance of the landlord of the building was

maintainable and on the finding rendered by the Court below on the question of wrongful dispossession, the Plaintiff is entitled to a decree.

6. The only other question arising for decision in this case is regarding the award of compensation for use and occupation by the Court below in the

suit u/s 6 of the Specific Relief Act. Learned Counsel for the first Defendant contended that damages cannot be granted in a suit u/s 6 of the

Specific Relief Act and it is for the Plaintiff to file a separate suit for that purpose. Here, the first Defendant took possession of the building on his

contention that he was a tenant of the building and was liable to pay rent to the Plaintiff at the rate of Rs. 400 per month. The Court below has not

given any reasons as such for holding that a claim for compensation could also be entertained and compensation for use and occupation awarded

by the Court, in a suit u/s 6 of the Specific Relief Act. Some of the decisions brought to my notice including the decision in Dharam Bir v. Ancha

Devi 1995 A.I.H.C. 77 (Del) indicate that the Court has no jurisdiction to award such compensation in a suit u/s 6 of the Specific Relief Act. But

in a case like the present, where the person sued upon raises the plea that he is a tenant of the Plaintiff and he is bound to pay rent at a particular

rate to the Plaintiff, I do not see why the Court cannot award that admitted amount as compensation for use and occupation to the Plaintiff during

the pendency of the suit. Here, the Court below has actually awarded not the admitted amount as compensation for the period of occupation but

something more. In the light of the decisions referred to in Dharam Bir v. Ancha Devi 1995 A.I.H.C. 77 (DeL), the award of something more than

that is admitted, does not seem to be warranted. I therefore consider that compensation only at the rate of Rs. 400 per month can be awarded on

the admission of the first Defendant. In a case like the present, I do not see why the parties should be driven to a separate suit for recovery of the

compensation for use and occupation. It is possible to say that what gives rise to the cause of action for recovery of possession u/s 6 of the

Specific Relief Act, also gives rise to the cause of action for compensation for use and occupation and to that extent the prayer for recovery of

compensation is ancillary to the main relief. Even while I admitted this Revision, I had directed the first Defendant to deposit a sum of Rs. 6,000

towards the profits decreed as a condition for stay of execution of the decree. The direction was made on the basis that the first Defendant had

agreed that he was bound to pay rent to the owner of the building during the period of his occupation. I therefore direct that the sum of Rs. 6000

deposited by the first Defendant if not withdrawn so far, can be withdrawn by the decree holder towards the amount that may be due to him by

way of compensation for use and occupation from 29th August 1991. Compensation for use and occupation for the subsequent period is also due

to the Plaintiff. The compensation can be awarded only at the agreed rate, in a suit of the present nature. Learned Counsel for the Plaintiff

submitted that the parties need not be driven to a separate suit and compensation for use may be awarded at the agreed rate. I am inclined to

accept that submission. I therefore modify, the decree of the Court below and award a decree to the Plaintiff for compensation for use and

occupation at Rs. 400 per month from 29th August 1991 till recovery of possession.

In the light of my conclusions as above, I confirm the decree for recovery of possession passed by the Court below and modify the decree for

compensation for use and occupation and award it to the Plaintiff at the rate of Rs. 400 per month from 29th August 1991 till date of recovery of

possession. The Civil Revision Petition is dismissed subject to the above modification of the decree for compensation. There will be no order as to

costs.

(2003)