

(2008) 09 MAD CK 0188

Madras High Court

Case No: Second Appeal No. 993 of 2008 and M.P. No. 1 of 2008

Thiru. Petchimuthu alias Mani

APPELLANT

Vs

Mrs. Anitha Sruthi

RESPONDENT

Date of Decision: Sept. 23, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Specific Relief Act, 1963 - Section 6, 6(3)

Citation: (2009) 2 CivCC 550 : (2009) 5 RCR(Civil) 276

Hon'ble Judges: C. Nagappan, J

Bench: Single Bench

Advocate: V. Raghavachari for Mr. G. Jeremiah, for the Appellant; C.A. Dhivahar for Mr. S. Sivaraman, for the Respondent

Judgement

1. This second appeal is preferred against the judgment and decree dated 4.6.2008 passed in A.S.Nb.557 of 2007 on the file of VI Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 26.7.2007 made in O.S. No. 497 of 2003 on the file of XVIII Assistant Judge, City Civil Court, Chennai. The defendant is the appellant. The respondent herein filed the suit seeking for judgment and decree directing the defendant to hand over possession of the schedule mentioned property to the plaintiff and for directing the defendant to return the original parent title deeds of the suit property to the plaintiff. The case of the plaintiff is that she purchased the suit property by registered sale deed dated 12.6.2002 from M/s.Crescent Agencies and she has been in possession of the property by paying taxes and was running a mens hair cutting saloon in the suit property for more than a year and the defendant who was a regular customer was asking the plaintiff to let out the said premises to him on rent and the plaintiff refused to do so and she closed the saloon in August 2002 and was looking out for a good tenant for the suit property and on 2.10.2002, she came to Madras from Bangalore to negotiate a tenancy and after negotiation, she had gone to Airport to Board the flight to

Bangalore and she was forcibly taken to the Office of the Commissioner of Police and her signatures were obtained on some blank papers in the presence of the defendant and his associates in the Commissioner's Office and she returned to Bangalore. It is further stated by the plaintiff that on 6.10.2002 through her relative from Chennai, she came to know that on 3.10.2002 the defendant with the help of the Police Officers broke open the lock of the property and took illegal and forcible possession of the suit property at 8.30 pm in the night and the defendant also put up a board M/s.Pichamuthu Travels on the suit property. The plaintiff has further stated that she is the absolute owner of the suit property and she was in possession and enjoyment of the same till 3.10.2002 when the defendant broke open the lock and took illegal and forcible possession of the suit property and she has not executed any document for handing over possession of the suit property or leasing out the same to the defendant and she filed the suit seeking re-possession of the suit property u/s 6 of the Specific Relief Act.

2. The defendant in his written statement denied the plaint averments and stated that the plaintiff and her husband moved with him closely and became family friends and subsequently had money transactions with him and the plaintiff had borrowed a sum of Rs.25 lakhs in total for the granite business from the defendant and on 11.11.2001, the plaintiff and her employee Rahman took the defendant to the house of Kanaka Durga and the defendant was told that the sale consideration of the suit property is Rs. 10 lakhs and if the defendant pays that amount, he can purchase the suit property and believing the representation, the defendant agreed to pay Rs. 10 lakhs and paid a sum of Rs.2,50,000/- through the cheque drawn by his wife Tmt.Poongodi and handed over it to the plaintiff and Kanaka Durga and they received the same and on the third day, through the banker the defendant came to know that the above cheque had been encashed by the plaintiff and Kanaka Durga towards the sale consideration of the suit property and thereafter the defendant paid Rs.6,50,000/- in cash and the defendant was assured that the sale transaction would be completed within six months thereon but to the surprise of the defendant, the plaintiff and Kanaka Durga fraudulently got the sale deed registered in the name of plaintiff on 12.6.2002 by utilising the sum of Rs.9,00,000/- paid by the defendant to the plaintiff and Kanaka Durga and for their illegal act, the defendant gave a complaint on 12.7.2002 before E3 Teynampet Police Station against the plaintiff and Kanaka Durga and also lodged a complaint to the Commissioner of Police on 19.9.2002 and a case in Central Crime Branch Crime No.734/2002 was also registered against the plaintiff and Kanaka Durga and in the meanwhile, the plaintiff on 2.10.2002 came to the house of Kanaka Durga at Chennai and the defendant informed the same to the Crime Branch Police which brought the plaintiff to their office for enquiring on the complaint of the defendant. It is further stated by the defendant that during the interrogation the plaintiff undertook to settle the matter amicably with the defendant and the defendant agreed to withdraw the complaint and the defendant and the plaintiff agreed to execute a lease deed in favour of

defendant and memorandum of understanding undertaking to repay the sum of Rs.9 lakhs and accordingly in the early morning 3.10.2002, the plaintiff put her signature in the memorandum of understanding dated 3.10.2002 and signed in the lease agreement in the presence of witnesses and the plaintiff had delivered vacant possession of the suit property on 3.10.2002 early morning itself to the defendant and left by flight to Bangalore. According to the defendant, he is in legal and peaceful possession and enjoyment of the suit property from 3.10.2002 itself and the plaintiff filed the suit with ulterior motive to take back the possession of the suit property without repaying the sum of Rs.9 lakhs to the defendant, which was agreed to be repaid.

3. The plaintiff examined herself as P.W.1 and documents in Exs.A1 to A5 were marked on her side and the defendant examined himself as D.W. 1 and examined D.W.2 and marked Exs.B1 and B4 on his side. The Trial Court, on a consideration of oral and documentary evidence, held that the plaintiff is entitled to recovery of possession of the suit property from the defendant since she was illegally dispossessed and the plaintiff is not entitled to the relief of direction to the defendant to return the documents and granted decree accordingly. Aggrieved by the judgment and decree, the defendant preferred appeal and the lower appellate Court dismissed the same by confirming the judgment and decree of the trial Court. Challenging the same, the defendant has preferred the present second appeal. For the sake of convenience, in this Judgment, the parties are referred to as arrayed in the suit.

4. The following substantial questions of law have been framed for consideration.

1. Whether the finding of the Courts below declaring the plaintiff as a person dispossessed of the suit property, is erroneous in law.

2. Whether this appeal is barred u/s 6 of the Specific Relief Act.

5. Mr.V.Raghavachari, learned counsel appearing for the appellant, submits that the plaintiff having put the defendant in possession of the suit property pursuant to Ex.B4 Memorandum of Understanding is precluded from challenging the possession of the defendant. The learned counsel further contends that though the suit is termed as one u/s 6 of the Specific Relief Act, it is not so and both the Courts below have determined the title to the suit property and hence the suit is one for title to the suit property and the appeal is maintainable.

6. Per contra, Mr.C.A.Dhivahar, learned counsel appearing for the respondent, submits that the plaint averments would disclose that the suit is one u/s 6 of the Specific Relief Act and the plaintiff has alleged illegal dispossession of the suit property and as against the decision u/s 6 of the Act, no appeal shall lie as stipulated u/s 6(3) of the Act and though this objection was not taken by the respondent in the first appellate Court, the bar of appeal u/s 6 of the Act would operate.

7. It has to be determined as to whether the present suit is one u/s 6 of the Specific Relief Act. The plaintiff in paragraph 5 of the plaint has averred about the purchase of the suit property by her under registered sale deed dated 12.6.2002 and running a mens hair cutting saloon in it and closing the same in August 2002 and looking out for a good tenant for the suit property. In paragraph 6 of the plaint, the plaintiff has stated about her visit to Madras on 2.10.2002 for negotiation for leasing out the suit property and her return to Airport and her being taken to the Office of the Commissioner of Police, Egmore, Chennai. In paragraph 7 of the plaint, the plaintiff has stated about the enquiry conducted in the Office of the Commissioner of Police on 2.10.2002 and about the pressure put on her to affix her signatures on blank stamp papers in the presence of the defendant and his associates and her boarding the flight to Bangalore in the early morning on 3.10.2002 and being admitted to hospital therein. In paragraph 8 of the plaint, she has stated about her discharge from the hospital and lodging complaints to various Authorities. In paragraph 9 of the plaint, the plaintiff has averred the information received by her on 6.10.2002 about the illegal and forcible possession taken by the defendant at 8.30 pm in the night on 3.10.2002. In paragraph 10 of the plaint, the plaintiff has averred that she is the owner of the suit property and she had been dispossessed forcibly and she is seeking for re-possession of the suit property u/s 6 of the Specific Relief Act.

8. The learned counsel for the appellant submits that the averments in paragraph No.7 of the plaint pertain to title only and hence it is a suit for title and in this regard, he relies on the decision of the Allahabad High Court in *Narain Das v. Het Singh and others* (1918 VOL. XLVI Indian Cases 925) and the decision in *Gokam Chinna Nagaiah v. Nagaram Baliga and others* (AIR 1956 Hyderabad 170). The learned counsel further submits that the plaint has to be read as a whole and there is basic distinction between the statements of the facts disclosing cause of action and the reliefs sought for and the reliefs claimed do not constitute the cause of action and in this regard, the learned counsel relies on the following decisions of the Apex Court: (1) *Sopan Sukhdeo Sable And Others v. Assistant Charity Commissioner and others* (2004 AIR SCW 799 = 2004-2-L.W.800) and (2) *Hardesh Ores (P) Ltd v. Hede And Company* (2007) 5 Supreme Court Cases 614).

9. It is settled law that for construction of pleadings, the entire plaint has to be read as a whole.

10. As already seen, the plaintiff in paragraph Nos.6 to 9 of the plaint has narrated the happenings on 2.10.2002 and 3.10.2002 and in paragraph No.10, she had alleged forcible dispossession of the suit property by the defendant and she has only sought for re-possession of the suit property u/s 6 of the Specific Relief Act. In such circumstances, the suit cannot be termed as one for title and the contention of the learned counsel for the appellant is not acceptable.

11. The suit being a summary suit u/s 6 of the Specific Relief Act, no appeal shall lie from the decree passed in the suit as stipulated u/s 6(3) of the Act. In this context,

the decision of the Supreme Court in [Sanjay Kumar Pandey and Others Vs. Gulbahar Sheikh and Others](#), is relevant and Their Lordships have laid down the law as under:

"Para 4. A suit u/s 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit u/s 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-Section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this Section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit u/s 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision u/s 6 of the Act. Thus, as against a decision u/s 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order u/s 6 of the Act except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction u/s 115 of the Code."

12. In view of the above, the remedy of the defendant who is unsuccessful in this suit u/s 6 of the Specific Relief Act, is to file a regular suit notwithstanding the adverse decision u/s 6 of the Act. It is needless to say that the impugned decree is passed in the summary suit u/s 6 of the Act and the rights can be agitated in the regular suit. Having concluded that the present appeal is barred u/s 6 of the Specific Relief Act, there is no need to go into the findings of the Courts below. The substantial questions of law are answered accordingly. The second appeal is dismissed. However, there shall be no order as to costs. Connected M.P. No. 1 of 2008 is also dismissed.