

Faijulbee Hajeel and Others Vs Yadali Amir Shaikh Ansari

Court: Bombay High Court

Date of Decision: Feb. 1, 1984

Acts Referred: Presidency Small Cause Courts (Amendment) Act, 1976 " Section 41
Presidency Small Cause Courts Act, 1882 " Section 41
Specific Relief Act, 1963 " Section 6

Citation: AIR 1984 Bom 290 : (1984) 2 BomCR 253 : (1984) MhLj 268

Hon'ble Judges: Chnandurkar, C.J; Jahagirdar, J

Bench: Division Bench

Advocate: S.M. Mhanamane, for the Appellant; D.K. Vasani, for the Respondent

Judgement

Jahagirdar, J.

The facts cavant involved in this petition are few and the point of law that arises for our determination is also a simple one.

Though this civil revision - application could have been in the normal course disposed of by the single Judge it has found its way before the division

Bench because it was though that a judgement of a single Judge of this Court requires a second look in the context of the amendment of Section 41

of the Presidency Small Cause Courts Act, 1882, herinafter referred to as "the Small Cause Courts ACt". That judgement is delivered by d. No.

Mehta, J. on 5+6 February 1981, while deposing of the Notice of Motion No. 1310 of 1980*, Chamanlal Dutta v. Jharna Ghosh, on normally the

file of this Court. One would have normally thought that the point which arose in this petition has been settled finally as far as this Court is

concerned by the judgement of the Division Bench of this Court in Shiavax C. Cambata and Another Vs. Sunderdas Ebji, However, in view of the

large-scale amendment that was made by the Bombay Legislature by made by the Bombay substituting a new chapter, being chapter VII in place

of the original chapter VI of the Small Cause Courts ACt, the question has to be considered afresh.

2. The respondent filed a suit, being s. C. Suit No. 6099 of 1982, in the city Civil Court at Bombay against the petitioners for recovery of

possession of a room in a hut situated in Modi Compound, Ghoeapdeo in Bombay. The respondent specifically alleged that he was at all material

times in possession of the said roodm, herinafter referred to a the suit premises", and the petitioners dispossessed him oif the suit premises on 21st

October 1982. The dispossession took place according to the respondent otherwise than in accordance with law and, therefore, the respondent

was constrained to file the aforesaid suit u/s 6 of the Specific Relief Act. The suit was filed on 28th October 1982. The suit was filed on 28th

October 1982. After narrating the circumstances in which the he came in possession of the suit premises the respondent mentioned the fact of

dispossession on 21st October 1982. He also specifically averred that the dispossession took place otherwise than in accordance with law and

thereafter in paragraph 11 of his plaint the he has mentioned as follows ; -

The plaintiff says that this suit is filed Specific Relief Act".

3. The respondent prayed that the petitioners be ordered and decreed to hand over forthwith vacant and peaceful possession of the suit premises

to the respondent. It may be added at this stage that in the plaint the respondent has mentioned that he came in possession the suit premises as a

tenant and at all material times he continued to be in possession of the suit premises as the tenant.

4. The petitioners resisted the suit by contending, among other things that the suit filed by the respondent in the City Civil Court at Bombay was not

maintainable in view of the provisions contained in Section 41 of the small Cause Courts Act. According to the petitioners, under the said

provisions , namely Section 41 of the Small Cause Courts Act, a suit between a tenant and a landlord relating to the recovery of possession of any

Immovable property situated in Greater Bombay must be filed in the Court of Small Causes which alone has jurisdiction to entertain and try such a

suit. Since, according to the petitioners, the respondent has alleged in his plaint that he was in possession of the suit premises as the tenant and that

the petitioners who are landlords, had dispossessed him the suit is essentially one between the tenant and the landlords and it is also one relating to

the recovery of possession of Immovable property. In view of this fact, said the petitioners the suit of the respondent could not be entertained by

the City Civil Court at Bombay. It could only be entertained and tried by the Court of Small Causes at Bombay. The petitioners also denied the

fact of dispossession; indeed they went to the extent of contending that the respondent was not in possession of the suit premises at all.

5. The learned trial Judge framed necessary issues. The first issue was relating to the jurisdiction of the City Civil Court to try the present suit. This

issue was answered by the learned trial Judge in the affirmative. The parties had led before him large evidence in support of their respective

contentions relating to the possession of the suit premises. After considering this evidence and after examining the same in a judgement which is

unusually detailed in a suit of this type, the learned trial Judge came to the conclusion that the respondent was in possession of the suit premises

and, that he was illegally dispossessed by the petitioners on 21st October 1982. A somewhat sharp contest has taken place in the Court below

about the identity of the suit premises. The learned trial Judge has resolved the same by minutely examining all the material on record and coming

to the conclusion that the suit premises were the one which were in occupation of the respondent and it was from those premises that the suit

premises were the one which were in occupation of the respondent and it was from those premises that the petitioners dispossessed him on 21st

October 1982. Consistent with these findings the learned trial Judge by his judgement and order dated 7th March 1983 decreed the suit and

directed that the petitioners should put the respondent in possession of the suit premises. It is against this decree that the petitioners have

approached this court u/s 115 of the code of Civil Procedure.

6. Mr. Mhamane, the learned Advocate appearing in support of this petitioner, has contended that the City Civil Court had no jurisdiction to try the

suit which, as the averments in the plaint in this case themselves show, was between the tenant and the landlord and related to the recovery of

possession from the landlord by the tenant. According to Mr. Mhamane, if the averments in the plaint themselves are to be relied upon, then it must

be said that the respondent came to the Court with a specific case that he was the tenant of the suit premises and the petitioners who were the

landlord dispossessed him from the suit premises. Despite the law laid down by this court in *Shivax C. Cambata and Another Vs. Sunderdas*

Ebji, Mr. Mhamane contends that in view of the amendment made in Section 41 of the small Cause Courts Act the Small Cause Court alone has

jurisdiction to try such a suit between a landlord and tenant. The amendment made in 1976 in the small Cause Courts Act has the effect of

rendering ineffective Sec. 6 of the specific Relief Act. Mr. Mhamane also relied upon the judgement of D. N. Mehta, J. mentioned earlier in this

judgement.

7. As is well known. Prior to the amendment of 1976 Section 41 of the small Cause courts Act provided for an application to be made by a

licensor for obtaining possession of Immovable property from the licensee on the ground that the licence has been determined or has been

withdrawn. The proceedings were started by an application and except in certain circumstances there was no appeal provided for from an order

made u/s 41 of the Small Cause courts Act. The licensor could, if he so chose, proceed to file a suit either in the High Court at Bombay or in the

City Civil Court at Bombay or in the city Civil Court at Bombay depending upon the value of the property the possession of which was to be

obtained by him. There was thus the possibility of the two matter Courts being seized of the same subject matter and the Maharashtra Legislature

thought it fit to resolve the difficulty that thus arose . Chapter VII was substituted for the original Chapter VII in the Small Cause Courts Act. For

the purpose of the disposal of this petition., however, we may have to take note of only Section 41 in Chapter VII which is as follows : -

41 (1). Notwithstanding anything contained elsewhere in this Act or on any other law for the time being in force, About subject to the provisions

of sub-section (2), the court of small Causes shall have jurisdiction to entertain and try all suits and licensee, or a landlord and tenant, relating to the

recovery of possession of any Immovable property situated in Greater Bombay, or relating to the recovery of the licence fee of the charge or rent

therefore, irrespective of the value of the subject matter or such (2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the

recovery of possession of any Immovable property , or of licence fee of charge or rent therefore, to which the provisions of the Bombay Rents,

Hotel and Lodging House Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, the Bombay Housing Board Act,

1948 any other law for the time being in force, applies".

8. Mr. Mhamane contends that the words "or in any other law for the time being in force" to the found in Sec. 41(1) include even the Specific

Relief Act and in particular Section 6 of the Specific Relief Act. If this is so, then notwithstanding the remedy provided for in Section 6 of the

specific Relief Act any suit between a landlord and a tenant and a licensor and a licensee relating to the recovery of possession of immovable

property situated in Greater Bombay has got to be filed in the small Cause Court at Bombay. Before proceedings to examine the contentions of

Mr. Mhamane it will be appropriate to refer briefly to the judgement of the Division Bench of this Court in *Shiavax C. Cambata and Another Vs.*

Sunderdas Ebji,

9. The facts of that case disclose that the defendants were the owners of a building situated at Queen's Road, Bombay and they through their

agents dispossessed the plaintiff from a part of that building wherein he was carrying on business. The plaintiff filed a suit in the High court praying

filed a suit in the High Court praying that the defendants be directed to deliver possession of Shop No. 6 in that building to him. He had mentioned

in the plaint that he was the tenant of the said shop. The learned single Judge before whom the suit being one between landlord and tenant for

possession of the demised premises was triable only of by the Court of Small Causes. This view of the ; learned single Judge was challenged in an

appeal and the Division Bench overruled the said view. It held that despite the provision contained in Section 28 of the Bombay Rent Act, which

bestowed exclusive jurisdiction upon the Court mentioned in s. 28 of the Bombay Rent Act to try suits by a person who has been dispossessed

from the Specific Relief Act could be properly entertained by a Civil Court. It was so held despite the fact that the tenant in that suit had given

history and circumstances in which the he had become the tenant of the suit premises. Discussing the question of law of the Division Bench held as

follows :-

In our opinion, it is only when a landlord or a tenant files a suit for possession as a landlord or a tenant and in his capacity as a landlord or a tenant

and relying on his title as a landlord or a tenant 5that it becomes a suit of the description mentioned in Section 50 and Section 28 of the Act

(Bombay Rent Act). Although the plaintiff might have set out his title in the plaint, those averments were entirely unnecessary and irrelevant. It is

clear that the defendants could not have raised an issue as to the plaintiffs contested the plaintiffs claim on the simple and short ground, viz. That the

plaintiff was not in possession within six months of the filing of the suit. Therefore, the issue as to landlord and tenant could never have arisen in this

suit "".

10. It is important to note that the Division Bench held that it is only when the party files a suit the capacity as a landlord or a tenant that the suit

falls under Sections 28 and 50 of the Bombay Rent Act. If the suit were one merely for possession from a person who has illegally obtained

possession then the question of the title of the party is irrelevant. The only issue that has to be decided in a suit u/s 9 (of the old specific Relief Act)

and u/s 6 of the present Specific Relief Act is only relating to the possession on the plaintiff on the date on which the he is said to have been

dispossessed .

11. Another decision of another division Bench of this Court in Pandhari Shamrao Kolhe v Meerabai, 1980 Mah LJ 39, may be briefly Noticed.

In this case the plaintiff had filed a suit for possession u/s 6 of the specific Relief Act on the ground that the defendant had illegally dispossessed

him. A question was raised by the defendant that he was the tenant of the immovable property which was in that the case an agricultural land . A

question arose as to whether u/s 124 of the Bombay Tenancy and Agricultural Lands (Vidarbha region) Act an issue should be referred to tenancy

authorities . It was held by the Division Bench that Section 124 of the Bombay Tenancy ACt barred the Civil Court from setting, deciding or

dealing with a question which was exclusively triable by the tenancy court. It was implicit that such a question must be involved in the suit before the

Civil Court. In a suit under Sec. 6 of the Specific Relief Act where a right to recover possession is by a person who is wrongfully dispossessed the

question of the title of either of the parties to the suit does not arise at all and therefore was not involved in the suit within the meaning of Section

124 of the Bombay Tenancy Act. In such a case it was not necessary, indeed it would be inappropriate, to refer that issue to the relevant tenancy

authorities . This view is fully consistent with the view expressed by the earlier Division Bench in *Shiavax Cambata's* case/

12. Mr. Mhamane, however, contends that the embargo in such a plenary language as is contained in the amended Section 41 of the Small

Cause Courts Act precluded the acceptance or at least the continuance of the view expressed in *Shiavax C. Cambata and Another Vs. Sunderdas*

Ebji, In *Shiavax Cambata's* case only Sections 28 and 50 of the Bombay Tenancy Act were considered and in those sections the total bar that is

to be found in Section 41 of the small Cause Court Act was absent. In our opinion, despite what is contained in Section 41 of the Small Cause

Courts ACt today the position in law as laid down in *Shiavax C. Cambata and Another Vs. Sunderdas Ebji*, is not changed. We have already

noted earlier that the Division Bench significantly said :

..... It is only when a landlord or a tenant files a suit for possession as a landlord or a tenant that it becomes a suit of the description mentioned in

S. 50 and s. 20 of the ACt". Though one can safely proceed on the basis that section 41 specifically lays down that a suit between a licensor

and a licensee or a landlord and a tenant relating to the recovery of possession of Immovable property in Greater Bombay must be filed in the

Small Cause Court such a suit necessarily means suit by a licensor as a licensor or by a licensee as a licensee or against such a licensor or a

licensee as a licensor and a licensee. Similarly, a suit between a tenant and a landlord must be between those two persons in their capacities as

tenant and landlord. It is only such a suit that is covered by the provisions contained in Section 41 of the Small Cause Courts Act . In a case where

a person who happens to be landlord wrongfully dispossess a person who happens to be tenant, and a landlord. It is only such a suit that is

covered by the provisions contained in Section 41 of the Small Cause Courts Act. In a case where a person who happens to be a landlord

wrongfully dispossess a person who happens to be a tenant, the remedy provided for recovery of Immovable property, the possession of which

has been wrongfully taken in s. 6 of the Specific Relief Act is not taken away by what Mr. Mhasmane. Calls the plenary language contained in

Section 41 of the small Cause Courts Act. In a case of wrongful dispossession, the remedy available by way of a summary suit with restricted

period of limitation must be held to be available to the person wrongfully dispossessed. In a suit of the that type a person who goes to the Court

does not so do in the capacity as a tenant, he is claiming possession on the basis of his previous possession of which he had been deprived by the

wrongful act of the defendant. The question of title whether as an owner or as a tenant does not arise at all in a suit of that type and therefore

naturally cannot be tried and decided at all in that suit.

13. In Nagin Mansukhlal Dagli Vs. Haribhai Manibhai Patel, on which Mr. Mhamane place reliance the plaintiff had filed a suit contending that the

period for which the Immovable property had been given to the defendant as a licensee had come to an end and on that ground the he was entitled

to obtain possession from the defendant. The averments in the plaint showed that the defendant had continued to remain in possession of the

premises despite the expiry of the licence by ex-licensee of the suit premises and his possession was wrongful and illegal. The plaintiff in that case,

became filed a suit on the original side of this court on the basis of the appropriate value of the suit property. This Court held that by virtue of the

provisions contained in Section 41 of the small Cause Courts Act a suit could only be filed in the Courts of Small Causes at Bombay and the High

court had no jurisdiction to entertain the same. We do not see how this judgement can be of any assistance to the petitioners before us. Admittedly

the plaintiff in Nagindas mansukhlal case had gone to the Court with the case that he was the licensor of the suit premises and the defendant was

the licensee, though the licensee had come to an end/. Both the plaintiff and the defendant in that suit fulfilled the character of the licensor and the

licensee respectively. In such a case naturally it was the Small Cause Court in Greater Bombay alone that could have entertained the suit. The

question of dispossession and of recovery of possession was not involved in that case at all. Mr. Mhamane relied upon the said judgement

probably for drawing our attention to the fact that it was case of an ex-licensee and even in such a case the small Cause Court alone could have

jurisdiction. In our opinion, this made no difference to the question of the jurisdiction. By the efflux of time to the possession of a licensee of a

tenant does not become one of a trespasser. It is a juridical possession which has to be determined by an appropriate decree or order passed by a

court of competent jurisdiction in that regard.

14. After a careful examination of the relevant provisions of law and the earlier decision on this subject we are of the opinion that the suit u/s 6 of

the Specific Relief Act which is based on the allegation on dispossession of Immovable property continues to be within the jurisdiction of the civil

court despite the amendment the character of a landlord of tenant or a licensor or a licensee. The question of the title of the parties including the

title of a tenant does not arise in such a case and will be decided in the suit. The law laid down despite the amendment contained in

Chapter VII of the Small Cause Courts Act, 1976. In the light of the view which we have thus taken we are of the opinion that Chamanlal Dutta's case

(1981 Bom CR 680), has been wrongly decided and it is, therefore, overruled.

Mr. Mhamane then made an attempt to demonstrate to us that the finding that the respondent was in possession of the suit premises is erroneous

and canvassed that it should be set aside. This is a petition under Section 115 of the Code of Civil Procedure. We do not see how a finding that the

respondent was in possession of the suit premises could be said to be erroneous or could be said to disclose such an error leading to an error or

jurisdiction inviting interference by this Court u/s 115 of the Code of Civil Procedure. Mr. Mhamane quarreled with the finding given by the trial

Judge relating to the indent of the property. With his assistance we have gone through the judgement but we are unable to find any error, let alone

an error of jurisdiction, committed by the learned trial Judge while giving the finding on the title of the property. Thus, there is no merit in the

complaint of Mr. Mhamane that the findings relating to the possession and title of the property are erroneous or are liable to be set aside in this

petition.

15. In the result, this Petition must fail, Rule is discharged with costs.

16. Petition dismissed.