

(2009) 04 BOM CK 0163

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 633 of 2008

Simao Moraes

APPELLANT

Vs

Govind Sitaram Patkar
(deceased) (through Sakaram G.
Patkar and Others)

RESPONDENT

Date of Decision: April 24, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 144
- Specific Relief Act, 1963 - Section 6

Citation: (2009) 111 BOMLR 1970

Hon'ble Judges: R.S. Dalvi, J

Bench: Single Bench

Advocate: J.E. Coelho and S. Karpe, for the Appellant; M.S. Usgaonkar and Amira Razak, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Dalvi, J.

This writ petition challenges the order of the Civil Judge, Senior Division, Quepem dated 19.08.2008 restituting the suit property to the respondents herein who were the defendants in the original suit being Regular Civil Suit No. 43/1981/A.

2. It would be useful to consider the chronology of the litigation between the parties and the events under which the rights have been claimed by them. It has been the case of the original plaintiff (petitioner herein) that under the agreement of lease dated 01.05.1967 the shop on the ground floor of Chandraswar Prasad building in Matriz No. 10 at Curchorem was leased to the plaintiff by the defendants for two rooms and a verandah admeasuring 75 sq.mtrs. upon monthly rent of Rs. 175/-. It is his case that in 1968 he converted the western part of the verandah into a room. He used it initially to store liquor. He thereafter used it for his tailoring business and

later used it for storing liquor.

3. It has been the case of the defendants that in 1970 the defendants had allowed one Godinho to use the suit premises, i.e. the converted room for tailoring business. Godinho died in 1981.

4. In the initial suit, the plaintiff's case is that the defendants forcibly locked the suit premises on 29.06.1981 by putting their lock on the lock of the plaintiff on the door of the said converted room. The cause of action is stated to have accrued on 29.06.1981, upon the plaintiff's forcible dispossession. The suit has been filed by the plaintiff on 06.07.1981 within six months of the said forcible dispossession. The suit is titled as a suit for injunction. The prayer in the suit is for mandatory injunction directing the defendants to remove their lock put on the said premises.

5. It may be mentioned that this itself shows that the plaintiff had put a lock on the suit premises and the defendants' lock was put over it prior to the suit. Upon a certain report of a Commissioner, upon inspection of the premises having been taken, two locks were seen. The plaintiff opened one lock by his key; the defendants opened another lock by their key. Pursuant to the Commissioner's report and upon seeing the articles of the plaintiff in the suit premises, an order to remove the lock was passed on 22.01.1982, as an interim order in the above suit being Regular Civil Suit No. 42/1981.

6. The said suit came to be decreed. An appeal was filed by the defendants. The decree was set aside. The Second appeal was filed by the plaintiff. The First appeal was confirmed by the final judgment on 19.09.2006. The defendants filed Civil Misc. Application No. 3/2007/A on 20.08.2007 being application u/s 144 of the CPC for restitution of possession to them. This application was taken out in the initial suit being Regular Civil Suit No. 43/1981/A. That application has been allowed. The order allowing the restitution of possession is challenged in this petition. The order is passed u/s 144 of the Civil Procedure Code. Under that Section, the Court is required to reconstitute the property to the party entitled to such benefit, on an application for such restitution such that the Court would place the parties in the position which they would have occupied but for such decree or order. It has to be seen whether the restitution granted by the Court is to allow the defendants (the respondents herein) to be put in the position that they were but for the initial order being the interim order to remove the lock passed on 06.07.1981 in Regular Civil Suit No. 43/1981.

7. The Court is not concerned with the respective cases of the parties which led to the final order in the Second appeal. The Court has to see whether the defendants in the suit (respondents herein) were displaced by any order of the Court in the proceedings between the parties and reconstitute them in the position that they would have occupied but for any such order.

8. The suit is titled a suit for injunction. The main prayer in the suit is for mandatory injunction directing the defendants to remove the lock put by them on the door of the suit premises. The suit is essentially a suit u/s 6 of the Specific Relief Act for restoration of the possession forcibly taken by the defendants. The initial order of mandatory injunction directing the defendants to remove the lock dated 06.07.1981 considers the possession of the plaintiff in the suit premises as on the date of the suit. It considers the case having been made out for removal of the lock by the defendants in the suit. It seeks to give back the possession to the plaintiff so as to maintain status quo ante, as the plaintiff was restrained from using the suit premises due to the second lock put by the defendants. Under that interim order the defendants were directed to remove the lock put by them on the door of the suit premises.

9. The lock was removed. The suit was heard and decreed. That decree has been finally set aside. It is under the order of the Court that the defendants' lock was removed. Hence it is under that order of the Court that the defendants lost their possession. That possession was prior to the filing of the suit since the lock was admittedly put prior to the filing of the suit i.e. since 29.06.1981. The status quo ante which was restored was the status quo that prevailed on 28.06.1981 and there before .

10. If the plaintiff was seen to have been in possession prior to the filing of the suit, even for a period of six months, his possession would have been protected under the final order passed in the Second appeal. In such a case the defendants whose lock was put on the suit premises, would not be allowed to put such lock. If the plaintiff's possession is not seen, even for six months prior to the suit, his possession cannot be protected. It would then follow that the defendants have not taken forcible possession as claimed by the plaintiff. Hence then, the defendants' possession would be seen to have been correctly exercised. It would, therefore, follow as a matter of corollary that the plaintiff is seen to have put his lock on the suit premises wrongfully though he was not in possession of the suit premises. Hence the defendants, under such circumstances, could not have been prevented from locking their premises. In this case, the defendants contention that they had allowed Godinho to use the premises, which he did from 1970 until his death in 1981 has been accepted. The plaintiff's independent claim that he used the suit premises has been rejected. It therefore, follows that after Godinho's death, the defendants had possession of their own premises. Consequently, when the plaintiff sought to enter upon and lock the suit premises, the defendants put their own lock on the suit premises. The defendants were directed to remove their lock by the order of the Court. That order has since been set aside. The final order has confirmed the defendants' possession as well as legal right to the premises. The final order has confirmed the total lack of right of the plaintiff in the suit premises. The position that prevailed prior to the suit which the defendants were directed, by an order of the Court, to alter must therefore, be restored. That is the status quo that prevailed

at the time of the filing of the suit and not the status quo ante which the plaintiff claimed and which claim has been finally rejected.

11. The case of restitution of the suit property by the defendants putting up their lock on the suit property is, therefore, made out. The suit property must be restituted to the defendants by allowing the defendants to put up their own lock on the suit premises. The impugned order is correct.

The writ petition is misconceived and hence dismissed.