

Madhya Pradesh High Court

Sukhjeet Singh vs Sirajunnisa on 19 June, 2000

Equivalent citations: AIR 2001 MP 59

Author: D Misra

Bench: D Misra

ORDER Dipak Misra, J.

1. Invoking the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure (hereinafter referred to as 'the Code') the defendant/applicant has called in question the defensibility of the judgment and decree dated 31-7-1999 passed by the learned Second Civil Judge Class II, Bilaspur in Civil Suit No. 211 -A/96 whereby the said learned Judge decreed the suit of the plaintiff/non-applicant preferred under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act').

2. The facts as have been undraped are that the house of the defendant is situated adjacent to the lane of Sharma Tent House in Rajendra Nagar. There are two blocks in the said house and the plaintiff is residing in the South Block on payment of Rs. 250/- per month. It is stated that the tenanted premises include two living rooms, one kitchen and one veranda. In the other room the defendant resides. In Dec. 1994 marriage ceremony of the defendant was to be held for which he requested the plaintiff to handover the possession of the part of premises with an assurance that he would deliver back the possession after the marriage ceremony was over. Though, one and half month had elapsed the defendant did not hand over the possession back to the plaintiff. It is further pleaded that the plaintiff has been dispossessed without due process of law, and therefore, he is entitled to get back the possession as per Section 6 of the Act.

3. The defendant filed his written statement contending, inter alia, that the plaintiff was not residing as a tenant in the south block. It is pleaded that Aziz Khan was residing in the disputed premises which include one living room and a kitchen and he was paying Rs. 250/- per month towards rent. It is further putforth that another room and kitchen was taken on rent by the mother of Aziz Khan from the deceased, Harbhajan Singh, and she vacated the premises as a result of which Aziz Khan illegally occupied the same and was paying Rs. 250/- per month towards rent. It is further set forth that the plaintiff was in illegal possession of one kitchen and one room. The defendant disputed plea of taking over of possession during the lime of marriage. It was also put-forth that the plaintiff was never in possession of the disputed premises. It was also denied that she was forcibly dispossessed. It was further pleaded that the premises in question is a joint family property and it , belonged to Late Chahadsingh and after his death it became the joint family property of his legal representatives and all the co-owners have not been made parties.

4. The learned trial Judge framed as many as five issues and came to the conclusion that the plaintiff is a tenant in respect of the disputed premises, that the defendant disposed the plaintiff without due process of law, and therefore, she was entitled to get back the possession; that the suit was not bad for non-joinder of parties, that the defendant was not entitled to get Rs. 5000/-from the plaintiff towards damages, and that the plaintiff was entitled to the cost of the suit.

5. Challenging the aforesaid findings Mr. Manindra Shrivastava, learned counsel for the petitioner, has contended that the learned trial Judge has arrived at the conclusion that the premises in question was given on tenancy to the plaintiff and the disputed premises was handedover by the plaintiff at the time of marriage ceremony to the defendant, but the defendant did not deliver the possession, back and in view of this it is crystal clear that she was not forcibly dispossessed without her consent, and hence, Section 6 is not attracted.

6. Refuting the aforesaid submissions Mr. Rajeev Shrivastava, learned counsel for the non applicant, has contended that the finding recorded in respect of issues by the learned trial Judge are impeccable and the petitioner having forcibly dispossessed the plaintiff, she is entitled to get back the possession.

7. To appreciate the rival submissions raised at the Bar it is apposite to refer to Section 6 of the Specific Relief Act which reads as under :--

"6. Suit by person dispossessed of immovable property. -- (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought.

(a) after the expiry of six months from the date of dispossession, or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this Section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

On a bare reading of the aforesaid provision it is luminously clear that if a person is dispossessed without his consent of his immovable property otherwise than in due course of law he can seek recovery of possession on satisfying certain conditions precedent. The object of the aforesaid section is to discourage the people from taking the law into their own hands, however, perfect their title may be. The aforesaid provision provide a summary remedy to a person, who without his consent has been dispossessed of his immovable property otherwise, than in due course of law, for recovery of possession. While claiming such relief the person concerned is not required to establish his title.

8. The moot question that arises for consideration in the case at hand is whether the plaintiff was dispossessed without her consent and without taking recourse to due process of law. At the outset, I must state that though the learned counsel for the petitioner assailed the findings recorded by the Court below in respect of various issues and submitted a written note scanning the findings and

commenting on the evidence. I am of the considered view that the findings are unassailable and validity thereof cannot be gone into in the limited scope of civil revision as they are based on proper appreciation of the material brought on record and the trial Court has not shown any perversity of approach. Hence, I would only address myself to the legal question whether the condition precedent i.e. dispossession of a person without his consent of immovable property otherwise than in due course of law is of any aid to the defendant. As has already seen, the plaintiff put forth her case that she was a tenant in respect of the disputed premises in question and had further put forth that the defendant had asked her to vacate certain portion of the premises with the assurance that he would deliver back the possession after the marriage ceremony was over. He has failed to live up to his promise, and hence, this suit. I may note in the passing that this fact has been disputed in the written statement, but eventually, the Court below relying on certain documents executed before the police and appreciating the oral evidence and has come to the conclusion that the defendant had taken the premises from the plaintiff for solemnisation of his own marriage but did not deliver back the premises in question.

9. The question that falls for consideration is whether, the plaintiff was dispossessed without her consent and without due process of law. The learned counsel for both the sides have given reference to various citations in their written notes but I would only notice a few. Mr. Rajeev Shrivastava, learned counsel for the opposite party, raising a preliminary objection has relied on the decision rendered in the case of *Smt. Sobhabati v. Lakshmi Chand*, (1985) 1 Civ LJ 116 : (AIR 1984 Orissa 171) wherein R.C. Patnaik, J. (as his Lordship then was) held that the High Court should not interfere in its discretionary revisional jurisdiction with a decision given under Section 6 of the Specific Relief Act as parties have effective remedy by way of suit for declaration of title and possession. The learned counsel has laid immense emphasis on the said decision to buttress his contention that the revision should be summarily rejected as not maintainable. In this context I may profitably refer to a decision rendered in the case of *Shree Onama Glass Works Ltd. Gondia v. Shri Ram Harak Panday*, AIR 1966 Madh Pra 282 wherein it has been held as under (at p. 284 of AIR) :

"5. Shri Y.S. Dharmadhikari, learned counsel for the non-applicants, has raised a preliminary objection to the effect that this revision petition is not competent because the applicant has the alternative remedy of a suit, interference in revision in cases under Section 9 of the Specific Relief Act can be justified only in exceptional circumstances e.g., when the suit is dismissed without trial under misapprehension of scope of S. 9 of the Act aforesaid (see *Ajodhya Prasad v. Ghasiram*, AIR 1937 Nagpur 326) or where the balance of convenience in a case is not in favour of driving the plaintiff to a regular suit (See *Bhojraj v. Sheshrao*, AIR 1949 Nagpur 126 : ILR (1948) Nag 422), or where the case of the applicant is clear (see *Ramamanemma v. Basavayya*, AIR 1934 Madras 558). Interference in revision in a particular case would depend on the circumstances of that case. If the case is disposed of on an obvious misapprehension as to the legal position, the decision of the lower Court may be interfered with even in a revision. But, ordinarily the High Court will not interfere in revision with an Order under Section 9 of the Specific Relief Act as there is remedy by way of suit."

From the aforesaid enunciation of law it is abundantly clear that ordinarily a revision is not to be entertained as the remedy lies by way of regular suit but if the facts and circumstances show that the

trial Court has disposed of the case on an obvious misapprehension as to the legal position, the decision of the lower Court may be interfered with even in a revision. In the case at hand as a pure question of law arises and it is an interesting one, I am not inclined to reject the application of revision at the threshold on the ground of maintainability.

10. As has already been stated that the moot question lies whether there has been forcibly dispossession. This is the basic ingredient of the section. In the case of *M.C. Chockalingam v. Manickavasagam*, AIR 1974 SC 104 the Apex Court observed as follows:--

"13. ... All that Section 6 (new) of the Specific Relief Act provides is that a person, even if he is a landlord, cannot take the law into his own hands and forcibly evict a tenant after expiry of the lease. This section has relevance only to the wrongful act of a person, if it be by the landlord, in forcibly recovering possession of the property without recourse to law. Section 6 frowns upon forcible dispossession without recourse to law but does not at the same time declare that the possession of the evicted person is a lawful possession. . . ."

I have referred to the aforesaid decision to indicate that recovery of possession by application of force is not countenanced in law.

11. At this juncture, I may profitably refer to a Division Bench decision of Madras High Court rendered in the case of *Neyveli Lignite Corporation Ltd. v. K.S. Narayan Iyer*, AIR 1965 Madras 122. In the said case certain property was leased by the petitioner/Corporation for running of a canteen. The lease which was originally for one year was renewed thereafter every year till December, 1961 but the Corporation declined to extend the lease any further. The Corporation issued a notice under the terms of the agreement and called upon the respondent to give the vacant possession of the property. After the expiry of the notice period the Secretary, and Township Administrator accompanied by Police Sub-Inspector went to the respondent and demanded vacant possession. Under their orders, the employees of the Corporation shifted the furniture to a portion of the premises and took an inventory of the articles found there and secured them in one of the rooms of the canteen. Though the respondents was standing thereby did not protest to the action. Later on he issued a notice to the Corporation calling upon it to pay damages failing which he threatened to take steps for recovery of the same. There was no demand for restoration of possession. The High Court held that the respondent did not intend to hold the possession, and hence, he cannot complain of dispossession and claim relief under Section 9 (Section 6 of New Act) of the Specific Relief Act. The purpose of citing this decision is that there should not have been an iota of consent in handing over the possession. The Division Bench of Madras High Court did not interfere as the occupant did not protest at the time of dispossession and later on only claimed for damages.

12. In this context I may usefully refer to the case of *Onama Glass Works* (AIR 1966 Madh Pra 282) (supra) wherein Bhargava, J was dealing with the consent with regard to handing over of possession by a Company. In that case the Board of Directors of Company by resolution transferred the companies property but no resolution was passed by the General Body of Shareholders. The Court opined as under:--

"8. This section becomes applicable only when the plaintiff is dispossessed 'without his consent.' The matter in issue is not whether the transaction was valid but whether the plaintiff was dispossessed 'without his consent'"

The facts of the present case are to be tested on the touchstone of the aforesaid enunciation of law. The Court is not required to delve into the illegality of transaction. The Court has to see whether there was consent at the time of handing over of possession. Mr. Rajeev Shrivastava, learned counsel for the non-applicant, has impressed upon this Court that there was misrepresentation to the tenant that the premises in question would be handedover after marriage ceremony was over and hence, the consent obtained under these circumstances would not amount to real consent. Though of first flush this contention looks attractive, on a close scrutiny I am of the view that it has no legs to stand upon. At the time of delivery of possession there was ad idem between the parties and the possession was delivered by the tenant/plaintiff. The possession was given out of total volition. There was no application of force of any kind in the most remote sense. If the plaintiff was deceived later on, that will be a matter of regular suit but it cannot come within the ambit and sweep of Section 6 of the Act.

13. In view of my preceding analysis the civil revision has to succeed and it accordingly succeeds and the impugned judgment and decree are set aside. However, in the peculiar facts and circumstances of the case there shall be no order as to costs.