HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL REVISION APPLICATION NO.693 OF 2012
with CIVIL APPLICATION NO.753 OF 2012

1. Kumar Gorakhnath Shinde .. Petitioner
Orig.Defendant)

vs.

Wider Church Ministries
& ors .. Respondents
(Orig,.Plaintiffs)

Appearances:

Mr.V.A.Thorat Sr.Advocate a/w Mr.P.B.Gujar for Petitioner
Mr.R.V.Govilkar for Respondents.

CORAM : RAVI K.DESHPANDE, J
DATED : 5.7.2013

P. C.

1 The challenge in this Revision Application is to a decree passed on 4.7.2012 by the learned Joint Civil Judge,Senior Division, Satara in Special Civil Suit No.179 of 2010 for restoration of possession under Section 6 of the Specific Relief Act,1963. The Defendant is directed to vacate the 'Norheim Bungalow' standing on C.T.S. No.67 Mahabaleshwar Taluka Mahabaleshwar District Satara (Hereinafter referred to as the “Suit property”) and to hand over the vacant physical possession to the Plaintiff-

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trust within a period of 90 days from the date of the order. Hence, the Original Defendant is before this Court and the Respondents are the original Plaintiffs. The parties shall hereinafter be referred according to their status as plaintiffs and the defendant.

2 The Plaintiffs filed Special Civil Suit No.179 of 2010 for restoration of possession of the suit property under Section 6 of the Specific Relief Act with an averment that the Suit property is owned by Plaintiff No.1 viz " the Wider Church Ministries" which is a public trust registered under the Bombay Public Trust Act bearing PTR No.E-922 (B). It is the averment in the Plaint that till 12.2.2010, the Plaintiff was in physical occupation and possession of the Suit property. However, on 13.2.2010 the Defendant along with some persons unlawfully encroached upon the suit property by breaking open the lock and causing theft of valuable articles lying in the bungalow. The Power of Attorney holder of the Plaintiff filed a complaint in the police station in respect of this incident on 13.2.2010. It is the further averments in the Plaint that the Plaintiff is legally entitled to possession over the Suit property and hence a decree for restoration of possession of the suit property is claimed.

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3 In response to the suit summons, the Defendant raised a defence that it is the "Marathi Mission and Wider Church Ministries," the another public trust bearing PTR No.F 287 (Mumbai) which is the owner of the Suit property and it has entered into an Agreement of Leave and Licence dated 6.1.2010 with the Defendant. It is the stand taken that the Defendant is in lawful possession of suit property from the true owner, pursuant to the said Agreement. The Defendant raised a defence that the Plaintiffs are neither owners of the Suit property nor were in possession of it at any point of time and hence a suit for restoration of possession by the Plaintiffs is not maintainable.

4 The trial Court recorded a finding in the Judgment and order impugned that the Plaintiffs have established ownership over the Suit property till 12.2.2010. It has also recorded a finding that the Plaintiffs were unlawfully dispossessed by the Defendant on 13.2.2010 and hence a decree for restoration of possession is passed.

5 Mr.V.A.Thorat, learned senior Counsel appearing for the Petitioner-

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Defendant has urged that in a Suit under section 6 of the Specific Relief Act,1963 the trial Court has no jurisdiction to go into the question of title or ownership in respect of the Suit property. In support of his contentions, Mr. Thorat has relied upon the decision of the Apex Court in the case of **MOHD MEHTAB KHAN & ors VS KHUSHNUMA IBRAHIM & ors** reported in **AIR 2013 (SCW) 877**. According to him, the trial Court has passed a decree for restoration of possession after holding that the Plaintiffs have established ownership over the Suit property. According to him, such a finding is without jurisdiction. He further submits that the only relevant points for consideration before the trial Court were whether the Plaintiffs have established their possession over the Suit property prior to 13.2.2010 and whether the Plaintiffs were wrongfully dispossessed on that date by the Defendant. He submits that the Defendant is in possession of the Suit property on the basis of the agreement of Leave and licence dated 6.10.2010 executed by the public trust viz.,"Marathi Mission and Wider Church Ministries", which is the owner of the Suit property and hence, possession of the Defendant cannot be said to be unlawful. He submits that the remedy of the Plaintiff was to file a Suit for title and to get resolved the controversy in respect of it between the two trusts. According to him,

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unless the controversy is settled in such a manner, the Suit filed at the instance of the Plaintiffs was not maintainable.

6 The learned Counsel appearing for the Respondent-Plaintiffs has urged that the Defendant had filed Regular Civil Suit No.468 of 2010 for injunction restraining the Plaintiffs from disturbing its possession over the suit property. In the said Suit an application for temporary injunction was filed claiming such injunction, which was rejected by the trial Court and an Appeal against it, was dismissed by the District Court and such orders are also confirmed by this Court. According to him the 'Norheim Bungalow' which is the Suit property, was lying vacant and the trial Court has recorded the finding that the Suit property is owned by the Plaintiffs and that the Plaintiffs were in possession of the suit property till 12.2.2010. After recording the finding that the Defendant unlawfully dispossessed the Plaintiffs on 13.2.2010, a decree for restoration of possession is passed. He supports the findings recorded by the trial Court and submits that there is no jurisdictional error committed by the trial Court. He submits that the findings of fact recorded by the trial Court upon appreciation of evidence available on record, does not call for any interference by this Court in

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exercise of its Revisional jurisdiction under section 115 of the C.PC.

7 In order to establish a claim under Section 6 of the Specific Relief Act,1963 three things are required to be established:

i) that the Plaintiff No.1 trust was in possession of the suit property;

ii) it has been dispossessed without the consent of the Plaintiffs and otherwise than in due course of law;

iii) the suit for recovery of possession is filed within a period of six months from the date of alleged dispossession.

It is not in dispute that the dispossession alleged is on 13.2.2010 and suit is filed on 11.8.2010 i/e within a period of limitation. Such finding is also recorded by the trial Court and not challenged by the Petitioner-Defendant. In respect of other two aspects, if the findings of facts recorded by the trial Court are based upon relevant material on record, no interference can be made in exercise of revisional jurisdiction, in the absence of any jurisdictional error.

8 The trial Court has recorded the findings that the Plaintiff-trust has

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established its leasehold rights and legal possession over the suit property from lessee of the Government and on 13.2.2010, the Plaintiffs are illegally dispossessed at the hands of the Defendant. These findings are based upon the following material:

(i) Oral evidence of PW 1 Robert Joel Mosses, a constituted Power of Attorney of the Plaintiff-trust.

(ii) Order dated 6.8.2001 passed by the Collector at Exhibit 60 for renewal of the lease in favour of the Plaintiff-trust for a period of 30 years;

(iii) Oral evidence of PW 2 Mohan a Senior Accountant in the office of the Plaintiff-trust.

(iv) Oral evidence of PW 3 Rajkumar a clerk in the Office of the Collector.

(v) Copy of 7/12 Extract at Exhibit 5 .

A Reference is also made to the order passed in Criminal Revision Application No.244 of 2010 decided by the Additional Sessions Judge, Satara and to the proceedings under sections 145 and 146 of Cr.P.C. instituted by the Plaintiff-trust on 13.2.2010.

9 The trial Court has held that the suit property is a bungalow of 100

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years old and no one was residing in it. The possession of the Plaintiffs over it, is held to be constructive and legal. The trial Court has taken in consideration the fact that the Defendant had filed Regular Civil Suit No.468 of 2010 against the Plaintiff for an injunction restraining the Plaintiffs from disturbing the possession of the Defendant, in which an order of temporary injunction has been refused. It has further been held that merely because there was no entry in the public trust Register Extract showing the suit property to be owned by the Plaintiff trust, that by itself is not sufficient to hold that the Plaintiff-trust is not in possession of it.

10 The stand taken by the Defendant that he is put in possession of the suit property by the "Marathi Mission and Wider Church Ministries", a public trust bearing PTR No.F-287 (Mumbai) pursuant to the Agreement of leave and licence dated 6.1.2010 has also been considered by the trial Court. The trial Court has recorded a finding that the Agreement of leave and licence dated 6.1.2010 has not been established or proved. It has been held that the Defendant has failed to examine any witness and to lead any evidence to show that the "Marathi Mission and Wider Church Ministries" was in lawful possession of the suit property either on the date of execution

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of the leave and licence agreement i.e. on 6.1.2010, or when the Defendant claims to have received possession from the said trust i.e. on 13.2.2010.

11 On the basis of the documents available on record the trial Court has held that upon a perusal of the extract of PTR No.F-287 (Bombay), there appears to be the name of the trust as "Marathi Mission". It has held in the said extract that there is no whisper about United Church Board for World Ministries or American Board of Commissioners for Foreign Mission. On the contrary, PTR extract of E-922 (B) at Exhibit 68 is the certified copy dated 10.1.2012 showing the name of the Plaintiff-trust with change of name. It has been held that initially name of the Plaintiff trust was "American World of Commissioners for Foreign Mission" and thereafter it was changed as "United Church Board for World Ministries" and ultimately as "Wider Church Ministries". It has been further held that the grant of lease by the Collector is in the name of the Plaintiff-trust.

12. Coming to the decision of the Supreme Court in **MOHD MEHTAB KHAN & ors vs KHUSHNUMA IBRAHIM & ors** cited supra relied

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upon by Mr.Thorat, learned Senior Counsel, there cannot be a dispute on the proposition laid down in para 12 of the said Judgment. A proceeding under section 6 of the Specific Relief Act is summary in nature and the object is to provide an immediate remedy to a aggrieved person who reclaim possession which he is unjustly denied by an illegal act of its possession. The question of title or better title of possession does not arise for adjudication in a Suit under Section 6, where the only issue required to be decided is as to whether the Plaintiff was in possession at any time of six months prior to the date of filing of the suit.

13. In the present case, the question of title or ownership has essentially been raised by the defendant. It is the Defendant who has set up the title in favour of another trust namely “Marathi Mission and Wider Church Ministries”. Even in order to establish its claim for possession, the source of such possession was required to be established. The Agreement of Leave and License dated 6.1.2010 has not been proved. To repel the contentions raised by the Defendant based upon entries in PTR extract in respect of the trust “Marathi Mission”, the trial Court has recorded a finding holding prima facie that it is the Plaintiff-trust which possesses

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leasehold rights from the State Government through the Collector and copy of the order of renewal of lease for 30 years has been proved. The said Trust namely "Marathi Mission" is not coming forward to claim title over the suit property. At any rate, any findings recorded by the trial Court in the Judgment and order impugned in respect of title or ownership shall not come in the way of such a trust in claiming ownership over the suit property by instituting appropriate proceedings .

14. In view of the above, it is absolutely clear that all the findings recorded by the trial Court are based upon evidence available on record. There is no perversity in recording such a finding brought to my notice by the Petitioner. The Petitioner-Defendant has failed to establish that it was the trust "Marathi Mission" which was in possession of the suit property on 6.1.2010 and that the Defendant received possession of the suit property from the said trust. The Plaintiff has established its possession over the suit property. There is no jurisdictional error in the findings of facts recorded by the trial Court and hence no interference is called for in the Judgment and order passed by the trial Court.

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15. In the result, this Civil Revision Application is dismissed with no order as to costs. Civil Application does not survive and is disposed of accordingly.

16. At this stage, the learned Counsel appearing for the Applicant seeks continuation of the protection granted by this Court for a further period of four weeks from today.

17. Keeping in view the fact that the interim order is continued till this date, the same shall continue to remain in force for a further period of four weeks from today. After expiry of the period, the same shall stand vacated automatically without reference to the Court.

RAVI K.DESHPANDE, J

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