

I.T.C. Ltd vs Adarsh Coop. Housing Soc. Ltd on 27 August, 2012

Author: Ranjan Gogoi

Bench: Ranjan Gogoi, P Sathasivam

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELATE JURISDICTION

CIVIL APPEAL No. 6071 of 2012
(Arising out of SLP (Civil) 9042/2007)

I.T.C. LIMITED

... Appellant(s)

Versus

ADARSH COOP. HOUSING SOC. LTD.

... Respondents

J U D G M E N T

RANJAN GOGOI, J

Leave granted.

2. A simple issue with regard to possession of either of the parties to this over two decade long litigation has come to the last court at the instance of the defendant in a suit under Section 6 of the Specific Relief Act, 1963. Notwithstanding the clear intent of the legislature to provide a summary remedy to a person illegally dispossessed of immovable property, the defendant has been persistent in its challenge to the decree passed against it. The learned trial court; thereafter the revisional court, i.e. court of the learned District Judge and lastly the Allahabad High Court have consistently held that possession of the disputed property on relevant date was with the plaintiff from which he was unlawfully dispossessed by the defendant, i.e. the petitioner herein. The unwavering view of the courts at all the three tiers of our hierarchical justice delivery system have not deterred the defendant to challenge the same by means of the present approach.
3. The facts in brief, may now be noticed :
The respondent - plaintiff had filed suit No. 72 of 1989 in the

court of Civil Judge, Agra, under Section 6 of the Specific Relief Act, 1963, (hereinafter referred to as 'the Act') praying for delivery of possession of the suit property from which the plaintiff claimed to have been illegally dispossessed by the defendant (petitioner herein) in the night intervening 19th/20th of November, 1988. According to the plaintiff, the land comprised in Khasra No. 877, measuring 2 bighas 3 biswas located in Village Basai Mustaqi Tajganj, Agra was jointly owned by Murari Lal on the one hand and Jagdish Prasad, Ramesh Chand, Suresh Chand and Haresh Chand (hereinafter referred to as 'Jagdish & others.') on the other. According to the plaintiff, by mutual consent, Murari Lal was in possession of his half share in northern part of the land whereas the half share of Jagdish & others was in the southern portion. The plaintiff has averred that it came into possession of the southern portion of the plot (hereinafter referred to as the Suit land) on 22.5.1985 and on 03.01.1986 Jagdish & others had sold the same to the plaintiff. On the basis of the aforesaid sale made by a registered deed, the revenue records were corrected and necessary entries were made showing the name of the plaintiff against the share of Jagdish & others. According to the plaintiff, Jagdish & others had entered into an agreement of sale of the same land with the defendant, though the land stood transferred in the name of the plaintiff and the revenue records corrected accordingly. In these circumstances, according to the plaintiff, suit No. 238 of 1983 was filed by the defendant against Jagdish & others for specific performance of the agreement to sell. Another Suit i.e. Suit No. 765 of 1984 was also filed by the defendant against Jagdish & others for an order of injunction restraining Jagdish & others from raising any construction on the suit land and from transferring/ alienating the same. According to the plaintiff, as the property involved in both the suits had already been transferred to the plaintiff, the plaintiff was impleaded as a party in both the above suits. It was also averred by the plaintiff that as injunction prayed for by the defendant, as the plaintiff, in Suit No. 765 of 1984 was refused and the appeal against such refusal was dismissed, in the intervening night of 19th/20th November, 1988, forcible possession of the suit land was taken by the defendant which fact was brought to the notice of concerned police station on 20.11.1988 itself. According to the plaintiff, a proceeding under Section 145 C. P.C. was also initiated at the instance of the plaintiff wherein an order of attachment of the disputed land, i.e. the suit land, was passed on 29.11.1988. However, as the defendant continued to remain in possession of the suit land despite the order of attachment, Suit No.72/1989 was instituted by the plaintiff seeking the reliefs already noticed.

4. The defendant contested the suit by contending that no partition, formal or otherwise, of the land covered by Khasra No.877 had taken place between Murari Lal and Jagdish & others. The defendant specifically contended that Jagdish was not in possession of the suit land. According to the defendant, in the absence of any formal partition between the co-sharers, i.e. Murari Lal and

Jagdish & others, and also in the absence of any mutual agreement between the parties with regard to possession of any specific share of the land, no exclusive right in the suit land had vested in Jagdish & others so as to confer legitimacy to the sale deed dated 03.01.1986 executed by Jagdish & others in favour of the plaintiff.

The defendant also contended that on the date of execution of the aforesaid sale deed, there was a pre-existing agreement executed by Jagdish & others to sell the same land to the defendant and in fact a suit for specific performance of the said agreement (Suit No. 238/1983) was pending in the competent court. The defendant also contended that pursuant to the aforesaid agreement between the defendant and Jagdish & others, possession of the land was handed over to the defendant way back in 1976. Consequently, the possession sought for in Suit No. 238/84 filed by the defendant was not physical but proprietary possession.

5. In the written statement filed, the defendant, had also claimed that it was in possession of the entire of the land covered by Khasra No. 877, i.e. both the northern and southern portions. According to the defendant, by a lease deed dated 01.04.1976, Jagdish & others had leased their half share of the land of Khasra No. 877 in favour of an officer of the defendant-Company acting for and on behalf of the said Company. The said deed was for an initial period of six months which period was subject to further extension(s). The defendant also claimed that on 19.09.1976, an agreement to sell was entered into by and between the defendant-Company and Jagdish & others for sale of the half portion of the land and further that on 28.9.1978, an agreement was executed by and between Jagdish & others and Murari Lal by which the possession of the defendant on the entire suit land w.e.f. 01.04.1976 was admitted by both co-sharers.

Furthermore, according to the defendant, Murari Lal had entered into a separate agreement dated 01.10.1976 for sale of his half share to the defendant wherein, once again, he had admitted the possession of the defendant over the entire land. Thereafter, on 21.08.1982, Murari Lal executed the sale deed conveying his half share of the suit property in favour of the defendant. According to the defendant, by the said sale deed dated 21.08.1982, the share of Murari Lal that was transferred to the defendant was the southern portion i.e. the suit land. In the written statement filed, it was also averred that before execution of the sale deed dated 21.08.1982, Murari Lal had executed two other documents both dated 03.03.1982 admitting the execution of the unregistered agreement dated 01.10.1976 in favour of the defendant and also admitting the delivery of possession of the half share belonging to him to the defendant in furtherance of the aforesaid unregistered agreement dated 01.10.1976. The defendant contended that the sale dated 03.01.1986 purported to be executed by Jagdish & others in favour of the plaintiff was a void document and also hit by the principle of *lis pendens*.

6. Section 6 of the Specific Relief Act 1963 under which provision of law the suit in question was filed by the plaintiff-respondent is pari-materia with Section 9 of the Act of 1877. A bare reading of the provisions contained in Section 6 of the Act of 1963 would go to show that a person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him recover such possession by filing a suit. In such a suit, the entitlement of the plaintiff to recover possession of property from which he claims to have been illegally dispossessed has to be adjudicated independently of the question of title that may be set up by the defendant in such a suit. In fact, in a suit under Section 6, the only question that has to be determined by the Court is whether the plaintiff was in possession of the disputed property and he had been illegally dispossessed therefrom on any date within six months prior to the filing of the suit. This is because Section 6 (2) prescribes a period of six months from the date of dispossession as the outer limit for filing of a suit. As the question of possession and illegal dispossession therefrom is the only issue germane to a suit under Section 6, a proceeding thereunder, naturally, would partake the character of a summary proceeding against which the remedy by way of appeal or review has been specifically excluded by sub-Section 3 of Section 6. Sub-Section 4 also makes it clear that an unsuccessful litigant in a suit under Section 6 would have the option of filing a fresh suit for recovery of possession on the basis of title, if any. In fact, the above view has found expression in several pronouncements of this Court of which reference may be made to the decisions in Lallu Yashwant Singh (dead) by his LRs. Vs. Rao Jagdish Singh & Ors.[1], Krishna Ram Mahale (D) by LRs Vs. Mrs.Shobha Venkat Rao[2] and Sanjay Kumar Pandey & Ors. V. Gulabhar Sheikh & Ors.[3] . In fact, para 4 of this Court's judgment passed in Sanjay Kumar Pandey (supra) may be a useful reiteration of the law in this regard. The same is, therefore, extracted hereinbelow:-

"4. "A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 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 under Section 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 under Section 6 of the Act. Thus, as against a decision under Section 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 under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code."

7. It is indeed sad, if not unfortunate, that what was intended by the legislature to be a summary proceeding to enable a person illegally dispossessed to effect quick recovery of possession of the immovable property has, in the present case, erupted into an over two decades old litigation. The sheer number of pending lis permitted the learned Trial Court to return its findings, after almost a decade, that it is, indeed, the plaintiff who was in possession of the disputed property on the relevant date and was dispossessed therefrom in an illegal manner by the defendant. Though Section 6 (3) of the Act of 1963 bars the remedy of appeal and review, a small window, by way of a revision, was kept open by the legislature possibly to enable the High Court to have a second look in the matter in an exceptional situation. However, section 115 of the CPC was amended in its application to the State of Uttar Pradesh and the forum for exercise of the revisional jurisdiction came to be recognized as the next Superior Court and not necessarily by the High Court. That is how the unsuccessful defendant moved the learned District Judge. Though the Revisional Court reiterated the findings of the learned Trial Court, another half a decade rolled by. Next in the hierarchical system of courts, i.e. the High Court was thereafter approached by way of a Civil Miscellaneous Writ Petition filed under Article 227 of the Constitution. The High Court answered the question, again, against the defendant. The manner and content of the same has been challenged before this Court in the present Appeal, primarily, on the ground that when formal partition of the land had not taken place the issue of possession of specific shares by the co-sharers could not have been determined so as to vest jurisdiction in the trial Court to pass a decree under Section 6 of the Act of 1963.
8. A reading of the judgment of the learned Trial Court indicates that in coming to the findings recorded, the learned Trial Court took into account the pleaded case of the defendant that it was in possession of the entire land comprised in Khasra No. 877 and not only the southern portion in respect of which recovery of possession was prayed for by the plaintiff. The learned Court, at the outset, noticed that the relevant revenue records on the crucial date, i.e. date of filing of the Suit, showed the possession of both parties to the Suit over the land comprising Khasra No. 877. According to the plaintiff, the southern portion which is the suit property was sold to it by Jagdish & others whereas according to the defendant, the said suit property, i.e. southern portion was sold to it by Murari Lal. The difference in the identity of the property, as claimed, would hardly make a difference to the core issue in the case inasmuch as according to the defendant it was in possession of the entire property, the northern portion by way of a lease deed executed by Jagdish & others and the southern portion by way of a sale deed executed by Murari Lal. The police report dated 21.11.1988 submitted in connection with the proceeding under Section 145 CPC recorded that in the northern portion of the land comprising Khasra No. 877, possession of the defendant was established and the dispute was

with regard to the southern portion of the land. From the above report, the conclusion recorded by the learned Trial Court that the plaintiff was in possession of the southern portion is a possible conclusion that could be reasonably reached in view of what was disclosed by the police report dated 21.11.1988 read with the relevant revenue records. The reluctance of the first revisional court as well as the High Court to interfere with the said conclusion is but natural and the same cannot be understood to be unreasonable so as to warrant interference by us in the present appeal.

9. That apart, the learned Trial Court also took note of the fact that lease deed dated 01.04.1976 purported to be executed by Jagdish & others, on the basis of which the defendant claimed to have entered possession of the share of the land belonging to Jagdish & others have not been proved by the defendant. Similarly, the agreement dated 28.9.1978, executed by Jagdish & others and Murari Lal on the basis of which the defendant claimed possession of the entire land had also not been proved. The reason for which the learned Trial Court came to the aforesaid conclusion, i.e., that the lease deed dated 01.04.1976 and the agreement dated 28.9.1978 have not been proved is that the signatures of the executors and the witnesses thereon have not been proved as required by law. Such a conclusion cannot be faulted. In fact, a further conclusion which has the effect of casting a serious doubt with regard to the claims of the defendant reasonably follows from the above. The fact that the defendant had instituted Suit No. 238 of 1983 and Suit No. 765 of 1984 claiming possession and injunction in respect of the suit property was rightly understood by the learned Trial Court to be a reasonable indication of the fact that the defendant, on the dates of filing of the said suits, was not in possession of the suit property. In such a situation, the dispossession which the plaintiff claimed to have taken place in the intervening night of 19th/20th of November, 1988, has to be understood to have been proved and established. The issues raised by the defendant with regard to the validity of the Sale deed dated 03.01.1986 executed by Jagdish & others in favour of the plaintiff on account of the pendency of Suit No. 238 of 1983 and the validity of the entries in the revenue records are questions surrounding title and are not strictly relevant for deciding the issue that was required to be decided in the suit in question namely, who was in possession of the suit property on the relevant date.
10. The argument raised on behalf of the petitioner (defendant) that highly contentious issue having arisen in the present proceeding, the same ought not to have been adjudicated in a suit under Section 6 would hardly merit acceptance, inasmuch, the foregoing discussion would enable us to come to the conclusion that the issue with regard to possession was capable of being decided on the materials on record and was, accordingly, so decided. A mutual understanding amongst the original co-sharers with regard to possession of specific areas of the entire land is fairly well established.
11. Another argument has been raised on behalf of the petitioner that in the present case the courts below have decided the issue of

possession by holding the defendant not to be in possession of the suit land instead of recording a finding that it was the plaintiff who was in possession. The said argument, again, would not merit acceptance by us. In a civil proceeding, the issues that may arise are required to be decided by balancing the claims and counter-claims of the parties before the Court and on the basis of a preponderance of probabilities. The conclusion that the defendant could not have been in possession, as claimed, was necessary to be reached in order to answer the question that was before the Court in the present case.

12. The discussion that have preceded leads us to conclude that the findings recorded by the learned Trial Court and affirmed by the revisional Court as well as by the High Court are essentially findings on question of fact which have been arrived at on the basis of the evidence and materials adduced by the parties. We, therefore, find no reason whatsoever, to disturb the said findings and the same are hereby affirmed. Consequently, we dismiss the appeal and affirm the decree passed by the learned Courts below.

.....J.
[P SATHASIVAM]

.....J.
[RANJAN GOGOI]

New Delhi,
27th August, 2012.

[1] AIR 1968 SC 620 [2] AIR 1989 SC 2097 [3] SCC 2004 (4) 664
