

Sadashiv Shyama Sawant(D) Th:Lrs &Ors vs Anita Anant Sawant on 22 February, 2010

Equivalent citations: 2010 AIR SCW 1822, 2010 (2) AIR KANT HCR 527, 2010 (3) AIR BOM R 308, (2010) 4 MAD LW 723, (2011) 2 KER LJ 10, (2010) 2 LANDLR 415, (2010) 3 MAD LJ 728, (2010) 4 MAH LJ 533, (2010) 1 RENCER 237, (2010) 2 RECCIVR 252, (2010) 2 ICC 204, (2010) 2 SCALE 530, (2010) 1 CLR 721 (SC), (2010) 79 ALL LR 479, (2010) 1 ALL RENTCAS 615, (2010) 2 CAL HN 63, (2010) 3 CALLT 35, (2010) 2 CIVILCOURTC 47, (2010) 1 KER LT 808, (2010) 2 MAH LJ 805, (2010) 3 MPLJ 265, (2010) 110 REVDEC 628, (2010) 1 RENTLR 219, (2010) 4 ANDHLD 24, (2010) 1 WLC(SC)CVL 403, (2010) 2 ALL WC 1914, 2010 (3) SCC 385, (2010) 3 ALLMR 410 (SC), (2010) 87 ALLINDCAS 95 (SC), (2010) 4 CIVLJ 251, 2010 (1) GLR NOC 19 (SC), 2010 (2) KCCR SN 14 (SC), 2010 (81) ALR SOC 65 (SC), (2010) 2 BOM CR 554

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Bench: R.M. Lodha, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1930 OF 2010
[Arising out of SLP [C] No. 10418 of 2008]

Sadashiv Shyama Sawant [D]
Through L.Rs., & Ors.

.... Appellants

Vs.

Anita Anant Sawant

....Respondent

JUDGEMENT

R.M. LODHA,J.

Leave granted.

2. The main question for consideration in this appeal by special leave is: where a tenant in exclusive possession is dispossessed forcibly by a person other than landlord, can landlord maintain suit under Section 6 of Specific Relief Act, 1963 against such person for immediate possession. The incidental question is, whether tenant is a necessary party in such suit.

3. Smt. Anita Anant Sawant - the sole respondent filed a suit for possession under Section 6 of the Specific Relief Act, 1963 (for short 'the Act') in respect of portion of property being Gram Panchayat House No. 97 situated on land bearing Gat No. 1, Hissa No. 61, Village Ambet, Taluka Mahasala, District Raigad, against the appellants and their predecessors-in-title (hereinafter referred to as 'the contesting defendants') and one Smt. Nanibai Shankar Sawant, since deceased, (hereinafter referred to as 'defendant no. 4'). The plaintiff averred in the plaint that she purchased the entire house No. 97 from defendant no. 4 by registered sale deed on October 1, 1981. At the time of purchase, part of house No. 97 was in possession of Pandurang Vichare who vacated that portion and she came into possession of entire house. Later on, she let out southern side one room along with hall adjacent to Padavi and northern side room of hall (for short 'suit property') to one P.V. Warik. On October 1, 1988, the contesting defendants forcibly dispossessed the tenant - P.V. Warik, threw away his articles and took possession of the suit property. The plaintiff, thus, prayed for recovery of possession of the suit property of which her tenant was forcibly dispossessed. The contesting defendants filed written statement and traversed plaintiff's claim by stating that suit property was joint family property and defendant no. 4 had no authority to sell the said house to the plaintiff. The contesting defendants, thus, claimed that they were co-owners and in possession of the entire house No. 97. Defendant No. 4 set up the plea that no consideration was paid to her for the sale of house No. 97 and that sale deed was obtained by fraud. It transpires, on the basis of the pleadings of the parties, the trial court framed as many as six issues, including that of title to property although such issue was unnecessary. The trial court, after recording the evidence and hearing the parties, held that plaintiff was able to prove her dispossession on October 1, 1988 by the contesting defendants from the suit property and that she could maintain the suit under Section 6 of the Act against the contesting defendants as she was in possession through a tenant over the suit property. The trial court, accordingly, vide its judgment and decree dated July 31, 2001, directed the contesting defendants to handover the possession of the suit property to the plaintiff.

4. The contesting defendants challenged the judgment and decree of the trial court by filing revision application before the High Court of Judicature at Bombay. It may be noticed here that defendant no. 4 had already died during the pendency of suit and her legal representatives were brought on record, but later on they were deleted from array of parties in the revision application. Inter alia, the contention raised before the High Court was that if the tenant of the plaintiff was forcibly dispossessed, the suit under Section 6 of the Act could be filed by the tenant and not by the landlady. The High Court did not accept the contention of the contesting defendants and held that in view of the language of Section 6 of the Act, either the tenant who was actually dispossessed or the plaintiff being landlady could file the suit. The High Court, thus, by its judgment dated March 28, 2008 dismissed the revision application. It is from this judgment that the present appeal by special leave arises.

5. Section 6 of the Act 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."

6. Section 6 corresponds to Section 9 of the repealed Specific Relief Act, 1877 (for short, '1877 Act'). The question whether a landlord can sue a trespasser for immediate possession where his tenant has been dispossessed has come up for consideration before various High Courts with reference to Section 9 of the 1877 Act. Section 9 of the 1877 Act is in these terms:-

"9. 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.

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

No suit under this section shall be brought against the Central Government or any State Government.

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. "

7. In *Veeraswami Mudali v. P.R. Venkatachala Mudali and others*¹, it was held by the Madras High Court that the trespasser could not interfere with landlord's right to receive rent and a decree to be put into possession of the rents, but so long as landlord did not himself possess the right to enjoy physical possession, he could not eject the trespasser under Section 9. While holding so, the Single Judge of Madras High Court relied upon previous decisions of that Court in *Ramanadhan Chetti v. Pulikutti Servai*² and *Mohideen Ravuther v. Jayarama Aiyar*³.

8. The Division Bench of Additional Judicial Commissioners, Nagpur, in *Ramchandra v. Sambashiv*⁴, on a question referred to it AIR 1926 Madras 18 (1898) 21 Madras 288 (1921) 44 Madras 937 AIR 1928 Nagpur 313 under Section 113 of Code of Civil Procedure, held that a landlord cannot sue under Section 9 to recover possession of the land because he was not in possession of it and was not dispossessed of it.

9. In *(Kanneganti) Ramamanemma v. (Kanneganti) Basavayya*⁵, a Single Judge of the Madras High Court held that a suit by landlord for possession under Section 9 in which the tenant in possession had not joined, is not maintainable.

10. Contrary to the aforesaid view of the Madras High Court and Nagpur Judicial Commissioner, the High Courts of Calcutta, Bombay, Patna, Pepsu and Rajasthan have taken the view that a landlord can maintain a suit under Section 9 of the 1877 Act to recover possession where his tenant in exclusive possession has been dispossessed forcibly by the act of a third party.

11. In *Nobin Das v. Kailash Chandra Dey*⁶, the Division Bench of Calcutta High Court held:

AIR 1934 Madras 558 (1910) Vol. VII Indian Cases 924 "....In the case before us, the plaintiff was originally in actual possession of the land. He was at that stage entitled to use the property in any way he chose. He settled the land with tenants. The result was, not that he was deprived of his possession, but that the mode in which he held possession of the property was altered. His tenants came into physical possession of the land and he held possession thereafter by receipt of rent from them.

When, therefore, his tenants were forcibly ejected from the land by the defendants, it may reasonably be held that he also was dispossessed. The case before us is further strengthened by the additional fact that the tenants, after they had been evicted, relinquished the land in favour of the plaintiff so that the plaintiff thereafter became entitled to have physical possession of the land. Under these circumstances, we hold that the plaintiff was dispossessed within the meaning of section 9 of the Specific Relief Act when his tenants were evicted from the land by the defendant.....".

12. The Division Bench of Bombay High Court in *Ratanlal Ghelabhai v. Amarsing Rupsing and others*⁷ stated the legal position with reference to Section 9 of 1877 Act thus:

"There is nothing in this section to show that possession is confined to actual physical possession. In the case of a landlord and tenant the landlord is in possession through his tenant and, as pointed out in *Nirjivandas Madhavdas v. Mahomed Ali Khan Ibrahim Khan* [1880] 5 Bom. 208], the proper remedy where exclusive occupation of immovable property is given to a tenant is for the tenant to file a suit for possession but the landlord, if he desires to sue immediately on the possessory right, can sue in the name of the tenant and further, for an injury to the reversion, the landlord can sue in his own name. The injury in the present instance consists in a denial of the plaintiff's title to the land for defendant 1 has taken possession of it claiming it to be his. I think, therefore, that there is an AIR 1929 Bombay 467 injury to the reversion

in respect of which the plaintiff can sue in his own name....".

13. In Sailesh Kumar and another v. Rama Devi⁸, the Division Bench of Patna High Court answered the question, whether a landlord can maintain a suit under Section 9 of the 1877 Act against trespasser for immediate possession when, at the date of dispossession, the house was in occupation of a tenant entitled to its exclusive use, in affirmative. The Division Bench considered the matter thus:-

"(6). Mr. P.B. Ganguly, appearing in support of this application, contended that the plaintiff's suit under S.9 of the Specific Relief Act was not maintainable, as she could not sue for possession, the actual possession having been with defendants 5 and 6 who were the tenants of the house. In support of his contention, he placed reliance on the cases of `SITA RAM v. RAM LAL', 18 All 440 and `VEERASWAMI v.

VENKATACHALA', AIR 1926 Mad 18. It is sufficient to state that the Allahabad case was not one under Section 9 of the Specific Relief Act, and it is beside the point in issue before us. The Madras case, however, supports the contention. That case is a single Judge case, and it appears that in the Madras High Court there are conflicting decisions on the point.

(7). Section 9 of the Specific Relief Act is as follows:-

"If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he AIR 1952 Patna 339 or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit"

(8). The contrary view was taken in the cases of `JADU NATH SINGH v. BISHUNATH SINGH', 1950 All LJ 288 & `RATANLAL GHELABHAI v.

AMARSINGH RUPSANG', 53 Bom 773. I respectfully agree with the view expressed in these cases. I am of opinion that there is nothing to bar a landlord from suing a trespasser under S. 9, Specific Relief Act, for possession even when at the date of dispossession the property is in occupation of a tenant entitled to possession".

14. In the case of Gobind Ram Jamna Dass v. Mst. Mewa w/o Parbhati⁹, the Division Bench of Pepsu High Court relied upon the decision of Patna High Court in Sailesh Kumar⁸ and did not follow decision of Madras High Court in Veeraswami Mudali¹. The Division Bench of Pepsu High Court held that possession of the tenant can be considered to be the possession of the landlord for the purposes of Section 9. The Division Bench expressed its opinion in the following words:

"....The word used in S. 9 is `dispossessed'. There is nothing in this section to show that the possession is confined only to actual physical possession. I am, therefore, of the opinion that a suit is competent by the landlord, even if he is not in actual physical possession of the land but in its possession through a tenant at the time of

illegal dispossession. This AIR 1953 Pepsu 188 conclusion is further strengthened by the words "he or any person claiming through him may, by suit, recover possession thereof" used in the section. The language of this section, therefore, clearly indicates that besides the person dispossessed, any person claiming through him can seek his remedy provided in this section for the recovery of possession. It necessarily follows that the person seeking relief under S. 9 need not himself be in actual physical possession of the property. A contrary view to this will defeat the aims and objects of this enactment. Supposing a landlord is incompetent to sue and his tenant who is dispossessed refuses to institute a suit under S. 9 of the Act, the landlord would be put in a very awkward situation and would be forced to file a regular suit. In such a case a wrong-doer will naturally be placed in an advantageous position. To accept this position it would be putting a premium on a wrong act of trespasser. This position, in my opinion, is not contemplated by the relevant legislation. On the other hand S.9 provides for a speedy and summary remedy to recover possession taken away by unlawful means. The object of the legislation, besides this, is to place the parties in their original position. Trespasser, if he so likes, can bring a regular suit to prove his title. A contrary construction, in my opinion, would result in protracted litigation for persons ousted from lawful possession by unlawful means on the part of a trespasser".

15. The Single Judge of Rajasthan High Court in Raghuvar Dayal v. Hargovind and another¹⁰ was concerned with the question, whether suit for possession under Section 9 of the 1877 Act can be brought by a landlord even when the property is in possession of the tenant. The Single Judge followed the afore-referred decisions of AIR 1958 Rajasthan 287 Bombay, Pepsu and Patna High Courts and reiterated the legal position as follows:-

"(18). On a careful consideration of the wordings of S. 9 of the Act, I am of opinion that the ruling in which it has been held that the suit for possession u/s 9 of the Act can be brought by a landlord also even when the property is in possession of the tenant have taken a correct view of the provisions of S. 9. The words used are "dispossessed" and "recover possession thereof".

Section 9 is not confined only to those cases where the plaintiff is in actual possession of the property in suit. Whatever possession the plaintiff has at the date of dispossession, he is entitled to claim in case of dispossession. If a tenant is in possession of the property and being dispossessed therefrom does not care to bring a suit for possession of the property, the landlord cannot be shut off from bringing a suit against the trespasser.

If the tenant has a mind to remain in possession of the property on behalf of the landlord, the landlord will put him in actual possession of the property. If, however, the tenant has no mind to stick to the land, the landlord is entitled to get actual possession of the property from the trespasser. Of course it would be proper to make the tenant also a party to the suit. He may either join as a co-plaintiff or in case he refuses to join as a co-plaintiff he may be made a defendant so that he might have his say in the matter. In this case the tenant has also been made a defendant.

I may say here that in this particular case according to the finding of the learned Civil Judge with which I have no reason to disagree, the tenant had put Raghuvar Dayal defendant in possession of the property in collusion with him. This Reghuvardayal filed a suit for ejectment and the tenant entered into a compromise and suffered a compromise decree for ejectment being passed against him. In execution of that decree Shivchand tenant was dispossessed. Under these circumstances to my mind the plaintiff was entitled to actual possession of the property in dispute and the defendant Reghuvardayal who came into possession of that property certainly interfered with the possession of the plaintiff.

Shivchand tenant had no interest in the possession of the property in dispute under the circumstances of the case and the only persons interested in possession thereof was the plaintiff. I cannot therefore find any fault with the decree of the lower Court awarding possession to the plaintiff".

16. As noticed above, the views of the High Courts differ about maintainability of suit for possession by the landlord under Section 9 of 1877 Act in respect of property let out to the tenant who has been dispossessed forcibly by a third party. That language of Section 6(1) of the Act and first paragraph of Section 9 of 1877 Act is exactly identical admits of no doubt. The key words in Section 6(1) are "dispossessed" and "he or any person claiming through him". A person is said to have been dispossessed when he has been deprived of his possession; such deprivation may be of actual possession or legal possession. Possession in law follows right to possession. The right to possession, though distinct from possession, is treated as equivalent to possession itself for certain purposes.

17. In Halsbury's Laws of England (Fourth Edition, page 617 - para 1111), 'physical and legal possession' is distinguished as under:

" 'Possession' is a word of ambiguous meaning, and its legal senses do not coincide with the popular sense. In English law it may be treated not merely as a physical condition protected by ownership, but as a right in itself. The word "possession" may mean effective, physical or manual control, or occupation, evidenced by some outward act, sometimes called de facto possession or detention as distinct from a legal right to possession... ..

'Possession' may mean legal possession: that possession which is recognized and protected as such by law. The elements normally characteristic of legal possession are an intention of possessing together with that amount of occupation or control of the entire subject matter of which it is practically capable and which is sufficient for practical purposes to exclude strangers from interfering. Thus, legal possession is ordinarily associated with de facto possession; but legal possession may exist without de facto possession, and de facto possession is not always regarded as possession in law. A person who, although having no de facto possession, is deemed to have possession in law is sometimes said to have constructive possession."

18. Pollock and Wright in their classic work, 'An Essay on Possession in the Common Law' (1888 Edition, page 27) explained the nature of possession, inter alia, as follows:

"Right to possess or to have legal possession. This includes the right to physical possession. It can exist apart from both physical and legal possession; it is, for example, that which remains to a rightful possessor immediately after he has been wrongfully dispossessed. It is a normal incident of ownership or property, and the name of 'property' is often given to it....

Right to possess, when separated from possession, is often called 'constructive possession.' The correct use of the term would seem to be coextensive with and limited to those cases where a person entitled to possess is (or was) allowed the same remedies as if he had really been in possession....".

19. A landlord by letting out the property to a tenant does not lose possession as he continues to retain the legal possession although actual possession, user and control of that property is with the tenant. By retaining legal possession or in any case constructive possession, the landlord also retains all his legal remedies. As a matter of law, the dispossession of tenant by a third party is dispossession of the landlord. The word "dispossessed" in Section 6(1) must be read in this context and not in light of the actual possession alone. If a tenant is thrown out forcibly from the tenanted premises by a trespasser, the landlord has implied right of entry in order to recover possession (for himself and his tenant). Similarly, the expression "any person claiming through him" would bring within its fold the landlord as he continues in legal possession over the tenanted property through his tenant. As a matter of fact, on plain reading of Section 6(1), it is clear that besides the person who has been dispossessed, any person claiming through him can also file a suit seeking recovery of possession. Obviously, a landlord who holds the possession through his tenant is competent to maintain suit under Section 6 and recover possession from a trespasser who has forcibly dispossessed his tenant. A landlord when he lets out his property to the tenant is not deprived of his possession in the property in law. What is altered is mode in which the landlord held his possession in the property inasmuch as the tenant comes into physical possession while the landlord retains possession through his tenant. The view of Calcutta High Court that where the tenant was forcibly ejected from the land by the third party, it may reasonably be held that landlord has also been dispossessed is the correct view. We find ourselves in agreement with the view of Bombay, Patna, Pepsu and Rajasthan High Courts and hold, as it must be, that there is nothing in Section 6 of the Act to bar a landlord from suing a trespasser in possession even when, at the date of dispossession, the property is in actual occupation of a tenant entitled to possession. The views expressed by Madras High Court in Veeraswami Mudali¹ and (Kanneganti) Ramamanemma⁵ and by Nagpur Judicial Commissioner in the case of Ramchandra⁴ do not lay down the correct law.

20. Now we advert to the incidental question whether in such a suit, tenant is a necessary party. Section 6 of the Act provides that suit to recover possession under the said provision could be filed by the person who is dispossessed or any person claiming through him. The tenant having lost the possession though without his consent to a third party, may not be interested in recovery of possession. He may not be available. He may not like to involve himself in litigation. In such

circumstances, if a landlord brings the suit to recover possession against trespasser under Section 6, it cannot be laid down as an absolute proposition that tenant must necessarily be impleaded as party to such suit. The view of Bombay High Court in Ratanlal Ghelabhai⁷ that landlord can sue in his own name where there is an injury to the reversion exposit the correct position of law. It may be desirable that a landlord in a suit under Section 6 of the Act against a trespasser for immediate possession when, at the date of dispossession, the house was in occupation of a tenant, impleads the tenant, but his non-impleadment is not fatal to the maintainability of such suit. The view of Madras High Court in (Kanneganti) Ramamanemma⁵ and of other High Courts following that view do not appear to us as laying down correct law.

21. In the result, appeal fails and is dismissed with no order as to costs.

.....J. [P. SATHASIVAM]J. [R.M. LODHA] NEW DELHI FEBRUARY 22, 2010.