

RAJASTHAN HIGH COURT

Arya Samaj Shri Karanpur

Vs.

Prithvi Raj, (Rajasthan)

S.B. Civil Revision No. 1105 of 1998

(Sunil Kumar Garg, J.)

28.07.2004

JUDGMENT

Sunil Kumar Garg, J.

1. This revision petition has been filed by the petitioner (hereinafter referred to as the plaintiff) against the judgment and decree dated 18.8.1998 passed by the learned Civil Judge (SD), Sri Karanpur District Sri Ganganagar in suit No. 53/89 by which the suit of the plaintiff filed under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act of 1963") against the respondent No. 1 Prithvi Raj (hereinafter referred to as the defendant No. 1) and No. 2 Jawahar Lal (hereinafter referred to as the defendant No. 2) was dismissed.

2. It arises in the following circumstances:

On 26.7.1989, the plaintiff filed a suit under Section 6 of the Act of 1963 for recovery of possession of shop Nos. 8 and 9 situated in Karanpur District Sri Ganganagar against the defendants (mainly against defendant No. 1) stating *inter alia* :

(i) That Jagdish Chandra, Advocate (PW2) was President of Arya Samaj, Sri Karanpur and he had the power to file the suit.

(ii) That shop Nos. 7 and 8, after falling vacant, were given on rent to the defendant No. 2 Jawahar Lal on 25.3.1989 through agreement.

(iii) That defendant No. 1 Prithvi Raj was already tenant of shop Nos. 2 and 4 belonging to the plaintiff for the last 5-6 years and he intended to take shop Nos. 7 and 8 on rent, but they were not given to him on rent as he was defaulter in payment of rent and because of that fact, the defendant No. 1 Prithvi Raj became angry and he, on 26.3.1989 in absence

of defendant No. 2 Jawahar Lal, who was tenant of shop Nos. 7 and 8, after breaking the lock, took the possession of these shops illegally and for that, report was also lodged in the Police Station Sri Karanpur Distt. Sri Ganganagar.

(iv) That when Jagdish Chandra (PW2), President of Arya Samaj had gone to Punjab, between 11th and 12th April, 1989, the defendant No. 1 Prithvi Raj handed over the possession of shop No. 7 to the defendant No. 2 Jawahar Lal and in place of shop No. 7, he took the possession of shop No. 9 illegally and apart from that, he also extended the shop No. 8 from back side. Thus, according to the plaintiff, the defendant No. 1 Prithvi Raj had taken the possession of the shop Nos. 8 and 9 illegally and unauthorizedly and on being asked by the plaintiff to give back the possession of the shops in question, he refused. Hence, this suit for recovery of possession of two shop Nos. 8 and 9.

The defendant No. 2 Jawahar Lal filed his written statement on 8.1.1990 stating *inter alia* that since he had already got the possession of shop No. 7 and the criminal proceedings had been dropped, therefore, he had no interest and if the decree is passed in favor of the plaintiff, he had no objection.

A separate reply was filed by the defendant No. 1 Prithvi Raj on 2.4.1990 stating *inter alia* that the shop Nos. 7 and 8 were lying vacant and on 24.3.1989, one Brij Gopal, who was Secretary of Arya Samaj, Karanpur, gave these shops to him on rent and before these two shops were given to him on rent, he was already tenant of shop Nos. 2 and 4 belonging to the plaintiff.

The further case of the defendant No. 1 Prithvi Raj was that possession of the shop Nos. 7 and 8 was never given to the defendant No. 2 Jawahar Lal and therefore, the case of the plaintiff that he took the possession of these shops illegally was wrong one.

The further case of the defendant No. 1 Prithvi Raj was that in order to resolve the dispute between the parties, Brij Gopal, Secretary of the Arya Samaj made a settlement (Ex. A-1) on 16.4.1989 and as per that settlement Ex. A-

1, shop No. 7 was given to the defendant No. 2 Jawahar Lal on rent and the shop Nos. 8 and 9 were given to him on rent of Rs. 300/-

per month after breaking the back wall of shop No. 8 and therefore, it was wrong to say that he had been in possession of shop Nos. 8 and 9 illegally or unauthorized. Hence, it was prayed that the suit filed by the plaintiff be dismissed.

Thereafter on 1.5.1991, the learned Civil Judge, Sri Ganganagar framed the following issues :

Thereafter, both the parties led evidence in support of their respective cases.

After hearing both the parties and after considering the entire evidence and materials available on record, the learned Civil Judge (SD), Sri Karanpur through impugned judgment and decree dated 18.8.1998 decided issue No. 1 in favor of the plaintiff, but issues Nos. 2 and 3 were decided against the plaintiff and in view of the findings on issues Nos. 2 and 3, the suit of the plaintiff was dismissed.

Aggrieved from the said judgment and decree dated 18.8.1998 passed by the learned Civil Judge (SD), Sri Karanpur, the plaintiff has filed this revision petition.

3. In this revision petition, the following submissions have been made by the learned counsel for the petitioner:

(i) That findings of the learned trial Judge on issue Nos. 2 and 3 are erroneous on the ground that no doubt defendant No. 1 Prithvi Raj was tenant of shop Nos. 2 and 4, but he had not paid rent and before he paid the rent, shop Nos. 7 and 8 were let out to the defendant No. 2 Jawahar Lal and therefore, there was no question that shop Nos. 7 and 8 were let out to the defendant No. 1 Prithvi Raj.

(ii) That learned trial Judge has wrongly admitted the execution of agreement Ex. A-

1 dated 16.4.1989 as according to the plaintiff, Brij Gopal was not Secretary of Arya Samaj and therefore, he was not authorized to make settlement through Ex. A-1.

Hence, it was submitted that the findings of the learned trial Judge on issue Nos. 2 and 3 are wholly erroneous and perverse one and they are liable to be set aside.

4. On the other hand, the learned counsel for the defendant No. 1 has supported the impugned judgment and decree dated 18.8.1998 passed by the learned Civil Judge (SD), Sri Karanpur.

5. I have heard the learned counsel for the plaintiff and the learned counsel for the defendant No. 1 and gone through the entire materials available on record.

6. In this case, the main issue is issue No. 2 which was to effect whether defendant No. 1 Prithvi Raj had taken the possession of the shop Nos. 8 and 9 belonging to the plaintiff illegally?

7. There is no dispute on the point that the present suit was filed by the plaintiff under Section 6 of the Act of 1963.

8. To succeed in a summary suit for restitution to possession under Section 6 of the Act of 1963, the plaintiff has to establish the following facts:

- (a) That he was in exclusive possession over the disputed property;
- (b) That the disputed property is an immovable property;
- (c) That the plaintiff was dispossessed within six months from the date of the suit;
- (d) That the dispossession was effected without the consent of the plaintiff;
- (e) That the dispossession aforesaid was effected otherwise than in due course of law;
- (f) That the dispossession is by one other than the Government.

9. On issue No. 2, the learned trial Judge, after considering and discussing the entire evidence and materials available on record, came to the conclusion :-

- (i) That possession of the defendants No. 1 Prithvi Raj in respect of shop Nos. 8 and 9 could not be said to be illegal, but he was given possession of these two shops by Brij Gopal, who was Secretary of Arya Samaj, Sri Karanpur.
- (ii) That after breaking the wall, which was behind the shop No. 8, both shop Nos. 8 and 9 were merged into one and for that, permission was also given to the defendant No. 1 Prithvi Raj by Brij Gopal, Secretary of Arya Samaj, Sri Karanpur.
- (iii) That plaintiff had failed to prove that the defendant No. 1 Prithvi Raj had taken the possession of the shops in question illegally.

10. Before proceeding further, it may be stated here that in revision under Section 115 Civil Procedure Code, the judgment of the trial Court, which is a discretionary one, should not be interfered with lightly and interference can be made only when the order is perverse or contrary to the provisions of law.

11. In *N.S. Venkatagiri Ayyanagar v. Hindu Religious Endowments Board* the Privy Council observed that Section 115 Civil Procedure Code empowers the High Court to satisfy itself on three matters : (a) that the order of the Subordinate Court is within its jurisdiction; (b) that the case is one in which the court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provisions of law or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on those three matters, it has no power to interfere because it differs from the conclusions of the subordinate courts on question of fact or law.

12. It may be stated here that no appeal lies from a decision in a suit under Section 6 of

f the Act of 1963 and the proper remedy of the party aggrieved by the dismissal of suit under Section 6 of the Act of 1963 is by way of a title suit and so far as the interference by the Court under Section 115 Civil Procedure Code is concerned, it is very limited one and in absence of jurisdictional error, the findings of facts recorded by the lower court should not be disturbed by this Court in exercise of power under Section 115 Civil Procedure Code and further, finding in respect of possession should not be disturbed, unless it is perverse.

13. In the present case, from perusing the impugned judgment and decree dated 18.8.1998, it appears that the learned Civil Judge has discussed and aspects in a minute and detailed manner and after elaborate discussion and consideration of the entire materials and evidence on record, on issue No. 2, he came to the conclusion that the possession of the defendant No. 1 Prithvi Raj in respect of shop Nos. 8 and 9 could not be said to be illegal, but he was given possession of these two shops by Brij Gopal, who was Secretary of Arya Samaj, Sri Karanpur and furthermore, after breaking the wall, which was behind the shop No. 8, both shop Nos. 8 and 9 were merged into one and for that, permission was also given to the defendant No. 1 Prithvi Raj by Brij Gopal, Secretary of Arya Samaj, Sri Karanpur.

14. In my considered opinion, the above findings of the learned Civil Judge cannot be said to be erroneous or perverse because of the simple reason that in support of these findings, there is a settlement Ex. A-

1 dated 16.4.1989, which was passed in favour of the defendant No. 1 Prithvi Raj in presence of witnesses, namely, Madanlal (DW2) and Rajendra Batra and that settlement Ex. A-

1, which is in the shape of rent deed, was executed by Brij Gopal in capacity as Secretary Arya Samaj, Karanpur. Since it is a written document in favour of the defendant No. 1 Prithvi Raj, therefore, at his stage, to say that possession of the defendant No. 1 over the shops in question was illegal cannot be accepted and the findings of the learned Civil Judge in this respect are liable to be confirmed one.

15. Furthermore, under Section 6 of the Act of 1963, the Court cannot adjudicate title and the Court can restore possession only if it is found that the defendant had taken it illegally or without due process of law. Since in this case, the defendant No. 1 Prithvi Raj was already tenant of shop Nos. 2 and 4 belonging to the plaintiff and not only this, according to plaintiff himself, the rent was paid by him later on in arrears of rent and all cases against the defendant No. 1 were later on withdrawn and looking to the fact that defendant No. 2 has admitted the fact that shop No. 7 was given to him later on, therefore, subsequent events, which are mentioned in the settlement Ex. A-

1 cannot be said to be totally irrelevant or bogus one. In these circumstances, the findings of the learned Civil Judge that the defendant No. 1 did not get the possession of the shops in question illegally, cannot be said to be erroneous or perverse one and rather they are based on settlement Ex. A-1.

16. Apart from this, when the plaintiff himself alleged that rent of the shops in question should have been Rs. 450/- per month instead of Rs. 3000/- p.m., this fact itself goes to show that basic dispute between the defendant No. 1 and the plaintiff was in respect of rate of rent and when this being the position, to say that the possession of defendant No. 1 over the shops in question was illegal, cannot be accepted.

17. So far as issue No. 3 is concerned, the learned Civil Judge came to the conclusion that the defendant No. 1 was making payment of rent of the shops in question at the rate of Rs. 300/- per month, as mentioned in the settlement Ex. A-1 and since the plaintiff had failed to prove that possession of the defendants No. 1 over the shops in question was illegal, therefore, in these circumstances, the plaintiff is not entitled to rent at the rate of Rs. 450/- per month instead of Rs. 300/- p.m.

18. In my considered opinion, the above findings of the learned Civil Judge on issue No. 3 also cannot be said to be erroneous or perverse one. As per settlement Ex. A-1, the defendant No. 1 was required to pay rent of the shops in question at the rate of Rs. 300/- p.m., which he was paying. Therefore, now to say that the plaintiff is entitled to rent of the shops in question at the rate of Rs. 450/- p.m. is not correct one.

19. Therefore, in the above circumstances, the plaintiff has failed to prove the fact that he was dispossessed by the defendant No. 1 from the shops in question within six months from the date of suit. Hence, the suit was rightly dismissed by the learned Civil Judge.

20. For the reasons stated above, it does not appear that the findings of facts recorded by the learned Civil Judge on issue Nos. 2 and 3, which have been stated above, are perverse or erroneous or there has been a non- appreciation or non- consideration of the material evidence on record by the learned Civil Judge. It also does not appear that the learned Civil Judge has failed to exercise jurisdiction so vested in him or acted in the exercise of his jurisdiction illegally or with material irregularity. The impugned judgment and decree of the learned Civil Judge do not suffer from any basic illegality or infirmity. Thus, no interference is called for with the findings of facts recorded by the learned Civil Judge through impugned judgment and decree dated 18.8.1998 and this revision petition deserves to be dismissed.

Accordingly, this revision petitioner filed by the plaintiff is dismissed.

Revision dismissed.

Cases Referred.

1. AIR 1949 PC 156