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Decided on .. 09.01.2023
Duration 6 Yr. 7 Ms. & 08 days.
Exhibit No.70

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION, VITA
(Presided over by I R SHAIKH. Civil Judge, Sr. Dn., VITA)

SPECIAL CIVIL SUIT NO.81/2020
[CNR - MHSN150013832020]

Shri. Sugriv Baban Buchade ... **Plaintiff.**

Age : 51 yrs., Occu. : Agri. & Business
R/o. Palus, Tal. Palus, Dist. Sangli.

Versus

1.Shankar Dattu Patil ... **Defendants.**

Age : 70 yrs., Occu. Agri.

2. Arun Shankar Patil

Age : 35 yrs., Occu. Agri.

3. Sanjay Tatyaso Patil

Age : Major, Occu. Agri.

4. Pravin Shankar Patil

Age : Major, Occu. Agri.

5. Sou. Vidya Vilas Gaikwad (Deleted)

Prop. Mamta Kirana & General Stores,

Age : 34 yrs., Occu. Business

All are R/o. Palus, Tal. Palus, Dist. Sangli

Suit For Possession, Mesne Profit & Perpetual Injunction

Shri C.D. Mane Ld. Advocates for the Plaintiff.

Shri S.S. Doshi, Ld. Advocate for defendant Nos.1 and 3

Shri A.R. Deshmukh, Ld. Advocate for
defendant Nos.2 and 4.

Shri D.S. Yalmante, Ld. Advocate for the
defendant No.5.

J U D G M E N T

(Delivered on 09.01.2023)

The present suit is filed by the plaintiff for possession, mesne profit, and perpetual injunction.

Plaintiff's case, in brief, is as under :

2. The property bearing Gat No.2435/1, admeasuring 0.03 R, as mentioned in para 1 (hereinafter referred to as “the suit property”) was owned and possessed by defendant No.1. The suit property was burdened with charge of different banks. Therefore, defendant No.1 agreed to sell the property to get rid of those charges. On the condition to repay the loan defendant No.1 on 27.02.2004 executed a sale deed in favour of the plaintiff for Rs.1,14,000/- Plaintiff became the owner and possessor of the suit property. He has developed the suit property and inducted tenants. However, his name was not mutated in the revenue record as the transfer was hit by the provisions of *Gunthewari*. However, the possession of the plaintiff continued through tenants.

3. It is the case of the plaintiff that the defendants started disturbing the possession of the plaintiff. It is contended that on 11.03.2016 defendants Nos.2 to 4 on the say of defendant, No.1 drove the tenants of the plaintiff. Vidya Gaikwad, Vijay Chowhan, and Ramdayal Nawal were asked to vacate the suit premises. Defendant forcibly and illegally dispossessed tenants of the plaintiff on 11.03.2016. The remaining open space, the backside of the suit property is in possession of the plaintiff. Therefore, on behalf of the tenants, the plaintiff brought this suit under section 6 of the Specific Relief Act. Through this suit, the plaintiff prayed for relief under Section 6 as well as a perpetual injunction against the defendants, *inter-alia* prayer of mesne profits.

4. Defendants appeared, however, defendants Nos.2, 4 and failed to file their written statement on record and, therefore, the matter proceeded without their written statement. Defendant Nos.1 and 3 contested the claim of the plaintiff by filing a written statement vide Exh.37. These defendants denied the execution of the sale deed in favour of the plaintiff by defendant

No.1. They further denied the possession of the plaintiff through tenants over the suit property. According to them, the possession by virtue of the sale deed was never transferred to the plaintiff. Redundantly, these defendants pleaded how the sale transaction was illegal and hypothetical in favour of the plaintiff. In short, these defendants denied the title of the plaintiff. According to them, they are in joint possession of the suit property, and, therefore, no question arises about any incident alleged by the plaintiff on 11.03.2016. Indeed, the suit property was under charge by different banks, and the plaintiff being the Director of Bharati Nagari Patsanstha aware of the fact of charge over the suit property. The value of the property was more than ten lakhs and the plaintiff being the director intended to purchase the property with assurance to discharge the suit property with all encumbrances but, neither he obeyed his promise nor any sale deed executed in his favour. Therefore, the question of possession never arise as no title was passed in favour of the plaintiff. It is further contended that the plaintiff having hands in gloves with Grampanchayat Officers, falsely assessed the property under the garb of a false sale deed. The tenants were inducted by the defendants and never by the plaintiff. Therefore, according to the defendants, the plaintiff cannot claim his possession through the tenants. Hence, prayed for the dismissal of the suit.

5. My predecessor framed the following issues at Exh.33, I have recorded my findings on them for the reasons as follow:-

Sr.No.	Issues	Findings
1	Whether plaintiff proves that, he was dispossessed without his consent from the suit property without following due process of law by defendants ?	Yes
2	Whether plaintiff is entitled for the relief under Section 6 of the Specific Relief Act ?	Yes
3	Whether the plaintiff is entitled for the relief of perpetual injunction as prayed ?	Yes
4	Whether the plaintiff is entitled for mesne profit ?	Yes

5	As per final orderWhat order and decree ?	As per Final Order
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: R E A S O N S :

As to Issues Nos.1 to 4

6. To substantiate the claim, the plaintiff have examined himself, Sugriv PW-1 at Exh.43. Beside oral evidence plaintiffs relied upon following documentary evidence-

1	Mouje Palus Gat No.2359/2/1 (New 2435) 8-A Extract	Exh.08
2	Mouje Palus Gat No.2720 (New 2359/2/1) 8-A Extract	Exh.09
3	Mouje Palus Gat No.3095 (New 2720) 8-A Extract	Exh.10
4	Mouje Palus Ferfar No17144, 17145 and 17146	Exh.45
5	Mouje Palus Gat No.2435 7/12 extract	Exh.46
6	Light Bill-Sugriv Baban Buchde	Exh.47 to 50
7	Tax Receipt	Exh.51 to 54
8	Agreement	Exh.55,56
9	Mouje Palus Gat No.2435 7/12 extract	Exh.57
10	RTS Appeal No.30/2016 order copy- Dy.Officer, Kadegaon	Exh.58
11	Mouje Palus Ferfar No14631	Exh.59
12	Mouje Palus Gat No.3115 8-A Extract	Exh.60
13	Mouje Palus Gat No.2435 7/12 extract	Exh.61
14	Sale Deed dt.27.02.2001 and Re-conveyance deed	Exh.62
15	Photo	Article-A

As the above issues are interlaced and common evidence is adduced by the plaintiff in that regard, therefore, I am discussing the above issues together. The suit is based on Section 6 of the Specific Relief Act. I would like to reproduce Section 6 in The specific Relief Act, 1963 as below-

7. 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.

8. It is worthwhile to note here that the present suit was decreed on 01.11.2018 by 7th Civil Judge Sr Dn, Sangli. As the defendant failed to lead evidence. As per the order dated 08.04.2020 present suit was restored as per the order in Civil Application No.81/2016 dtd.16.06.2020. It is pertinent to note that defendants No.1 to 4 failed to cross-examine the plaintiff. Defendants No.1 to 4 also failed to lead evidence in their support.

9. The oral evidence of the plaintiff is supported by the above documentary evidence. As discussed above defendants No.1 to 4 failed to cross-examine the plaintiff, therefore his evidence remained unchallenged. I have no reason to disbelieve the evidence of the plaintiff. To corroborate his oral testimony plaintiff filed a number of documents to show the factum of possession before the filing of the suit through their tenants. Plaintiff also filed the rent agreement of tenant Vidya Gaikwad to show that, the tenant was in possession of the suit property. Furthermore, the plaintiff filed bills towards payment of electric supply and tax to the authorities. These documents are sufficient to show that, the plaintiff was in possession of the suit property through his tenants. Now it has to be seen whether the plaintiff was

dispossessed on 11.03.2016 by the defendants. As mentioned above the said fact is not rebutted by the defendants either by submitting cogent evidence or through cross examination to the plaintiff. The entire version of the plaintiff remained unchallenged for want of cross-examination by the defendants. Therefore, the adverse inference under Section 114(g) of the Evidence Act can be drawn against the defendants.

10. This suit is not for declaration of title. Plaintiff proved that he was in possession of the suit property though through the tenant. He further proved that he was dispossessed by the defendants forcibly and illegally, without following due process of law. The plaintiff has brought this suit within 6 (six) months of the dispossession. Therefore, I have no hesitation to grant relief in view of Section 6 of the Specific Relief Act in favour of the plaintiff. Therefore, the plaintiff is entitled to relief as envisaged in Section 6 of the Specific Relief Act and also to an injunction. So far as *mesne* profit is concerned, as the plaintiff was dispossessed through tenants, therefore, he is also entitled to the same, however by filing a separate proceeding in that regard. Hence, I am answering all the issues in the affirmative and as per Issue No.5, I pass the following order :

: ORDER :

1. The suit is decreed with costs.
2. All the defendants are directed to restore possession of the plaintiff through his tenants within three months from today in view of Section 6 of the Specific Relief Act.
3. After the restoration of possession, all the defendants are perpetually restrained not to disturb the possession of the plaintiff without following due process of law.
4. Separate inquiry for *mesne* profit is granted.
5. A decree be drawn up accordingly.