



2022:TSHC:64102

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY ,THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL REVISION PETITION NO: 5662 OF 2012

Petition under Section 115 of Civil Procedure Code, against/aggrieved by the Order dated.11-09-2012 in O.S.No.108/2008 on the file of the Court of the Senior Civil Judge Siddipet.

Between:

Mohd. Akber Ali, S/o Mohd. Abdul Qhader,

...Plaintiff/Petitioner

AND

1. Mohd. Kareemuddin, S/o late Shabuddin, aged about 49 years, Occ: Pvt. Employee.
2. Mohd. Nayeemuddin, S/o. late Shabuddin, aged about 36 years, Occ: Pvt. Employee.
3. Mohd. Khajanavazuddin, S/o late Shabuddin, aged about 30 years, Occ: Pvt. Employee.
4. Mohd. Gouse Moinuddin, S/o late Shabuddin, aged about 29 years, Occ: Pvt. Employee
5. Mohd. Faiz Mohiuddin, S/o Gulam Mohiuddin, Occ: Nil (Died)
6. Mohd. Sultan Mohiuddin, S/o Gulam Mohiuddin, aged about 41 years, Occ: Nil
7. Mohd. Asgar Mohiuddin, S/o Gulam Mohiuddin, aged about 36 years, Occ: Nil.
8. Rayees Mohiuddin, S/o Gulam Mohiuddin, aged about 31 years, Occ: Nil. R/o.
9. Vishnu, S/o not known to the plaintiff/petitioner, aged about 34 years, Occ: Business, Shop No. 7-1-90, Market Cross Road, Siddipet Town, Medak district.
12. Anjum Fathima, W/o. Late Faiz Mohinuddin, aged 47 years,
13. Mohd. Khader Mohinuddin, S/o. Late Faiz Mohinuddin, aged 28 years,
14. Mohd. Farook Mohinuddin, S/o. Late Faiz Mohinuddin, aged 24 years,
15. Mohd. Arif Mohinuddin, S/o. Late Faiz Mohinuddin, aged 21 years,
16. Sulthana Mahabubiya, D/o. Late Faiz Mohinuddin, aged 26 years,
17. Naseem Fathima, D/o. Late Faiz Mohinuddin, aged 23 years,



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All are R/o. H.No. 10-1-70, Bara Imam, Siddipet Town, Medak District.

(RR 12 to 17 are brought on record as LRs of the deceased R5 as per C.O.dt.24.11.2022 in IA No. 1 of 2022)

...RESPONDENTS

Counsel for the Petitioner: MR. M. KIRAN REDDY

Counsel for the Respondent No.5: MR MOHAMMED ILYAS

Counsel for the Respondent No.1,2,3 & 4: MR. N. VIJAY

The Court made the following: ORDER



THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL REVISION PETITION No.5662 of 2012

ORDER:

1. The present revision has been directed against judgment and decree dated 11.09.2012 in O.S.No.108 of 2008 on the file of Senior Civil Judge, Siddipet, wherein and whereby suit filed by the appellant herein for recovery of possession based on prior possession under Section 6 of the Specific Relief Act, 1963, was dismissed. Aggrieved by the same, the present revision has been preferred by the plaintiff in the suit.

2. The revision petitioner herein is plaintiff and respondent Nos.1 to 11 are defendants in the suit. During pendency of the present revision petition, respondent No.5 died and his legal representatives were brought on record as respondent Nos.12 to 17. For the sake of convenience, the parties hereinafter are referred as they were arrayed in the suit.

3. The case of the plaintiff is that commercial complex covered by municipal door Nos.7-1-89 to 7-1-95 situated at Market Cross Road, Siddipet, comprising of eight (8) mulgies, RCC go-down and small open place were originally owned by Late Mohd. Abdul Qader Saheb. Mohd. Abdul Qader Saheb had



six (6) sons. During his life time, he executed a Will Deed dated 20.07.1980. After his death on 28.06.1985, his sons occupied portions of mulgies received by them on the strength of the said Will Deed. The sons of said Mohd. Abdul Qader Saheb were doing their businesses in their respective portions either directly or by letting out the same.

4. In view of the said Will Deed, the plaintiff, who is youngest son of Mohd. Abdul Qader Saheb got mulgi bearing door No.7-1-94 and go-down. Out of eight (8) mulgies, six (6) are facing western side and two (2) are facing northern side. The go-down is located immediately behind mulgies bearing door Nos.7-1-89 and 7-1-90. The entrance to the go-down was from north-western side. On the west side, there was road. On account of road widening, front part of mulgies bearing door Nos. 7-1-89 to 95/1 were demolished. As a result, the length of mulgies was reduced.

5. Defendant Nos.1 to 4, who are sons of eldest son of Mohd. Abdul Qader Saheb, are in occupation of mulgi bearing door No.7-1-89 and defendant Nos. 5 to 8, who are sons of second eldest son of Mohd. Abdul Qader Saheb, are in occupation of



mulgi bearing door No.7-1-90. On account of demolition of mulgies due to road widening, defendant Nos. 1 to 8 on 26.04.2008 and 27.04.2008 illegally removed the wall separating their mulgies and plaintiff's go-down and dispossessed the plaintiff and encroached into the go-down by extending their premises. In this regard, a complaint was lodged by the plaintiff to police, but as there was no action. He filed the present suit in the month of October, 2008 seeking relief of recovery of possession on the basis of prior possession.

6. It is the case of the defendants that they admitted that they are in possession of mulgies bearing door Nos. 7-1-89 and 7-1-90. They also admitted that there was 5 feet road widening on the west side of mulgies. After that road widening took place, the defendants also modified their mulgies by extending them into the open space which is on the eastern side of their mulgies. There was no illegal encroachment or demolition of wall or dispossession of plaintiff from go-down. They also submitted that muslim personal law does not permit execution of any Will Deed and there was no partition. According to them, plaintiff



cannot exclusively claim enjoyment of go-down premises.
Hence, they prayed to dismiss the suit.

7. On the basis of the above pleadings, the trial Court has framed the following issues:

- “1. Whether the plaintiff is entitled for recovery of possession of schedule property from the defendant as prayed for?
2. Whether the defendants dispossessed the plaintiff from the suit property?
3. To what relief?”

8. The plaintiff, in support of his case, examined P.Ws.1 to 3 and relied upon Exs.A-1 to A-9. The defendants, to support their case, examined D.Ws.1 and 2 and relied upon Exs.B-1 to B-3.

9. The trial Court after having considering the respective submissions of the parties held that there is no valid execution of Will Deed and there was partition of property. Therefore, plaintiff cannot claim exclusive possession over the go-down and he also failed to prove his dispossession within six months, thereby suit was dismissed.

10. Heard both sides.



11. In the light of above submissions, the point emerging for consideration in this revision petition is as follows:

“Whether the plaintiff established that he was in possession of suit property within six months from the date of dispossession?”

Point:-

12. It is the case of the plaintiff that defendants dispossessed him on 26.04.2008 and 27.04.2008 by demolishing wall, which separates mulgies from the go-down. According to the plaintiff, such a demolition was on account of previous demolition of defendants mulgies on the western side, for the purpose of road widening. There is no clear finding from the trial Court that both parties i.e., children of Mohd. Abdul Qader Saheb, were in occupation and enjoyment of their respective mulgies from 1980. Having accepted such possession, the Court could not grant relief on two grounds. The first is that parties admitted that property belongs to Mohd. Abdul Qader Saheb, who is father of plaintiff and grandfather of some of the defendants. The second is that there was no proof of partition and allocation of mulgies and their possession is deemed to be constructive possession.



13. The evidence of defendants clearly shows that they admitted the location of premises as reflected in the plaintiff map. After demolition on western side for road widening, they moved their mulgies back. They claimed that such moving back was into open space. Similarly, other brothers of the plaintiff also moved back after demolition. The defendants admitted their true possession from the plaintiff map. As seen from the plaintiff map, there is no open space behind the mulgies of defendants i.e., bearing door Nos.7-1-89 and 7-1-90. The open space is only behind the mulgi bearing door No.7-1-91. It is also not in dispute that the entire commercial complex is covered by RCC and there is no question of open space on the eastern side behind the mulgies of defendants.

14. The contention of learned counsel for defendants is that plaintiff could not able to prove his dispossession within six months. According to them, the constructions were made immediately after demolition of their mulgies after road widening was effected in the year 2007. As seen from the pleadings, there is no such claim from defendants that immediately after demolition of mulgies for the purpose of road widening, they



re-constructed the mulgies. In fact, they have claimed that there is no encroachment or dispossession of plaintiff's go-down. They say that they only modified and moved back their mulgies into open space, which is not established through evidence. There is evidence from the plaintiff which clearly demonstrates that he was dispossessed on 26.04.2008 and 27.04.2008. The suit is filed on 23.10.2008, which is within six months. When the suit is filed within six months, the title is immaterial and if party has established his possession within six months prior to suit, he is entitled to recover such possession from those who illegally dispossessed the plaintiff. Even, if there is no partition, one co-owner, who is in exclusive possession of property cannot be disturbed without resorting to procedure contemplated under the law. Further, a person in exclusive possession, even of common property, has a right to protect such property, until appropriate steps are initiated for division of common possession, as per law.

15. In the present case, it appears the defendants filed suit for partition and if they really claim that there is no partition, such an issue cannot be adjudicated in this proceedings. They have



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no right to illegally evict the plaintiff from his exclusive possession and enjoyment, in respect of go-down. Therefore, the trial Court has erroneously considered the case of plaintiff and dismissed the suit. Hence, this revision is liable to be allowed.

16. In the result, the civil revision petition is allowed and judgment and decree dated 11.09.2012 in O.S.No.108 of 2008 on the file of Senior Civil Judge, Siddipet, is set aside. Consequently, the suit is decreed granting recovery of possession of suit schedule property i.e., go-down, under Section 6 of the Specific Relief Act, 1963. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

Sd/- MOHD. SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Senior Civil Judge, Siddipet, Medak District (erstwhile State) (with records)
2. One CC to Mr. M. RAJAMALLA REDDY, Advocate [OPUC]
3. One CC to Mr. M. KIRAN REDDY, Advocate [OPUC]
4. One CC to Mr. MOHAMMED ILYAS, Advocate [OPUC]
5. One CC to Mr. N. VIJAY, Advocate [OPUC]
6. Two CD Copies

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HIGH COURT

ML,J

DATED:07/12/2022



ORDER

CRP.No.5662 of 2012

ALLOWING THE CRP

(8)

PM

27/1/23