

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10937 OF 2013

VILAS SHANKAR SHELAR AND OTHERS . . . . . APPELLANTS

VERSUS

PIRPASHA HUSAINI ABDUL RAZZAK . . . . . RESPONDENTS  
INAMDAR AND OTHERS

O R D E R

This appeal arises out of a judgment of the High Court of Judicature at Bombay, reversing a decree of possession granted by the trial court in a suit filed by the appellants under Section 6 of the Specific Reliefs Act, 1963 ('1963 Act').

We have heard Ms. Kalyani Pathak, learned counsel for the appellants and Mr. V. Giri, learned senior counsel along with Mr. Ravindra Keshavrao Adsure, learned counsel, appearing for the respondents.

The appellants herein were the Plaintiffs in Regular Civil Suit No. 604/2010 filed under Section 6 of the 1963 Act

on the file of the 3<sup>rd</sup> Joint Civil Judge (SD) Pune. The suit was decreed by the trial court by a judgment dated 04.07.2011. However, on a revision filed by the respondents-defendants, the High Court of Judicature at Bombay reversed the judgment and decree, resulting in the dismissal of the suit.

Admittedly, the suit was filed under Section 6 of the 1963 Act. *Sin qua non* for the maintainability of a suit under Section 6 of the 1963 Act is: (1) that the plaintiff should have been dispossessed without his consent of the immovable property and (2) that such dispossession should have taken place otherwise than in due course of law. Once a person files a suit under Section 6 of the 1963 Act, he must actually seek a relief of recovery of possession. The entitlement to file a suit under Section 6(1) is circumscribed by a condition found in sub-Section (2) of Section 6 of the 1963 Act. The condition is that the suit should be brought within six months from the date of dispossession. It is needless to point out that by its very nature, a suit under Section 6 of the 1963 Act is of an interim nature. This is why sub-Section(4) of Section 6 of 1963 Act does not bar any person from suing to establish his title to such property and to recover possession

thereof.

Keeping in mind the above scheme of Section 6, if we come back to the suit filed by the appellants, it is seen that the appellants herein originally made a prayer in their suit, which reads as follows:

"9) Therefore it is prayed that:-

a) The mandatory injunction be issued against the defendants to remove the fencing polls, barbed wires, tin shed etc., from the suit land.

b) The defendants be restrained from carrying out any kind of temporary or permanent construction on the suit property and they be further restrained from changing the nature of the suit property.

c) The defendants be restrained from transferring the suit property to the third person or by creating third party interest in the suit property.

d) The Plaintiffs be awarded the cost of the suit.

e) The Plaintiffs be allowed to amend the plaint if necessary.

f) Any other just and equitable order be passed."

A look at the prayers originally sought by the

appellants in their suit would show that the suit was not actually for recovery of possession as required by Section 6(1) of the 1963 Act. The prayer in the suit was for a mandatory injunction to direct the defendants to remove the fencing poles, barbed wire, tin shed etc. Additionally, a decree of permanent injunction was sought to restrain the defendants from carrying out any kind of temporary or permanent construction on the suit property. A third prayer was made for restraining the defendants from transferring the property to any third party.

Clearly, the reliefs sought in clauses (b) and (c) of Paragraph '9' of the plaint were not within the scope of Section 6 of the 1963 Act.

Subsequently, an amendment was made to the plaint, perhaps realizing the difficulty, albeit only party. The amended plaint contained the following reliefs:

"15) Therefore it is prayed that:-

a) The defendants be ordered to handover possession of the suit property by removing the fencing polls, barbed wires, tin shed etc., the mandatory injunction be issued to that effect and the defendants be restrained from interfering with the possession of the Plaintiffs over the suit

property.

b) The defendants be restrained from carrying out any kind of temporary or permanent construction on the suit property and they be further restrained from changing the nature of the suit property.

c) The defendants be restrained from transferring the suit property to the third person or by creating third party interest in the suit property.

d) The Plaintiffs be awarded the cost of the suit.

e) The Plaintiffs be allowed to amend the plaint if necessary.

f) Any other just and equitable order be passed."

Though the amended plaint sought to bring the suit within the ambit of Section 6(1) of the 1963 Act, the plaint still contained other prayers which were beyond the scope of Section 6 of the 1963 Act.

In the entire pleadings, both in the original plaint and in the amended plaint, there was no clear averment of dispossession. In fact, the pleadings disclose that the appellants wanted to have the cake and eat it too. They have indicated as though the defendants were attempting to

interfere with the possession of the plaintiffs by erecting fencing poles, etc. A half hearted attempt to dispossess the plaintiff will not come within the purview of Section 6.

The deficiency in the pleadings was compounded by the evidence given by PW-1. The affidavit filed by PW-1 in lieu of chief examination, contained a very important statement. The relevant portion of the said statement is extracted as under:

"21) There was nothing on the suit land until 11 a.m. on 17/4/2010 the land was vacant. On the northern side of the western portion of the suit property, there is land bearing S.No.54/LA owned by us. The construction is going on, on that land, therefore on the western portion of the said land we have temporarily stored bricks, sand and rubble. On 17/04/2010 all this material was there and is still there till today.

The above statement goes to show that the appellants-plaintiffs were asserting to be in symbolic possession of the property, even on the date on which PW-1 gave evidence.

There is one more additional factor. The entire evidence of PW-1 shows that the claim of the appellants was that the family was in possession of the property for more

than 80 years. There was no assertion by any individual about being in possession and about being dispossessed specifically.

In the absence of any specific pleadings to this effect, it was not possible for the trial court to have granted a decree in terms of Section 6. This is why the High Court reversed the said judgment and decree and, in our opinion, the High Court did so rightly.

Therefore, we do not find any ground to interfere with the impugned judgment of the High Court and hence, the appeal is dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.  
(V. RAMASUBRAMANIAN)

.....J.  
(PANKAJ MITHAL)

NEW DELHI;  
MARCH 15, 2023.  
PS

ITEM NO.114

COURT NO.14

SECTION III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 10937/2013

VILAS SHANKAR SHELAR & ORS.

APPELLANT(S)

VERSUS

PIRPASHA HUSAINI ABDUL RAZZAK INAMDAR AND OTHERS

RESPONDENT(S)

Date : 15-03-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) Ms. Kalyani Pathak, Adv.  
Ms. Vaidehi Odhekar, Adv.  
Mr. Nitin S. Tambwekar, Adv.  
Mr. Seshatalpa Sai Bandaru, AOR

For Respondent(s) Mr. V. Giri, Sr. Adv.  
Mr. Ravindra Keshavrao Adsure, AOR  
Mr. Sidheshwar Namdev Biradar, Adv.  
Mr. Yash Prashant Sonavane, Adv.  
Mr. Rohan Darade, Adv.  
Mr. Lav Mishra, Adv.  
  
Mr. Amol Chitale, Adv.  
Mrs. Pragma Baghel, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)  
COURT MASTER (SH)

(RENU BALA GAMBHIR)  
COURT MASTER (NSH)

(Signed order is placed on the file.)