

HIGH COURT OF MADHYA PRADESHBENCH AT GWALIORJUSTICE SUJOY PAUL.**Civil Revision No. 105/2011**

Jai Vilas Parisar and Anr.

Vs.

Alok Kumar Hardatt and Anr.

Shri Ankur Mody, Advocate for the petitioners.Shri J.P. Mishra, Advocate for the respondent No.1
-----**ORDER****(28 / 09 / 2015)**

This civil revision is filed against the order passed by VIth Civil Judge Class II, Gwalior dated 27.07.2011 whereby application of petitioner preferred under Order 7 Rule 11 C.P.C. was rejected.

2. Draped in brevity, the facts are that the petitioner is a charitable trust. Respondent No.1 filed a suit for injunction against the petitioner No.1 stating that the premises owned by him is in his occupation since last 26 years. The said premises was allotted to him as he was in service of petitioners. It is urged in the plaint that petitioners after discharge of respondent from the service, did not provide any plot to him nor any amount in lieu thereof is paid to him. Respondent No.1 / plaintiff further stated that on 12.06.2010 petitioners along with other officers and employees threatened him to vacate the said house. This compelled him to file the civil suit. It is prayed that plaintiff be not dispossessed without following due process of law. The petitioners and respondent No.2 filed their written statement wherein plaint allegations were denied. It is stated that respondent himself submitted his resignation which was accepted and accordingly, he was discharged from the services of the petitioners. Accommodation in question

was given to plaintiff on account of his employment. Thus after discharge from service, he has no right to continue in said accommodation. It was co-terminus to his employment. Plaintiff is unauthorizedly residing in the accommodation. He cannot be treated to be in valid possession. Petitioners on 28.02.2011 filed an application under Order 7 Rule 11 C.P.C. for rejection of plaint on the ground that suit filed by respondent No.1 is barred by provision of Section 34 of Specific Relief Act. It does not disclose any right and cause of action. Earlier application preferred under Order 7 Rule 11 C.P.C was rejected against which Civil Revision No. 69/2011 was filed. This civil revision was permitted to be withdrawn by this Court on 06.07.2011 with the liberty to file a properly constituted application. In turn, a fresh application under Order 7 Rule 11 C.P.C (Annexure P/4) was filed. Learned trial court heard the parties on this application and dismissed the same with cost of Rs. 100/-. This order is called in question in this petition.

3. Shri Ankur Mody, learned counsel for the petitioners, submits that plaintiff by no stretch of imagination can claim any right on the accommodation. He was given accommodation because of his employment. Once employee- employer relation comes to an end, the plaintiff has no right whatsoever to continue in the accommodation. He submits that possession means a possession based on some right. Reliance is placed on Section 34 of Specific Relief Act. He submits that court below has erred in rejecting the application of the petitioners. He relied on certain judgments in support of his contention.

4. Shri Mishra, learned counsel for the respondent No.1 / plaintiff, submits that order of court below dated 27.07.2011 is in accordance with law and does not

require any interference at this stage. By placing reliance on (1999) 4 SCC 403 (*Prataprai N. Kothari Vs. John Braganza*) he submits that this is trite law that even an encroacher or trespasser cannot be removed without following due process of law. He also contends that while deciding an application under Order 7 Rule 11 C.P.C, the court below was only required to see the plaint averments. The plaint averments are sufficient to show that triable issue is there before the trial court. The other things are matter of evidence. The parties advanced arguments only to the extent indicated above.

5. I have heard the parties and perused the record.

6. This is settled law that at the time of deciding application under Order 7 Rule 11 C.P.C., the trial court is not required to examine anything beyond the plaint averments. In para 3 of plaint reads as under :-

“3. यहकि, वादी म्युजियम समिति में सन् 1984 (उन्नीस सौ चौरासी) से इलेक्ट्रीशियन के पद पर (जय विलास पैलेस) में कार्य किया एवं म्युजियम समिति में कार्यरत परिवार सहित रहने हेतु प्रतिवादी द्वारा भवन आबंटन किये गये थे। वादी को भी वादग्रस्त भवन आबंटित किया गया था विवादित भवन में वादी अपने परिवार के साथ करीब छबबीस वर्षों से बिना किसी रोक टोक के निवास करता चला आ रहा है।”

7. Para 4 of the plaint makes it clear that plaintiff's services have come to an end. Section 34 of Specific Relief Act, 1963 reads as under :-

“34. Discretion of court as to declaration of status or right :- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

(Emphasis supplied)

A bare perusal of Section 34 makes it crystal clear that entitlement of “ legal right” or “legal character” in relation to a property may be a subject matter of suit. Thus, the “entitlement”, “legal character” and “legal right” are necessary elements for seeking a declaration of status or right. In the present case, plaint averments clearly show that accommodation was given to the respondent No.1 because at the relevant time he was an employee of the petitioner. No other right / legal character or entitlement is shown in the plaint averment.

8. The Apex Court in *(2012) 5 SCC 370 (Maria Margarida Sequeira Fernandes and Ors. Vs. Erasmo Jack De Sequeira)* considered the question of right of possession in such cases and summarized the principles of law in this regard as under :-

“1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has give possession forthwith on demand.

3. The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

(Emphasis supplied)

9. The Apex Court further opined that possession of

the past is one thing, and the right to remain or continue in further is another thing. It is further held that court must ensure that pleadings of a case must contain sufficient particulars. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.

10. In the aforesaid three judge Bench judgment, the Apex Court considered the argument relating to the facet of 'due process'. It also considered the relief claimed by certain litigants, who are not in a position to establish beyond doubt that they have any continuous right of possession. The Apex Court opined that the respondent's suit for injunction against the true owner, the appellant, was not maintainable, particularly when it was established beyond doubt that the respondent was only a caretaker and he ought to have given possession of the premises to the true owner of the suit property on demand. Admittedly, the respondent does not claim any title over the suit property and he had not filed any proceedings disputing the title of the appellant. Therefore, the impugned judgment of the High Court as also of the trial court deserve to be set aside. Consequently, it was directed that the possession of the suit premises be handed over to the appellant, who is admittedly the owner of the suit property.

11. Shri Mishra on the strength of *Prataprai* (supra) contended that plaintiff cannot be dispossessed without following 'due process'. The Apex Court way back in (1977) 4 SCC 467 (*T. Arivandandam Vs. T.V. Satyapal and Anr.*) opined that the trial Court must remember that if on a meaningful- not formal- reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power

under Order VII Rule 11 C.P.C. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist judge is the answer to irresponsible law suits.

12. In *Maria Margrida* (supra) the Apex Court after taking stock of various judgments on the question of dispossession after following "due process of law", opined that due process of law means that nobody ought to be condemned unheard. Due process of law means a person in settled possession will not be dispossessed except by due process of law. "Due process" means an opportunity to the other side to file pleadings and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment right of parties are adjudicated upon by the competent Court.

13. The Delhi High Court in (2006) 88 DRJ 545 (*Thomas Cook (India) Ltd. Vs. Hotel Imperial*) opined as under :-

"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejection from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this 'due process process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting

him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law"

(Emphasis supplied)

This judgment of Delhi High Court is approved on the aspect of 'due process' of law by Supreme Court in *Maria Margarida* (supra) (para 80).

14. If the impugned order is tested as per acid test laid down by the Supreme Court in aforesaid judgment, it will be clear as per plaint averments itself that the plaintiff was given possession only in the capacity of an employee. No right to remain or continue in the possession after cessation of service is shown in plaint averments. A caretaker, agent or employee does not have any right or interest to continue in accommodation. The court below while deciding application under Order 7 Rule 11 C.P.C was required to examine whether there exists any triable cause of action, right or legal character. If averments of the plaint do not indicate any such right

to continue in possession, plaint is lacking in showing the triable cause of action. For this purpose, no evidence is required to be lead / recorded. In *Maria Margarida* (supra) the Apex Court held that trial does not mean complete trial. It can be decided even at the stage of deciding application under Order 7 Rule 11 C.P.C. Justice R.C. Lahoti (as he then was) in 1994 (30) DRJ 596 (*Sham lal Vs. Rajinder Kumar and Ors.*) opined that merely because the plaintiff was employed as a servant, or chowkidar to look after the property it cannot be said that he had entered into such possession of the property as would entitle him to exclude even the master from enjoying or claiming possession of the property or as would entitle him to compel the master staying away from his own property.

15. In the opinion of this Court, from the plaint averments it is clear that plaintiff is unable to show any right and cause of action. The Court below was not justified in rejecting the said application. A microscopic reading of judgment of Delhi High Court in *Thomas Cook* (supra) shows that when party approaches the court with a suit for injunction and it fails to set up a good case, it cannot say that another party now must institute an action in court of law for enforcing his rights i.e. for taking back something from the first party, who holds it unlawfully, and, till such time, the Court hearing the injunction application must grant an injunction. In this view of the mater, even if injunction suit of plaintiff is decided, 'due process' of law is fulfilled.

16. As analyzed above, the Court below has erred in rejecting application under Order 7 Rule 11 C.P.C. Said application is allowed. Resultantly, civil suit filed by the plaintiff is dismissed.

(Sujoy Paul)
Judge