

(7) Consequently, this revision petition succeeds and is allowed. The impugned orders are set aside and the eviction order is passed against the tenant. However, the tenant is allowed three months' time to vacate the premises; provided all the arrears of rent, if any, are paid and an undertaking, in writing, that he will vacate the premises after the expiry of the said period of three months and hand over their vacant possession to the landlord, is given before the Rent Controller, within one month from today and the future rent is paid monthly regularly by the tenth of every month, in advance.

S.C.K.

Before S. P. Goyal, J.

LAKSHMI CHAND,—*Petitioner.*

versus

SARLA DEVI,—*Respondent.*

Civil Revision No. 3541 of 1986.

June 5, 1987.

Specific Relief Act (XLVII of 1963)—Sections 6, 6(4) & 41 Clauses (a) & (b)—Code of Civil Procedure (V of 1908)—Order 39, Rules 1 and 2, Section 151—Forcible dispossession of person in occupation—Suit to recover possession by such person—Suit decreed—Execution of such decree—Suit for injunction to stop execution—Such suit—Whether competent—Prayer for interm injunction—Grant of such prayer.

Held, that a suit for injunction restraining a person, who has been wrongfully dispossessed, from executing the decree passed under Section 6 of the Specific Relief Act, 1963, for recovery of possession is held to be competent, it would obviously result in rendering the provisions of Section 6 of the Act nugatory. Moreover such a suit is expressly barred by the provisions of Section 41(a) of the Act which provides that an injunction cannot be granted to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent the multiplicity of proceedings. Again, the phraseology used in Section 6(4) of the Act also makes it clear that the suit has to be for establishment of title and recovery of possession. This phraseology was purposely used in view of the provisions of Section 41(b) of the Act. If a suit for injunction could be maintainable, then the Legislature would have used the words "to recover possession thereof".

(Paras 3 and 5).

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Held, that if suit for permanent injunction is not competent then the Court would have no jurisdiction even to grant an *ad-interim* injunction to restrain the defendant from executing the decree. When a defendant seeks to recover possession through judicial process by way of execution of a decree lawfully passed in his favour, by no stretch of reasoning can it be said that he is threatening to dispossess the plaintiff or doing any wrongful act. (Para 6)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri Ravinder Mohan Gupta, Additional District Judge, Sangrur, 16th September, 1986, affirming that of Shri S. C. Arora, P.C.S., Sub-Judge 2nd Class, Malerkotla, dated 2nd November, 1985, dismissing the appeal with no order as to costs. The parties have been directed to cause their appearance in the trial court on 29th September, 1986.

M. P. Maleri, Advocate, for the Petitioner.

L. M. Suri, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J.

(1) The petitioner filed a suit under Section 6 of the Specific Relief Act, 1963 (for short 'the Act') for possession of the premises in dispute alleging that he was in occupation thereof as a tenant and the respondent took its possession illegally in his absence on April 21, 1982. The suit was decreed on January 18, 1985 and the revision against the decree also failed. Thereafter, the respondent filed the present suit under Section 6(4) of the Act for a declaration that she was in lawful possession of the premises in dispute as owner and for perpetual injunction restraining the petitioner from dispossessing her. Along with the suit, she also filed an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure for the grant of an *ad interim* injunction restraining the petitioner from interfering with her possession during the pendency of the suit, which was accepted by the trial Court and *status quo* ordered to be maintained. Having failed in the appeal as well, the defendant has come up in this revision.

(2) The lower appellate Court, for its view that an *ad interim* injunction restraining the defendant from executing the decree can be granted, has relied on two decisions; one of Allahabad High Court in *Chuni and another v. Sullaher and another* (1), and another of

(1) A.I.R. 1972 All. 418.

Gujarat High Court in *Mohammed Hussain Suleman Shaikh and another v. Batkhai Valjibhai and others* (2). For holding that a *prima facie* case exists in favour of the plaintiff, it observed that even according to the defendant the former was in possession when the suit under Section 6(4) of the Act was filed. It passes my comprehension as to how any Court could hold that the plaintiff has a *prima facie* case on the reason stated when the decree itself is for the recovery of possession. The considerations, such as *prima facie* case and balance of convenience, have no meaning in a suit like the present one because no *ad interim* injunction restraining the defendant from executing the decree can legally be issued.

(3) It was settled long back by the Supreme Court in *Munshi Ram and others v. Delhi Administration* (3), that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. The right given under Section 6 of the Act to a person dispossessed without his consent of immovable property otherwise than in due course of law to recover possession thereof, notwithstanding any other title that may be set up in such suit, is the statutory recognition of the same principle. If a suit for injunction restraining a person, who has been wrongfully dispossessed, from executing the decree passed under Section 6 for recovery of possession is held to be competent, it would obviously result in violation of the above principle and render the provisions of Section 6 of the Act nugatory. Moreover, such a suit is expressly barred by the provisions of Section 41(a) of the Act which provides that an injunction cannot be granted to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings. A contrary view was taken in *Chunni's case* (supra) by the Division Bench of the Allahabad High Court on the ground that, strictly speaking, such a suit is neither to restrain the defendant from prosecuting a judicial proceeding nor from instituting the execution application within the meaning of clauses (a) and (b) of Section 41 of the Act as the relief claimed is to restrain the defendant from interfering with the plaintiff's possession and not for a direction to prevent him from instituting or prosecuting the execution proceedings. The Bench sought support for this view from a Single Bench decision of the Bombay

(2) A.I.R. 1984 Gujarat 66.

(3) A.I.R. 1968 S.C. 702.

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High Court in *Meri Alias Lingappa Doddatamma Merkundi v. Santaya Ramkrishna Pai Kolla* (4). With due respect to the learned Judges, I am unable to subscribe to this view. The defendant obviously seeks the recovery of the possession by executing the decree and not by any wrongful act or by taking the law into his own hands. The injunction claimed, though may be that the defendant be restrained from taking possession, but, in substance, it would mean and have the effect of restraining him from executing the decree lawfully passed in his favour, which would necessarily result in the violation of the provisions of clause (a) of Section 41 of the Act.

(4) Under the Specific Relief Act, 1877, clauses (a) and (b) of Section 56 read as under:—

“An injunction cannot be granted—

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought.”

Interpreting these clauses, several Courts like the Bombay High Court in *Mari's case* (supra) took the view that though an injunction could not be granted to stay judicial proceedings or proceedings in a Court not subordinate to that from which the injunction is sought, but an injunction could be granted to the party restraining him from pursuing such proceedings. As the injunction restraining a party from pursuing judicial proceedings has the effect of staying those proceedings, the Legislature did not approve this view and the old clauses were substituted with the following clauses in the Specific Relief Act of 1963:—

“Section 41. An injunction cannot be granted—

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

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- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought."

The obvious intent and purpose of the introduction of the words "to restrain any person" in the beginning of the two clauses was to make it clear that under the new clauses, no injunction can be issued even to a party restraining him from pursuing or prosecuting a judicial proceeding. The change in the law and phraseology of the present clauses, it appears, was not brought to the notice of the learned Judges in *Chunni's case* (supra).

(5) Again, the phraseology used in Section 6(4) of the Act also makes it clear that the suit has to be for establishment of title and recovery of possession. This phraseology was purposely used in view of the provisions of Section 41(b) of the Act. If a suit for injunction could be maintainable, then the Legislature would have used the words "for establishment of the title and the maintenance of possession" instead of the words "to recover possession thereof". I am, therefore, of the considered view that a suit for injunction restraining the defendant from executing the decree passed in his favour under Section 6 of the Act would not be competent.

(6) Once it is held that no suit for permanent injunction would be competent, then the Court would have no jurisdiction even to grant an *ad interim* injunction to restrain the defendant from executing the decree as held by the Supreme Court in *Cotton Corporation of India Limited v. United Industrial Bank Limited and others* (5). Even if it may be accepted for the sake of argument that a suit for permanent injunction would be competent, then even it would not be possible to grant any *ad interim* injunction. The grant of temporary injunction is regulated by Order 39 of the Code of Civil Procedure, but it can be granted in exercise of the inherent powers also in matters not covered by the provisions of the said rule. However, as held in *Ramkarandas Radhavallabh v. Bhagwandas Dwarikadas* (6), in so far as the matter in question in any particular case or topic falls within the ambit of the express provisions of the statute, the inherent powers of the Court, must to that extent, be regarded as abrogated by the Legislature and the Court in such

(5) A.I.R. 1983 S.C. 1272.

(6) A.I.R. 1965 S.C. 1144.

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cases, cannot have recourse to its inherent powers. A specific provision has been made for the grant of temporary injunction preventing the dispossession of the plaintiff by clause (c) of Order 39, Rule 1, Civil Procedure Code, which provides that the Court may grant a temporary injunction when the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property. It is only the first portion of the clause (c) which could possibly be invoked by the plaintiff, but that clause envisages a wrongful act on the part of the defendant. The use of the word "threatens" in this part of the clause implies a wrongful act on the part of the defendant and the taking of the law into his own hands. When a defendant seeks to recover possession through judicial process by way of execution of a decree lawfully passed in his favour, by no stretch of reasoning can it be said that he is threatening to dispossess the plaintiff or doing any wrongful act. The case, therefore, would not be covered by the said clause. Nor it would be possible to invoke the powers of the Court under Section 151 of the Code of Civil Procedure because of the specific provision available in the shape of clause (c) of Order 39, Rule 1. The Courts below, thus, acted illegally in granting the *ad interim* injunction in utter disregard and violation of the provisions of Order 39, Rule 1 of the Code of Civil Procedure.

(7) For the reasons recorded above, this revision is allowed and the impugned order reversed. No costs.

S.C.K.

Before H. N. Seth, C.J. and M. S. Liberhan, J.

R. T. Gupta Industries and another,—Appellants.

versus

M/S. KWALITY SPINNER and another,—Respondents.

Letters Patent Appeal No. 261 of 1987.

August 3, 1987.

Letters Patent, 1919—Clause X—Order confirming injunction in pending second appeal—Order—Whether a "judgment passed in the exercise of appellate jurisdiction"—Letters Patent Appeal—Whether maintainable against such an order.