

**Britto Gomez, Vs. Xavier Gomez,**

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**SooperKanoon Citation :** [sooperkanoon.com/827979](http://sooperkanoon.com/827979)

**Court :** Chennai

**Decided On :** Jun-25-2002

**Reported in :** (2002)2MLJ701

**Judge :** A. Ramamurthi, J.

**Acts :** Specific Relief Act - Sections 6; Code of Civil Procedure (CPC) - Sections 115

**Appeal No. :** Civil Revision Petition No. 505 of 2002

**Appellant :** Britto Gomez, ;s. Sophia Gomez, ;b. Elma Gomez, ;theresita Gomez, ;agnalo Gomez and Savithri

**Respondent :** Xavier Gomez, ;mary Gomez, ;thomas Gomez and J. Julians Gomez

**Advocate for Def. :** A.V. Arun, Adv. for ;S. Subbiah, Adv.

**Advocate for Pet/Ap. :** K. Srinivasan, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**A. Ramamurthi, J.**

1. The revision petitioners are defendants 1 to 3 and 5 to 7 in the suit.
2. The case in brief is as follows:- Plaintiffs 1 and 2 are sisters and the 3rd plaintiff is their brother. The plaintiffs are living together in the suit property. The defendants are the children of the deceased brother of the plaintiffs. The suit property originally belonged to the mother of the plaintiffs and she had executed an unregistered Will and bequeathed the property in favour of the plaintiffs. Plaintiffs 1 and 2 are the retired teachers. The 3rd plaintiff served in the Shipping Corporation and retired and all of them were living in the property after retirement. The plaintiff's mother died in 1989. The defendants lived in other places and they forcibly entered into possession of the 2nd schedule of the property on 18.06.2000 and dispossessed the plaintiffs. They also gave a complaint to the police, but no action was taken. Hence, the suit is filed under section 6 of the Specific Relief Act for recovery of possession of the 2nd schedule of the suit property.

The defendants admitted that the suit property originally belonged to their grand mother. They denied the execution of the alleged Will. The plaintiffs are not in exclusive possession and the alleged Will has not been probated. The alleged trespass is also false. The defendants also had right in the property and as such, they are in the nature of co-owners and hence the plaintiffs are not entitled to claim any relief by invoking section 6 of the Specific Relief Act.

The trial court framed 2 issues and on behalf of the plaintiffs, P.Ws.1 to 8 were examined and Exs.A-1 to A-35 were marked and on the side of the defendants, D.Ws.1 and 2 were examined and Exs.B-1 to B-20 and Witness documents 1 to 11 were marked. The trial court decreed the suit and aggrieved against this, defendants 1 to 3 and 5 to 7 have preferred this revision petition.

3. Heard the learned counsel for the parties.

4. The points that arise for consideration are

(1) Whether the plaintiffs are entitled to get recovery of possession of the 2nd schedule of the suit property ?

(2) Whether the suit filed by the plaintiffs is maintainable under law ?

### (3) To what relief

5. Points: There is no dispute that the plaintiffs as well as the defendants are related. The plaintiffs filed the suit for recovery of possession of the 2nd schedule property, forming part of the first schedule property, by invoking section 6 of the Specific Relief Act. The plaintiffs claimed that after retirement from the work, they were in possession and enjoyment of the property. The plaintiffs' mother executed an unregistered Will bequeathing the property in favour of the plaintiffs and also died in 1989. The defendants forcibly took possession of the 2nd schedule property on 18.06.2000 and the complaint given to the police also did not yield any result.

6. The learned counsel for the revision petitioners contended that the court below erred in holding that the respondents are entitled to the relief sought for under section 6 of the Specific Relief Act relating to the alleged dispossession. It also failed to note that the claim of the possession on the side of the respondents is on the basis of unprobated and unregistered Will. It also overlooked that in the absence of the Will, the petitioners, who are the children of brother of the respondents are all entitled to a share and as such, the revision petitioners also will be deemed to be in possession of the entire property and hence, section 6 of the Specific Relief is not applicable. The court below also erred in relying upon the telephone bill, voters list and notices issued by the Urban Land Tax Authorities. The court below also erred in placing reliance upon the documents filed on the side of the plaintiffs when they came into existence long after the dispute arose between the parties. It also failed to advert to the directions issued by this Court in CRP No.1176 of 2001.

7. It is settled position of law that to succeed in a summary suit for restitution to possession under section 6, the plaintiffs have to establish that they were in exclusive possession of the disputed property, that the disputed property is an immovable property, that the plaintiff was dispossessed within six months from the date of the suit, that the dispossession was effected without the consent of the plaintiffs, that the dispossession was effected otherwise than under due course of law and that the dispossession is by one other than the Government. The question

of title to the property cannot be gone into in such type of suit. The only question that has to be found out is whether the plaintiffs were in actual possession of the property and they had been dispossessed except in accordance with law. Number of documents have been filed on behalf of the plaintiffs to show that they were in possession and enjoyment of the property. The telephone bills, voters identity card and ration card have been filed to prove their residence. These documents have been considered by the court below and gave a finding that the plaintiffs were in possession of the property.

8. The learned counsel for the revision petitioners contended that there was no dispossession. They have filed number of documents and all these documents have not been considered by the court below. The trial court also came to the conclusion that the possession of these revision petitioners in the property has not been proved before 17.06.2000. The documents filed by them disclosed that they are in possession only after 17.06.2000. The suit was also brought within six months from the date of dispossession. The suit was filed on 03.07.2000 and the alleged date of dispossession was 17.06.2000.

9. The learned counsel for the revision petitioners further contended that based upon the Will only, the plaintiffs claimed that they are in possession and enjoyment of the property. The Will has not been admittedly probated and proceedings are pending before the Sub Court, Tuticorin relating to the Will. Under the circumstance, it is not necessary to go into the truth and validity of the Will. The learned counsel further stated that for the Will they are also co-owners in the property and under the circumstance, the plaintiffs cannot claim the relief of recovery of possession. Only if the plaintiffs were able to prove that they were in possession of the property and they were illegally dispossessed and if the suit was filed within time, then alone they can succeed. The plaintiffs have positively established that they have been in possession and enjoyment of the property before 17.06.2000 and only by virtue of trespass, the revision petitioners have got into possession of the property. Now, the plaintiffs have been dispossessed from using the toilet, verandah, etc., and it is shown as the 2nd schedule of property. The remedy under section 6 is of summary trial and its object is to prevent self-help and to discourage people from adopting any means fair or foul to dispossess

a person unless dispossession was in due course of law or with consent.

10. The learned counsel for the petitioners contended that the observation made in CRP No.1176 of 2001 has not been complied with. This civil revision petition has been filed by the plaintiffs in the suit aggrieved against the order for appointment of an Advocate Commissioner. Even in the order of that revision petition, it is stated that as the evidence had already commenced, the stage for deciding the issue relating to the valuation of the suit can be considered only at the end of the trial. Now, this cannot be made use of by the revision petitioners. The learned counsel for the respondents relied on the decision reported in Kamalam Ammal & Others ..vs.. Minor Gnanaseelan & Others 2001 (2) LW 829 for the principle that 'a person aggrieved by the decision in suit under section 6 can institute a suit for establishing title and for injunction. For invoking section 115 of Civil Procedure Code in such case, there should be grave injustice. It has also been held in Kausalya ..vs.. Padmanav that in a suit for possession and finding perverse nor occasioned miscarriage of justice and interference under section 115 of Civil Procedure Code is unwarranted. Similar view has also been reiterated in M/s. I & M. Equipment Co. Pvt. Ltd. vs . N.L. Kanodia AIR 1986 Delhi 36 Sobhabati ..vs.. Lakshmi Chand Amirthalingam ..vs.. Lakshmanaswami Mudaliar 72 L.W.361 Badri Das ..vs.. Mt. Dhanni and Padartha Amat ..vs.. Siba Sahu AIR 1933 Ori 92.

11. The court below has rightly come to the conclusion that the plaintiffs were in possession of the property and they were unlawfully dispossessed from the property and, as such, entitled to recovery of possession. The truth and validity of the Will and the question of title to the property can be decided by the parties in a separate suit. The trial court after analysing the entire material, rightly came to the conclusion and there is no material to come to the conclusion that there was any miscarriage of justice and hence, no interference is called for.

12. For the reasons stated above, the civil revision petition fails and is dismissed. No costs. Time for delivery one month. Consequently, CMP No.5410 of 2002 is closed.