

Qayamuddin and ors Vs. Jamil-ud-din and ors

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SooperKanoon Citation : sooperkanoon.com/977982

Court : Delhi

Decided On : Jul-08-2013

Judge : Rajiv Sahai Endlaw

Appellant : Qayamuddin and ors

Respondent : Jamil-ud-din and ors

Advocate for Def. : Ms. Amita Gupta, Mr. Ashok Mahipal

Advocate for Pet/Ap. : Mr. Nikhil Chhoker, Mr. Qayamuddin

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

8. h July, 2013 % + RFA 309/1997 QAYAMUDDIN & ORS Through: Appellants Mr. Nikhil Chhoker for Mr. Qayamuddin, Adv. versus JAMIL-UD-DIN & ORS Through: Respondents Ms. Amita Gupta, Adv. for R-7. Mr. Ashok Mahipal, Adv. for R-8. CORAM :HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J 1.Mr. Nikhil Chhoker proxy counsel for Mr. Qayamuddin stated to be Advocate for the appellant no.2 appears and seeks adjournment. None appears for the appellant no.1 and appellant no.3.

2. This being an appeal of the year 1997 and there being no cause disclosed for the adjournment sought, the same has been refused. A perusal of the order sheet also shows that adjournments were sought by Mr. Nikhil Chhoker, Advocate on

25th February, 2013 and 15th April, 2013. There is no reason to keep this appeal pending specially when the appellants themselves do not appear to be interested in pursuing the same.

3. The counsel for the respondent no.8 who alone besides the counsel for the respondent no.7 MCD appears, has been asked to address.

4. The counsel for the respondent no.8 has contended that the suit from which this appeal arises was filed under Section 6 of the Specific Relief Act, 1963 and under sub Section (3) thereof, no appeal lies against the order of dismissal thereof. He thus contends that this appeal is not maintainable.

5. Section 6 of the Act is as under:6. Suit by person dispossessed of immovable property.-(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. (2) No suit under this section shall be brought(a) after the expiry of six months from the date of dispossession; or (b) against the Government. (3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed. (4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

6. A perusal of the Trial Court record shows that the three appellants had filed the suit from which this appeal arises, For Declaration, Possession under Section 6 of Specific Relief Act, Damages and Injunction pleading that they had on 11th November, 1996 been forcefully dispossessed without due process of law from property bearing not B-93, Main Road, Braham Puri, Delh

053. built up on an area of 175/180 sq. yds. It was expressly stated in para 6 of the plaint that the appellants being in joint possession could not be dispossessed against their will and consent and without due process of law because Section 6 of the Act does not make any distinction between a joint possession and an exclusive possession. Reliefs of declaration that the forcible dispossession of the appellants/plaintiffs was illegal, unwarranted and without due process of law, and

of recovery of possession of the premises from which appellants/plaintiffs were dispossessed were claimed. It was further pleaded that the defendants no.1 to 4 in the suit were planning to sell the property and had also started raising illegal construction thereon and on the basis of the said pleas the reliefs of injunction restraining the defendants from selling or parting with possession of the property or from raising any construction thereon was claimed; damages of Rs.2,43,000/- on account of forcible dispossession and of Rs.5,000/- per month from the date of institution of the suit and till restoration of possession, were also claimed.

7. The defendants in the suit applied under Order VII Rule 11 of the CPC inter alia pleading that the appellants had filed the suit under Section 6 of the Act and the reliefs as claimed of injunction and damages could be made in the plaint.

8. The appellants filed a reply to the said application and in which they did not deny the suit to be under Section 6 of the Act but pleaded that the other reliefs claimed were incidental or consequential to the relief of possession claimed under Section 6 of the Act.

9. The learned Addl. District Judge has allowed the aforesaid application under Order VII Rule 11 of the CPC and held that Section 6 of the Act under which the suit had been filed is not meant for declaration of right over the property. Axiomatically, the suit has been dismissed.

10. The appellants in the memorandum of appeal have not controverted the filing of the suit for possession under Section 6 of the Act but have in para 3.5 stated that the suit, besides on the basis of Section 6 of the Act is also for other reliefs pertaining to other causes of action categorically averred.

11. There is thus no doubt that the suit, from which this appeal arises, in so far as for the relief of possession, was instituted definitely under Section 6 of the Specific Relief Act. The bar under sub Section (3) of Section 6 is unequivocal i.e. that no appeal lies from any order or decree passed in any suit instituted under Section 6. This appeal, in so far as against the dismissal of the relief claimed in the suit of recovery of possession, is not maintainable.

12. The question which arises is whether the appeal can be said to be maintainable in so far as against the dismissal of the reliefs of declaration, damages and injunction claimed in the said suit.

13. In my opinion the same also cannot be said to be maintainable. The reliefs of declaration, damages and injunction are closely intertwined to the relief of possession and rather as the appellants themselves as aforesaid have admitted, are incidental or consequential to the main relief claimed of possession under Section 6 of the Act. The suit for the said reliefs without the relief of possession would not even be maintainable. As far as the relief of declaration is concerned, though the title of the suit undoubtedly shows the same to be also for declaration but the declaration claimed is also of the forceful dispossession alleged being illegal unwarranted and without due process of law. Once the appeal against the dismissal of the suit for recovery of possession under Section 6 of the Act is not maintainable, the question of considering the grant of the relief of declaration of the dispossession being illegal does not arise.

14. It may also be stated that the remedy under Section 6 of the Specific Relief Act is a summary remedy against dispossession otherwise than in due process of law, where the only question to be adjudicated is of such dispossession and without adjudicating any question of title and which adjudication takes time. The dispossession without due process of law pleaded by the appellants/plaintiffs is of 11th November, 1996; the suit was filed on 11th December, 1996 and dismissed as aforesaid on 11 th July, 1997. This appeal remained pending for nearly sixteen years, largely due to appellants not acting with promptitude and repeatedly seeking adjournments. Sub Section (4) of Section 6 clarifies that dismissal of a suit under Section 6 does not bear suing again for the relief of possession on the basis of title. It is not deemed appropriate to now, after seventeen years, relegate the applicants to the remedy under Section 6 which as aforesaid is summary in nature.

15. Whichsoever way one looks at, the appeal is not maintainable and is dismissed; however in the circumstances no costs. Decree sheet with drawn up. RAJIV SAHAI ENDLAW, J JULY 8 2013 pp..