

Maria Margadia Sequeria Fernandes & Ors vs Erasmo Jack De Sequeria (D) Tr.Lrs.& Ors on 21 March, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1727, 2012 AIR SCW 2162, 2012 (3) AIR BOM R 857, 2012 (5) SCC 370, (2012) 92 ALL LR 251, (2012) 2 CIVILCOURTC 344, (2013) 1 RENTLR 338, (2012) 2 RAJ LW 1765, (2012) 2 ICC 413, (2012) 3 SCALE 550, AIR 2012 SC (CIV) 1201, (2012) 1 CLR 731 (SC), (2012) 3 KCCR 181, (2012) 3 MAD LJ 1202, (2012) 4 ANDHLD 1, (2012) 2 ALL RENTCAS 325, (2012) 3 MAD LW 111, (2012) 1 ORISSA LR 945, (2012) 116 REVDEC 318, (2012) 1 WLC(SC)CVL 630, (2012) 113 ALLINDCAS 212 (SC), (2012) 4 CIVLJ 494, (2012) 4 ALL WC 3645, 2012 (2) KLT SN 46 (SC), (2012) 4 BOM CR 75

Bench: Deepak Verma, H.L. Dattu, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2968 OF 2012

(Arising out of SLP (C) No. 15382 of 2009)

Maria Margarida Sequeria Fernandes and Others ...Appellants

Versus

Erasmo Jack de Sequeria(Dead) through L.Rs. ...Respondents

JUDGEMENT

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal emanates from the judgment and order dated 5.5.2009 passed by the High Court of Bombay, Bench at Goa in Civil Revision Application No.3 of 2009.

3. Appellant No.1 and respondent No.1, Erasmo Jack de Sequeira (now dead) were sister and brother, hereinafter referred to as appellant and respondent respectively.

4. According to the appellant, she is the sole owner and is in exclusive possession of the suit property. Her title of the said suit property was clearly admitted, and never disputed by the respondent, Erasmo Jack de Sequeira. According to the appellant, the suit property was given to her brother as a caretaker. The respondent has kept appellant, his own sister, out of her suit property for about two decades by suppressing relevant material and pertinent information from the Court and abusing the process of law.

5. Both the appellant and the respondent hail from the State of Goa and belong to one of the leading and well known families of Goa. The father of the appellant and the respondent, Dr. Jack D. Sequeira was an affluent businessman and a well-known politician of Goa. Dr. Sequeira, during his lifetime, gave a number of properties worth crores of rupees to the respondent and also gave some properties to the appellant and her sisters. The respondent was given a soft drink factory at Goa, mining leases of iron ore, agricultural lands and residential plots including one situated at Dona Paula, which is located next to the Governor's House. Though the respondent was given properties worth several crores of rupees, he still eyed on a small property which the appellant purchased through Court auction after paying full sale consideration. The respondent-

brother of the appellant was also a very influential and important Member of Parliament. He was also very active in the local politics in Goa.

6. The appellant urged that the suit property originally belonged to her grandmother. Under the Portuguese Law, her (grandmother's) children, i.e. two sons and a daughter (the appellant's father, uncle and aunt) got 1/3rd share each in the said suit property. The suit property of her grandmother was put to auction and this suit property in question was purchased in auction by the appellant. In the Inventory Proceedings No. 1075/935 in the year 1968, she became the exclusive owner of the suit property. Admittedly, the appellant has placed a certified copy of the order of the Civil Judge, Senior Division at Panaji dated 27th May, 1972 issued in favour of the appellant. According to the appellant, the possession and title of the suit property in favour of the appellant is established from the judgment of the Inquiry Officer of City Survey Tiswadi, Panjim, Goa. The said order was not only passed in the presence of the respondent, but also in the presence of his Attorney, Rodrigues who was also a senior executive officer of the respondent. The relevant portion of that judgment is as under:-

"The claim put forth by Shrimati Maria Teresa de Sequeria from Panaji, in respect of Chalta No.14 of P.T. Sheet 65 was inquired into and it was found that the same belongs to the said Maria Teresa de Sequeria in view of Inventory Proceedings No.9-1968 [1075-935] - vide Certificate issued by the Court of Civil Judge Senior Division, Panaji dated 27.5.72 and as such her title and possession to the Chalta No.14 of P.T. Sheet No.65 is confirmed."

7. According to the appellant, she obtained the exclusive title of the plot and the house in question.

8. It may be pertinent to mention that the respondent had even participated in the said Court proceedings on behalf of his handicapped aunt, Edna May Sequeria as a guardian and received a cheque on her behalf. The appellant had deposited Rs.40,000/-, the owelty money in the said Court proceedings which became payable on account of the purchase of the said house. The said suit property stood registered in Panaji Municipal Council in the name of the appellant. House tax was paid by the appellant to the Municipality on self-

occupation basis. Further, it is submitted that the possession of the suit property always remained with the appellant.

9. The Panaji Municipal Council, Goa issued a certificate showing that possession of the suit premises was with the appellant and the house tax of the suit property was paid by her and she was the recorded owner of the same. According to the appellant, the respondent himself had acknowledged possession and title of the suit property in favour of the appellant.

10. The appellant submitted that she got married on 8.9.1974 to an Officer of the Indian Navy who was posted from time to time in different places in India. She also submitted that the respondent - her brother requested her that as his office is just adjacent to the suit property, therefore, it would be convenient for him to run his office and to keep an eye on the suit property of the appellant. Therefore, the suit property was given to the respondent only as a caretaker.

11. The respondent executed a leave and licence agreement in the name of his wife to shift with his family out of the suit property completely on 1.4.1991 to Campo Verde Apartments at Caranzalem in Goa. The leave and licence agreement executed by the respondent's wife for the new house wherein the respondent and his family shifted on 1.4.1991 and thereafter got the agreement renewed on 7.3.1992. The respondent also owned one flat in Goa and occupied on 17.4.1991.

12. According to the appellant, the respondent handed over the suit property to his sister Maria in the first week of May, 1991 and requested her that some items which were already lying in the suit property which the respondent did not immediately require in his new place may be kept in the suit property. According to the appellant, her brother before shifting to the tenanted flat, handed over the keys of the house to the appellant. The appellant did not take any receipt from her brother or click a photograph to create evidence showing handing over of the custodian possession of the suit property.

The respondent shifted to his new flat and the suit property was lying almost vacant because the appellant along with her husband was living outside Goa on his different official postings.

13. According to the appellant, the details of electricity, water and telephone bills clearly demonstrate that the house was locked and the small amounts payable in the said months, i.e., August, September, October and November in the year 1991, February 1992 also showed very nominal payments of Rs.30/-, Rs.33/-, Rs.68/- which conclusively proved that a house comprising of several rooms, drawing, dining, bathrooms, verandah, lawns etc. was lying vacant.

14. On 20.5.1992, the appellant returned with her family to Goa and occupied and enjoyed the said suit property. The appellant submitted that she has a valid title/ownership and was in possession of the suit property and she could not be dispossessed by a Court in a suit for injunction. The appellant submitted that under Section 6 of the Specific Relief Act, the appellant could not have been legally compelled to hand over the possession to the respondent. It may be pertinent to mention that the respondent had filed a suit for injunction before the Trial Court. The Trial Court granted injunction in favour of the respondent and the same was upheld by the High Court in the impugned judgment in Civil Revision Application.

15. According to the appellant, the impugned judgment of the High Court by which the judgment of the Trial Court was affirmed is totally contrary to the law laid down by this Court in *Mahabir Prasad Jain v. Ganga Singh* (1999) 8 SCC 274.

It was also asserted by the appellant that this Court in the aforementioned case has laid down the parameters of Section 6 of the Specific Relief Act, 1963. In the instant case, the Courts below were oblivious of the principle under Section 6 of the Specific Relief Act. The appellant urged that the respondent's suit for injunction was not maintainable as he could not claim to be in lawful and legal possession of the premises at all. The appellant argued that the Courts below have missed the main issue as the respondent was merely in custody of the house on behalf of the appellant. According to her, a caretaker can never sue a valid title-holder of the property.

16. The appellant further urged that a caretaker's possession can never be a possession of individual's right and no such suit for injunction under Section 6 of the Specific Relief Act was maintainable. The appellant contended that the respondent returned the keys of the suit property sometime in May 1991. The appellant asserted that the respondent had manipulated the system and collected false and fabricated evidence in the form of Panchnama in collusion with the local police and was designed to throw out the appellant from her own house.

17. On 17.6.1992, the respondent filed a suit for permanent and mandatory injunction in the Court of Civil Judge, Senior Division at Panaji as a Special Civil Suit No.131/92/A. On 22.6.1992, an ex-parte order for depositing the keys was passed while the appellant and her family members were living in the suit premises. The Trial Court decreed the suit.

18. According to the appellant, the impugned judgment of the High Court is contrary to the ratio of the judgment of this Court in *Rame Gowda (dead) by LRs. v. M. Varadappa Naidu (dead) by LRs.*

and Another (2004) 1 SCC 769 wherein a three-Judge Bench of this Court has observed that possession is no good against the rightful owner and that the assumption that he is in peaceful possession will not work and cannot operate against the true lawful owner.

19. Reliance has also been placed by the appellant on *Southern Roadways Ltd., Madurai v. S.M. Krishnan* (1989) 4 SCC 603 wherein this Court has held that it is the settled law that agent has no possession of his own and caretaker's possession is the possession of the principal. This Court has taken the view that possession of the agent is the possession of the principal and in view of the fiduciary relationship, the agent cannot be permitted to claim his own possession. Thus, according to the appellant, the respondent had no right, title and/or interest in the suit property and was not in lawful possession. Therefore, the suit for injunction under Section 6 of the Specific Relief Act is totally misconceived. The appellant contended that the High Court in the impugned judgment has gravely erred in affirming the judgment of the Trial Court.

20. According to the case of the respondent, he was permitted to live in the suit premises because of the family arrangement. The respondent remained in possession of the suit property for several years and hence he cannot be dispossessed without following due process of law.

21. It is also submitted by the respondent that he was in possession of the suit premises for 28 years and was forcibly dispossessed on 15.6.1992. The respondent also submitted that he never conceded that the title of the suit property was with the appellant. He also submitted that it is contrary to the records that the respondent was a caretaker.

22. The learned counsel for the parties reiterated the submissions made before the Courts below. The appellant submitted that she is a helpless and hapless sister of the respondent who has been kept out from her own house for more than two decades. The appellant is the owner of the suit property which is evident from the Certificate of the Probate Proceedings known as Inventory Proceeding No.1075/935.

She further submitted that the respondent, her brother, was a party in the said Probate Proceedings where the appellant acquired the title of the suit property on 27.5.1972. The respondent collected the sale consideration amount on 17th March, 1972 vide Cheque No.33559 drawn on Bank of India on behalf of his aunt in the auction proceedings.

23. The appellant submitted that the City Civil Court held that the appellant is the owner of the suit property and has the title and possession of the same which was never challenged by the respondent. The appellant also submitted that apart from the title of the suit property, house tax records and wealth tax records indicate that she was and continued to be the owner of the suit property. She further submitted that the utility bills of electricity, water and telephone were of minimal amount which show that the respondent had never resided in the suit premises. The appellant submitted that the finding of the Trial Court that the appellant had no funds to purchase the property was contrary to record. The High Court has also erroneously affirmed the findings of the Trial Court.

24. The appellant urged that the suit filed by the respondent is not based on title. The family arrangement, as alleged by the respondent, is neither pleaded nor proved. The appellant asserted that no suit under Section 6 of the Specific Relief Act lies against the true owner. The appellant submitted that a caretaker, agent, guardian etc. cannot file a suit under Section 6 of the Specific Relief Act.

25. According to law laid down by this Court in Rame Gowda (dead) by LRs. (supra), it is the settled legal position that a possessory suit is good against the whole world except the rightful owner. It is not maintainable against the true owner.

26. This Court in Anima Mallick v. Ajoy Kumar Roy and Another (2000) 4 SCC 119 held that where the sister gave possession as gratuitous to the brother, this Court restored possession to the sister as it was purely gratuitous basis and the sister could have reclaimed possession even without knowledge of the brother.

27. According to the appellant, this Court in Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others (2004) 3 SCC 137 has observed that no injunction can be granted against the true owner and Section 6 of the Specific Relief Act cannot be invoked to protect the wrongdoer who suppressed the material facts from the Courts.

28. The appellant submitted that Section 41 of the Specific Relief Act debars any relief to be given to such an erring person as the respondent who is guilty of suppression of material facts.

29. The appellant relied on Automobile Products India Limited v. Das John Peter and Others (2010) 12 SCC 593 and Ramrameshwari Devi and Others v. Nirmala Devi and Others (2011) 8 SCC 249 where the Court has laid down that dilatory tactics, misconceived injunction suits create only incentives for wrongdoers.

30. The appellant submitted that for more than two decades the appellant is without the possession of her own house despite the fact that she has valid title to the suit property.

Truth as guiding star in judicial process

31. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.

The truth should be the guiding star in the entire judicial process.

32. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth.

That is their mandate, obligation and bounden duty.

33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In *Mohanlal Shamji Soni v. Union of India* 1991 Supp (1) SCC 271, this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-

whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In *Ritesh Tewari and Another v. State of U.P. and Others* (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under:

"Every trial is voyage of discovery in which truth is the quest"

37. This Court observed that the power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth.

38. Lord Denning, in the case of *Jones v. National Coal Board* [1957] 2 QB 55 has observed that:

"In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries."

39. Certainly, the above, is not true of the Indian Judicial system. A judge in the Indian System has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

40. Lord Denning further observed in the said case of *Jones* (supra) that "'It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth..."

41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimized.

42. In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges. Section 30 CPC reads as under:-

30. Power to order discovery and the like. -

Subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party, -

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit

43. "Satyameva Jayate" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad.

Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides."

44. Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all Courts need to play an active role. The Committee observed thus:

2.2..... In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence

that they decide to present to the court.

The trial is oral, continuous and confrontational.

The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court....."

2.15 "The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation.

During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth....."

2.16.9. Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice.

Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.

45. In Chandra Shashi v. Anil Kumar Verma (1995) 1 SCC 421 to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

46. Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.

47. In James v. Giles et al. v. State of Maryland 386 U.S. 66, 87, S.Ct. 793), the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the defendants and use of perjured testimony held that such rules existed for a purpose as a necessary component of the search for truth and justice that judges, like prosecutors must undertake. It further held that the State's obligation under the Due Process Clause "is not to convict, but to see that so far as possible, truth emerges."

48. The obligation to pursue truth has been carried to extremes. Thus, in *United States v. J. Lee Havens* 446 U.S. 620, 100 St.Ct.1912, it was held that the government may use illegally obtained evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of "arriving at the truth, which is a fundamental goal of our legal system".

49. Justice Cardozo in his widely read and appreciated book "The Nature of the Judicial Process" discusses the role of the judges. The relevant part is reproduced as under:-

"There has been a certain lack of candour," "in much of the discussion of the theme [of judges' humanity], or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations." I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."

50. Aharon Barak, President of Israeli Supreme Court from 1995 to 2006 takes the position that:

"For issues in which stability is actually more important than the substance of the solution - and there are many such case - I will join the majority, without restating my dissent each time. Only when my dissenting opinion reflects an issue that is central for me - that goes to the core of my role as a judge - will I not capitulate, and will I continue to restate my dissenting opinion: "Truth or stability - truth is preferable".

"On the contrary, public confidence means ruling according to the law and according to the judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the judge is doing justice within the framework of the law and its provisions. Judges must act - inside and outside the court - in a manner that preserves public confidence in them. They must understand that judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth."

51. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.

Pleadings

53. Pleadings are the foundation of litigation. In pleadings, only the necessary and relevant material must be included and unnecessary and irrelevant material must be excluded.

Pleadings are given utmost importance in similar systems of adjudication, such as, the United Kingdom and the United States of America.

54. In the United Kingdom, after the Woolf Report, Civil Procedure Rules, 1998 were enacted. Rule 3.4(2) has some relevance and the same is reproduced as under:

(2) The Court may strike out a statement of case if it appears to the Court -

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or Court order.

55. In so far as denials are concerned, Rule 16.5 provides that where the defendant denies an allegation, he must state his reasons for doing so, and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

56. The various practice directions and prescribed forms give an indication of the particulars required. In fact, the 1998 Rules go further and provide for summary judgment. Rule 24.2 of the Civil Procedure Rules, 1998 reads as under:

24.2 The Court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if-

(a) it considers that-

(i) that claimant has no real prospect of succeeding on the claim or issue; or

(ii) that defendant has no real prospect of successfully

defending the claim or issue;

and

(b) there is no other compelling reason
why the case or issue should be disposed
of at a trial.

57. After enactment of the Civil Procedure Rules 1998, much greater emphasis is given on pleadings in the United Kingdom.

Similarly, in the United States of America, much greater emphasis is given on pleadings, particularly after two well known decisions of the US Supreme Court, viz., *Bell Atlantic Corporation et al. v. William Twombly* [550 U.S. 544, 127 S.Ct. 1955] and *John. D. Ashcroft, Former Attorney General, et al. v. Javaid Iqbal et al.* [556 U.S. 662, 129 S.Ct.1937].

58. In *Bell Atlantic* (supra), the Court has observed that factual allegations must be enough to raise a right to relief above the speculative level. The pleadings must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action.

59. In *Ashcroft* (supra) the majority Judges of the U.S. Supreme Court observed as under:

"Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as a true, we are not bound to accept as true a legal conclusion couched as a factual allegation only a complaint that states a plausible claim for relief survives a motion to dismiss."

60. The aforementioned two decisions of the U.S. Supreme Court re-emphasized and reiterated the importance of pleadings.

61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62. Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another such as in a mortgage or lease. A licensee holds possession on behalf of the owner.

63. Possession is important when there are no title documents and other relevant records before the Court, but, once the documents and records of title come before the Court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.

64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

65. A suit can be filed by the title holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

66. A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession.

If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there.

Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

(a) who is or are the owner or owners of the

property;

(b) title of the property;

(c) who is in possession of the title documents

(d) identity of the claimant or claimants to

possession;

(e) the date of entry into possession;

(f) how he came into possession - whether he

purchased the property or inherited or got the same in gift or by any other method;

(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;

(h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;

(i) who are the persons in possession/occupation or otherwise living with him, in what capacity;

as family members, friends or servants etc.;

(j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and

(k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise.

Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

76. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

77. Dr. Arun Mohan in his classic treatise on "Justice, Courts and Delays" has dealt with these fundamental principles of law exhaustively.

78. The Court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.

79. 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.

Suit for Mandatory Injunction

80. It is a settled principle of law that no one can take law in his own hands. Even a trespasser in settled possession cannot be dispossessed without recourse of law. It must be the endeavour of the Court that if a suit for mandatory injunction is filed, then it is its bounden duty and obligation to critically examine the pleadings and documents and pass an order of injunction while taking pragmatic realities including prevalent market rent of similar premises in similar localities in

consideration. The Court's primary concern has to be to do substantial justice. Even if the Court in an extraordinary case decides to grant ex-parte ad interim injunction in favour of the plaintiff who does not have a clear title, then at least the plaintiff be directed to give an undertaking that in case the suit is ultimately dismissed, then he would be required to pay market rent of the property from the date when an ad interim injunction was obtained by him. It is the duty and the obligation of the Court to at least dispose off application of grant of injunction as expeditiously as possible. It is the demand of equity and justice.

Due process of Law

81. Due process of law means nobody ought to be condemned unheard. The 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 for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.

82. The High Court of Delhi in a case *Thomas Cook (India) Limited v. Hotel Imperial* 2006 (88) DRJ 545 held 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' 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."

83. We approve the findings of the High Court of Delhi on this issue in the aforesaid case.

False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount.

This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in Ramrameshwari Devi and Others (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation.

The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

Grant or refusal of an injunction

86. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness.

87. The safe and better course is to give short notice on injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to

grant an ex-parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex-parte ad interim injunction. The Court, in order to avoid abuse of the process of law may also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the Court must take into consideration the pragmatic realities and pass proper order for mesne profits. The Court must make serious endeavour to ensure that even-handed justice is given to both the parties.

88. Ordinarily, three main principles govern the grant or refusal of injunction.

- a) prima facie case;
- b) balance of convenience; and
- c) irreparable injury, which guide the Court in this regard.

89. In the broad category of prima facie case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play vital role.

Mesne Profits

90. Experience has shown that all kinds of pleadings are introduced and even false and fabricated documents are filed in civil cases because there is an inherent profit in continuation of possession. In a large number of cases, honest litigants suffer and dishonest litigants get undue benefit by grant or refusal of an injunction because the Courts do not critically examine pleadings and documents on record.

In case while granting or refusing injunction, the Court properly considers pleadings and documents and takes the pragmatic view and grants appropriate mesne profit, then the inherent interest to continue frivolous litigation by unscrupulous litigants would be reduced to a large extent.

91. The Court while granting injunction should broadly take into consideration the prevailing market rentals in the locality for similar premises. Based on that, the Court should fix adhoc amount which the person continuing in possession must pay and on such payment, the plaintiff may

withdraw after furnishing an undertaking and also making it clear that should the Court pass any order for reimbursement, it will be a charge upon the property.

92. The Court can also direct payment of a particular amount and for a differential, direct furnishing of a security by the person who wishes to continue in possession. If such amount, as may be fixed by the Court, is not paid as security, the Court may remove the person and appoint a receiver of the property or strike out the claim or defence. This is a very important exercise for balancing equities. Courts must carry out this exercise with extreme care and caution while keeping pragmatic realities in mind and make a proper order of granting mesne profit. This is the requirement of equity and justice.

93. In the instant case, if the Courts below would have carefully looked into the pleadings, documents and had applied principle of the grant of mesne profit, then injustice and illegality would not have perpetuated for more than two decades.

94. We have heard the learned counsel for the parties at length and perused the relevant judgments cited at the Bar. In the instant case, admittedly, the respondent did not claim any title to the suit property. Undoubtedly, the appellant has a valid title to the property which is clearly proved from the pleadings and documents on record.

95. The respondent has not been able to establish the family arrangement by which this house was given to the respondent for his residence. The Courts below have failed to appreciate that the premises in question was given by the appellant to her brother respondent herein as a caretaker.

The appellant was married to a Naval Officer who was transferred from time to time outside Goa. Therefore, on the request of her brother she gave possession of the premises to him as a caretaker. The caretaker holds the property of the principal only on behalf of the principal.

96. 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.

97. This Court in *Puran Singh v. The State of Punjab* (1975) 4 SCC 518 held that an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession.

98. This Court in *Mahabir Prasad Jain (supra)* has held that the possession of a servant or agent is that of his master or principal as the case may be for all purposes and the former cannot maintain a suit against the latter on the basis of such possession.

99. In *Sham Lal v. Rajinder Kumar & Others* 1994 (30) DRJ 596, the High Court of Delhi held thus:

"On the basis of the material available on record, it will be a misnomer to say that the plaintiff has been in 'possession' of the suit property. The plaintiff is neither a tenant, nor a licensee, nor a person even in unlawful possession of the suit property. Possession of servant is possession of the real owner. A servant cannot be said to be having any interest in the suit property. It cannot be said that a servant or a chowkidar can exercise such a possession or right to possession over the property as to exclude the master and the real owner of the property from his possession or exercising right to possession over the property.

Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider

(i) the person possessing, (ii) the things possessed and, (iii) the persons excluded from possession. A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and & master."

100. The ratio of this judgment in Sham Lal (supra) is 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 from staying away from his own property.

101. Principles of law which emerge in this case are crystallized 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 to 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.

102. In this view of the matter, the impugned judgment of the High Court as also of the Trial Court deserve to be set aside and we accordingly do so. Consequently, this Court directs that the possession of the suit premises be handed over to the appellant, who is admittedly the owner of the suit property.

103. In the peculiar facts and circumstances of this case, the legal representatives of the respondent are granted three months time to vacate the suit premises. They are further directed that after the expiry of the three months period, the vacant and peaceful possession of the suit property be handed over to the appellant. The usual undertaking to this effect be filed by the legal representatives of the respondent in this Court within two weeks.

104. The legal representatives of the respondent are also directed to pay Rs.1,00,000/- (Rupees one Lakh) per month towards the use and occupation of the premises for a period of three months. The said amount for use and occupation be given to the appellant on or before the 10th of every month. In case the legal representatives of the respondent are not willing to pay the amount for use and occupation as directed by this Court, they must hand over the possession of the premises within two weeks from the date of this judgment. Thereafter, if the legal representatives of the respondent do not hand over peaceful possession of the suit property, in that event, the appellant would be at liberty to get the possession of the premises by taking police help.

105. As a result, the appeal of the appellant is allowed. In the facts and circumstances of the case, the respondents are directed to pay a cost of Rs.50,000/- to the appellant within four weeks. (We have imposed the moderate cost in view of the fact that the original respondent has expired). Ordered accordingly.

.....J. (Dalveer Bhandari)J. (H.L. Dattu)
.....J. (Deepak Verma) New Delhi;

March 21, 2012