

# **D.Gnanasekaran vs Viswanathan Ramachandran on 3 January, 2018**

**Author: R.Subramanian**

**Bench: R.Subramanian**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON :07.12.2017

JUDGMENT PRONOUNCED ON : 03.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.37 of 2009

1.D.Gnanasekaran  
2.K.Kamalanathan

... Plaintiffs

Vs.

1.Viswanathan Ramachandran  
2.Dr.Rajyalakshmi Ramachandran  
3.Kannabiran

... Defendants

PRAYER : Complaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of  
(a)Directing the defendants herein to deliver possession of the suit property comprised  
(b)for costs of the suit.

For Plaintiffs : Mr.M.Balasubramanian

For Defendants : Mr.S.Parthasarathy,  
Senior Counsel  
for Mr.M.Ganesan for D1 and D2

Mr.B.Manivannan for D3.

J U D G M E N T

The suit is filed under Section 6 of the Specific Relief Act seeking possession of the suit property.

The claim of the plaintiffs is as follows:

2. The ancestors of the 1st plaintiff had purchased vast extents of lands in Zamin Mambalam and Mylapore Villages in the year 1923. It is claimed that they had acquired the lands in Paimash Nos.669 and 670 in Zamin Mambalam Village. The Madras Corporation had acquired vast extent of lands in Zamin Mambalam Village for development of road and other infrastructural facilities. Certain lands belonging to the ancestors of the 1st plaintiff were also acquired during the said acquisition. According to the plaintiffs, by G.O.Ms.No.735 dated 28.08.1923, certain lands belonging to the ancestors of the 1st plaintiff were excluded from the acquisition. Survey Nos.39 to 76 in Zamin Mambalam Village (Old Survey No.55/3 and 54) were, according to the plaintiffs, excluded from acquisition.

3. It is further claimed that Old Survey No.55/3 was assigned new Survey No.4867 in the year 1956. Subsequently, Old Survey No.55/3 was assigned Survey No.7039/2 of Zamin Mambalam Village. It is the further claim of the plaintiffs that the Northern boundary of the land that belonged to the 1st plaintiff's ancestors, belonged to the predecessors-in-title of the defendants 1 and 2 herein one Meenambal. The said Meenambal's land which was originally comprised in Survey No.7039 and later sub-divided and assigned Survey No.7039/1. The defendants 1 and 2 herein appears to have purchased the properties in Survey No.7039/1 in Zamin Mambalam Village of an extent of 2 grounds and odd from the said Meenambal. It is claimed that an extent of 5460 sq.ft. or thereabouts belonged to the family of the 1st plaintiff was comprised in Survey No.7039/2 which has been enjoyed by the family of the plaintiffs and the defendants had nothing to do with the property.

4. They would further plead that the 2nd plaintiff entered into a Registered Agreement of sale with the 1st plaintiff and his family members on 27.11.2006 in respect of the properties situate in Survey No.7039/2. It is claimed that on the date of the agreement the 2nd plaintiff was put in possession of the property. Since the 1st plaintiff did not comply with the terms of the agreement dated 27.11.2006, the 2nd plaintiff had filed a suit for specific performance in this Court in C.S.No.701 of 2008 and the same ended in a compromise on 12.09.2008. On 26.11.2006 the 2nd plaintiff had put up a board in the property mentioning about the decree passed in C.S.No.701 of 2008. It is claimed that the 2nd plaintiff removed bushes and cleaned the property and put up a small shed in October 2008. It is also claimed that a security staff was employed by the 2nd plaintiff at his cost through M/s.Faithful Security Services, Chennai. The salaries were also paid by him.

5. It is the further claim of the plaintiffs that the 2nd plaintiff applied for and

obtained a landline telephone connection to the shed on 11.11.2008. Electricity service connection was also obtained on 26.11.2008 in the name of the 2nd plaintiff for the said shed. While so, according to the plaintiffs, on 16.12.2008, the 2nd defendant visited the property and quarreled with the security personnel deployed by the 2nd plaintiff. He also lodged a police complaint before R4-Pondy Bazaar Police Station. It is claimed that the 2nd defendant had lodged a police complaint with a wrong description of the property and laid claim for the present suit.

6. It is also contended that the 3rd defendant, who as a higher police officer in the rank of Assistant Commissioner of police took personal interest in the complaint lodged by the 2nd defendant and by stepping into the shoes of the Station House Officer, registered a case against the 2nd plaintiff under Section 448 of I.P.C. It appears that the 2nd plaintiff had filed a suit for injunction against the defendants 1 and 2 before the City Civil Court on 17.12.2008 itself and notice was ordered by the learned VI Assistant judge, City Civil Court returnable by 06.01.2009. However, the 3rd defendant being Police officer took law into his own hands and dispossessed the plaintiffs on 18.12.2008 by pulling down the notice board put up by the second plaintiff and posted two securities for the suit property. Complaining that the 2nd plaintiff was dispossessed illegally by the defendants, the present suit had been filed seeking recovery of possession.

7. The defendants 1 and 2 filed a written statement contending that the plaintiffs were never in possession of the suit property to have been dispossessed on 18.12.2008 as alleged by them. According to them, the Survey number of the suit property is 7039/1 and not 7039/2 as claimed by the plaintiffs. It is also stated that the property of the defendants 1 and 2 measures 2 grounds and 1644 sq.ft. (6444 sq.ft.), while the measurement given in the plaint schedule is only 5460 sq.ft. ie., 2 grounds and 660 Sq.ft.

8. The defendants 1 and 2 would also assert title to the property claiming that the property originally belonged to one Karuppan Chettiar, who sold the same to one Mrs.Meenambal on 14.03.1946. The said Meenambal had sold the entire extent of property, 4 grounds 1600 sq.ft. comprised in Survey Nos.55/2 and 55/3 to Mrs.Jayant Iswrlal Choksey and Jayntilal Ratilal Shah vide sale deed dated 26.03.1951. The said purchasers under the sale deed dated 26.03.1951 had sold a portion measuring 2 grounds and 1644 sq.ft. which is the back side portion of the property with a strip of land serving as pathway from Venkataraman Street to one Putcha Viswanatha Sastry under the Sale Deed dated 06.09.1957. The said Putcha Viswanatha Sastry had put up construction as per the plan sanctioned by the Corporation of Madras. With a view to discharge the mortgage which was created by Putcha Viswanatha Sastry with Mylapore Hindu Permanent Fund Ltd., he sold the property to the vendor of the defendants 1 and 2 under the sale deed dated 26.08.1966.

9. The purchaser under the sale deed dated 26.08.1966 viz., one Jalma Nachia, in the year 1977 sold the property purchased by her under the sale deed dated 26.08.1966 to the defendants on 07.04.1997. Thus, the defendants had purchased the property for a valuable consideration of Rs.1,00,00,000/- (Rupees one crore only) after obtaining necessary No Objection certificate from the appropriate Authority under the Income Tax Act under Section 269-UL(1). Ever since purchase the defendants 1 and 2 are in possession of the property paying all public charges. The patta for the property has also been transferred in the names of the defendants from their predecessors-in-title.

10. It is also claimed by the defendants that subsequent to the purchase, they had let it out to various persons including the Chennai Mathematical Institute, which was tenant in the suit property from November 2000 to April 2003. The defendants who are Non Resident Indians residing in Nigeria wanted to settle down in Chennai. Therefore, they required the tenant to vacate, upon the tenant vacating in the year 2003, the electricity connection was disconnected by applying to the Tamil Nadu Electricity Board. The building in the suit property was also demolished after obtaining due approval from the Corporation of Madras. However, the outhouse which was an old structure of 40 years has been retained by the defendants and it is in their possession.

11. In fact, the defendants had opportunity in August 2008 to come to India and consulted an Architect for construction of a new building and performed Boomi Pooja in the month of August 2008. They had also submitted the building plans to the Corporation of Madras. It was during the interregnum between August 2008 and January 2009, the 2nd plaintiff attempted to trespass over the property by putting up board claiming title to the property. The attempted trespass by the 2nd plaintiff was prevented by the defendants with the timely intervention of the Police Officers and a case was registered against the 2nd plaintiff under Section 448 of Cr.P.C. Therefore, according to the defendants the plaintiffs were never in possession of the property to enable them to file suit under Section 6 based upon their previous possession.

12. They would also attack the compromise decree said to have been obtained by the 2nd plaintiff on 12.09.2008 as collusive one, stage managed to create title over the property. The very filing of the suit is termed as abuse of process of court by the defendants 1 and 2. On the above allegations the defendants 1 and 2 sought for dismissal of the suit.

13. The 3rd defendant who is Police Officer impleaded in his personal capacity has filed the separate written statement. He would narrate the incidents after which the FIR was registered on 19.12.2008. It is also contended by him that he was assigned the job of investigating about the case only on 29.12.2008 by the Deputy Commissioner of Police by his memo in C.No.51/DC TNR/memo/Genl/08. Therefore, according to the 3rd defendant, he had nothing to do with the investigation till 29.12.2008. Only upon the receipt of memo dated 29.12.2008, from

the Deputy Commissioner of Police the 3rd defendant had took up further investigation of the case from 30.12.2008. He would also narrate as to how the defendants had obtained title to the property and had demolished the house after obtaining necessary permission from the Corporation vide order No.DE/Da/92/05 dated 15.03.2005. The 3rd defendant would also deny the claim of the plaintiffs that the suit property formed part of the property that belonged to the ancestors of the 1st plaintiff which were exempted under G.O.Ms.No.735 dated 28.08.1923.

14. The sum and substance of the written statement of the 3rd defendant is that the plaintiffs were never in possession of the property at any point of time and therefore, there is no question of plaintiffs having been dispossessed illegally by the defendants 1 to 3. It is also contended by him that what was done by the police was to effectively prevent the attempted trespass by the plaintiffs. On the above contentions 3rd defendant would also seek dismissal of the suit.

15. On the above pleadings the following issues were framed by this Court:

1. Whether the above suit is maintainable against the defendants when the description of the suit schedule property is different from the property owned and possessed by the first and second defendants in respect of Survey Number and measurements?

2. Whether the plaintiffs had any possessory right over the suit property to seek relief under Section 6 of Specific Relief Act, 1963?

3. Whether the plaintiffs are entitled for the relief as prayed for under Section 6 of Specific Relief Act, 1963?

4. To what other relief the plaintiffs are entitled to?

16. At the time of trial, the 1st plaintiff was examined as PW1 and the 2nd plaintiff was examined as PW2. Exs.P1 to P13 were marked by the plaintiffs. The 2nd defendant was examined as DW1. One Sripathi who is the Registrar of Chennai Mathematical Institute which is a deemed University under Section 3 of UGC Act was examined as DW2. The 3rd defendant was examined as DW3. Exs.D1 to D21 were marked by the defendants.

Issue No.1:

17. In the schedule of property to the plaint the suit property is shown to be comprised in Old Survey No.55/3, New Survey No.7039/2, T.S.No.4867 in Block No.113 of Zamin Mambalam Village, bearing Door No.3, Venkatraman Street, Theagaraya Nagar, Chennai 17, with a small shed thereon. The documents that are produced by the plaintiffs would not establish title of the plaintiffs. The earliest

document produced by the plaintiffs is Ex.P1, it is the agreement of sale entered into between the 1st plaintiff and 4 others as vendors and the 2nd plaintiff as purchaser. The said registered sale agreement does not recite that the possession was handed over under the agreement to the plaintiff. Encumbrance Certificate, relating to the suit property for the period from 01.01.1987 to 14.12.2006 has been produced as Ex.P2. The compromise decree in CS.701 of 2008 has been produced as Ex.P3. Ex.P4 is the photograph of the suit property with the board that was erected by the 2nd plaintiff over the suit property. Ex.P5 is the receipt for payment of charges for provision of land line telephone issued by BSNL. Ex.P6 are receipts issued by the Tamil Nadu Electricity Board, acknowledging payment of certain amounts by the 2nd plaintiff there is no reference of property in question in Ex.P6. Ex.P7 is the receipt issued by M/s.Faithful Security Services for having received a sum of Rs.5243/-, the address of the 2nd plaintiff is shown as No.3, Venkataramn Street, T.Nagar, Chennai - 600 017 in the said receipt. Ex.P8 is the telephone bill for the period from 20.11.2008 to 30.11.2008. Ex.P9 is the CSR issued by the Pondy Bazar police station on 17.12.2008. Ex.P10 is the Xerox copy of the plaint filed by the 2nd plaintiff in OS.No.8864 of 2008 in the City Civil Court, Chennai. It is not in dispute that the said suit has been withdrawn subsequently. Ex.P11 is another receipt dated 01.01.2009 issued by M/s.Faithful Security Services to the 2nd plaintiff. This document is subsequent to the alleged disposition and about 4 days prior to the filing of the suit.

18. Ex.P12 is an unauthenticated Xerox copy of the notice issued under Section 9(3) and 10 of the Land Acquisition Act 1 of 1894 issued by the Special Land Acquisition Deputy Collector. This contains Survey Nos.56, 53/3, 55/3 and 54/3 and names of the pattadars is shown to be Sambasiva, Veerabhadra and Devaraja. This document does not contain any date. It is however claimed by the plaintiffs that this document is a notice received by their ancestors for an enquiry to be held on 26th September 1923. It is a notice under section 9(3) and 10 of the Land Acquisition Act 1 of 1894. Therefore, it is clear that a declaration relating to the acquisition of the property had been made even earlier under section 6 of the Act. Though the plaintiffs would claim that the acquisition proceeding were withdrawn subsequently there is no evidence for such withdrawal. Ex.P13 is the final report filed in the Criminal case.

19. A perusal of the above documents would show that none of the above documents relate to the title of the property. Of course, this suit is one under Section 6 and the question of title is not relevant for the purpose of dismissal of the suit. The plaintiffs are before the Court claiming that they have been wrongfully dispossessed by the defendants.

20. The defendants have produced the documents viz., sale deeds of the year 1946, 1951, 1957, 1966 and 1997 which have been marked as Ex.D1 to D4 and D7. Ex.D5 is the encumbrance certificate for the period from 01.01.1987 to 01.02.2009 in Survey No.7039/1. Ex.D6 is the no objection certificate issued by the Income Tax Department for sale of the property. Ex.D8 is the patta for the property situate in

Survey No.7039/1 in favour of Jalma Nachia, the vendor of the plaintiff. Ex.D9 is the patta that stand in the name of the plaintiffs, the said patta is in respect of land in Survey No.7039/1 and Door No.7/3 Venkatarama, Street, T.Nagar, Chennai - 17. Ex.D10 is the Corporation tax property book for Door No.3, Venkataraman Street, which stands in the name of the defendants 1 and 2. Ex.D11 are the receipts for payment of Corporation tax for the second half year 1998 to 1999 and the 1st and 2nd half years 1997 to 1998. Ex.D12 is the order passed by the Executive Engineer, Tamil Nadu Electricity Board, transferring the electricity service connection in respect of the premises at Door No.3, Venkataraman Street in favour of the defendants 1 and 2. Ex.D13 is the electricity card and receipts for payment of electricity charges issued by the Tamil Nadu Electricity Board. Ex.D14 is the receipts for payment of water tax and water charges by the defendants 1 and 2 to the Chennai Metropolitan Water Supply and Sewerage Board. Ex.D15 is rental agreement entered into between the 2nd defendant and one J.Vijayarani in respect of the suit property. Ex.D16 is the challan issued by the PWD. Ex.D17 is the order granting permission for demolition of building situate at Door No.3, Venkataraman Street, Chennai - 17. Ex.D18 is the copy of the FIR registered by the Police on 19.12.2008. Ex.D19 is the rental agreement entered into between the 1st defendant and the Chennai Mathematical Institute on 01.10.2002. Ex.D20 is the letter of authorization given by Chennai Mathematical Institute to DW2 to depose on behalf of the institute. Ex.D21 is the photocopy of the memorandum issued by the Deputy Commissioner of Police.

21. The claim of the plaintiffs is that the property comprised in old Survey No.55/3 New Survey No.7039/2 T.S.No.4867, Block No.113 of Zamin Mambalam Village, the property that is bearing Door No.3, Venkataraman Street, T.Nagar, Chennai - 17. But, the defendants would contend that the defendants had purchased those properties in 1997 and it can be seen that the property at Door No.3, Venkataraman Street, T.Nagar, Chennai - 17, originally formed part of 4 ground and 1600 sq.ft situate in Survey No.55/2 and 55/3. From the sale deed dated 14.03.1946 produced as Ex.D1 one Meenambal has purchased the above extent. Thereafter, she had sold the said entirety of the property to two persons viz., Jayant Iswrlal Choksey and Jayntilal Ratilal Shah on 26.03.1951.

22. The said predecessor viz., Jayant Iswrlal Choksey and Jayntilal Ratilal Shah had sold a portion measuring 2 grounds and 1644 sq.ft. which is the back side portion of the property with a strip of land serving as pathway from Venkataraman Street to one Putcha Viswanatha Sastry under the Sale Deed dated 06.09.1957. Therefore, the property which consisted 4 grounds and 1600 sq.ft was divided and portion of the property with a passage measuring about 2 ground 1644 sq.ft. was sold to Putcha Viswanatha Sastry in 1957 and the said Putcha Viswanatha Sastry put up construction in land and separate Door number was assigned to the same. The said Putcha Viswanatha Sastry, subsequently, on 26.08.1966 sold the property purchased by him to one Jalma Nachiya, who in turn sold the property purchased by her to the defendants 1 and 2 on 02.04.1997.

23. The claim of the plaintiffs is that the suit property is actually situate in Survey No.7039/2, but, the defendants would contend that the property belonging to them is situate in Survey No.7039/1. The revenue records that had been produced also would show that the property in question viz., the property in Door No.3, Venkatraman Street, T.Nagar, Chennai 17, measuring about 2 ground 1644 sq.ft with passage from Venkatraman Street has always been assigned Survey No.7039/1.

24. Of course, Mr.M.Balasubramanian, learned counsel appearing for the plaintiffs would contend that as per the sketch annexed to the final report by the police, the suit property which is shown to be with pathway connecting it to Venkatraman Street bears Survey No.7039/2. The said sketch is unsigned and it is not known as to what exactly are the boundaries of the survey number shown in the said sketch. On the other hand, the patta issued to Mrs.Jalma Nachiya has been produced by the defendants as Ex.D8. The said document issued on 13.11.1996 would show that the TS. number of the property with a passage from Venkatraman Street is 7039/1 and not 7039/2. The property in Survey No.7039/1 is situate on the north and the west of the suit property as per the sketch appended to Ex.D8. Patta issued to the defendants 1 and 2 has been produced as Ex.D9, the same also shows that the suit property is in Survey No.7039/1. Therefore, the revenue documents produced by the defendants would clearly point out that the suit property bears Survey No.7039/1 and not 7039/2 as alleged by the plaintiffs.

25. The plaintiffs who are claiming title, who set up a case on title over Survey No.7039/2 have come forward with the suit cleverly under section 6 claiming that the suit property bears Survey No.7039/2. The documentary evidence shows that the suit property is situate in Survey No.7039/1 and not in Survey No.7039/2 as claimed by the plaintiffs. The measurement of the properties also is different. In the plaint the plaintiffs would claim that the area of the suit property is about 5460 sq.ft. that is about 2 grounds 660 sq.ft. whereas from the revenue records as well as the sale deeds produced by the defendants it could be seen that the extent of the suit property is actually 2 grounds and 1644 sq.ft. this measurement claimed by the defendant also tallies with the revenue records as well as anterior sale deeds. Therefore, I find that the plaintiffs have not identified the suit property properly and correlated with the plaint schedule property. Issue No.1 is answered accordingly.

Issue Nos.2 and 3:

26. Section 6 of the Specific Reliefs Act reads as follows:

. 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.

27. In order to succeed in the suit for possession under Section 6, it is incumbent upon the plaintiffs to prove that they were in possession of the property and they were dispossessed except under due process of law. The plaintiffs claim to be in possession of the property and the documents relied upon by the plaintiffs to establish their possession are only the electricity bills, telephone bills and the receipts for payment of salary to the watch man. The telephone connection itself has been applied for by the 2nd plaintiff on 11.11.2008 as per Ex.P5. the 2nd plaintiff has also applied for obtaining electricity connection on 26.11.2008. The receipts issued by the Tamil Nadu Electricity Board do not show that they were for the suit property except the name of the plaintiff, there is no other detail in the said documents.

28. Insofar as the telephone bill is concerned it is for the period between 20.11.2008 and 30.11.2008. Of course that bears the address as No.3, Venkatraman Street, T.Nagar, Chennai 17. Ex.P7 and Ex.P11 are 2 receipts issued by M/s.Faithful Security Services, Chennai in the name of the 2nd plaintiff showing the address as No.3, Venkatraman Street, T.Nagar, Chennai 17, as the payment received for 2 security guards at Rs.3,500/- per month. Ex.P11 is the receipt obtained after the alleged dispossession on 18.12.2008 on 01.01.2009 which is 4 days prior to the filing of the suit.

29. Mr.M.Balasubramanian, learned counsel appearing for the plaintiffs would contend that these documents would show that the 2nd plaintiff was in possession of the property on the date when he was dispossessed and according to him that possession simpliciter would be sufficient for him to seek a relief under Section 6 of the Specific Relief Act. He would also draw my attention to the portion of oral evidence and claim that his possession has been admitted by the defendants. Drawing my attention to the evidence of DW1 in cross examination wherein she had deposed as follows:

As per Ex.D18 there was a board in the suit property mentioning that the suit property belongs to Sri.K.Kamalanathan vide decree dated 12.09.2009 passed in O.S.No.701 of 2008, High Court Madras, trespassers will be prosecuted

30. Mr.M.Balasubramanian, learned counsel appearing for the plaintiffs would contend that the possession of the 2nd plaintiff has been admitted by the witness. Mr.M.Balasubramanian, learned counsel would invite my attention to the judgment of the Hon ble Supreme Court in Krishna Ram Mahale Vs. Mrs.Shobha Venkat Rao reported in AIR 1989 SCC 2097, to contend that the nature and scope of the suit under Section 6 is very narrow and once it is proved that the plaintiff was in

possession of the property and he was dispossessed except in accordance with law, the suit under Section 6 is bound to be decreed without reference to any other question.

31. He would also rely upon the judgment of the Gauhati High Court in Madan Singh Vs. Taiyab hussain reported in AIR 1990 Gauhati 85, wherein it was pointed out that the powers of the Court under Section 6 is limited to the question of possession only and the Court cannot adjudicate the question of title. He would further point out that the Hon ble Supreme Court in Sanjay Kumar Pandey and others Vs. Gulbahar Sheikh and others reported in (2004) 4 SCC 664, had held that nature of the proceedings under Section 6 are summary in nature and the enquiry under Section 6 is confined to finding out the possession and dispossession within a period of 6 months from the date of institution of the suit ignoring the question of title. To the similar effect is the judgment of this court in Petchimuthu @ Mani Vs. Anitha Sruthi reported in 2009 (5) CTC 894.

32. Per contra Mr.S.Parthasarathy, learned Senior Counsel appearing for the defendants 1 and 2 would contend that in order to enable a person to sue for possession under Section 6, it should be shown that the plaintiff was in settled possession. According to the learned Senior Counsel, a casual act of possession would not have the effect of interrupting the possession of the original owner. The original owner may re-enter and reinstate himself provided he does not use more force than necessary. Such entry will be viewed only as a resistance to an intrusion upon possession which has never been lost.

33. To buttress his submissions learned Senior Counsel would rely upon the judgment of the Hon ble Supreme Court in Munshi Ram and others vs. Delhi Administration reported in AIR 1968 SC 702. Of course the Hon ble Supreme Court was concerned with the right of private defence in criminal proceedings alleged under section 447 of Indian Penal Code. The learned Senior Counsel would however submit that the Hon ble Apex Court had stated the law relating to possession its nature and the rights of the trespasser in the said judgment.

34. He would also draw my attention to the judgment of the Hon ble Supreme Court in Puran Singh and others vs. The state of Punjab reported in (1975) 4 SCC 518, wherein, the Hon ble Supreme Court had held that in order to exercise the right of the private defence to protect the possession and trespassers must be shown to have been in settled possession. While considering the question regarding settled possession the Hon ble Supreme Court had observed as follows:

Thus in our opinion the nature of possession in such cases which may entitle a trespasser to exercise the right of private defence of property and person should contain the following attributes:

(i)that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii)that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possendie (sic possideni). The nature of possession of the trespasser would

however be a matter to be decided on facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence.

These principles logically flow from a long catena of cases decided by this Court as well as other High Courts some of which have been referred to in the judgment of this Court in *Munshi Ram* s case (supra)

35. Mr.S.Parthasarathy, learned Senior Counsel appearing for the defendants 1 and 2 would also invite my attention to the judgment of the Delhi High Court in *Deep Chand vs. Kulanand Lakhera* and others reported in 2007 (95) DRJ 683. The Delhi High Court in the said decision after referring to various decisions of the Hon ble Supreme Court, particularly the law laid down in *Puran Singh and others vs. The state of Punjab* reported in (1975) 4 SCC 518 extracted by me above has observed as follows:

6. A deceitful, undercover or a trespass shrouded under darkness of secrecy; not to the knowledge, express or implied of the owner, howsoever long may be the duration of the possession would not amount to a settled possession. The reason for the law is that where a person knowingly permits another to take possession of his property and deal with the same he may encourage the trespasser to improve upon the property i.e. permit the trespasser to spend his time, money or energy on the property. Having encouraged the trespasser to do so, the owner would be precluded i.e. estopped from alleging that the trespasser has no right whatsoever in the property.

57. To put it differently, where the owner permits a trespasser to go into settled possession he permits the status of the possession of the trespasser acquiring the status akin to that of a juridical possession. Thus, juridical possession or possession akin thereto in any case becomes the sine qua non for an action to be maintainable under Section 6 of the Specific Relief Act 1963.

58. It would therefore be wrong to state that every trespasser has a right to retain possession till evicted by a due process of law. If that was the legal position there would have been no need for courts to evolve the concepts of legal possession, lawful possession, juridical possession, settled possession etc.

59. In legal possession or lawful possession the possessor has a claim recognized by law to enjoy possession of a property. The entry upon the property and its retention is with the consent or permission of the owner. In a case of juridical possession, the possessor asserts a legal right to possess and the facts on which the right is found is asserted have to be decided and since no one can be a judge in his own cause, the dispute has to be resolved by a lawful authority. But where a person asserts no right to possess a property but illegally holds on to it, nothing requires adjudication. The judicial forum has to decide nothing, or to put it differently there is not even a semblance of a claim. There is nothing juridical which exists.

60. A perusal of the decisions under Section 6 of the Specific Relief Act 1963 and its forerunner, namely Section 9 of the Specific Relief Act 1877, reveal the fairly uselessness of providing a remedy of a suit based on a mere possessory right. As would be evident from the facts noted hereinafter and in particular pertaining to C.R. No. 193/2005, the remedy under Section 6 is neither speedy nor effective because more often than not, evidence which is generally led to establish possession is the near same as would be required in a title suit.

61. Way back in the year 1958, the Law Commission under the chairmanship of Late M.C. Setalvad in the 9th Report of the Law Commission, dealing with the Specific Relief Act 1877 recommended deletion of Section 9. The report records that it was felt that the question of possession cannot be determined without going into the question of title to some extent. Since a decree under Section 9 (now Section 6) does not determine title it was noted by the Law Commission that the same i.e. the decree was generally followed by a suit for recovery of possession based on title, thus resulting in multiplicity of proceedings.

62. On appreciating the growth of law on the subject as noted hereinabove, one realizes that though drafted in a manner which aims to cage its scope; but while defining the concepts of possession, legal possession, juridical possession, settled possession akin to juridical possession and rank trespass, the provision of law i.e. Section 6 of the Specific Relief Act 1963 has rendered nugatory the object of the Section, more so in view of the docket explosion in the courts in India. In para 10 of the decision in R.V.Bhupal Prasad's case (supra), it has been noted that long delay in disposal of cases has become a ruse to unscrupulous litigants to abuse the due course of law and remain in unjust or wrongful possession of property.

36. I am in respectful agreement with the above view expressed by the Delhi High Court. A person who attempts to interfere with the possession of the true owner cannot in the garb of a suit under Section 6 seek to dispossess the true owner. In fact, in the evidence of PW1 he had specifically stated that Ex.P1 agreement was executed to retrieve the land in Survey No. 55/3 this itself would show that the ancestors of the 1st plaintiff were never in possession of the property he would again in cross examination deposed as follows:

Since somebody was in possession in the year 2003 to retrieve the property I entered into the sale agreement. He would also state that there was a small shed like structure in the year 2005. Therefore, it is clear that neither the 1st plaintiff nor his ancestors were in possession of the property at any point of time. The sale agreement does not recite that the 2nd plaintiff was put in possession of the property pursuant to the agreement. It is however averred in the plaint ever since the stamp duty was very high though possession was delivered at the time of the agreement, the same was not shown in the agreement but it was separately handed over evidenced by a writing. The said writing was not produced in Court. The entire process of agreement followed by a suit for specific performance and the compromise decree have been adopted by the plaintiffs 1 and 2 in collusion with each other in order to create semblance of title over the property in question. This according to me, is an abuse of process of Court by the plaintiffs 1 and 2.

37. It is seen from the document viz., the sale deed dated 07.04.1997 that the defendants 1 and 2 have purchased property for consideration of Rs.1,00,00,000/- whereas, the sale price under the agreement Ex.P1 in the year 2006 is shown as Rs.50,00,000/-, this factor cannot be ignored while considering the validity of the claim of the plaintiffs that they were in possession. The obtaining of the electricity service connection and the telephone connection cannot in my opinion prove that the plaintiffs were in settled possession of the property.

38. The defendants have by producing plethora of documentary evidence proved that they are in possession of the property and an attempt to trespass was in fact prevented by them. The 2nd plaintiff as PW2 would admit that he is close relative of the minister of the State, though, he has denied the suggestion that by misusing the name of the Minister he has obtained E.B connection and telephone connection, such possibility cannot be ruled out. It is also seen from the evidence of PW2, that he had not got the sale deed executed pursuant to the decree in CS.No.701 of 2008 till date of his deposing in Court.

39. Though PW2 would admit that he had received title deeds of the property from the 1st plaintiff, he has not produced them and is a pointed question in the cross examination he has stated that those documents are not necessary in this suit. Therefore, it is clear that the intention of the plaintiffs was to grab the property of the defendants by hook or crook by creating documents. Though the plaintiffs would claim that the suit property which form part of the land acquired by Chennai Corporation, which was subsequently exempted by a GO, the said Government Order is not produce though it has been referred to in the plaint.

40. All these infirmities in the case of the plaintiffs lead me to believe that the plaintiffs were never in possession of the suit property, in order to invoke the benefit of Section 6 to regain possession through Court. The evidence of PW1 and PW2 would itself show that they were never in settled possession in order to invoke Section 6 of the Specific Relief Act to seek restoration of possession. Hence, issue nos. 2 and 3 are answered against the plaintiffs.

41. In fine, the suit is dismissed with costs of the defendants 1 to 3.

03.01.2018 dsa Index : yes/ No Internet : Yes/No Speaking order/ Non-speaking order List of the Witnesses examined on the side of the Plaintiffs:

PW1 - D.Gnanasekaran PW2 - K.Kamalanathan List of Exhibits marked on the side of the Plaintiffs:

Sl.No. Exhibits Description of documents Date Ex.P1 Original agreement of Sale Deed between the 1st plaintiff and the 2nd plaintiff.

27.11.2006 Ex.P2 Original Encumbrance Certificate in respect of the suit property.

15.12.2006 Ex.P3 Certified copy of the compromise decree in C.S.No.701 of 2008.

12.09.2008 Ex.P4 Original photographs showing the suit property executed by the 2nd defendant.

12.09.2008 Ex.P5 Original proforma issued by BSNL.

11.11.2008 Ex.P6 Original intimation and receipt by the Electricity Board in the name of the 2nd plaintiff.

26.11.2008 Ex.P7 Original receipt for payment of security staff's salary.

01.12.2008 Ex.P8 Photocopy of the telephone bill in the name of the 2nd plaintiff.

12.12.2008 Ex.P9 True copy of the L.P receipt issued to the 2nd plaintiff by Pondy Bazar Police.

17.12.2008 Ex.P10 True copy of the plaint in O.S.No.8864 of 2008 filed by the 2nd plaintiff in City Civil Court.

17.12.2008 Ex.P11 Original receipt issued to the 2nd plaintiff by security services.

01.01.2009 Ex.P12 Certified copy of the notice issued in land acquisition proceedings by the Deputy Collector of madras District to the predecessor in title of the 1st plaintiff.

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Ex.P13 Photocopy of the final report filed by the investigation Officer in C.C.No.4594 of 2009.

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List of the Witnesses examined on the side of the Defendants:

DW1 - Dr.Rajyalakshmi Ramachandran DW2 - Sripathy DW3 - V.Kannabiran List of Exhibits marked on the side of the Defendants:

Sl.No. Exhibits Description of documents Date Ex.D1 Photocopy of the Sale Deed registered as Doc.No.225/1946 before SRO, T.Nagar.

14.03.1946 Ex.D2 Photocopy of the Sale Deed registered as Doc.No.235/1951 before SRO, T.Nagar.

26.03.1951 Ex.D3 Photocopy of the Sale Deed registered as Doc.No.235/1951 before SRO, T.Nagar.

06.09.1957 Ex.D4 Photocopy of the Sale Deed by Putcha Viswanatha Sastry to Jalma Nachia.

26.08.1966 Ex.D5 Original Encumbrance Certificate.

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Ex.D6 Original No Objection Certificate issued by Appropriate Authority.

28.02.1997 Ex.D7 Photocopy of the Sale Deed by Jalma Nachia to the 1st and 2nd defendant.

07.04.1997 Ex.D8 Photocopy of Patta issued to Jalma Nachia.

14.11.1996 Ex.D9 Photocopy of Patta issued to the 1st and 2nd defendant.

05.01.2009 Ex.D10 Original Property Tax Assessment Card.

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Ex.D11 Original Property Tax receipts

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Ex.D12 Original transfer of Electricity Account in the names of 1st and 2nd defendants.

25.08.1998 Ex.D13 Original Electricity Tariff Card of 1st and 2nd defendants.

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Ex.D14 Original Water and Sewerage Tax payment receipts.

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Ex.D15 Original Rental Agreement between 2nd defendant and J.Vijayarani.

01.12.1997 Ex.D16 Original challan issued by Public Works Department, Corporation of Chennai for remittance of amount. 12.03.2005 Ex.D17 Original approval for building demolition granted by Corporation of Chennai.

31.03.2005 Ex.D18 Original complaint of 2nd defendant and FIR.

19.12.2008 Ex.D19 Original Rental Agreement.

01.10.2002 Ex.D20 Authorization letter.

28.10.2014 Ex.D21 Photocopy of Memorandum issued by the Deputy Commissioner of Police, Chennai directing the 3rd defendant to take up investigation in Crime No.902 of 2008. 29.12.2008 03.01.2018 dsa R.SUBRAMANIAN,J.

dsa To The Sub Assistant Registrar, Original Side, High Court, Madras.

Pre-Delivery Judgment in 03.01.2018