

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 06.03.2014  
Pronounced on: 10.03.2014

**+ LPA 588/2009, C.M. APPL. 1586/2013 & 1685/2013**

ROOP LALWANI AND ORS. ....Petitioners  
Through: Sh. Dheeraj Malhotra and Sh. Sandeep  
Mittal, Advocates.

Versus

SUNITA LALWANI AND ORS. ....Respondents  
Through: Ms. Karuna Nundy, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE R.V. EASWAR**

**MR. JUSTICE S. RAVINDRA BHAT**

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1. This plaintiffs' appeal impugns the judgment and order of a learned Single Judge dated 12.10.2009 by which CS(OS)941/2002, a suit under Section 6 of the Specific Relief Act, 1963 (*"the Act"*), was dismissed.

2. The parties shall be referred to in the course of judgment by the nomenclature assigned to them in the impugned judgment.

3. The plaintiffs are the brother and sisters of late M.N. Lalwani, who lived in R-791, New Rajendra Nagar, New Delhi, (*"the suit property"*). They alleged that during his lifetime, on 10.01.2002, late Sh. M.N. Lalwani accompanied them to Mumbai as he was gravely ill

and at that time the keys of the suit property were handed over to them. Sh. M.N. Lalwani's wife had predeceased him on 26.12.2001. He died on 24.02.2002 in Mumbai. It is claimed that after his death the physical possession of the property was with the plaintiffs till the defendants dispossessed them on 18.04.2002. It is alleged that on the latter date, the defendants went to the suit premises with "some hired persons", a locksmith and changed the locks of the suit property and dispossessed the plaintiffs without their consent. The plaintiffs also claimed that complaints were lodged with the concerned police authorities and that the defendants, despite repeated requests, did not hand back possession of the suit property.

4. The defendants are the widow and children of late Sh. P.N. Lalwani, the brother of late Sh. M.N. Lalwani, and the plaintiffs. The written statement alleged that the said Sh. P.N. Lalwani was working with the Central Public Works Department (CPWD) and was posted in New Delhi till 1960 and had been allotted, pursuant to his application, the suit property in a draw of lots, on 07.08.1954, for which he had deposited amounts from his own accounts. The defendants also relied upon a perpetual lease granted in favour of late Sh. P.N. Lalwani dated 28.12.1961 with effect from 07.08.1954 and that Sh. P.N. Lalwani started residing in the suit property in 1964 and thereafter upon his marriage in 1967 he lived with the fourth defendant, i.e. his wife. Upon the death of late Sh. P.N. Lalwani on 02.02.1980, the fourth defendant, his widow, was put to considerable difficulty. The written statement went on to allege that Sh. M.N. Lalwani perpetrated some

fraudulent acts upon the fourth defendant and started relying upon an affidavit and Power of Attorney which allegedly resulted in his (Sh. M.N. Lalwani) being treated as owner of the property. It was contended in the written statement that Sh. M.N. Lalwani stayed in the suit property during the period of his posting on the permission of Sh. P.N. Lalwani, the owner of the property and that

*“there were two sets of keys of the suit property – one with Sh. M.N. Lalwani and the other set was being retained by Sh. P.N. Lalwani during his lifetime and after his death, by Defendant No.4. As stated above, Sh. P.N. Lalwani used to stay in the suit property during his posting in Delhi and thus kept with him the second set of keys. “It is totally incorrect and vehemently denied that Sh. M.N. Lalwani handed-over the keys of the suit property to the plaintiffs on 10.01.2002 or at any time after that.”*

5. Apparently, the plaintiffs had initially filed a suit for partition [CS(OS)872/2002]. This partition suit was thereafter withdrawn and the suit for possession under Section 6 of the Act was filed subsequently. On 04.03.2008, following issues were framed for consideration:

*“1. Whether the plaintiffs were given actual physical possession of the suit property by late Shri M.N. Lalwani on 10.1.2002 and whether the plaintiffs were in settled actual physical possession of the suit property on or after the death of Shri M.N. Lalwani on 24.2.2002. If so, the effect thereof? (OPP).*

2. *Whether the plaintiffs were dispossessed by the defendants on 18.4.2002, otherwise than in the due course of law? (OPP).*

3. *Whether the plaint is liable to be rejected on account of deficiency of Court fee? (OPD).*

4. *Whether the suit as framed is not maintainable under Section 6 of the Specific Relief Act against the defendants? (OPD).*

5. *Whether any claim can be made by the plaintiffs qua the suit property as a consequence of the unconditional withdrawal of CS(OS) No.872 of 2002? Roop Lalwani and Ors. v. Sunita Lalwani and Ors. (OPD).*

*Relief.”*

6. By the same order, the Court also stated that since Issue Nos. 3 to 5 were purely legal, they would be treated as preliminary. During the hearing, counsel for the parties stated that the defendants have filed a suit seeking declaration that some documents relied on by late M.N. Lalwani and the plaintiffs are not legal and binding. The plaintiffs are resisting the suit, and have not claimed any relief in any other proceeding.

7. It was in these circumstances that the suit – as far as it pertained to Issue Nos. 3 to 5 – was heard and decided by the impugned judgment. The learned Single Judge, by the impugned judgment, decided the fifth issue in favour of the plaintiffs and recorded that the third issue – framed at the behest of the defendants – was not urged. After noticing Section 6 of the Specific Relief Act, 1963 and the defendants' contention that the plaintiffs were never in actual physical

possession of the suit property, the learned Single Judge referred to Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 which was relied upon by the defendants. Thereafter, the learned Single Judge relied upon the judgment in *Rame Gowda (dead) by LRs v. M. Varadappa Naidu (Dead) by LRs and Anr.*, 2004 (1) SCC 769 and on appreciation of law, observed that physical possession could only be said to have been with the plaintiffs. The findings in this regard in the impugned judgment are as follows:

*“16. The actual possession of the suit property cannot by any stretch of imagination be said to have been with the plaintiffs. They were only in possession of the keys to the same. The plaintiffs’ contention that they had posted a security guard at the suit property and were therefore in possession of the same is claimed to be unfounded and wrong as the security guard was hired on 23 March, 2002 and was posted for only about 26 days. Further, plaintiff’s letter dated 22 March, 2002 to the Delhi Vidyut Board for charging basic charges clearly states that “no one is staying in the premises from January 2002 and hence there is no consumption of electricity.”*

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*18. It is settled law that the question/existence of title in the suit property is immaterial as far as Section 6 of the Specific Relief Act is concerned. In view of the observation of the Supreme Court as stated above, and under the circumstances of the present case, it seems to me that it cannot be said that the plaintiffs were in “settled possession” of the suit property. The plaintiffs never actually resided in the suit property and are asserting their “actual possession” of the same on the basis of the security guard deployed there for a mere 26 days. Though the defendants did not reside in the suit property for much time either, the*

*onus of proving “settled possession” is on the plaintiffs and I believe that the same has not been satisfactorily discharged.*

*19. Such being the circumstances of the present suit, I find that the present suit is not maintainable under Section 6 of the Specific Relief Act, 1963. Thus issue No.4 is decided in favour of the defendants and against the plaintiffs. Consequently, the suit of the plaintiffs is dismissed. All pending applications, if any, also stand disposed of in view of the orders passed in Issue No. 4. No costs.”*

8. The plaintiffs argued that having framed issues on 04.03.2008, the learned Single Judge ought not to have assumed that possession was never with them on a narrow appreciation of the pleadings alone. Learned counsel for the appellants highlighted that there was a wealth of material which was on the record in the form of a list of documents which disclose that continuous physical possession was with Sh. M.N. Lalwani, who at the time of his death, had handed over the keys to them. Learned counsel urged that even the impugned judgment concedes that on 10.01.2002 when Sh. M.N. Lalwani left Delhi for Bombay to be with his siblings, i.e. the plaintiffs, the keys were with him and were subsequently handed over to them. It was argued that in these circumstances, their possession is undeniable and the Court could not have reasoned that they were never in possession.

9. Learned counsel asserted that the materials on record which were noticed to a limited extent by the learned Single Judge was to the effect that security guards had been positioned in the suit premises at the plaintiffs’ behest and that the defendants, without their permission, changed the locks and forcibly took over possession. Learned counsel

relied upon the decision of the Supreme Court reported as *Puran Singh and Ors. v. The State of Punjab* 1975 (4) SCC 518 to say that the expression “settled possession” does not carry any special meaning and should not be treated as ritualistic formula. Particular reliance was placed upon the following element outlined in *Puran Singh* (supra):

“(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 by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the 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 to 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.”

10. It was argued that besides the objective circumstances such as the handing over of the keys and its continued retention by the plaintiffs as well as the deployment of security guards which were evidenced by the receipts issued by the agency concerned, the plaintiffs had also relied upon the e-mail addressed by the husband of

one of the defendants, i.e. daughters of late Sh. P.N. Lalwani. This categorically conceded that possession of the property was with the plaintiffs at the contemporaneous period of time. In these circumstances, the defendants could not, regardless of whether the defendants could claim equal ownership rights or exclusive title, upset the plaintiffs' lawful possession. Thus, the suit was not only maintainable but had to be tried and adjudicated on merits in accordance with law.

11. Learned counsel relied upon the rulings in *Abdul Aziz Sk. Imam Musalman and Ors. v. Sk. Amir Sk. Burham Musalman and Anr.* AIR 1941 Nag 130 and *Munshi Ram and Ors. v. Delhi Administration* AIR 1968 SC 702, to state that settled possession does not refer to any definitive period or length of time and would have to be judged in the context of circumstances of each case. Learned counsel for the plaintiffs contended that since late M.N. Lalwani was owner of the property and as his surviving siblings, were his heirs and clearly within rights to contend that possession continued with them as legitimate heirs to the property. In that sense, late M.N. Lalwani's possession continued with them upon his death and all rights, including the possession, devolved upon them.

12. Counsel for the defendants argued that the plaintiffs had not shown by any manner known to law that they were in possession of the property even for a day. It was submitted that the plaint was premised on alleged constructive possession, which had never been asserted against the defendants, who concededly were in possession, since they

had keys to the premises and very frequently visited it. Submitting that mere constructive possession of the nature relied upon did not fall within the contemplation of foundational rights capable of enforcement under Section 6 of the Act, the defendants say that their right to possession as co-owners got enlarged when late M.N. Lalwani died, into exclusive possession of the property and the suit premises.

13. The defendants also argued that even if the plaint averments and the documents are taken as a whole they do not make out a case for trial because the actual possession relied upon to maintain the suit was the pleaded continuous possession of the property of M.N. Lalwani, not that of the plaintiffs. *Arguendo*, without admitting the documents to be true, all that they could lead the Court to infer or conclude was that the plaintiffs had possession to keys to the premises and that they had deployed security guards near it. The email relied on at best showed that the keys were with the plaintiffs; at any rate that was not by the defendants, and was a disputed document. The absence of the plaintiffs pleadings that they were ever physically present in the premises belied their argument that they were dispossessed from it. Learned counsel relied on the decision of the Supreme Court reported as *Subramani and Ors. v. State of Tamil Nadu*, 2002 (7) SCC 210 and *Darshan Singh and Ors. v. Gujjar Singh (Dead) by LRs and Ors.*, 2002 (2) SCC 62 to say that for anyone to contend that he was in settled possession, sufficient time should have elapsed. Reliance was also placed on the judgment reported as *East India Hotels v. Syndicate Bank*, 1992 Supp (2) SCC 29.

14. It was argued that the suit was filed only to harass the defendants, particularly the fourth defendant, wife of late P.N. Lalwani, a widow aged 80 years in an attempt to tire them out and grab the property. It was contended that late M.N. Lalwani had dubiously secured documents which gave away the rights of the plaintiffs, without any rhyme or reason, when they were minors, after their father's death. Counsel reiterated that M.N. Lalwani could never have claimed lawful ownership and the reliance placed upon the alleged will of late P.N. Lalwani is unsupportable because it is disputed and the subject matter of the pending declaratory suit.

15. From the above discussion what this Court has to decide is whether the impugned judgment was correct in dismissing the suit, by holding that the plaintiffs were disentitled to maintain the proceedings, given the factual circumstances pleaded in the plaint. The nub of the controversy here is whether the plaintiffs can be said to have been in possession so as to be entitled to claim the relief in equity – as one under the Specific Relief Act undoubtedly is – of restoration of possession, *sans* any enquiry as to title to the property.

16. There is consistent authority (*Nair Service Society Ltd. v. Rev. Father K.C. Alexander and Ors.* AIR 1968 SC 1165, *East India Hotels* (supra)) that a suit under Section 6 embodies a summary remedy, intended solely at restoration of possession of the plaintiff, desegregating that aspect from the issue of title. The authorities have emphasized upon the summary nature of the proceedings, to say that this is meant to secure swift restitution, leaving the determination of

title to regular proceedings. To emphasize that such determinations are to be speedy and would not be subjected to further appeals, Section 6(3) establishes a bar to appeals. Thus, the Courts are not expected to go into elaborate evidence and have to decide in a summary manner whether the complaint of loss of possession is justified as to call for an order or decree under the provision. Viewed from this perspective, the approach of the learned Single Judge – who took note of the fact that while casting issues, the Court had separated Issue No. 4 as requiring decision as a preliminary issue – cannot be faulted.

17. As to what is “settled possession” was explained in *East India* (supra), where the Supreme Court took note of several previous decisions. This included *Puran Singh* (supra) relied on by the plaintiffs. The Court held that when the plaintiff, a bank, handed over the possession – under somewhat compelling circumstances, but voluntarily, nevertheless – its status as a licensee was lost and it could not claim possession under Section 6:

“38.....*The rightful owner may re-enter and reinstate himself provided he does not use more force than was necessary. Such entry will be viewed as a resistance to an intrusion upon possession which has never been lost. The person in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time, to remove the obstruction even by using necessary force". In Puran Singh v. State of Punjab (1975) SCR 299, while following the ratio in Munshi Ram's case, this*

*Court held that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. There is no special charm or magic in the words "settled possession" nor is it a ritualistic formula which can be confined in a straight jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. It would be reiterated that the possession must be within the knowledge either express or implied, of the owner or without any attempt at concealment and which contains an element of animus possidendi. In that case possession for 14 days was held to be settled possession since they raised the crops in the land. This view was reiterated again in Ram Ratan v. State of U.P. (1977)2 SCR 2323, laying therein that the true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law.*

*39. This court thus firmly laid the rule that stray or intermittent acts of possession does not constitute settled possession. A person in settled possession is entitled to resist the attempt of even the owner or persons claiming under him to dispossess the trespasser. The only*

*exception was that a recent or concealed possession does not enable a trespasser to defend his possession.”*

18. The decisions from *Puran Singh* (supra) onwards, including *East India* (supra) and *Rame Gowda* (supra) were rendered in the context of claims by parties whose *actual physical possession* was disrupted, leading to actions under Section 6. Whilst on the subject, it would be interesting to notice that “possession” was the subject matter of another decision, *Gurucharan Singh v. Kamla Singh and Ors.*[1976] 1 SCR739 where the Supreme Court held that:

*“There are, therefore, three requisites of possession. First, there must be actual or potential physical control. Secondly, physical control is not possession, unless accompanied by intention; hence, if a thing is put into the hand of a sleeping person, he has not possession of it. Thirdly, the possibility and intention must be visible or evidence (sic) by external signs, for if the thing shows no signs of being under the control of anyone, it is not possessed! In the end of all, however, the meaning of ‘possession’ must depend on the context (ibid p. 153). Maybe, in certain situations, possession may cover right to possess. It is thus clear that in Anglo-American jurisprudence also, possession is actual possession and in a limited set of cases, may include constructive possession, but when there is a bare right to possess bereft of any domination or factum of control, it will be a strange legal travesty to assert that an owner is in possession merely because he has a right to possess when a rival, in the teeth of owner's opposition, is actually holding dominion and control over the land adversely, openly and continuously.”*

19. The plaintiffs do not state, in their averments, nor assert in their arguments, that they ever lived with late M.N. Lalwani or actually possessed the property, save the manner stated by them. That M.N.

Lalwani lived or stayed there, had the property mutated in his name, or paid municipal taxes, electricity or water bills, would not in any manner confer an advantage upon them. Consequently, even if their allegation that keys were given to them by late Lalwani is correct, it precisely means that and nothing more. Keys were entrusted; the plaintiffs do not rely on any further material on this score. They do not assert that they ever visited the suit premises and exercised domain over the property except deploying security guards outside the property. Given these circumstances, they cannot be said to have “possessed” the property within the meaning as can be reasonably understood in the context of something deserving protection under Section 6 of the Act. Whilst law undoubtedly abhors unilateral action by anyone – the State, its agencies or private citizens – the remedies provided by way of restitution in equity such as Section 6 cannot be based on vague or tenuous claims, which this Court has no manner of doubt the present one involves.

20. The Court is of the opinion that the plaintiffs’ complaint that the suit should not have been dismissed “summarily” without going into elaborate evidence is groundless. The plaintiffs were forewarned of this possibility, when Issue No. 4 was framed as a preliminary one (and a legal one at that). Furthermore, the Court’s power to decide whether on the face of the materials on record, a triable cause of action is made out is undeniable in view of Order VII Rule 11. This power stands doubly reinforced in the case of proceedings of a summary nature, as suits initiated under Section 6 are.

21. This juncture is apt for a few observations concerning Section 6 trials. A Section 6 suit is a special provision intended for a specific purpose: a person who was in possession may, if dispossessed, regain possession. The *only* two questions before the Court are whether (1) the person was *factually* in possession, and (2) whether the person has been dispossessed.

22. The correctness of such possession, whether it was lawful, or backed by a valid title (for whatever reason) is to be ignored by the Court. That matter is properly considered in a full-fledged trial on title. A Section 6 action on the other hand is – intended to be and must remain – a summary trial. It is no defence in such a suit that the plaintiff was in possession illegally, or that he did not have title, or that title vested with the defendants. Be that as it may, if the plaintiff was in possession, and was later dispossessed by the defendants, Section 6 would be triggered. The very purpose of Section 6 is to provide immediate and quick relief to those who have been dispossessed, distancing their *fact* of possession from their *right* to possess. Section 6 actions are not to be burdened with issues of title or claims to ownership, howsoever indistinctly. In other words, the Court must only see whether the plaintiff *was* in possession, and not whether he/she *should* have been in possession.

23. This is the clear intent behind Section 6, which is supported by clear and express language. The Section envisages recovery of possession “*notwithstanding any other title that may be set up in such suit.*” Thus, the issue of title (even if facially in favour of the

defendant) is to be ignored. Rather, a summary trial is to be conducted under the limited confines of Section 6 to determine the fact of possession and subsequent dispossession, in order to return the possessor to the land as quickly as possible. This leaves the parties to agitate the issue of title later through detailed evidence and trial. This urgency of a Section 6 remedy is clear from the provision itself: the suit must be filed within 6 months of the dispossession, and any appeal or review is barred. The purpose is not to have a truncated trial on title or the right to claim the land, but only to – in the interim – maintain the *status quo* as regards possession.

24. It is a self-defeating exercise to have to prolong a Section 6 determination. The plaintiff in the present matter claims he was dispossessed in 2002; the learned Single Judge decided the matter 7 years after in 2009, and the appeal came up for final hearing in 2014. Independent of the outcome, the purpose of Section 6 – to decide on matters of possession quickly first, and consider title later – has been vitiated. That the learned Single Judge ultimately dismissed the suit may be a consolation here, but if decreed, the plaintiff would have had to suffer dispossession for a period of 7 years, denying the equity Section 6 seeks to protect.

25. With this in mind, this Court notes that Section 6 trials must be conducted in an expedited – though fair – manner. Courts should consciously ensure that as far as possible, evidence is recorded by way of affidavit; that the admission and denial of documents and production of any other evidence is expedited through the appointment

of local commissioners or through other means; and that the matter is taken up for final hearing within the third or fourth hearing, if not sooner. Every attempt should thus be made to ensure that the matter is considered as soon as possible, lest the equity embodied in Section 6 decays with the passage of time. This Court is of opinion that the Judge-in-Charge of the Original Side of the High Court to prepare a list of all pending Section 6 actions as per the date of dispossession, and starting with the oldest matter, suitably devise a system to distribute the case-load appropriately to ensure that these matters are considered as soon as possible. It would also be appropriate that rules or practise directions are issued in this regard, ensuring that such Section 6 suits are heard and disposed off as early as reasonably possible.

26. In view of the above reasons, this Court finds that the appeal is devoid of merit. It is accordingly dismissed, with costs throughout. Counsel's fee in appeal is quantified at ₹25,000/- to be paid to the defendants within four weeks.



**S. RAVINDRA BHAT**  
**(JUDGE)**

**R.V. EASWAR**  
**(JUDGE)**

**MARCH 10, 2014**