

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.457 of 2013

JUDGMENT:-

The unsuccessful plaintiff society had filed this appeal under Order XLIII Rule 1 of the Code of Civil Procedure ('the Code' for short) assailing the order dated 28.05.2013 of the learned Vacation Civil Judge, Anantapuram passed in I.A.No.116 of 2013 in O.S.No.35 of 2013 filed under Order XXXIX Rules 1 and 2 of the Code for grant of temporary injunction restraining the respondent/defendant, its men, agents and servants from interfering with the plaintiff's peaceful possession and enjoyment over two items of land in an total extent of Acs.7.95 cents viz., Ac.4.00 cents in Town Survey Nos. 2012 [Old 4] and Ac.3.95 cents in T.S.No.2143 [New 8] and present 11 in the Municipal limits of Anantapuram more fully described in the schedule annexed to the petition.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondent/defendant ('the defendant', for brevity). I have perused the material record.

3. The case of the plaintiff, in brief, is as follows:-

The suit schedule property originally belonged to the Government. The Government had assigned the suit land along with some other lands in Anantapuram town to one Miss. Luis Chrislib, a Missionary sent by London Missionary Society Corporation, England to this Country for evangelic activities. The main object of the London Missionary Society Corporation was to spread the Gospel of Christ in Non-Christian countries. In the course of the activities, the missionary had started Churches, Hospitals and Educational Institutions etcetera in various parts of India. Miss. Luis Chrislib had started educational institutions and hostels for poorer sections of the society in Anantapuram town. The Government had assigned to Miss. Luis Chrislib the lands in extents of Acs.4.00 cents in Survey No.2012, Acs.9.10 cents in Survey No.2143 and Acs.13.44 cents in Survey No.2677, i.e., a total

extent of Acs.26.54 cents in Anantapuram town, during the year 1910; and, she was doing public service. Miss. Luis Chrislib, while leaving India had transferred the above mentioned properties to London Missionary Society Corporation and now the above mentioned property stands in the name of London Missionary Society Corporation. The Churches established by the London Missionary Society Corporation in Madras region for administrative convenience formed into pastorates; and, the pastorates constituted into divisional committees; and, the divisional committees were federated into Church Councils. The Church Councils are established in several regions in India and one such Council constituted for Telugu speaking areas came to be known as Telugu Church Council. The plaintiff society has taken the petition schedule land on lease under a registered lease deed for a period of 30 years from the Secretary, Telugu Church Council on 14.09.1990, as he was looking after the affairs of the petition schedule land on behalf of the London Missionary Society Corporation. The said lease was taken for the period from 14.09.1990 to 13.09.2020 for the purpose of running educational institutions. The land was by then full of thorny bushes as it was kept vacant for decades. The plaintiff had spent huge amounts and removed the thorny bushes, leveled the land and made the land fit for use. The plaintiff had started in the petition schedule land, a school for classes I to X and also college courses from intermediate to post graduation, by taking necessary recognitions and permissions from the departments concerned and also the affiliation from the University. The copy of the lease agreement executed by the Secretary, Telugu Church Council is submitted to all the departments concerned at the time of obtaining recognition and permission. Though an extent of Acs.7.95 cents of land is mentioned in the schedule of the lease deed, an extent of Acs.2.00 only is in the occupation of the plaintiff, as the possession of the remaining extent of land was not taken by the plaintiff. The plaintiff having taken vacant land with the building bearing D.No.11-461, has gradually constructed permanent multi-storied buildings in an extent of Acs.0.90 cents by spending huge amounts to cater to the educational needs of the students who are studying in the institutions therein. The remaining extent of Acs.1.10 cents of land out Acs.2.00 cents is being used as

playground and for vehicle parking. At present, the strength of the students in the school is 1500 and the strength of the students in the college courses is 500. The society is functioning without any profit motive and no business activities are being carried on. The plaintiff has been in possession and enjoyment of the suit land since the year 1990 without any let or hindrance from anybody muchless from the defendant and is also paying municipal taxes and electrical consumption charges. The plaintiff has been enjoying the suit land openly, peacefully, uninterruptedly and continuously without any disturbance from anybody. The defendant is a construction firm founded by the local MLA and his family members. One of the elder brothers of the said MLA is the managing partner of the defendant firm. Last year, the partners of the firm came to the suit premises and demanded to vacate the premises saying that they have purchased the suit land along with some other land from Church of South India Trust Association, Madras under a registered sale deed. The said sale deed in favour of the defendant by the Church of south India Trust Association, Madras, is neither valid nor binding on the plaintiff and that the Church of South India Trust has no right to alienate the suit land as they have neither title nor possession over the suit land. The defendant did not get any right over the suit land under the above mentioned sale deed, as the property belongs to London Missionary Society Corporation, England. The defendant had made a representation to the Director of Secondary School Education, Kadapa, for cancellation of the permission given to the plaintiff for running a school; further, the defendant had made an announcement in the news paper requesting the general public not to admit their children in the plaintiff's high school as it has no permission to run the school in the suit land. The defendant is doing all sorts of illegal activities to harass the plaintiff and dispossess the plaintiff. 36 individuals, who are residing by constructing pucca houses in the land purchased by the defendant under the alleged sale deed from the Church of south India Association, have filed a suit in O.S.No.136 of 2011 on the file of the District Judge, Anantapuram for cancellation of the sale deed in favour of the defendant stating that the land belongs to the Government and that it was given for public purpose. Further, some of the members of the Church of

South India Association have questioned the sale in favour of the defendant by filing a suit in O.S.No.91 of 2011 on the file of the District Judge, Anantapuram. The defendant has not taken possession of the land purchased by him under the alleged sale deed from the Church of South India Association. The correct existing physical features on the land, i.e., existing residential, non-residential, school and college buildings are not mentioned in the sale deed in favour of the defendant and only vacant land is shown in the schedule of the said sale deed. The partners of the defendant firm are threatening the plaintiff with dire consequences and are saying that they would not allow the plaintiff to run the educational institutions in the coming academic year. They have also threatened that unless the plaintiff leaves the suit land within a month, the property would be in danger. The defendant is trying to disturb the peaceful possession of the plaintiff and is creating fictitious documents in order to occupy the petition schedule land for its illegal benefit. And, since the suit land has now become a valuable property, the defendant's partner was instigated to illegally occupy it to do a real estate business. Hence, the plaintiff apprehends danger and also that the defendant may enter at any time into the petition schedule land and dispossess the plaintiff from it. If the defendant succeeds in his attempts, the plaintiff society, the teaching staff and the non-teaching staff, who are working in the institutions, will suffer heavily and will be put to great loss and hardship. Though the plaintiff had reported the matter to the elders of the town, they have not taken any action against the defendants in view of their influence and political backup. The plaintiff has got a *prima facie* case and also the balance of convenience in its favour. If injunction is not granted, great injustice and irreparable loss would be caused to it.

4. The defendant filed a counter denying the material averments pleaded in the case of the plaintiff. The defence of the defendant is this:

The suit filed by the Secretary on behalf of the plaintiff society is not maintainable since he has no authority to sign the pleadings and file a suit. The allegation that the petition schedule property belongs to the Government and the Government has assigned the suit land to Miss. Luis Chrislib, a

Missionary sent by London Missionary Society Corporation, England to this country for evangelic activities is incorrect. The defendant had purchased the suit land from its rightful owner under a registered sale deed dated 22.09.2007. The plaintiff had not paid a single rupee towards rent and the lease amount to the real owner or his predecessor-in-title since the year 2006 till the date. The Regional Joint Director, Kadapa upon the application filed by the defendant had conducted an enquiry regarding the production of forged lease deed before him for renewal of the school license and in that enquiry the husband of the secretary of the plaintiff society by name D. Chenna Reddy and one of the partners of the defendant firm, viz., B. Yerriswamy Reddy participated and it is confirmed by the Regional Joint Director that the alleged lease deed is a forged one. The Regional Joint Director, Kadapa, vide his proceedings in Rc.No.4027/A3/2010 dated 23.08.2012 had passed orders canceling the permission to run the school by the plaintiff in the suit land. Aggrieved of the same, the plaintiff had filed W.P.No.33098 of 2012 before this Court against the defendant and others seeking suspension of the proceedings issued by the Regional Joint Director, Kadapa. This Court, vide its order dated 27.11.2012, has confirmed the cancellation order in regard to permission/recognition for running the school by the plaintiff society and further directed the plaintiff to seek renewal of the lease from the original owner, i.e., the defendant. The present suit is filed by the plaintiff society to defeat the order passed by this Court in W.P.No.33098 of 2012. There is no specific mention about the date, the time and the place of objection that was allegedly caused by the defendant/their men/agents to the plaintiff society from running the school. The pleadings of the plaintiff society that the defendant had tried to interfere with the possession of the plaintiff are vague, ambiguous and unspecific. The law of equity does not permit the plaintiff society to seek the injunction against the defendant, who is the true owner of the suit land. The said fact was also admitted by the plaintiff society before the Regional Joint Director, Kadapa. Thus, the plaintiff society is estopped from pleading that the defendant is not the owner of the suit land. The plaintiff society, being an unauthorized occupier of the suit land, cannot seek any legal and equitable remedy against the defendant. The plaintiff

Society, with a dishonest intention had mischievously and purposefully pleaded false facts by contending that the London Missionary Society Corporation is the owner of the property and it had executed a lease deed through the Telugu Church Council. The plaintiff is well aware that there is a title dispute over the suit land which ultimately reached the Hon'ble Supreme Court of India and that the Supreme Court had categorically held that the Church of South India Trust Association Company Limited, i.e., the vendor of the defendant is the absolute owner of the suit land and that the London Missionary Society Corporation and the Telugu Church Council are merged with Church of South India. The allegation that the defendant has not taken possession of the land purchased by him is not correct and since the date of purchase, i.e., from 22.09.2007, the defendant is in exclusive possession and enjoyment of suit schedule property. The averment that the defendant is threatening the plaintiff society with dire consequences is incorrect and is only invented to obtain orders in its favour. There is no *prima facie* case and the balance of convenience is not in favour of the plaintiff. No injury would be caused to the plaintiff if the injunction order is not granted since its lawful possession of the suit land is not proved. Therefore, the suit and the petition are liable to be dismissed.

5. During enquiry before the trial Court, no oral evidence was adduced. Exhibits A1 to A12 and B1 to B3 were marked.

6. On merits, the Court below, by the impugned order, had dismissed the interlocutory application with costs. Aggrieved of the said order, the plaintiff society had preferred this appeal.

7. Now, the points for consideration are:--

- (i) Whether the plaintiff had made out valid and sufficient grounds and had satisfied the cardinal principles for granting a temporary injunction as prayed for? And, if so, whether the order impugned is unsustainable under facts and in law?
- (ii) To what relief?

8. **POINTS:**

8.1 At the time of hearing, the learned counsel for the plaintiff, while reiterating the pleaded case of the plaintiff which is extracted *supra*, had *inter alia* contended as under: “The learned vacation Judge ought to have seen that it is not only admitted but also established that there is a building in existence in the suit schedule property and that it is a *prima facie* fit case for grant of temporary injunction in favour of the plaintiff. The learned vacation Judge had not relied upon the documentary evidence which is filed on behalf of the plaintiff. The non-consideration of vital documentary evidence is against established principles of law. The learned Vacation Judge ought to have seen and considered the contents of the Writ Petition and the order made in the writ proceedings and ought to have granted temporary injunction as prayed for in favour of the plaintiff. The learned Vacation Judge had failed to consider that the plaintiff society is running educational institutions, i.e., a school and a college and is imparting education to the students up to class X and also the students of the college being run by the society in the schedule premises. The learned Vacation Judge ought to have seen that there is ample evidence to show that the plaintiff society is having possession and enjoyment over the suit schedule property. The learned Vacation Judge ought not to have considered the orders of the Regional Joint Director and District Education Officer, Kadapa, canceling the permission to the educational institutions as the same is no way relevant for grant of temporary injunction and as the Khas possession of the plaintiff over the suit land is only relevant and that the said possession is established not only by filing the lease deed but also the other documentary evidence. The Learned Vacation Judge ought to have seen that the directions of this Court in the writ petition referred to above and the consequential proceedings are subsequent to the settlement deed dated 13.08.2012. The learned Vacation Judge ought to have seen that the plaintiff society, which is a lessee, is entitled to continue in possession of the property till its eviction in accordance with the procedure established by law. The impugned order, which is contrary to the facts and the law is unsustainable.”

8.2 On the other hand, the learned counsel for the respondent/ defendant

while supporting the order of the Court below had contended as Under: “The Court below had discussed at length the documentary evidence and the legal position, which is applicable, and had answered the point framed in favour of the defendant after taking into consideration the pleadings of both the parties and also the facts and circumstances of the case. Further, in support of its finding, the Court below had recorded cogent and valid reasons. When the Court below had recorded a finding on the facts by accepting the case of the defendant on all the aspects of the matter, the appeal raising casual grounds of objection is not maintainable. All the contentions that are now raised by the plaintiff society were well-considered by the Court below before not accepting them. The plaintiff is not entitled to again raise the self-same contentions before this Court. There is no merit in the appeal and the appeal is liable to be dismissed.”

9. The plaintiff society claims to be a lessor of the property under a registered lease deed executed by Telugu Church Council. The said lease deed is dated 14.09.1990 and is marked as exhibit A1. The lease period is stated to be 30 years and expires by 13.09.2020. However, the extent of the schedule property is confined to Ac2.00 with buildings constructed by the plaintiff for running educational institutions viz., a school and a college. On the other hand, the defendant while contending that the lease deed is a forged document *inter alia* submits as under: ‘The real owner of the property is the vendor of the defendant, i.e., the Church of South India Trust Association (CSITA) and that the defendant had trespassed into the suit schedule property by forging and bringing into existence the alleged exhibit A2-registered lease deed dated 14.09.1990. The same, in any view of the matter, was obtained from a party which had no authority, right, title and interest in the property and hence, the alleged possession of the plaintiff is not lawful. The order dated 27.11.2012 of this Court in W.P.No.33098 of 2012 under exhibit B2 supports the case of the defendant as this Court while upholding the proceeding/order dated 23.08.2012 issued by the Regional Joint Director, Kadapa revising the recognition of the school had further directed that the petitioner/plaintiff herein to approach the Regional Joint

Director, Kadapa, if it holds a valid lease from the lawful owner of the property beyond the current academic year and also directed that the Regional Joint Director, Kadapa shall consider the same for extension of recognition. In the proceeding that had been finally decided by the Supreme Court, it was declared that M/s. Church of South India (CSI) is having title to the property and not the alleged lessor of the plaintiff. In an enquiry, which was made by the Regional Joint Director, Kadapa (Department of Education), it was established that the lease deed under exhibit A2 being relied upon by the plaintiff is a forged document and the recognition/permission to run educational institutions granted to the plaintiff was cancelled pursuant thereto. Thus, the plaintiff has no valid recognition/permission to run the educational institutions from the academic year 2013 in view of the cancellation/revision orders issued by the Education Department. A settlement deed was executed after the settlement of dispute between B.N.R. Constructions, represented by its Managing Partner B.Yerriswamy Reddy and the St. Joseph English Medium School Educational Society represented by D.Chenna Reddy. In that settlement document, it was admitted that B.N.R. Constructions, i.e., the defendant is the title holder of the property. There was also a term in that document regarding compensation payable for the construction made by the St. Joseph English Medium School Educational Society and that the same has to be decided at the intervention of the elders. The value has to be determined by competent persons. In view of the admission of the title of the defendant in the settlement document and the cancellation of permission/recognition and affiliation to run the educational institutions, the plaintiff is not entitled to contend that it is in possession, much less as a lessee. The defendant could establish that Telugu Church Council has no authority or ownership rights to lease out the property and that the lease deed is a forged document and that it was not executed by the real owner of the property, i.e., Church of South India; and, hence, the plaintiff has no lawful possession and a *prima facie* case.

10. Before proceeding further, it is necessary to advert to the following important aspect of the matter. 'On 13.06.2013, during the pendency of this

appeal before this court, the learned counsel for the respondent (the defendant) had brought to the notice of a learned Judge of this court that in the counter at page no.(6) in the last paragraph, it is stated on behalf of respondent/defendant that the petitioner/appellant (plaintiff) has taken away entire furniture from the school on 2nd and 3rd of June, 2013 and that the petitioner (plaintiff) is not in possession of the suit property as on the date of filing of the counter, i.e., 11.06.2013 and that on the other hand, *Sri P.Raghu Ram*, the learned senior counsel for the petitioner had represented that he will file a reply for the counter affidavit regarding possession of the property and that therefore, the matter was adjourned to 14.06.2013 and that on that day, a reply affidavit was filed and that on 14.06.2013, the said learned Judge had recorded in the proceeding sheet as follows:

“Heard Sri Raghu Ram, learned counsel appearing for the appellant and Sri V.Venkata Ramana, learned counsel appearing for the respondent.

In the C.M.A., the respondent filed a counter, the last paragraph of which reads as follows:

“It is submitted that the possession of the property is delivered to the respondent on 27-9-2007 on which date sale deed is executed. After dismissal of the I.A.No.116 of 2013 in O.S.No.35 of 2013 on 28-5-2013 the petitioner herein removed the name boards of the School and also taken away the entire furniture from the School on 2nd and 3rd of June, 2013, as such, the petitioner is not in possession of the property as on today. Hence, there are no merits in the above CMA and the orders passed by the Court below on 28-5-2013 in I.A.No.116 of 2013 in O.S.No.35 of 2013 are perfectly legal and based on material available on record. Hence, it is prayed that this Hon’ble Court may be pleased to dismiss the C.M.A. with the costs.”

The above paragraph reads that the petitioner/plaintiff removed the sign boards of the School and she is not in possession of the property as on today, i.e., the date of the counter.

The petitioner/appellant filed reply affidavit dated 14-06-2013 denying the above averments and says that she is still continuing in possession. Normally, a Commissioner should not be appointed to find out who is in possession of the property.

In view of the above averments and counter averments in the counter in reply, which are already referred to supra, I am of the opinion that to ascertain the ground reality, an Advocate Commissioner should be appointed by the trial court to obtain a report on the above aspect of possession. Both the counsel also agreed and in fact they stated that the Advocate Commissioner can be appointed by this Court. However, I am of the opinion that the trial Court should be directed to appoint the Advocate

Commissioner at its place to get the report.

Accordingly the Registry shall communicate copies of the counter affidavit of the respondent and the reply affidavit of the petitioner to the trial court along with copy of this order, and thereupon, the trial Court shall appoint an Advocate Commissioner to obtain a report on the ground reality about the possession. The trial Court shall give the necessary directions in the warrant and the said Advocate Commissioner shall submit a report expeditiously to the trial Court and it shall communicate the same to this Court.” (Reproduced verbatim).

11. Thus, having regard to the facts peculiar to this case, a learned Judge of this Court had earlier appointed an Advocate Commissioner for the reasons, which are reflected in the aforementioned orders. The Commissioner appointed by this Court having visited the property on 24.07.2013 had filed a report along with a rough sketch. According to the Commissioner, there are ‘A’, ‘B’. ‘C’ and ‘D’ blocks apart from other structures. He had noted the existence of the blocks with the following further observations in a table, which is reproduced hereunder:

Block Number	Number of floors	Number of rooms	Boundaries
‘A’	Three	Eight rooms in each floor	Southern side
‘B’	Three	Nine Rooms in first floor Eight Rooms in second floor Ten Rooms in third floor	Northern Side
‘B’	Three	Five Rooms in first floor Six Rooms in second floor Five Rooms in third floor	Northern Side
‘C’	Three floors	Five Rooms in each Floor	Western side

He had further noted the existence of three dilapidated “Tiles Sheds” on the West-Northern side of ‘C’ block adjoining to the compound wall besides one ‘tin shed’ and one ‘tiles shed’, which are in a dilapidated condition and five tin sheds which are vacant. He had noted further details and the physical features of the property in his report. He had also noted that there is a Decree College on the Northern side of the school building and that the college

building consists of three floors and that there are seven rooms in 1st and 2nd floors and five rooms in the third floor and that in the 1st floor there is one Library Room with books, and iron safes (with CVLNR Label) and that the library is not in use at the time of his visit. According to his observations, some rooms are having furniture but, the furniture is covered with dust. Thus, he has noted existence of several multi-storied blocks and other constructions in the property and had also filed a sketch showing existence of the said blocks/structures. He had noted that he did not find staff and students of the school at the buildings. But, he had observed certain material items like desks, black boards, etcetera related to the school. Be that as it may. Placing reliance on the observations in the Commissioner's report, the learned senior counsel for the plaintiff would contend that the allegations that the plaintiff had taken away the entire furniture from the school on 2nd and 3rd June 2013 is false.

12. Reverting to the original pleadings, let it be assumed for a moment that the lease deed of the defendant is not true and that it was not executed by a real owner and that the lease deed is not a valid document; still, it is an admitted and undisputed fact that the plaintiff had entered into possession of the suit schedule property long time back; and, having constructed multi-storied buildings had run the educational institutions like a school and college for quite some time in the plaint schedule property with permission and recognitions obtained from the Education and other departments and also affiliation from the University. Though, the permissions and recognitions were cancelled later, it is only suggestive and it follows that the plaintiff cannot run a recognized school and/or college. The fact that the recognitions or permissions to run the educational institutions are cancelled and the affiliation is also cancelled does not lead to a conclusion that the plaintiff who had entered into possession of the schedule property long time back and made valuable multi-storied constructions for running the educational institution has lost physical possession also over the suit schedule property in which admittedly, the plaintiff had constructed huge buildings to facilitate the running of the school and the college. Even in the

counter of the defendant, it is urged as follows:

“The law of equity did not permit the petitioner to seek for injunction against this respondent who is true owner of the property, which was directly admitted by the petitioner before the Regional Joint Director, Kadapa and signed I the terms of settlement. The petitioner being unauthorized occupier cannot seek any relief against this respondent, admittedly purchase the suit property by the respondent even according to the petitioner.”
(Reproduced verbatim)

From these very allegations in the counter, it is clear that the possession of the plaintiff over the suit schedule land is admitted though it is sought to be contended that the plaintiff is an unauthorized occupier. Any contentions that the plaintiff had voluntarily vacated the property and delivered possession orally cannot be countenanced by this Court when the plaintiff is seriously contesting the matter before this Court all through. If really, the plaintiff had voluntarily vacated the property nothing prevented the defendant from obtaining from the plaintiff a valid delivery receipt. No such document was admittedly executed by the plaintiff in favour of the defendant. The Commissioner's report falsifies the contention of the defendant that on 2nd and 3rd of June 2013, the plaintiff had taken away the entire furniture from the school. Therefore, from the admission in the counter and the report of the Commissioner, there is ample evidence to come to a safe conclusion that though recognition/permission for running educational institutions are cancelled, the plaintiff society is continuing in possession of the property though not running at present any school or college. Moreover, when the plaintiff society admittedly made huge constructions the real owner did not make any objection till a sale deed was obtained by the defendant herein in the year 2007. When the real owner was not in possession and when educational institutions are being run, how the physical possession of the vacant site property was delivered to the defendant under a sale deed executed in the year 2007 could not be explained by the defendant. Further, the learned senior counsel for the plaintiff would contend that the plaintiff had constructed multistoried and other valuable buildings in this plaintiff schedule property by spending huge amounts for running the educational institutions

and that even in the settlement deed, though it is disputed by the plaintiff, there is a recital in regard to compensation payable for the buildings that were erected by the plaintiff society and that therefore, the equity is in favour of the plaintiff. When once it is established that the plaintiff is in settled possession having made valuable constructions over the property and when the contention that the plaintiff had taken away the entire furniture from the school on 02nd and 03rd of June 2013 is found to be unacceptable more particularly in the light of the observations in the report of the Commissioner and when the possession of the plaintiff over the plaint schedule property is established to be continuing and when admittedly, no compensation was determined and paid to the plaintiff towards the value of the constructions made over the property, even the real owner like the defendant cannot take forcible possession of the property from the plaintiff. The possession of the plaintiff over the property is admittedly continuing since a long time, which is more than a decade. However, the trial Court did not consider all these factual aspects, which are relevant. From the facts, it is clear that after the disposal of the interlocutory application by the trial Court a contention was raised before this court by the defendant that the plaintiff had voluntarily taken away the furniture from the schedule property and the said contention is found to be not true. Whether the plaintiff is entitled to permission/recognition and affiliation are beyond the scope of the present enquiry and the possession of the plaintiff over the property is only germane for consideration.

13. It is note worthy that in the decision in **Rame Gowda (D) by L. Rs v. M. Varadappa Naidu (D) by Lrs.**^[1], a Bench of three Hon'ble Judges of the Supreme Court while dealing with the right of a trespasser to remain in possession till he is lawfully evicted has held as follows:

8. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In Midnapur Zamindary Co. Ltd. v. Kumar Naresh Narayan Roy and Ors. - Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

9. The thought has prevailed incessantly till date, the

last and latest one in the chain of decisions being Ramesh Chand Ardawatiya v. Anil Panjwani - [2003]3SCR1149 . In-between, to quote a few out of severals, in Lallu Yeshwant Singh (dead) by his legal representative v. Rao Jagdish Singh and Ors. [1968]2SCR203 , this Court had held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to Court and obtain an order for possession before he could eject the lessee. The court quoted with approval the law as stated by a Full Bench of Allahabad High Court in Yar Mohammad v. Lakshmi Das AIR1959All1 , "Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." In the oft-quoted case of Nair Service Society Ltd. v. K.C. Alexander and Ors. [1968]3SCR163 , this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. The court quoted Loft's maxim '*Possessto contra omnes valet praeter eur cul lus sit possessionis* (He that hath possession hath right against all but him that hath the very right)' and said, "A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time". In M.C. Chockalingam and Ors. v. V. Manickavasagam and Ors. [1974]2SCR143 , this Court held that the law forbids forcible dispossession even with the best of title. In Krishna Ram Mahale (dead) by his Lrs. v. Mrs. Shobha Venkat Rao AIR1989SC2097 , it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In Nagar Palika, Jind v. Jagat Singh, Advocate [1995]3SCR9 , this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the

defendant.

10. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

11. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. v. Delhi Administration -1968CriLJ806, Puran Singh and Ors. v. The State of Punjab -AIR1975SC1674 and Ram Rattan and Ors. v. State of Uttar Pradesh -1977CriLJ433. The authorities need not be multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is, entitled to defend his possession even against the rightful owner.

The ratio laid down supra applies on all fours to the case of the plaintiff. The conduct of the defendant in this case in contending falsely that the plaintiff

had taken away his furniture from the school on 2nd and 3rd June 2013, would support the contention of the plaintiff that the apprehension that the defendant is trying to forcefully evict the plaintiff from the property is based on facts and not on imaginary or false grounds. However, one of the contentions is that the plaintiff did not come to court with clean hands and that since the lease itself is invalid, the possession of the plaintiff from the inception is not lawful and that therefore, the plaintiff is not entitled to the equitable relief of temporary injunction. At the same time, the defendant is not entitled to take forcible possession from the plaintiff, in the facts and circumstances of the case.

14. Viewed thus, this Court finds that while accepting that the plaintiff is in possession of the property, a direction can be given to both the parties to maintain *status quo* as regards the possession of the plaintiff till the disposal of the suit leaving open the contentious issues to be decided in the suit after full fledged trial.

15. In the result, the Civil Miscellaneous Appeal is allowed accordingly and the impugned order is set aside. While recording that the plaintiff is in possession of the suit schedule property, both the parties are directed to maintain *status quo* as regards plaintiff's possession over the suit schedule property till the final disposal of the suit. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.SEETHARAMA MURTI, J

05th August 2015
BVV

[\[1\]](#) AIR 2004 SC 4609