

ATUL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1066 OF 2001

- 1. ~~NABI AHMED MOHAMMED VASIN,~~**
Since deceased through his legal
heirs:-
- 1a. ANSARI NAZMA NABI AHMED,**
Age 34 years
- 1b. ANSARI MOHAMMED SHOEIB NABI**
AHMED,
Age 32 years
- 1c. ANSARI MOHAMMED ZAHID NABI**
AHMED,
Age 30 years
- 1d. ANSARI ZAKIR HUSSAIN NABI**
AHMED,
Age 26 years
- 1e. ANSARI ERAM JAHAN NABI**
AHMED,
Age 20 years

All of Bombay, Indian Inhabitant,
now R/at Shop No. 2, Ground
Floor, Tahera House, 25, Mastan
Tank Road, Mumbai 400008

...Appellants
(Orig. Defendants)

~VERSUS~

- 1. SABIRA W/O MOHAMED**
SIDDIQUE,

Bombay, Indian Inhabitant,
Residing at Room No. 6 to 8, First
Floor, Tahera House, 25, Mastan
Tank Street, Mumbai 400008

2. **NOORMOHAMED DIN MOHAMAD**,
Bombay, Indian Inhabitant, Also
residing at Room No. 6 to 8, First
Floor, Tahera House, 25, Mastan
Tank Street, Mumbai 400008

...Respondents
(Orig. Plaintiffs)

APPEARANCES

FOR THE APPELLANTS **E. R. Naik**, *Advocate*

FOR THE RESPONDENTS **A. K. N. Mulla**, *Advocate*

CORAM : G. S. Patel, J.

JUDGMENT RESERVED ON : 21 July 2017

JUDGMENT PRONOUNCED ON : 04 August 2017

JUDGMENT:

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A. INTRODUCTION

1. This Appeal arises from the order and judgment dated 28 April 2000 passed by the Ld. Additional Principal Judge of the City Civil Court at Bombay in S. C. Suit No. 7460 of 1995. The appeal was admitted on 9th September 2004.

2. The Appellants were the original Defendants, and the Respondents were the original Plaintiffs. The 1st Plaintiff is Sabira, widow of Mohammed Siddique, and the 2nd Plaintiff is her brother, Noormohamed Din Mohamad. Following the original Appellant's death, his heirs have been brought on record by an amendment dated 30 June 2006.

3. The dispute is over the Defendant's alleged trespass on Room No. 2 (**"suit premises"** **"Shop No. 2"**, **"Room No. 2"**) in a building known as Tahera House, located at 25, Mastan Tank Street, Mumbai – 400008 (**"Tahera House"**). Tahera Nainuddin was the landlady of Tahera House.¹

4. In the City Court Suit, the learned Judge framed nine issues and adjudged the Defendants as trespassers. He also ordered an enquiry under Order 20 Rule 12(1)(c) of the Code of Civil Procedure, 1908 in regard to the prayer for mesne profits. Prayer (a)

1 Deceased in 1982; cross examination of the Defendant, page 164 of the paper-book.

of the suit was for a declaration that the Defendant was a trespasser and had no right whatever in regard to the suit premises. Prayer (b) was for a decree of possession.

B. FACTS

5. The Plaintiffs and the Defendant are not strangers. They are family members. A detailed family tree is tendered. The Plaintiffs' father, Din Mohammed, and the 1st Plaintiff's father-in-law, Gulam Mohammed ("**Gulam**"), were brothers. The 1st Plaintiff married Gulam Mohammed's son, Mohammed Siddique.

6. The Defendant, Nabi Ahmed Mohammed Vasin, was the son of Rabiya Bi, the daughter of Gulam, and the sister of Mohammed Siddique. Gulam was thus also the Defendant's grandfather. They were all residing together in Tahera House.

7. The Plaintiffs, who are brother and sister, currently reside in Tahera House. The 1st Plaintiff has succeeded to the tenancy as the widow of Mohammed Siddique, who died on 11 January 1967.² The rent receipts were transferred and now stand in the name of the 1st Plaintiff.³

2 Death Certificate at Exhibit "B".

3 Examination-in-chief of the 2nd Plaintiff, pages 127, 128 and 145 of the paper-book.

8. During his lifetime, Gulam was the original tenant of multiple rooms in Tahera House, including the suit premises. The examination-in-chief of the 2nd Plaintiff reveals a ration card in Gulam's name.⁴ This card shows the 1st Plaintiff and her husband as living in Room No. 7 on the first floor of Tahera House.

9. It is not in dispute that the suit premises was originally occupied by one Abdul Hamid, Gulam's maternal cousin. He started a gymnasium or *akhada* in the suit premises, offering training free of cost. The suit premises became a public institution of wrestling known as Hamidia Akhada.⁵ After Abdul Hamid's death in 1946, Gulam succeeded to the tenancy of the suit premises.⁶

10. The Defendant claims that Gulam gave permission to one Mohammad Husein Ansari ("**Ansari**") to operate and maintain the *akhada* and its equipment.⁷ The Defendant also claims that Ansari was paying rent to Gulam. Gulam died in 1994.

11. The Defendant claims that he was born in the suit premises, which had been used for residential purposes since his father's time.⁸ He claims that the tenancy in Tahera House was a family arrangement. There was never any formal agreement within the

4 Marked as 'X' for identification, bearing No. 33719, page 128 of the paper-book.

5 Examination-in-chief of the Defendant, page 152 of the paper-book.

6 Page 138 of the paper-book.

7 Page 9 of the compilation on behalf of the Plaintiffs.

8 Examination-in-chief of the Defendant, page 152 of the paper-book.

family with respect to rent receipts, charges, etc. He also calls into question whether the *akhada* was part of the family arrangement.

12. The Defendant claims that after the death of the original tenants, the successors went to stay separately and the *akhada* was closed.

13. The examination-in-chief of the 2nd Plaintiff states that the Defendant was originally residing in Room No. 13 on the second floor of Tahera House with his mother. Thereafter, he took a room on the first floor of House No. 21, Fatmabai Building, on a leave and license basis for 11 months. On the completion of this period, the Defendant and his wife returned to reside with his mother. They stayed with her for 8 or 9 months.⁹ The suit premises was then claimed to be handed over by Ansari to the Defendant, who started residing there with his wife and child, in 1972.¹⁰

14. In 1975, the Defendant filed RAD Suit No. 1582 of 1975 in the Small Causes Court (“**RAD Suit**”) against the 1st Plaintiff and the landlady for declaration either as a protected licensee or a protected tenant. The Defendant failed to prove that he was entitled to any protection under Section 15-A of the Bombay Rent Act, 1947 (“Rent Act”). He also could not prove that he was in lawful or exclusive possession.

9 Page 129 of the paper-book.

10 Cross-examination of the Defendant, page 158 of the paper-book.

15. The suit was rejected by judgment and order of the Small Causes Court dated 27 February 1992.¹¹ An appeal before the Appellate Bench of that Court also failed.¹²

16. In the meanwhile, the landlady filed RAD Suit No. 2036 of 1975 before the Small Causes Court against the Plaintiffs to hand over the possession of the suit premises, on the grounds that the rent was in arrears for more than 6 months. The landlady also contended that the 1st Plaintiff had illegally sublet the suit premises to the Defendant in the present suit. In this suit, there was an order for the Plaintiffs to deposit the rent with the court. The 1st Plaintiff deposited rents till 1997.¹³ Finally, this suit was disposed of in the Plaintiffs' favour.¹⁴

17. In 1992, the Plaintiffs, through their advocate Mr M. M. Bagadia, acted on the order of the Small Causes Court.¹⁵ They sent a legal notice to the Defendant to vacate the suit premises. Having failed in their tenancy suit, the Defendant was presumed to be a trespasser. He was given sufficient time to vacate.¹⁶

11 Ex. "C" in the compilation on behalf of the Plaintiffs, page 66 of the compilation.

12 Appeal No. 211 of 1992. Ex. "D" in the compilation on behalf of the Plaintiffs, page 86 of the compilation.

13 Deposit receipt at Exhibit "E".

14 Examination-in-chief of the 2nd Plaintiff, pages 127 and 128 of the paper-book.

15 Judgement in RAD Suit No. 1582 of 1975, dated 27 February 1992.

16 Page 113 of the paper-book.

18. The Defendant, through his advocate Mr A. A. Patel, denied all the claims made in the Plaintiffs' notice. He stated that he would prefer an appeal against the judgment of the Small Causes Court and refused to comply with any steps suggested by the Plaintiffs.¹⁷

19. The Plaintiffs then filed S. C. Suit No. 7460 of 1995 in the City Civil Court for eviction of the Defendant. The learned Judge held the Defendant to be a trespasser to the suit premises in terms of prayers (a) and (b).

20. The order in that suit is challenged in the present appeal.

C. ISSUES

21. The following issues were framed on 1 March 2000 and answered thus by the trial court:

Sr No	Issue	Finding
1	Whether the Defendant proves that the suit is barred by the law of limitation?	In the negative.
2	Whether the Defendant proves that this Hon'ble Court has no pecuniary jurisdiction to entertain and try the present suit?	In the negative.
3	Whether the Plaintiffs prove that	In the affirmative.

17 Letter dated 9 March 1992, page 116 of the paper-book.

Sr No	Issue	Finding
	they have succeeded to and become tenants of Shop No. 2, being the suit premises?	
4	Whether the Plaintiffs prove that the Defendant was in wrongful use and occupation of the suit premises without any right whatsoever.	In the affirmative.
5	Whether the Plaintiffs prove that they have become entitled to recover possession of the suit premises from the Defendant?	In the affirmative.
6	Whether the Plaintiffs prove that the Defendant is a trespasser and not entitled to any right in the suit premises as stated in para 9 of the plaint?	In the affirmative.
7	Whether the Plaintiffs prove that they are entitled to recover damages and/of compensation and future mesne profits from the Defendant?	In the affirmative.
8	Whether the Plaintiffs are entitled to any reliefs and if so what?	In the affirmative as per final order.
9	And generally.	As per final order.

D. EVIDENCE ON RECORD

22. The Plaintiffs led 24 documents in evidence before the trial court:

- (1) **Ex. "A"**: Original power of attorney granted by the 1st Plaintiff in favour of the 2nd Plaintiff dated 24 October 1985;
- (2) **Ex. "A(1)"**: Photocopy of the power of attorney granted by the 1st Plaintiff in favour of the 2nd Plaintiff dated 24 October 1985;
- (3) **Ex. "B"**: Death certificate of Mohammed Siddique dated 16 January 1967;¹⁸
- (4) **Ex. "B(1)"**: Photocopy of the death certificate of Mohammed Siddique dated 16 January 1967;
- (5) **Ex. "C"**: Death certificate of Gulam Mohammed dated 24 March 1994;¹⁹
- (6) **Ex. "C(1)"**: Photocopy of the death certificate of Gulam Mohammed dated 24 March 1994;
- (7) **Ex. "D"**: Certified copy of the proceedings in RAD Suit No. 2036/75 filed by Tahera Nainuddin in the Small Causes Court;²⁰

18 Examination-in-chief of the 2nd Plaintiff, page 127 of the paper-book.

19 Examination-in-chief of the 2nd Plaintiff, page 127 of the paper-book.

20 Examination-in-chief of the 2nd Plaintiff, page 127 of the paper-book.

- (8) **Ex. “D(1)”**: Photocopy of the certified copy of the proceedings in RAD Suit No. 2036/75 filed by Tahera Nainuddin in the Small Causes Court;
- (9) **Ex. “E”**: Deposit receipt of rent upto 1997 paid in court, bearing Ledger Folio No. S-459;²¹
- (10) **Ex. “E(1)”**: Photocopy of the deposit receipt of rent upto 1997 paid in court, bearing Ledger Folio No. S-459;
- (11) **Marked ‘X’ for identification**: Original ration card bearing No. 337179, in the name of Gulam Mohammed, showing the 1st Plaintiff and her husband residing in Room No. 7 on the first floor of Tahera House;²²
- (12) **Marked ‘X’(A) for identification**: Photocopy of the ration card bearing No. 337179, in the name of Gulam Mohammed, showing the 1st Plaintiff and her husband residing in Room No. 7 on the first floor of Tahera House;
- (13) **Ex. “F” Colly**: One notice for non-payment of electricity bill dated 6 January 1965 @ 3 electricity bills;²³
- (14) **Ex. “F(1)” Colly**: Photocopy of the notice for non-payment of electricity bill dated 6 January 1965 @ 3 electricity bills;

21 Examination-in-chief of the 2nd Plaintiff, page 128 of the paper-book.

22 Examination-in-chief of the 2nd Plaintiff, page 128 of the paper-book.

23 Examination-in-chief of the 2nd Plaintiff, page 129 of the paper-book.

- (15) **Ex. “G”**: Certified copy of the judgment dated 27 February 1992 of the Small Causes Court in RAD Suit No. 1582 of 1975;²⁴
- (16) **Ex. “G(1)”**: Photocopy of the judgment dated 27 February 1992 of the Small Causes Court in RAD Suit No. 1582 of 1975;
- (17) **Ex. “H”**: Certified copy of the oral judgment in AO No. 211/92 before the Appellate Bench of the Small Causes Court dated 13 September 1995;²⁵
- (18) **Ex. “H(1)”**: Photocopy of the oral judgment in AO No. 211/92 before the Appellate Bench of the Small Causes Court dated 13 September 1995;
- (19) **Ex. “J” Colly**: Notice from the 2nd Plaintiff to the Defendant dated 27 February 1992 and the Defendant’s reply dated 9 March 1992;²⁶
- (20) **Ex. “J-1” Colly**: Photocopy of the notice from the 2nd Plaintiff to the Defendant dated 27 February 1992 and the Defendant’s reply dated 9 March 1992;
- (21) **Marked ‘X’1 for identification**: Copy of the plaint and summons in RAD Suit No. 1582/75, as served upon the 1st Plaintiff;²⁷

24 Examination-in-chief of the 2nd Plaintiff, page 131 of the paper-book.

25 Examination-in-chief of the 2nd Plaintiff, page 131 of the paper-book.

26 Examination-in-chief of the 2nd Plaintiff, page 132 of the paper-book.

27 Examination-in-chief of the 2nd Plaintiff, page 134 of the paper-book.

- (22) **Ex. “K”**: Original rent receipt bearing No. 723, in the name of Gulam Mohammed, dated 15 September 1937;²⁸
- (23) **Ex. “K(1)”**: Photocopy of the rent receipt bearing No. 723, in the name of Gulam Mohammed, dated 15 September 1937;
- (24) **Marked ‘X’2 Colly for identification**: 2 original rent receipts dated 10 January 1980 and 1 February 1988;²⁹
- (25) **Marked ‘X’2-A Colly for identification**: Photocopies of 2 rent receipts dated 10 January 1980 and 1 February 1988.
- (26) **Marked ‘X’3 for identification**: Rent receipt bearing No. 237, in the name of Gulam Mohammed, dated 1 July 1950, in respect of rent for Shop No. 2 for the month of June 1950;³⁰
- (27) **Marked ‘X’3-A for identification**: Photocopy of rent receipt bearing No. 237, in the name of Gulam Mohammed, dated 1 July 1950, in respect of rent for Shop No. 2 for the month of June 1950;

23. The Defendants led six documents in evidence before the trial court:

28 Examination-in-chief of the 2nd Plaintiff, page 135 of the paper-book.
29 Examination-in-chief of the 2nd Plaintiff, page 135 of the paper-book.
30 Examination-in-chief of the 2nd Plaintiff, page 136 of the paper-book.

- (1) **Ex. “1”**: Original rent receipt bearing No. 144, issued by Shaikh Ismail Gulam Mhd. Khatib in the name of Abdul Suleman Ustad, dated 1 January 1940;³¹
- (2) **Ex. “1(A)”**: Photocopy of the rent receipt bearing No. 144, issued by Shaikh Ismail Gulam Mhd. Khatib in the name of Abdul Suleman Ustad, dated 1 January 1940;
- (3) **Ex. “2”**: Original rent receipt bearing No. 2, issued by Shaikh Ismail Gulam Mhd. Khatib in the name of Abdul Suleman Ustad, dated 1 November 1940;³²
- (4) **Ex. “2(A)”**: Photocopy of the rent receipt bearing No. 2, issued by Shaikh Ismail Gulam Mhd. Khatib in the name of Abdul Suleman Ustad, dated 01 November 1940;
- (5) **‘Y’ Colly for identification**: Original covering letter from the Assistant Commissioner of the BMC, dated 6 March 1971, and 2 permits for erection of a temporary booth, issued by the assessment engineer of the BMC, bearing Nos. 4715 and 1878, in the name of Nabi Ahmed Mohammed Yasin;³³
- (6) **‘Y(A)’ Colly for identification**: Photocopy of the covering letter from the Assistant Commissioner of the BMC, dated 6 March 1971, and 2 permits for erection

31 Cross-examination of the 2nd Plaintiff, page 139 of the paper-book.

32 Cross-examination of the 2nd Plaintiff, page 139 of the paper-book.

33 Cross-examination of the 2nd Plaintiff, pages 140 and 141 of the paper-book.

of a temporary booth, issued by the assessment engineer of the BMC, bearing Nos. 4715 and 1878, in the name of Nabi Ahmed Mohammed Yasin;

- (7) Ex. “3” Colly: Two original receipts for electricity bill paid by the Defendant, for the period 26 September 1972 to 25 October 1972 and 26 December 1972 to 29 January 1973, in respect of the suit premises;³⁴
- (8) Ex. “3(A)” Colly: Photocopies of two receipts for electricity bill paid by the Defendant, for the period 26 September 1972 to 25 October 1972 and 26 December 1972 to 29 January 1973, in respect of the suit premises;

E. FINDINGS

24. The dispute before me is on the issues of limitation and trespass. The City Civil Court observed:

“10...It is a case of trespass which continues **from day to day and every day is a fresh trespass and there is therefore, a fresh cause of action.** The right of the plaintiff continues though there is a trespass committed by the defendant. In support of this case the learned advocate on behalf of Plaintiffs has relied upon (1) 1994 Maharashtra Rent Control Journal 90 in the case of *State of Punjab and Ors. V/s. Brigadier Sukhjit Singh* (2) 1994 (1) Bom. C. R. 211 in case of *Byramjee Jeejeebhoy Private Limited V/s. Govindbhai Appaji Bhatte and Ors.* and (3) Commentaries

34 Cross-examination of the 2nd Plaintiff, page 141 of the paper-book.

from Chapter XII – The Law relating to possession from the book of Jurisprudence by Shri M. J. Sethna.”

(Emphasis added)

25. I find this reasoning tenable. To compute limitation, we must first establish that the trespass actually took place. I find no reason to disagree with the learned Judge.

26. Having heard Mr. Naik and Mr. Mulla for the Defendant and Plaintiffs respectively, I find that I must dismiss the appeal. My reasons follow.

27. The heart of the matter is the issue of trespass.

28. The Plaintiffs base their argument on the footing that the Defendant’s failed RAD Suit and appeal before the Small Causes Court implies that his occupation is one of a trespasser. Therefore, they claim that they are entitled to recover possession of the suit premises.

29. In the RAD Suit, the Defendant had sought protection either as a licensee or as a tenant. In this context, the City Civil Court observed:

“28. What is material to be noted is page 3 para 3 of the plaint of the Small Causes Court Suit wherein it has been stated by the present defendant who is the plaintiff in that suit that he is the protected licensee and/or tenant of the suit premises protected under the Bombay Rent Act as

amended in 1973. He is entitled for a declaration that he is the tenant of the suit premises....Thus what is material to be noted from the averments in the Small Causes Court Suit is that the defendant in this suit who is the plaintiff in the Small Causes Court had taken up the contention that he was protected licensee and/or tenant of the suit premises protected under the Bombay Rent Act. At no point of time in the Small Causes Court Suit the present defendant has stated that the suit premises was utilised as tenant in common. **The defendant's case in the Small Causes Court Suit and in the present suit is entirely different. In the Small Causes Court Suit he has claimed to be a protected licensee and/or tenant whereas in the present suit his case is of tenancy in common. The suit filed in the Small Causes Court is affirmed by the present defendant who is the plaintiff in that suit."**

(Emphasis added)

30. This is correct, and calls for no interference. I shall, therefore, be limiting myself to the plea of tenancy raised by the Defendant.

31. The 2nd Plaintiff, Noor Mohammed, in his cross examination, has said that the tenancy devolved upon the 1st Plaintiff from her late husband. He has also placed on record the rent receipts accrued during the relevant period.³⁵

32. As both families were living in the premises together, the Defendant claims that it cannot be said that he has no rights to the property. He claims that the rent receipts were not transferred to

35 Exhibits "K", 'X'2, 'X'3.

anyone, nor was there any discussion regarding the transfer of the rent receipt, either with the 1st Plaintiff or the landlady. He also claimed that he was paying the electricity bill for the suit premises.³⁶ The Defendant denies any claim that he trespassed upon the suit premises.³⁷

33. The City Civil Court has observed:

“Coming to the evidence of the present defendant who is the plaintiff in the Small Causes Court suit, the present defendant who is the plaintiff has stated that the rent receipt in respect of the suit premises stands in the name of defendant No. 2 that is the present plaintiff No. 1. In his written statement that is now filed in the present suit at page 2 the present defendant has stated that because of illiteracy in the family and taking advantage of this fact the plaintiffs in the present suit must have obtained the rent receipt in their favour. **Thus the present defendant was aware in 1991 that the rent of the suit premises stood in the name of plaintiff No. 1.**”

(Emphasis added)

34. The Defendant has adduced no evidence to support his inconsistent claims regarding the rent receipts. The 1st Plaintiff has produced sufficient evidence to show that the rent receipts were transferred in her name.³⁸

36 Examination-in-chief of the Defendant, page 152 of the paper-book.

37 Examination-in-chief of the Defendant, page 153 of the paper-book.

38 Examination-in-chief of the 2nd Plaintiff, page 128 of the paper-book.

35. The Plaintiffs' claim stands further reinforced by the fact that it is they who were impleaded as tenants in the landlady's suit for vacating the suit premises on grounds of rent arrears. This is despite the Defendant being in possession of the suit premises since April 1972. Thus, there was no express or implied acknowledgement of the Defendant's tenancy. The City Civil Court rightly perused the evidence adduced. It was justified in holding that the Defendant failed to substantiate his claims. The Defendant's claim of tenancy therefore cannot be upheld. I shall now consider whether he is a trespasser.

36. A trespasser is a party in possession whose possession is unlawful and not juridical, i.e., of a kind that the law does not recognise. In the present case, the Defendant is in possession of the suit premises from 1972. His possession or continued occupation of the suit premises however does not conclusively validate his entry. The Defendant has claimed that he entered the suit premises with Ansari's permission. But it cannot be confirmed whether Ansari himself had the authority to allow the Defendant to enter or occupy the suit premises. Ansari's authority over the suit premises extended only till the upkeep of the *akhada* and its equipment. That, too, died with Gulam. Ansari, therefore, could not transfer any right, title or interest in the suit premises in favour of the Defendant.

37. Therefore, it is not conclusively established that the Defendant's initial entry was such as the law recognises. Turning to the Defendant's stay in the suit premises, it is a matter of fact that the Plaintiffs have been actively trying to remove him from Room

No. 2 since 1992. His continuance in possession is, therefore, also not demonstrated to be authorised of lawful.

38. The trial court, in its reasoning to understand the issue of trespass, observed that all the rent receipts and other bills were paid by the Plaintiffs and there is no record to show or prove the rightful possession of the Defendant.

39. The Defendant's case is that the initial entry in the suit premises was with the permission of the Plaintiffs and the subsequent stay was with their full consent.³⁹ But nowhere in the cross examination has the Defendant been able to prove the consent of the Plaintiffs.

40. The trial court has observed:⁴⁰

"The defendant has not taken permission either from him or Plaintiff No. 14 for residing in the suit premises. On being shown written statement dated 21-2-2000 filed in the Small Causes Court Suit P. W. No. 1 has stated that the said statement of the defendant was incorrect. The landlady Tahirabi and any of her children have never resided in the suit premises. The defendants' statement that he had tenancy rights in the suit premises was incorrect. **Since the time the defendant trespassed in the suit premises till his death he had not paid anything either to him or Plaintiff No.1 or to anybody else.**"

(Emphasis added)

39 Page 5 of the paper-book.

40 Pages 33 and 34 of the paper-book.

41. The logical conclusion that can finally be drawn from this is that the Defendants have no demonstrated title. They are not tenants, sub-tenants, or licensees. They are obviously not the owners. This leaves me with no option but to term them as trespassers.

42. Now to the issue of limitation. Averments have been made on grounds of both Articles 65 and 69 of the Limitation Act. Article 65 is the only one applicable. It speaks of the period of limitation where the title or possession of the Defendant becomes 'adverse' to the Plaintiff. The Plaintiffs have relied on various decisions of the Supreme Court to support their argument that every day the trespass continues, a fresh cause of action arises.

43. In *Gaya Parshad Dikshit v Dr Nirmal Chander and Anr*,⁴¹ it was held that a mere continuance of unauthorised possession by a licensee for more than 12 years does not enable him to claim title by adverse possession. Thus, if the initial point of entry is unauthorised, no amount of time lapsed enables a person to claim an adverse title.

44. From *Bhura Mogiya and Ors v Satish Pagariya and Ors*:⁴²

"Permissible possession cannot be converted into adverse possession. Party originally getting possession by permission, such as under an agreement for sale, cannot claim to be in adverse possession, unless he proved that

41 (1984) 2 SCC 286; Para 5.

42 (2001) 9 SCC 385; Para 5.

he had asserted and acquired adverse title to the property within the knowledge of the true owner for a period of twelve years or above."

45. In *The State Bank of Travancore v Aravindan Kunju Panicker and Ors*, the Supreme Court said:⁴³

"Permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twelve years or more."

46. The authorities cited above support the conclusion that a fresh period of limitation begins on every successive day the trespass continues. Therefore, it is not possible to hold that the suit is barred by limitation.

F. CONCLUSIONS AND ORDER

47. The Defendant has not been able to support his claim of tenancy in Tahera House. Nor has he been able to prove that he has a right to use or occupy the suit premises, i.e., that he is not a trespasser. His final plea, that of limitation, fails due to the nature of the cause of action.

43 (1972) 4 SCC 274; Para 9.

48. On the other hand, the Plaintiffs have established their right to the tenancy as successors of Gulam Mohammed. They have paid the rents and charges.

49. The appeal is accordingly dismissed.

50. There will be no order as to costs.

51. The appellants will deliver possession of the suit premises to the Plaintiffs within three months from today. They will not, in that time, create any third party rights in respect of the suit premises. Since I have given three months' time to vacate, there is no question of granting a further stay.

(G.S. PATEL, J.)