

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 30, 2016

Judgment delivered on: March 08, 2017

+ FAO(OS) 385/2014 & CM No. 14139/2014

M/S CARAVAN COMMERCIAL COMPANY LTD

..... Appellant

Through: Mr. Arvind Nigam, Sr. Adv. with Mr.K.
Datta & Mr.Manish Srivastava, Adv.

versus

YASHASHWI AGGARWAL & ORS

..... Respondents

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr.Jeevesh Nagrath, Ms.Monica
Manchanda, Mr.Chetan Gautam &
Ms.Meghna Bal, Adv. for R-1 & 2.
Mr. Manish Vashist, Adv. for R-3 & 4
Mr.Deepak Sahni, Adv. for R-11.
Mr.Lalit Gupta with Mr.Gaurav Lavaria,
Adv. for R-12 to 18.

+ FAO(OS) 386/2014 & CM Nos. 14143/2014 & 14145/2014

SMT. PUSHPA DEVI

..... Appellant

Through: Mr.Deepak Sahni, Adv.

versus

SHRI YASHASHWI AGGARWAL & ORS

.... Respondents

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr.Jeevesh Nagrath, Ms.Monica Manchanda,
Mr.Chetan Gautam & Ms.Meghna Bal, Advs.
for R-1 & 2.
Mr. Manish Vashist, Adv. for R-3 & 4
Mr. Arvind Nigam, Sr. Adv. with Mr.K. Datta,
Mr.Manish Srivastava, Advs. for R-9.
Mr.Lalit Gupta with Mr.Gaurav Lavaria, Advs.
for R-11 to 17.

CORAM:

**HON'BLE MS JUSTICE INDIRA BANERJEE
HON'BLE MR JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

**CM No. 14145/2014 in FAO(OS) 386/2014 (filed by appellant under Section 151
CPC seeking permission for filing lengthy list of dates and events)**

For the reasons stated in the application, the same is allowed and disposed of.

FAO(OS) 385/2014 & FAO(OS) 386/2014

1. These two appeals impugn order dated August 4, 2014 passed by the learned Single Judge in suit bearing CS (OS) No. 1561/1994 whereby the learned Single Judge has decided an application under Order 39 Rule 2A read with Section 151 CPC preferred by the respondents 1 and 2 herein, wherein it has been held that the appellants herein have disobeyed the status quo order dated May 07, 1997 subsequently modified by orders dated September 16, 2005 and November 24, 2009 and as such, guilty of committing contempt of the Court and further directed M/s

Caravan Commercial Co. Ltd. (the appellant in FAO (OS) no. 385/2014) (Caravan in short) to deliver the vacant possession of entire ground floor as received by it from Smt. Pushpa Devi (appellant in FAO (OS) No. 386/2014) within eight weeks. Similarly, Smt. Pushpa Devi has been directed to obtain physical possession of the entire ground floor delivered by her to M/s Caravan (appellant in FAO(OS) 385/2014) within eight weeks. The learned Single Judge has also observed that awarding of punishment will be dependant upon the compliance of the order. We may state here that, the period of eight weeks was extended initially on September 23, 2014 in the appeals. Thereafter, on November 12, 2014, in both the appeals, the Court directed parties to maintain status quo till the next date of hearing and on January 25, 2016, the Court directed the continuance of interim orders till further orders.

FACTS (as noted in FAO(OS) 385/2014):-

2. There are three co-owners namely (i) Late Smt. Shanti Devi (respondents 12 to 18 in FAO (OS) No. 385/2014 are her legal heirs), respondents 11 to 17 in FAO(OS) No. 386/2014 (ii) Late Smt. Bimla Devi (respondents 3 to 6 in FAO(OS) No. 385/2014 and FAO(OS) 386/2014 are her legal heirs and (iii) Smt. Pushpa Devi (the appellant in FAO (OS) 386/2014) in respect of suit property No. 42-44, Sunder Nagar, New Delhi ('suit property' in short). A perpetual lease in respect of the suit property was executed in their favour in the year 1954. A fresh perpetual lease was

executed in the year 1992 on the demise of Smt. Shanti Devi to include her heirs (respondents 15 to 18) and Late Sh. Mahinder Kumar Gupta, S/o Late Smt. Shanti Devi, Late Smt. Bimla Devi and Smt. Pushpa Devi. The three co-owners are said to be the sisters-in-law. It is the case of the appellant Caravan that between 1954 to 1977 the suit property was entirely tenanted to the Embassy of Poland and from 1977 to 1994, it was entirely tenanted to the DPR of Korea Embassy. It is stated that the suit property was never physically occupied by any of the three co-owners or their families till 1994. The built-up construction consists of an independent ground floor and an independent first floor and terrace. Two independent and separate driveways and entrances access these two built-up portions having separate kitchen and place of worship. There are two independent servant quarters at the end of the two driveways. There is no internal staircase between the two units. It is the case of the appellant Caravan that on November 15, 1991 all three co-owners entered into an Agreement to Sell with Caravan agreeing to convey and transfer the entire suit property to Caravan for a total consideration of Rs.1.90 crores. On November 16, 1992, another Registered Agreement to Sell was executed by all the three co-owners in favour of Caravan. Under the aforesaid two Agreements to Sell, a total of Rs.66 lakhs was paid to the three co-owners in equal shares. The permission of the Income Tax Authority and Urban Land Ceiling Authority was obtained.

3. It is the case of the Caravan that it was agreed that the sale transaction was to be completed on or before October 31, 1993. It is represented that in September, 1993, Caravan became aware of a suit being CS(OS) No. 1578/1992 filed by one Sh. Arun Batra seeking specific performance of an alleged oral Agreement to Sell in respect of the suit property. It is stated that Caravan also learnt that by an ad-interim ex-parte order dated April 23, 1992, Late Smt. Bimla Devi and the legal heirs of Late Smt. Shanti Devi had been restrained from selling their respective shares in the suit property. It is stated by Caravan that the co-owners were duly aware of the said ad-interim ex-parte order but did not inform the appellant Caravan and in fact received a further part of the sale consideration in November 1992. It is the stand of Caravan that under these circumstances, it had filed a suit being CS (OS) No. 2443/1993 for specific performance, which is pending adjudication before this Court. By an order dated September 06, 1999 both the aforesaid suits have been consolidated for the purpose of recording evidence, which is going on before the learned Local Commissioner. It is stated that by detailed judgment and order dated July 02, 2010 the ex-parte ad-interim order of injunction passed in Sh. Arun Batra's suit was vacated by the learned Single Judge, which had been upheld in appeal and before the Supreme Court. It is the case of the Caravan, in an effort to buy peace in litigation pending for more than 20 years, it purchased 2/3rd share in the suit property by executing Registered Agreements to Sell and other related documents

with the legal heirs of Late Smt. Shanti Devi on May 25, 2011 and Smt. Pushpa Devi on May 30, 2011. It is stated by Caravan that it paid additional consideration of Rs.20 Crores to the aforesaid parties once again in an effort to buy peace and to put to an end to the protracted litigation. It is the case of the appellant Caravan that pursuant to this Smt. Pushpa Devi who was in sole and exclusive occupation of the entire ground floor of the suit property since 1994 handed over possession of the same to Caravan. It is stated that the entire first floor and terrace are in the peaceful occupation of the legal heirs of Late Smt. Bimla Devi since 1994 and continues undisturbed. It is stated by Caravan that this fact of handing over of the possession was noted by the learned Single Judge of this Court in its order dated June 02, 2011 when it was brought to the notice of the Court by counsel for Smt. Pushpa Devi.

4. That Caravan has given reference to certain other litigations concerning the suit property. The same are as under:-

- (a) Suit for partition [CS (OS) No. 690/2006] filed by the legal heirs of Late Smt. Shanti Devi who were never in occupation of the suit property (respondents 12 to 18) seeking partition and possession of the suit property. The aforesaid suit was withdrawn pursuant to the further Agreements to Sell executed by and between Caravan & respondents 12 to 18 on May 30, 2011. It is stated that no other party sought transposition as plaintiff in the suit to seek to continue the said partition suit.
- (b) On July 04, 2011 Sh. Rakesh Aggarwal (Son of Late Smt. Bimla Devi and

respondent No.3 herein) filed a suit No. 1587/2011 seeking permanent and mandatory injunction against Caravan from entering the suit premises or from changing or altering the nature of the suit property in any manner. Caravan was the sole defendant in the said suit. The suit was predicated on Section 44 of the Transfer of Property Act. The ad-interim relief granted on July 04, 2011 was that the ground floor of the suit property in possession of Caravan would not be alienated and that the renovation being carried on would be at Caravan's risk and cost. It is represented by Caravan that repeated applications were filed in the said suit for preventing renovation on the ground floor; seeking restraint order against Caravan from using and occupying the ground floor; seeking restraint order against Caravan from entering the suit premises. Further no interim reliefs were granted in favour of the respondent No.3 herein who is the plaintiff in the said suit; Caravan has carried out the renovation and the ground floor is in its occupation.

(c) CS (OS) 1561/1994 titled Master Yash & Anr v. Rakesh Kumar Aggarwal & Ors in which the order, of which contempt is alleged was passed, is a suit filed by the grand sons of late Smt. Bimla Devi for partition alleging that 1/3rd share of Late Smt. Bimla Devi was ancestral property and claiming their respective 1/27th share each in her 1/3rd share. Late Smt. Bimla Devi has filed a written statement opposing the averments in the plaint and asserting the property to be hers alone. It is stated by Caravan, that at the time of filing of the Suit, no application for interim orders was

filed. Caravan was not impleaded as party. On May 6, 1997, an application was filed for interim reliefs apprehending that they would be dispossessed from the first floor. However, status quo order was granted on May 7, 1997 in respect of the entire suit property. On the demise of Smt. Bimla Devi on January 15, 2004 an application was filed seeking substitution of Smt. Bimla Devi's legal heirs viz. her sons and daughters in her place. It is stated by Caravan that an amendment application being IA No. 3710/2005 was filed seeking leave to amend the earlier application for substitution on the ground that a Will of Late Smt. Bimla Devi had been discovered under which certain additional legal heirs of the deceased namely respondents 1 and 2 and Sh. Ashish Aggarwal (son of respondent No.3) were sought to be impleaded since they were the only legal heirs who were entitled to her estate. Accordingly, testamentary capacity of Late Smt. Bimla Devi in respect of 1/3rd share in the suit property was admitted. It is stated that the said amendment application was, thereafter withdrawn on September 16, 2005 with liberty but no application was filed subsequently. It is stated, that in the connected suit (1587/2011) it has been recorded in the order dated January 7, 2013 that the alleged will is not in possession of the legal heirs of Late Smt. Bimla Devi. It is also stated that IA No. 4108/1997 was filed by respondent No.17 (one of the legal heirs of late Smt. Shanti Devi who was never in possession of any part of the suit property) and the status quo order dated May 7, 1997 was modified on September 16, 2005 to permit the

said respondent to deal with his undivided share in the suit property. Status quo was directed to be maintained in respect of possession of parties meaning thereby that the respondent No.17, who was admittedly never in possession of the suit property would not take any steps to dispossess the heirs of late Smt. Bimla Devi from the first floor and Smt. Pushpa Devi from the ground floor of the suit property while dealing with his undivided share. It is stated that similar application being IA No. 3084/2006 was filed by respondents 12 to 16 and 18 which was dismissed by order dated August 22, 2007. In 2009, Smt. Pushpa Devi filed an application being IA No. 12948/2008 inter-alia seeking discharge, vacation, modification of the status quo order dated May 07, 1997 as modified on September 16, 2005 as a whole; seeking discharge and vacation of the status quo orders dated May 07, 1997 and September 16, 2005 insofar as it relates to her 1/3rd undivided share. Vide order dated November 24, 2009 the learned Single Judge passed the following order:-

“ I.A. No.12948/2008

This application has been made under Order 39 Rule 4 CPC on behalf of defendant No.8 with a prayer that the court should modify the status quo order dated 7th May, 1997 which was earlier modified on 16th September, 2005. It is submitted by learned counsel for defendant No.8 that defendant No.8 was entitled to undivided 1/3rd share in the property. This court vide order dated 16th September, 2005 had given liberty to defendant No.12, who was similarly placed that defendant No.12 shall be entitled to exercise his rights and deal with his undivided share in his property. He states that defendant No.8 is also entitled for the same liberty. Learned counsel for the plaintiffs states that as far as defendant No.8 is concerned, her 1/3rd share in the property is not

disputed and counsel for the plaintiffs has no objection in case, the similar order as in respect of defendant No.12 has been passed is also passed in favour of defendant No.8. In view of this submission, the application for modifying the status quo order dated 16th September, 2005 is allowed and it is observed that defendant No.8 shall be entitled to exercise her rights and deal with her undivided 1/3rd share in the property. The application stands disposed of.

C.S. (OS) No.1561/1994

The plaintiffs have filed this suit claiming 1/3rd undivided share in the property No.42- 44, Sunder Nagar, New Delhi. The plaintiffs are grandsons of Smt. Bimla Devi, defendant No.3 (deceased) and defendant Nos.1 and 2 are father and uncle of the plaintiffs respectively. Smt. Bimla Devi had entered into a sale agreement along with co-owners of the property with defendant No.14. The other defendants are defendants in respect of other two co-owners of the property, namely, Smt. Pushpa Devi and Smt. Shanti Devi (since deceased). They are defendant Nos.8 and 9 to 13. There is no dispute in respect of undivided 1/3rd share, one of LRs of Smt. Shanti Devi or undivided share of Smt. Pushpa Devi. The dispute is only in respect of 1/3rd undivided share of late Smt. Bimla Devi. I, therefore, consider that all the defendants, who inherit property from Smt. Pushpa Devi or Smt. Shanti Devi, being performa defendants, are at liberty to deal with their respective undivided share of the property. The court had passed similar order in respect of defendant No.12 earlier and defendant No.8 today. I consider that the other defendants similarly placed cannot be treated differently and the earlier order of dismissing the application made by the defendants is, therefore, recalled. However, since the property is not divided so far, the defendants shall remain entitled to undivided share and they may deal only with undivided share.”

5. It is the stand of the appellant Caravan that after failing to secure any orders in CS (OS) No. 1587/2011 and after a lapse of about 18 months from the date when

Caravan took physical possession of the ground floor of the suit property in December 2012, two applications were filed first being IA 22681/2012 seeking interim reliefs directing the appellant Caravan to hand over possession of the ground floor of the suit property. According to the appellant, no notice has been issued on the said application; and the second being IA No. 22682/2012 under Order 39 Rule 2A of CPC stating that Smt. Pushpa Devi and Caravan were in contempt of the orders dated September 16, 2005 and November 24, 2009, wherein the impugned order was passed. The facts noted in the appeal filed by Smt. Pushpa Devi [FAO(OS) 386/2014)] are identical to the facts noted above, in the appeal filed by Caravan and the same are not repeated for the sake of brevity. However, this Court would like to note the stand of the appellant Smt. Pushpa Devi in her appeal [FAO(OS) 386/2014)], wherein she has submitted that the order dated April 30, 1992 in CS(OS) 1578/1992 filed by Arun Batra was not against her. It is also her case that in the suit being CS(OS) No. 1561/1994 by the plaintiffs, grandsons of late Smt. Bimla Devi, is only with respect to 1/3 share of Late Smt. Bimla Devi and the other defendants were impleaded merely as performa defendants. It is her case that the application for discharging/vacating/modifying/status quo order, being IA No. 12948/2008 was allowed without any restrictions. In other words, she was permitted to exercise her rights and deal with her 1/3 share in the property. From the legal opinion sought by her, it was confirmed that she can deal with her share

and part with possession.

SUBMISSIONS:-

6. Mr. Arvind Nigam, learned Senior Counsel appearing for Caravan would submit that by order dated November 24, 2009 the aforesaid application (being IA No. 12948/2008) and by necessary implication, its prayers were allowed and consequently, Smt. Pushpa Devi was fully entitled to deal with and part with possession of the ground floor of the suit property. The said order, both in the application and in the suit, did not place any bar or fetters on the mode or manner of dealing with the share of Smt. Pushpa Devi or the heirs of late Smt. Shanti Devi, since they were recognized and held to be proforma parties. He would rely upon the judgment of this Court in ***Banne Singh v. State of Rajasthan, Criminal Appeal No. 1254/2008*** decided on January 15, 2014 to contend that the word '***to deal***' implies that the offender has certain concern with the property either by keeping it in his possession, or parting with the ownership, or possession of the property through any of the modes of transfer of property. According to him, the order dated May 07, 1997 was modified by order dated September 16, 2005 in respect of defendant No.12-Surinder Kumar (respondent No.17 herein), a party, who was admittedly never in possession of the suit property. The relief of modification of status quo order, sought by the brothers of defendant No.12-Surinder Kumar (respondent No.17 herein) was denied. He lay stress on the fact that Smt. Pushpa Devi (the

appellant in FAO (OS) No. 386/2014) sought full reliefs in her application filed under Order 39 Rule 4 CPC and her said application was allowed as a whole vide order dated November 24, 2009 i.e in terms of all prayers therein.

7. According to Mr. Nigam, the contention of the respondents 1 & 2 (plaintiffs in the suit) that other reliefs were given up or/and abandoned is wholly speculative. The order dated November 24, 2009 does not record any abandonment and/or any giving up of any prayers. He states that the said order was not passed on concession. According to him, it is a settled principle of law that order has to be read as it is without any addition or subtraction. He would also contest the submission made on behalf of respondents 1 and 2 that the order dated November 24, 2009 is to be interpreted on the basis of order dated September 16, 2005 as erroneous for the reasons that operative part of the order dated November 24, 2009 places no fetters on Smt. Pushpa Devi (defendant No.8 in the suit and appellant in FAO (OS) No. 386/2014) regarding transfer of possession and order dated September 16, 2005 stood subsumed in the order dated November 24, 2009 and cannot be interpreted to control the scope or width of the order dated November 24, 2009 in any manner whatsoever. He states that a reading of order dated September 16, 2005 must also be made in the context of the fact that defendant No.12-Surinder Kumar (respondent No.17 herein) was never in possession of any part of the suit premises. He was only one of the legal heirs of Late Smt. Shanti Devi and he alone

could not have transferred the entire share of Late Smt. Shanti Devi. His brothers being defendants 9 to 11 and 13 (respondent No.12 to 16 and 18) were declined relief on August 22, 2007. According to him, the direction in the order dated September 16, 2005 is in two parts; (a) status quo was qua possession of the parties to the suit property; (b) defendant No.12-Surinder Kumar (respondent No.17 herein) will be entitled to deal with his undivided share but no fetters were put on him.

8. Mr. Nigam would also state that the order dated November 24, 2009 was passed for modification of order dated May 7, 1997 and order dated September 16, 2005 and also for recall of order dated August 22, 2007. The order has to be read in reference to the prayers made in IA No. 12948/2008. According to him, vide order dated November 24, 2009 the application of Smt. Pushpa Devi was allowed without any condition or restriction. It is the submission of Mr. Arvind Nigam that the order dated November 24, 2009 clarifies and crystallizes the position (i) that plaintiff's claim is only with regard to 1/3rd share of their grandmother-late Smt. Bimla Devi; (2) there is no dispute with respect of 1/3rd share each of Shanti Devi Group and Smt. Pushpa Devi; (3) defendants who inherited from late Smt. Shanti Devi and Smt. Pushpa Devi are proforma defendants and are at liberty to deal with their respective undivided share in the suit property, which categorically means that the lis remains only inter-se legal heirs of late Smt. Bimla Devi alone; (4) only condition is that since the suit property was not divided, defendants shall be entitled

to undivided share only. Logic for this last caveat was that partition should be required to be made by metes and bounds and parties cannot claim preferential rights in any specified area. Caravan was never a party defendant in CS (OS) No. 1561/1994 when the orders dated May 7, 1997 and September 16, 2005 were passed. Caravan was only impleaded as a party defendant by order dated May 13, 2008. He would rely upon provisions of Section 21(1) of Limitation Act, 1963 to contend that the Caravan having been added in the suit on May 13, 2008 deemed to have been instituted on that date only and not on any earlier date. Hence, applicability of the earlier orders dated May 07, 1997 or September 16, 2005 cannot be read into the order dated November 24, 2009 for purposes of contempt as alleged by respondents 1 and 2.

9. He also states, there is an unexplained delay and laches of one year and six months in filing of the application, which would not be maintainable under the Contempt of Courts Act. The families of the two sons of late Smt. Bimla Devi including the respondents 1 and 2 (plaintiffs in the suit) never occupied any part of the ground floor of suit property. Their possession of the first floor and terrace remained undisturbed since 1994. The said floor is a separate and independent unit having its own entry/exit point, driveway, servant quarters etc. Even though Caravan is the rightful owner of 2/3rd of the suit property it is at best occupying only 1/3rd of the same. He would state that Section 44 of the Transfer of Property Act has

no application. The suit property was never nor is the dwelling house of an undivided family. One branch of the family i.e late Smt. Shanti Devi or her legal heirs never resided in the property. In any event this plea has been raised only in CS(OS) 1587/2011 and is not relevant in the context of order under challenge in the present appeal and further Caravan has been restrained from transferring the ground floor of the suit property in CS(OS) 1587/2011. Caravan is ready and willing to undertake to be bound by the decision in the said suit and upon division of the property (if permissible) accept any part of the suit property as its share. He would also urge that where more than one interpretation of an order is possible, the party acting bona fide on its own interpretation of the order cannot be held guilty of willful disobedience. In this regard, he would refer to the judgments of the Supreme Court reported as *AIR 1961 SC 221 State of Bihar v. Sonabati Kumari* and (2008) 14 SCC 392 *Sushila Raje Holkar v. Anil Kak*. That apart, he also relied upon the judgment of the Supreme Court reported as (2008) 15 SCC 529 *Tamil Mercantile Bank v. Tamilnad Bank* to contend that willful disobedience needs to be proved beyond reasonable doubt.

10. It is the submission of Mr. Nigam, at the highest and without prejudice, the order dated November 24, 2009 is capable of two interpretations. As such, Caravan's actions cannot be said to be deliberate and willful in any manner. It is not such a case where the learned Single Judge could have held the appellant guilty of

contempt. In this regard, he refers to the judgment reported as **(2009) 5 SCC 417** ***All India Anna Dravida Munnetra v. L.K. Tripathi.***

11. Mr. Nigam would vehemently argue that the plaintiffs have instituted the suit only to frustrate the suit of specific performance filed by the Caravan and the application under Order 39 Rule 2 A of CPC was filed by the plaintiffs with ulterior motives. According to him, it is an admitted fact that legal heirs of late Smt. Bimla Devi i.e her sons and grandsons and their families are all residing together in the first floor of the suit property even as on date. Also the plaintiffs as minor did not institute the suit through their father or mother or legal guardian but instituted the suit through their aunt. He states that the dispute inter-se as alleged by plaintiff among Smt. Bimla Devi Group is only a camouflaged to overcome the admitted documents i.e Agreements to Sell dated November 15, 1991 and November 16, 1992 whereby, their father i.e Rakesh Kumar stood as witness and signed the same. It was the endeavour of Mr. Nigam to canvass that the factum of the transactions and handing over of possession was brought to knowledge of learned Single Judge on June 02, 2011 by Mr. J.P. Gupta, Advocate counsel for Smt. Pushpa Devi, who was also counsel for the plaintiff (respondents 1 and 2 herein). He states, the ulterior motive is apparent from the fact despite late Smt. Bimla Devi categorically stating in her written statement that the suit property is a self acquired property of hers but even respondents 1 and 2 herein in application No. 3710/2015 as well as their father

Rakesh Aggarwal, both have set up a case that the suit property was self acquired property of late Smt. Bimla Devi. It is only to delay the suit for specific performance filed by Caravan, they have been taking contradictory stands in different proceedings. He also states, that their stand that late Smt. Bimla Devi has left a Registered Will dated July 30, 2003 is without basis, neither the plaintiff master Yash nor father Rakesh Aggarwal have produced the said Will despite directions of the Court. Mr. Nigam would also urge, it was incumbent upon the learned Single Judge to decide the application being IA No. 15875/2013 under Order VII Rule 11 CPC relating to issue of maintainability of suit first as the same goes to the root of the matter. The reliance upon the order dated August 1, 2013 passed in suit No. 1578/1992 by the counsel for respondents 3 and 4 to buttress his point that it was agreed by parties that all pending applications shall be taken up for hearing at the time of final arguments is completely misleading. The said order does not relate to suit in question i.e CS(OS) 1561/1994. He also states sufficient time was not given to put forth the arguments.

12. On the aspect of Section 44 of the Transfer of Property Act is concerned, he states the said submission is not germane to the present appeal. The families of the three co-owners do not constitute an undivided family in law. In any event, the suit property was never the 'dwelling house' of all the three co-owners and their families have never ever resided together in the suit property. Even the families of two of

the three co-owners namely late Smt. Bimla Devi and Smt. Pushpa Devi lived in the suit property, there was no common kitchen or prayer room. In the last, it is his submission that the present appeals need to be allowed and the impugned order dated August 4, 2014 needs to be set aside.

13. Mr. Deepak Sahni, learned counsel appearing for appellant Smt. Pushpa Devi in FAO(OS) 386/2014, would submit that the appellant has not violated any order of status quo passed by the learned Single Judge vide order dated November 24, 2009. He states, that the appellant was given complete liberty to deal with her 1/3rd undivided share in the suit property. According to him, an application filed by the appellant in the suit, being I.A. No. 12948/2008 under Order 39 Rule 4 read with Sections 94 & 151 CPC was allowed by the learned Single Judge, as a whole, without attaching any fetters on her 1/3rd share in the suit property. He would state, that in the reply filed by the plaintiffs (respondents 1 and 2) to I.A. No. 12948/2008, they have admitted that order dated May 7, 1997 has been merged in order dated September 16, 2005. In the same manner, after passing of order dated November 24, 2009, the previous orders have merged in the said order dated November 24, 2009. He states, the learned Single Judge vide order dated November 24, 2009, clarifies the fact that the dispute is only with regard 1/3rd share of late Smt. Bimla Devi. According to him, Smt. Shanti Devi Group and the appellant herein, were given liberty to deal with their respective undivided shares in the suit property. The

Court duly considered the fact that the appellant is a proforma defendant, against whom no relief was actually prayed. The factum of the said liberty, so granted by the Court, was also duly recorded in the Agreement to Sell dated May 25, 2011. He would state, since inception, the appellant had been in the possession of the ground floor of the suit property and Bimla Devi Group had been in the possession of the first floor and terrace / second floor. The possession of the plaintiffs (respondents 1 and 2) is not disturbed since 1994 till today, as the entire property as a whole has separate drive way / gate / ingress / egress / kitchen / worship place etc. for the ground floor occupants whereby, it is ensured that no disturbance is caused and / or no privacy is infringed by / of the occupants of first floor, i.e., Bimla Devi Group. He would state, the appellant, who is presently 88 years old, only settled her disputes with Caravan to put an end to protracted litigations, which were / are pending since 1992, to have peace in rest of her life. She did not want this protracted litigation to be passed on to her children and grand-children. It is his submission that the Appellant herein executed sale documents with Caravan in the year 2011, in continuation of the previous admitted Agreements to Sell dated November 15, 1991 and November 16, 1992, by getting enhanced consideration. Caravan merely stepped into the shoes of Smt. Pushpa Devi pursuant to an out of court compromise, which in fact was nothing but honoring the previous Agreements dated November 15, 1992 and November 16, 1992 entered into by all co-owners on one hand

(including Late Smt. Bimla Devi) and Caravan on the other hand. In the end, it is his submission that no prejudice has been caused to Bimla Devi Group with the said transfer of the ground floor and no third party to the *lis* was inducted in the property.

14. Mr. Dayan Krishnan, learned Senior Counsel appearing for respondents 1 and 2 would justify the impugned order, inasmuch as the appellants in these appeals have violated the injunction order whereby, the parties were restrained from parting with possession of ground floor of property bearing No. 42-44, Sunder Nagar, New Delhi inasmuch as the possession of the ground floor of the suit property was parted with by Smt. Pushpa Devi in favour of the appellant. It is his submission that the property is an undivided residential/dwelling house being used for the residence of only the family members/relatives of the respondents 1 and 2 until the Caravan entered into illegal possession of the ground floor of the undivided dwelling units in violation of the injunction order and also in violation of Section 44 of the Transfer of Property Act. He states that the partition is yet to take place. Until such time the property is not divided and partitioned by metes and bounds, the family members as co-owners have a right on each and every square inch of entire property bearing No. 42-44, Sunder Nagar, New Delhi. He would refer to the application being IA No. 4108/1997 and order dated May 07, 1997 passed by the Court. He would also refer to the application filed by the defendant No.12 in the suit i.e the respondent No.17 in FAO (OS) No. 385/2014 being IA No. 4696/2005 seeking modification of order

dated May 07, 1997. According to him, vide order dated September 16, 2005, the injunction order dated May 07, 1997 was modified to a limited extent on the application of the respondent No. 17 herein. According to him, the respondent No.17 was not in physical possession of the suit property on the date of the said order, despite this Court was clear and categorical in its direction that the status quo will be maintained in respect of possession of the parties to property. There is no doubt or ambiguity or any confusion on the order passed by this Court as the order is absolutely clear and speaks for itself. He states that the order dated September 16, 2005 has two parts. The part 1 includes *“that the status quo will be maintained in respect of possession of the parties to property bearing No.42-44, Sunder Nagar, New Delhi”*. Part 2 includes *“however defendant No.12 shall be entitled to exercise his rights and deal with his undivided share in the suit property”*. It is the submission of Mr. Krishnan that the expression ‘deal’ has to be read in the context of undivided share in the property, which can be sold but without parting with the possession of the property. According to him, this is consistent with Section 44 of the Transfer of Property Act. He would refer to Section 44 of the said Act. He also states, that if the submission made by Mr. Nigam that the expression ‘deal’ also includes the power and right to part with possession then the earlier part of the order becomes meaningless and amounts to rendering otiose/negating the said direction directing the parties to maintain status quo of possession. According to him, the

only correct and fair interpretation of the order dated September 16, 2005 is that the Court permitted the applicant to deal with his undivided share i.e to sell the same. However, not only the applicant but all the parties were directed to maintain status quo of the possession. He would rely upon the judgment of this Court in the case reported as **(2006) 91 DRJ 26 Kuldip Gandotra v. S.N. Endlay and Anr** to contend the expression 'however' has to be given a meaning. He states that the parties were to maintain status quo qua possession of the suit property, which is clear from the language of the order. He also states, no appeal was filed against the order. Smt. Pushpa Devi was a party to the proceedings in the suit at the time of passing of the order and was bound by the same. He also states, the fact that Smt. Pushpa Devi had prayed for vacation of interim orders dated May 07, 1997 and September 16, 2005, as a whole, clearly shows that Smt. Pushpa Devi was aware that there was an interim order operating against the parties in respect of the suit property, which included the injunction restraining the parties from parting with possession. Thus, clearly the parties were aware and conscious that the first interim order dated May 07, 1997 was complete and absolute, inasmuch as the parties had to maintain both status quo of title as well as possession of the property. Vide order dated September 16, 2005, the earlier order dated May 07, 1997 was modified to the limited extent that one of the parties had been permitted to deal with his undivided share. However, all the parties have been restrained, enjoined from parting with

possession of the property. Hence, there was no doubt or ambiguity in the order or in the mind of the parties that defendant No.12 could deal with his undivided share in the property and injunction order was existing, which restrained/prevented all the parties including defendant No.12 from parting with the possession of the suit property. It is for this reason, appellant Smt. Pushpa Devi made a categorical prayer in IA No. 12948/2008 for discharge, vacation, modification of the status quo order dated May 07, 1997, which has been later modified vide order dated September 16, 2005 as a whole.

15. According to Mr. Krishnan, there was no reason for the appellant Smt. Pushpa Devi to include the word '*as a whole*' if there was no injunction order operating against parting with possession. Thus, all the parties were aware that there was an injunction order operating against all the parties to the suit restraining them from parting with possession of the property and also title except defendant No.12, who was permitted to sell his undivided share but without parting with possession. He has drawn our attention to the order dated November 24, 2009, both in IA No.12948/2008 and in CS(OS) No. 1561/1994. It is his submission that from the order dated November 24, 2009, it is clear that the appellant Smt. Pushpa Devi had asked for larger reliefs in the application. But at the time of the arguments had prayed for, being granted the same liberty as has been granted to defendant No.12 (respondent No.17 herein) in the order dated September 16, 2005, to which the

counsel for the respondents 1 and 2 had conveyed his no objection to the appellant Smt. Pushpa Devi being granted the same liberty. This was done primarily because there was no dispute qua the undivided share. Accordingly, the appellant Smt. Pushpa Devi was allowed to deal with her 1/3rd undivided share in the property. There was no adjudication on the merits. The order was passed on the basis of the concession statement made by the learned counsel for the parties. In the suit also, the learned Single Judge has made it clear that the order being passed for the appellant Smt. Pushpa Devi was the same order, as was passed in favour of the defendant No.12. There is no doubt/ambiguity in the order. Mr. Krishnan further states that Caravan was a party to the suit at the time of the passing of the order dated November 24, 2009 and was duly represented at the hearing on the said date. Therefore, the appellant cannot feign ignorance of the said order dated November 24, 2009 or the proceedings that transpired on that date. According to him, there is no dispute that the appellant Smt. Pushpa Devi had parted with the possession of the ground floor of the property bearing No. 42-44, Sunder Nagar, New Delhi despite the existence of the injunction order passed by this Court restraining the parties from parting with possession, which makes it apparent that the appellant and Smt. Pushpa Devi committed contempt of the Court by violating the injunction order.

16. Mr. Krishnan would state there is another aspect of the matter, inasmuch as the appellant Smt. Pushpa Devi was the owner of only 1/3rd undivided share in the

property and at best, she was entitled to part with possession of 1/3rd of her share in the property under order dated November 24, 2009, whereas she has transferred possession of the entire ground floor of the property to the appellant Caravan, which is in excess of her 1/3rd share. Therefore, the appellant Smt. Pushpa Devi and Caravan had clearly violated the injunction order. If there was any doubt or ambiguity in the minds of the parties, it was incumbent upon them to approach this Court, seeking clarification, rather than to act in a manner, which suited their commercial convenience which was in violation of the injunction order passed by this Court. He would rely upon the judgment reported as **(2009) 2 SCC 166 K.A. Ansari and Anr. v. Indian Airlines Ltd.** in support of his contention that if there was any doubt with regard to the interpretation of an order then the appellants were within their rights to approach the Court seeking clarification. He states, the very fact that lengthy arguments had been advanced by the appellants in their appeal on the merits would, itself show there was no confusion but now a case is sought to be built up to avoid the consequences of violation of the injunction order on the ground that there was some confusion. He would rely upon the judgment reported as **AIR 1961 SC 221 State of Bihar v. Sonabati Kumari**. Alternatively, he would argue, even if there was some confusion, that is a factor to be considered only at the time of sentence. Therefore, the appellants were rightly directed to deliver the possession of the ground floor of the property in question. This cannot be avoided, denied or

escaped by the appellants herein. He would also rely upon the judgments in the case reported as *AIR 2004 SC 4419 State of Bihar and Ors v. Rajendra Singh and Anr.*, *AIR 2006 SC 909 Union of India and Ors v. Subedar Devassy*. In the last, it is his submission that the respondents 1 and 2, had agreed that 1/3rd undivided share can be sold without parting with possession because insofar as title of the said defendants in the suit was concerned there was no dispute. However, for possession the property is yet to be partitioned. Therefore, the injunction order restraining parting with possession was never modified/vacated. He would also contend that the present appeals being intra-court appeals, on a finding of a fact, unless the Appellate Bench reaches a conclusion that a finding of the learned Single Judge is perverse, it should not disturb the same merely because another view is possible. In this regard, he would rely upon the judgment reported as *(2016) 1 Scale 320 The Management of Narendra & Company Private Limited v. The Workmen of Narendra & Company*. He seeks the dismissal of the appeals. He states, his submissions, be read as submissions to the appeal filed by Smt. Pushpa Devi as well.

17. Mr. Manish Vashisht learned counsel appearing for the respondents 3 and 4 in the appeals would submit that the plea of Mr. Nigam that the learned Single Judge, instead of deciding an application under Order 7 Rule 11 CPC, decided the application under Order 39 Rule 2A CPC, which is inappropriate is concerned, the application under Order 39 Rule 2A was filed by the respondents 1 and 2 in the year

2012 and the application under Order 7 Rule 11 CPC by the appellant Caravan was filed as an afterthought only in the month of December, 2013. He states, that the appellant Caravan was impleaded as a defendant in the suit vide order dated May 13, 2008 and it is highly surprising that no such application for dismissal of the suit was filed for a period of five and a half years. The issue of non maintainability has no bearing on the disobedience of the orders passed by the Court even though, ultimately it is found that such a suit was not maintainable.

18. With regard to the submission of Mr. Nigam that the learned Single Judge did not decide the application bearing CCP No. 70/1994 against the appellant Smt. Pushpa Devi and respondents 3 to 4, which was filed by the appellant in CS (OS) No. 2443/1993 and thus committed an error by taking up an application, which was filed under Order 39 Rule 2A CPC is concerned, the application, which was filed was never listed before the learned Single Judge when the arguments on the application under Order 39 Rule 2A were heard and the matter was reserved for orders. He states, to the contrary vide order dated August 01, 2013 passed in CS (OS) No. 2443/1993 the counsel for the appellant Caravan stated that all the remaining pending applications may be taken up for hearing at the time of final arguments of that suit filed by the appellant Caravan. Therefore, on the face of it, this argument on the part of the appellant is fallacious.

19. Insofar as the plea of Mr. Nigam that the appellant Caravan was under the impression that there was no embargo on Smt. Pushpa Devi to transfer the possession of the property as the order dated November 24, 2009 did not specify or put any restrictions on the transfer of possession is concerned, Mr. Vashisht had submitted the following:-

(i) The Court was adjudicating upon an undivided residential property viz a viz its co-owners and a stranger.

(ii) The Court from time to time in order to protect the intrinsic character and nature of the undivided property passed various following orders:

- a. Order dated October 27, 1993 passed in CS (OS) No. 2443/1993;
- b. Order dated August 25, 1995 confirming the above order.
- c. Order dated May 07, 1997 in the present suit;
- d. Order dated September 16, 2005;
- e. Order dated October 12, 2006 passed in CS (OS) No. 690/2006;
- f. Order dated August 22, 2007;
- g. Order dated November 24, 2009.

(iii) All the parties to the suit were fully aware that injunction orders restricted them from transferring the possession of the property to any person outside the family. There was no occasion for any of the parties to have misunderstood the import of the injunction orders or to have arrived at a different understanding or

reasoning relating to the aforesaid orders which were passed.

(iv) That a reading of the documents dated May 25, 2011 and May 30, 2011 establishes the express knowledge of the appellant Caravan about CS (OS) No. 690/2006. In this suit an order dated October 12, 2006 was passed to the following effect:

“The counsel for defendant states that he has no objection if the said application is allowed subject to the status quo order with regard to the title, possession and state of construction regarding the suit property being equally applicable to the plaintiff. In the circumstances, parties are directed to maintain status quo with regard to the title, possession and the state of construction regarding the suit premises aforesaid till the final disposal of the suit. To this extent, orders dated April 22, 2006 are modified.”

(v) The orders which were passed in CS (OS) No. 690/2006 and CS (OS) No. 2443/1993 as stated supra were also passed in the present suit from which the Appeal has arisen.

(vi) The order dated September 16, 2005 was passed in the present suit whereby the Court, while permitting the defendant No.12 to exercise his rights and deal with his undivided share without parting with the possession of any portion of the property also directed all the parties to maintain status quo as qua possession of the property. The relevant portion of the order is reproduced:

“In view of the statement made by the counsel for the plaintiffs, the order dated May 07, 1997 is modified to the extent that the status quo will be maintained in respect of possession of the parties to property No. 42-44, Sunder Nagar, New Delhi.”

(vii) The other appellant Smt. Pushpa Devi did not impugn or challenge this order before the Appellate Court. However, after 3 years Pushpa Devi filed IA No. 12948/2008 under Order 39 Rule 4 CPC for vacation of the order dated May 07, 1997 and September 16, 2005.

(viii) The present appellant had already become the party when Smt. Pushpa Devi filed the IA No. 12948/2008. The said application was never opposed by the appellant herein, even though, admittedly as on that day, the appellant and Pushpa Devi were adversaries and fighting tooth and nail.

(ix) During the arguments Smt. Pushpa Devi restricted her prayer raising the plea of parity as recorded in the order dated September 16, 2005. The counsel for the respondents 1 and 2 also conceded when the plea of parity was pressed and accordingly order dated November 24, 2009 was passed permitting Smt. Pushpa Devi to exercise her rights in the undivided property as were accorded to the other defendant No.12. The following order was passed on November 24, 2009:

“It is submitted by learned counsel for defendant No.8 that defendant No.8 was entitled to undivided 1/3rd share in the property. This court vide order dated 16th September, 2005 had given liberty to defendant No.12, who was similarly placed that defendant No.12 shall be entitled to exercise his rights and deal with his undivided share in his property. He states that defendant No.8 is also entitled for the same liberty.

Learned counsel for the plaintiffs states that as far as defendant No.8 is concerned, her 1/3rd share in the property is not disputed and counsel for the plaintiffs has no objection in case, the similar order as in respect of defendant No.12 has been passed is also passed in favour of defendant No.8. In view of

this submission, the application for modifying the status quo order dated 16th September, 2005 is allowed and it is observed that defendant No.8 shall be entitled to exercise her rights and deal with her undivided 1/3rd share in the property.”

(x) The mandate of the order dated November 24, 2009 so as to maintain the sanctity of possession is further clear from the reading of the latter portion of the order, wherein while concluding, the learned Single Judge further observed that “since the property is not divided so far, the defendant shall remain entitled to undivided share and they may deal only with undivided share.”

(xi) **No application seeking any clarification or alleging any misunderstanding of the order dated November 24, 2009 was filed by the appellant or even by Smt. Pushpa Devi.**

(xii) The aforesaid chain of sequence of facts categorically and without any iota of doubt establish that at no point of time since 1993 till date, the Courts had allowed any co-owner of the property to transfer the possession or to change the nature of the property by inducting any person outside the family or a stranger in it.

(xiii) The order dated November 24, 2009 was further clear to the effect that the co-sharers can deal with their undivided share only as the property was not partitioned by metes and bounds but cannot transfer the possession.

(xiv) Therefore, there could not have been any scope for any party to the suit to allege that the orders dated September 16, 2005 or November 24, 2009 were

incapable of communicating the clear mandate and restriction imposed by the Court while keeping in view the nature of the property which was an undivided one.

20. On the plea of Mr. Arvind Nigam that the appellant Caravan was not a party in the suit till May 13, 2008, it was not aware of the orders which were passed and the orders were not applicable to it, it is the contention of Mr. Vashisht that the order dated November 24, 2009 was passed in the presence of the counsel for the appellant in which clearly the order dated September 16, 2005 was discussed. According to him, till November 24, 2009 the appellant was an adversary to the other co-sharers and the remaining parties to the suit and since 1993 the endeavour of the appellant was to secure the status quo order in respect of the suit property so that the possession and title could not be transferred or the nature of the property could not be changed till the decision of its suit of specific performance. Therefore, when the order dated November 24, 2009 was passed, the appellant was not affected by the same and had no reasons of any grouse against the observations which were passed by the learned Single Judge directing the parties not to deal with the possession or transfer of possession. The prayer allowed was only with respect to a permission to deal with the undivided share. No appeal or any modification of the order dated November 24, 2009 was sought by the appellant or Smt. Pushpa Devi.

21. Even on the plea of Mr. Nigam that the order dated November 24, 2009 was

very ambiguous and was confusing one, Mr. Vashisht would submit that the same was clear and unambiguous. Nothing precluded the appellant Caravan from filing an appropriate application before the Court seeking clarification on the presumed ambiguity. He states, a party who pleads ambiguity has to act above board by approaching the Court which has passed such an order and to seek necessary clarification. The plea that the application under Order 39 Rule 2A CPC was filed as an afterthought, when the respondents 3 and 4 failed to get any injunction orders in their suit bearing CS (OS) No. 1587/2011 is concerned, Mr. Vashisht would submit that the CS(OS) No. 1587/2011 is an independent remedy which has been filed in terms of Section 44 of Transfer of Property Act, 1882 and the cause of action urged in the said suit is also supported and approved by numerous judicial pronouncement including the judgment of the Supreme Court in the case reported as **(1990) 2 SCC 117 Dorab Cawasji Warden** and the judgment of the Calcutta High Court, Orissa High Court and Allahabad High Court. He states, that an injunction order dated July 04, 2011 was also passed in favour of the respondents 3 and 4. Nevertheless, the said suit and the impugned order has no connection at all and both are independent of each other.

22. Even on the plea of application under Order 39 Rule 2A CPC is barred by limitation, Mr. Vashisht would submit that there is no limitation prescribed to file an application under Order 39 Rule 2A and further the disobedience being a recurring

cause, no party can raise immunity from punishment on the ground of delay. According to Mr. Manish Vashisht, even the plea on behalf of the appellant that appellant has paid Rs.20 Crores to the two co-sharers and that the appellant has an inherent right to occupy the ground floor of the property is misconceived, inasmuch as the law does not permit the purchaser of an undivided share to intrude inside a dwelling house without seeking relief of partition. The appellant ought to have impleaded himself as a plaintiff in CS (OS) No. 690/2006 after purchasing the undivided rights of two co-sharers and prayed for a decree of partition by metes and bounds. No party to a lis can be permitted to even argue equity when such a party is guilty of disobeying the orders of the Court. On the plea of Mr. Nigam that the contesting respondents on the first floor are in possession of peaceful, separate and in excess of their share is a misconceived argument, inasmuch as when a share in an undivided house is purchased, no portion of the same can be said to be a divided or a separate one. The different exit and entry is created by the appellant after the order dated July 04, 2011 passed in CS(OS) No. 1587/2011. It was held that any renovation work on the ground floor would be at the risk and cost of appellant Caravan. Mr. Vashisht would submit that the respondents are not sitting in any excessive share, because till such time property is partitioned, they have an indisputable right to enjoy every inch of the property. Mr. Vashisht would submit that the reliance placed on the report of the Local Commissioner by the appellant to

suggest the occupation of different floors by the co-owners is misplaced in view of the report itself as a reading of the Local Commissioner's report would show that it records the name of the nine persons, who were in physical occupation of the entire property. The argument on behalf of the appellant that the interpretation as sought to be given by the appellant is the only right argument is also misconceived and contemptuous. He states, that under similar circumstances, the learned Single Judge has taken a consistent view. He would rely upon the judgment reported as **(2015) 147 DRJ 563 titled Vera Ruth Rego Consalvis v. Maninder Pal Singh**, against which appeal was filed before the Division Bench, which was also dismissed by the Division Bench as reported in **2015 (DLT SOFT) 158 (DB) Vinay Chhabra & Others v. Vera Ruth Rego Gonsalvis**.

23. Mr. Manish Vashisht would also submit that the appellant has not controverted in the rejoinder, the submissions made on behalf of respondents 3 and 4, inasmuch as the appellant was purchasing undivided shares in the residential house, which is apparent from the reading of its own documents. The Supreme Court in the case reported as **(2009) 7 SCC 444 Ramdas v. Sita Bai & Others** and in **(2009) 10 SCC 654 Gajara Vishnu v. Prakash Nansaheb** has held that an undivided share of a co-sharer may be a subject matter of sale but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds. In the end, it is his submission that the appellant cannot be permitted to perpetuate the illegality, which

according to him is apparent from the submissions made by him as reflected above. He would rely upon the judgment in the case of *All Bengal Excise Licensee's Association v. Raghabendra Singh & Others* (2007) 11 SCC 374 and (1999) 7 SCC 569 *Kapildeo Prasad Sah v. State of Bihar*. He prays that the appeal filed is liable to be dismissed.

24. Insofar as the appeal filed by Smt. Pushpa Devi is concerned, it is the submission of Mr. Vashisht that the same need to be dismissed in view of the admission of the appellant Smt. Pushpa Devi at page 40 (paragraph 27) of the appeal, wherein she has pleaded as under:-

“that legal opinion was sought by the appellant before dealing with her share in the said property and the appellant was clearly advised by her counsels that there is absolutely no bar in the appellant dealing with her share and/or exercising her rights qua her share including transferring of possession of the ground floor.”

25. He would also state that the appeal is misconceived in view of the following admitted facts:-

- i. The litigation ensued qua the subject matter i.e property No.42-44, Sunder Nagar, New Delhi relating to the parties to the present appeal in the year 1993.
- ii. That subject property admittedly is an undivided residential house. No actual physical partition by metes and bounds has taken place till date.
- iii. That various interim orders to protect transfer of title and possession were

passed by this Court in its ordinary civil jurisdiction in respect of the subject property.

iv. That the appellant Smt. Pushpa Devi was impleaded as a defendant in the following suits/proceedings:-

- a. CS(OS) No. 2443/1993 titled “Carvan Commercial Company Limited v. Pushpa Devi & Ors”. (as defendant No.1).
- b. CS(OS) No.1561/1994 “Master Yashaswi Aggarwal & Another v. Rakesh Aggarwal & Others” Pushpa Devi was impleaded as defendant No.8.
- c. CS(OS) No. 690/2006 titled “Mahender Kumar Gupta & Ors v. Pushpa Devi & Ors. A suit for partition in which Pushpa Devi was Defendant No.1.
- d. Suit bearing No.1578/1992 titled “Arun Batra v. Bimla Devi & Ors. Pushpa Devi” was defendant No.7 in the said suit. (For the purposes of deciding the present appeal this suit has no relevance).

26. According to him, the submissions made by learned counsel for Pushpa Devi are misconceived and untenable in view of the following:-

(i) That this Court while adjudicating upon the suit was seized with an issue of partition qua a residential house among its co-owners.

(ii) To protect the intrinsic character and nature of the undivided property various following orders were passed by this Court:

- a. 07.05.1997, @ 199
- b. 16.09.2005, @ 213-214

c. 22.08.2007, @ 216-218

d. 24.11.2009, @ 233-236.

(iii) That all the parties to the suit were also aware of the fact that they were restricted by the aforesaid interim injunction orders which was passed from transferring the possession to any third party. There was no occasion for any of the parties to have misunderstood the import of the orders or to have arrived at a different understanding or reasoning relating to the aforesaid four orders which were passed and modified.

(iv) That besides above, the appellant Smt. Pushpa Devi was also contesting two different suits as a defendant before this Court wherein she and the other co-defendants were restrained from alienating, transferring or parting with possession in respect of the suit property.

(v) In CS(OS) No. 2443 of 1993 she was restrained along with other co-defendants to deal with the property and to maintain status quo. This order was confirmed on 25.08.1995 and is in operation till date.

(vi) That in another suit for Partition CS(OS) No. 690 of 2006 an Order dated 12.10.2006 was passed in CS(OS) No. 690/2006 where the appellant P. Ushpa Devi was defendant No.1 to the following effect:

“The counsel for defendant states that he has no objection if the said application is allowed subject to the status quo order with regard to the title, possession and state of construction regarding the suit property being equally applicable to the plaintiff. In the circumstances, parties are directed to maintain status quo with regard to the title, possession and the state of construction regarding the suit premises aforesaid till the final disposal of the suit. To this extent, orders dated 22.4.2006 are modified.”

(vii) The orders which were passed in CS(OS) No. 690 of 2006 and CS (OS) No.2443 of 1993 as stated supra were also passed in the present suit from which the Appeal had arisen.

(viii) The order dated 16.9.2005 was passed in the present suit whereby the Hon'ble Court, while permitting the defendant No.12 to exercise his rights and deal with his undivided share without parting with the possession of any portion of the property also directed all the parties to maintain status quo as qua possession of the property. The relevant portion of the order is reproduced:

“In view of the statement made by the counsel for the plaintiffs, the order dated 7.5.1997 is modified to the extent that the status quo will be maintained in respect of possession of the parties to property No.42-44, Sunder Nagar, New Delhi.”

(ix) The appellant Smt. Pushpa Devi did not impugn or challenge this order before the Appellate Court. However, after 3 years Appellant filed IA No. 12948 of 2008 under Order 39 Rule 4 CPC for vacation of the order dated 7.5.1997 and 16.9.2005.

(x) That during the arguments the Appellant restricted her prayer raising the plea of parity as recorded in the order dated 16.9.2005. The counsel for the respondents 1 and 2 also conceded when the plea of parity was pressed and accordingly order dated 24.11.2009 was passed permitting the Appellant to exercise her rights in the undivided property as were accorded to the other Defendant No.12. The following order was passed on 24.11.2009:

“It is submitted by learned counsel for defendant No.8 that defendant No.8 was entitled to undivided 1/3rd share in the property. This court vide order dated 16th September, 2005 had given liberty to defendant No.12, who was

similarly placed that defendant No.12 shall be entitled to exercise his rights and deal with his undivided share in his property. He states that defendant No.8 is also entitled for the same liberty.

Learned counsel for the plaintiffs states that as far as defendant No.8 is concerned, her 1/3rd share in the property is not disputed and counsel for the Plaintiffs has no objection in case, the similar order as in respect of defendant No.12 has been passed is also passed in favour of defendant No.8.

In view of this submission, the application for modifying the status quo order dated 16th September, 2005 is allowed and it is observed that defendant No.8 shall be entitled to exercise her rights and deal with her undivided 1/3rd share in the property.

(xi) That the mandate of the order dated 24.11.2009 so as to maintain the sancity of possession is further clear from the reading of the latter portion of the order @ page 235, wherein while concluding, the learned Single Judge further observed that “since the property is not divided so far, the defendant shall remain entitled to undivided share and they may deal only with undivided share.”

(xii) The aforesaid chain of sequence of facts categorically and without any iota of doubt establish that at no point of time since 1993 till date, the Courts had allowed any party to transfer the possession or to change the nature of the property by inducting any third party or a stranger in it.

(xiii) Instead of purging the contempt and correcting the illegality, the present appellant has the audacity to raise frivolous objections and arguments by taking shelter of her old age. This is a calculated move by her at the behest of another appellant Carvan Commercial Company Limited, which has intruded inside the property despite injunction orders.

(xiv) That the arguments of the appellant are also misconceived for the

simple reason that throughout the orders dated September 16, 2005 and November 24, 2009 reminded everyone that the orders were being passed in respect of an undivided property.

(xv) That the actions of the Appellant were calculated and motivated so as to overreach the process of law. The action is also in defiance of law. An erring party cannot raise the plea of ignorance of law to his/her defence. It is well settled law that a co-sharer cannot deliver possession of any portion of an undivided property to any stranger or an outsider. Section 44 of the Transfer Property Act, 1882 prohibits the same.

(xvi) The Hon'ble Supreme Court in (2009) 7 SCC 444 titled "Ramdas v. Sita Bai & Other" and in (2009) 10 SCC 654 titled "Gajara Vishnu v. Prakash Nansaheb" has categorically held that an undivided share of a co-sharer may be a subject matter of sale but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds.

(xvii) As stated above it is an admitted position that the suit property is an undivided one and therefore she could not have transferred the possession to Caravan Commercial Property Ltd because of Orders dated 7.5.1997, 16.9.2005 and 24.11.2009.

(xviii) Although the orders dated 7.5.1997, 16.9.2005 and 24.11.2009 are very clear, unambiguous and constantly reminded all the parties to the suit to only deal with their undivided share of the property and not to part with possession of the property, yet the appellant cannot be heard to contend that even by the usage of the term undivided in the orders, she was under an impression that she had been permitted to transfer the possession of the

property to a stranger.

(xix) This would be preposterous on her part even to allege that the term “undivided” would mean divided and includes the transfer of possession.”

He prays that the appeal be dismissed.

27. Having heard the learned counsel for the parties, to understand and decide the issue whether the learned Single Judge was justified in holding that the appellants herein were guilty of committing Contempt of Court by disobeying the status quo order dated May 07, 1997, subsequently modified by orders dated September 16, 2005 and November 24, 2009, it is necessary to note the said orders. For the said purpose, we reproduce the orders as under:

“ 07.05.1997

XXXXX

XXXXX

XXXXX

Notice returnable on 10th November, 1997.

Learned counsel for the Defendants No.1 and 2 and Defendant No.2 accept notice.

Notice be issue only to the remaining defendants.

The parties will maintain status quo as of today in respect of property NO.42-44, Sunder Nagar, Delhi till the next date.

In the meantime, pleadings be completed.”

“16.09.2005

XXXXX

XXXXX

XXXXX

CS(OS) No.1561/1994

IA No.4108/1997 and 4696/2005

The counsel for the plaintiffs state that his clients will have no objection in case the defendant No.12 exercises his rights and deals with his undivided share without parting with the possession of any portion of the property. In view of the statement made by the counsel for the plaintiffs the order dated 7.5.1997 is modified to the extent that the status quo will be maintained in respect of possession of the parties to property No.42-44, Sunder Nagar, New Delhi. However, defendant No.12 shall be entitled to exercise his rights and deal with his undivided share in the property. With these observations, the applications IA Nos. 4108/1997 and 4696/2005 are disposed of.”

“24.11.2009

XXXXX

XXXXX

XXXXX

I.A. No.12948/2008

This application has been made under Order 39 Rule 4 CPC on behalf of defendant No.8 with a prayer that the court should modify the status quo order dated 7th May, 1997 which was earlier modified on 16th September, 2005. It is submitted by learned counsel for defendant No.8 that defendant No.8 was entitled to undivided 1/3rd share in the property. This court vide order dated 16th September, 2005 had given liberty to defendant No.12, who was similarly placed that defendant No.12 shall be entitled to exercise his rights and deal with his undivided share in his property. He states that defendant No.8 is also entitled for the same liberty. Learned counsel for the plaintiffs states that as far as defendant No.8 is concerned, her 1/3rd share in the property is not disputed and counsel for the plaintiffs has no objection in case, the similar order as in respect of defendant No.12 has been passed is also passed in favour of defendant No.8.

In view of this submission, the application for modifying the status quo order dated 16th September, 2005 is allowed and it is observed that defendant No.8 shall be entitled to exercise her rights and deal with her undivided 1/3rd share in the property.

The application stands disposed of.

The plaintiffs have filed this suit claiming 1/3rd undivided share in the property No.42- 44, Sunder Nagar, New Delhi. The plaintiffs are grandsons of Smt. Bimla Devi, defendant No.3 (deceased) and defendant Nos.1 and 2 are father and uncle of the plaintiffs respectively. Smt. Bimla Devi had entered into a sale agreement along with co-owners of the property with defendant No.14. The other defendants are defendants in respect of other two co-owners of the property, namely, Smt. Pushpa Devi and Smt. Shanti Devi (since deceased). They are defendant Nos.8 and 9 to 13. There is no dispute in respect of undivided 1/3rd share, one of LRs of Smt. Shanti Devi or undivided share of Smt. Pushpa Devi. The dispute is only in respect of 1/3rd undivided share of late Smt. Bimla Devi.

I, therefore, consider that all the defendants, who inherit property from Smt. Pushpa Devi or Smt. Shanti Devi, being performa defendants, are at liberty to deal with their respective undivided share of the property. The court had passed similar order in respect of defendant No.12 earlier and defendant No.8 today. I consider that the other defendants similarly placed cannot be treated differently and the earlier order of dismissing the application made by the defendants is, therefore, recalled. However, since the property is not divided so far, the defendants shall remain entitled to undivided share and they may deal only with undivided share.”

28. That apart, we also note the conclusion of the learned Single Judge in the impugned order holding the appellants guilty of contempt of court was primarily on the following findings:-

“12. There is no dispute about the proposition of law as has been urged by the learned Sr. Counsel for Defendants No. 4 to 8 and Defendant No. 14 that when an order of the Court is ambiguous and is reasonably capable of more than one interpretation, proceedings for contempt should not be entertained. Can it be said that the order dated 07.05.1997 read with subsequent orders dated 16.09.2005 and 24.11.2009 was capable of two interpretations? The learned Sr. Counsel for Defendants No. 8 and Defendant No. 14 have stressed that there is no specific mention in the order dated 24.11.2009 that Defendant No. 8 will not be entitled to transfer

possession of the suit property while dealing with the property and thus, even if order dated 16.09.2005 is taken into consideration, at the most, it will show that the order dated 24.11.2009 was capable of two interpretations and thus, no action of contempt can be taken against Defendants No. 8 and 14.

13. I have already extracted earlier the orders dated 16.09.2005 and 24.11.2009. Order dated 16.09.2005 categorically records no objection of the Plaintiffs in respect of the right of Defendant No. 12 to deal with his undivided share without parting with the possession of any portion of the property. The order dated 07.05.1997 was modified by order dated 16.09.2005 to the extent that Defendant No. 12 may deal in his share but status quo was to be maintained in respect of possession of property bearing no. 42-44, Sunder Nagar by the parties. By a subsequent application I.A. No. 12948/ 2008, Defendant No. 8 wanted discharge of the status quo order dated 07.05.1997, which was granted to Defendant No. 8 recording that 1/3rd share of Defendant No. 8 is not disputed and the counsel for the Plaintiffs has no objection in case the order as passed in respect of Defendant No. 12 is passed in respect of Defendant No. 8. Thus, everybody was aware that concession which had been given to Defendant No. 8 was similar to the one granted to Defendant No. 12 by the order dated 16.09.2005. Hence, the contention raised on behalf of Defendant No. 8 and Defendant No. 14 that the order dated 24.11.2009 with regard to dealing with the property with or without possession was ambiguous and capable of two interpretations is unfounded. It may be mentioned that in the proceedings under Order 39 Rule 2A CPC, the Court is simply to see whether there is disobedience of the order passed by the Court. It is not permissible for the Court to examine the correctness of the earlier decision which is stated to be violated. (See State of Bihar & Ors. v. Rajendra Singh & Anr., AIR 2004 SC 4419 and Union of India & Ors. v. Subedar Devassy PV, AIR 2006 SC 909). The judgments in Tamilnad Merchantile Bank and Sushila Raje Holkar (supra) and K.K. Puri (supra) relied upon by the learned Sr. Counsel for Defendant No. 14 and Defendant No. 8 will not come to the rescue of the Defendants as there was no ambiguity in the order. The contention that Defendant No. 8 was in possession of only ground floor of which possession was delivered to Defendant No. 14 and the Plaintiffs and Defendants No. 1 to 3 were in possession of more than 1/3rd share in the property and thus, there will not be any contempt is noted to be rejected for two reasons. First, as stated earlier, the order as modified by the subsequent orders was clear that possession of the property

is not to be disturbed. Second, even if it is assumed that Plaintiffs and Defendants No. 1 to 3 were in possession of about 50% of the built-up portion, Defendant No. 8 was also in possession of the entire ground floor which must be more than 1/3rd share of Defendant No. 8. Thus, even if Defendant No. 8 had been permitted to part with the possession of the 1/3rd portion of the property belonging to him (though it was not done), she could not have delivered the possession of entire ground floor to Defendant No. 14 which as per own showing of Defendant No. 8 about 50% of the property.”

29. The order dated November 24, 2009 was primarily passed both in IA No. 12948/2008 and CS(OS) No. 1561/1994. The prayer in IA No. 12948/2008 under Order 39 Rule 4 CPC was as under:-

“a. Discharge, vacate, modify the status quo order dated 07.05.1997 which has later been modified vide orders dated 16.09.2005, as a whole;

b. Discharge and vacate the status quo order dated 07.05.1997 and 16.09.2005 in so far as it relates to one-third (1/3rd) undivided share of the applicant/defendant No.8 or,

c. In any case the operation of the status quo order may kindly be restricted in respect of the one-third (1/3rd) undivided share of Late Smt. Bimla Devi i.e defendant No.3 only;

d. Pass any other and further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

30. The prayers made in the said IA were inter-alia for seeking discharge, vacation, modification of the status quo order dated May 07, 1997 as modified on September 16, 2005 as a whole, insofar as it relates to the appellant Smt. Pushpa Devi’s 1/3rd undivided share. When the said application was listed on November 24, 2009, it was represented by the counsel for Smt. Pushpa Devi that Smt. Pushpa Devi being

similarly placed as defendant No.12, shall be entitled to the same liberty. A perusal of order dated September 16, 2005 would reveal that the order dated May 07, 1997 was modified to the extent, status quo was required to be maintained with respect to the possession of the parties to property no.42-44, Sunder Nagar, New Delhi. However, the defendant No.12 (respondent No.17, in FAO(OS) 385/2014) shall be entitled to exercise his rights and deal with his undivided share in the property. The learned Single Judge, on November 24, 2009 accepted the statement made on behalf of the plaintiffs in the suit, respondents 1 and 2 herein that he has no objection in case similar order, as in respect of defendant No.12 be passed in favour of Smt. Pushpa Devi. The Court made it clear that Smt. Pushpa Devi shall be entitled to exercise her rights and deal with her undivided 1/3rd share in the property. We agree with the submission made by Mr. Dayan Krishnan that the relief, as prayed for in IA No.12948/2008 was seeking discharge, vacation, modification of status quo order dated May 07, 1997 as modified on September 16, 2005 as a whole would surely depict that the appellant Smt. Pushpa Devi was conscious of the fact that she could not have transferred the possession of the ground floor of the property in question, otherwise, she would have only sought a simplicitor prayer that the liberty, as granted to defendant No.12, be granted to her. In fact, during the hearing on November 24, 2009, it is noted that the counsel for the appellant Smt. Pushpa Devi has stated that his client is entitled to the same liberty as was given to the defendant

No.12 to exercise her rights and deal with her “undivided” share in the property. That apart, we note, the Court while passing an order in the suit, has stated as under:-

“However, since the property is not divided so far, the defendants shall remain entitled to undivided share and they may deal only with undivided share.”

31. The aforesaid observation underlines the fact that there is no dispute with regard to the undivided share of Smt. Pushpa Devi and Late Smt. Shanti Devi (her legal heirs) and they are required to deal with the undivided share only. That apart, there is no express order of the learned Single Judge on November 24, 2009 granting liberty to the appellant Smt. Pushpa Devi to part with the possession of her undivided share. In fact, this appears to be the understanding of the Smt. Pushpa Devi, as is clear from para 27, of her appeal, wherein she has referred to a legal opinion sought by her, wherein she was advised, that there is no bar for her to deal with her share including transferring the possession. In other words, on legal advice she has transferred the possession, which pre supposes her understanding that order dated November 24, 2009 may not have directed the transfer of possession. The plea of Mr. Nigam, that order dated November 24, 2009 does not bar or put fetters on Smt. Pushpa Devi and the legal heirs of Smt. Shanti Devi for transferring the possession being perform parties is concerned, the same is a selective reading of the order. The said submission is primarily because, the Court in the earlier

sentence records “*The dispute is only in respect of 1/3rd undivided share of late Smt. Bimla Devi*”. But if the order is read in totality, the last line, wherein, the Court has said “*however since the property is not divided so far, the defendants shall remain entitled to undivided share and they may deal with undivided share*” would become relevant. Surely in a suit for partition, every legal heir has an undivided share without demarcation. The Court was conscious of the fact that demarcation by metes and bound is yet to take place. Precisely for this reason it did not direct, transfer of possession and it could not have, as that would have made the suit infructuous. The reliance placed by Mr. Vashist on the judgment of the Supreme Court in the case of *Ramdas v. Sita Bai and ors (supra)* and *Gajara Vishnu (supra)*, wherein the Supreme Court has held that undivided share of a co-sharer may be subject matter of sale but possession cannot be handed over to the vendee (purchaser) unless the property is partitioned, is appealing. The plea of Mr. Arvind Nigam that by necessary implication, the prayers in the IA were allowed and Smt. Pushpa Devi was entitled to deal with and part with possession of the ground floor of the suit property, is also without any merit.

32. The reliance placed by Mr. Nigam on the judgment of this Court in the case of *Banne Singh v. State of Rajasthan (supra)*, to contend that the word “*to deal*” implies that the offender has certain concern with the property by keeping it, in his possession or parting with ownership or possession of the property through any of

the modes of transfer of property is concerned, the same would not be of any help to the appellant Caravan, inasmuch it is the principle found out upon a reading of a judgment as a whole in the light of the questions before the Court that forms the ratio. In the said case, the High Court was dealing with various provisions of the IPC including Section 413 IPC, which relates to an offence of habitually dealing in stolen property. It was in that context, the High Court has culled out a difference between “*retaining*” and “*dealing*” and held “*to deal*” implies that the offender has certain concern with the property either by keeping it in his possession, or parting with the ownership, or possession of the property through any of the modes of transfer of property. It was in the context of Section 413, the High Court has held the verb “to deal” is broader in its scope than the verb “retain”. Whereas, in the case in hand, the word “*deal*” has been referred to by the learned Single Judge in the order dated September 16, 2005 and also in the order dated November 24, 2009 in the context, to deal with “undivided share” in the property without parting with the possession. The said judgment has no application. Further it may be stated that, it is a conceded position that Surinder Kumar, defendant No.12, was not in possession of suit property, and could not have part with the possession. If that be so, the parity granted to Smt. Pushpa Devi, must be read to mean, that she could not have part with possession. The plea that defendant No.12-Surinder Kumar was never in possession of any part of the suit premises and as such, no fetters were put on him,

would not be tenable, inasmuch as on a reading of order dated September 16, 2005, it was clearly directed that “*status quo will be maintained in respect of possession of the parties to property No.42-44, Sunder Nagar, New Delhi*” itself clarifies that the parties could not have parted with the possession. We agree with the submission of Mr. Krishnan that if Mr. Nigam’s interpretation of the word “deal” is accepted then this direction of status quo shall be render otiose. Hence, the plea of Mr. Nigam that Surinder Kumar was never in the physical occupation of the property is inconsequential/irrelevant. It would be irrelevant for these proceedings, the factum that modification of status quo order was sought by the brothers of Surinder Kumar was denied. The plea of Mr. Nigam, that Smt. Pushpa Devi had sought full reliefs in her application filed under order 39 Rule 4 CPC and her application was allowed as a whole vide order dated November 24, 2009 and not on concession is concerned, the same is untenable, as is seen from prayers made and order passed, it is clear that the counsel for Smt. Pushpa Devi restricted the prayer, seeking parity qua defendant No.12 in view of order dated September 16, 2005. Surely, such a plea suggest concession, as he had not pressed the relief as sought for in the application. The plea of Mr. Nigam, that the order dated November 24, 2009, places not fetters on Smt. Pushpa Devi regarding transfer of possession and the order dated September 16, 2005 stood subsumed in the order dated November 24, 2009 and cannot be interpreted to control the scope or width of the order dated November 24, 2009, is

without merit.

33. Insofar as the plea of limitation is concerned, there is no dispute that IA 22682/2012 was filed under Order 39 Rule 2A CPC only without any reference to or under the provisions of the Contempt of Courts Act. The limitation becomes relevant in view of the provisions of Section 20 of the Contempt of Courts Act and not when an application under Order 39 Rule 2A CPC is filed. Even otherwise, when the allegation is of violation of an interim order of the Court, the application would not be hit by delay and laches. We may note in this regard the judgment of the Gujarat High Court in the case of ***Bharatbhai Jivrajbhai v. Chaganbhai Samabhai and Anr.*** passed in ***Miscellaneous Civil Application No. 1751/2011 decided on December 14, 2012***, wherein Gujarat High Court, on an identical plea of limitation raised by the respondents 2, 4 and 5 therein and has rejected such a plea and observed that merely because the proceedings under Order 39 Rule 2A of the CPC for breach of injunction are considered to be akin to the proceedings under the Contempt of Courts Act, the period of limitation, as prescribed under Section 20 of the Contempt of Courts Act would not be applicable. The Court also held that the Supreme Court in the case of ***Pallav Sheth v. Custodian and ors (2001) 7 SCC 549*** has not held that the period of limitation prescribed under Section 20 of the Contempt of Courts Act would be applicable in a proceeding for breach of injunction under Order 39 Rule 2A CPC. We are in agreement with such a

conclusion. Suffice to state, no period of limitation is prescribed for initiating proceedings for breach of injunction under Order 39 Rule 2A CPC, which is provided under Section 20 of the Contempt of Courts Act. It must be held that so long as the breach of injunction continues, the aggrieved party in whose favour there is an injunction, can initiate the proceedings for breach of injunction under Order 39 Rule 2A of the CPC. That apart, it must also be held that Order 39 Rule 2A CPC being a special provision inserted in the Code, shall prevail over the general law of contempt contained in the Contempt of Courts Act. Further, the submission of Mr. Arvind Nigam that the provisions of Section 21(1) of Limitation Act, 1963, to contend that Caravan, having been added in the suit on May 13, 2008 deemed to have been instituted on that date only and not earlier date and the order dated May 07, 1997 or September 16, 2005 cannot be read into order dated November 24, 2009 for the purposes of contempt is concerned, the same is also without any merit. There is no dispute that order dated November 24, 2009 was passed after May 13, 2008 when Caravan was impleaded as a party in the suit. Further, on November 24, 2009 when the order was passed by the Court, Caravan was duly represented by the counsel. The said order explicitly records the statement made on behalf of appellant Smt. Pushpa Devi herein, defendant No.8 in the suit that Smt. Pushpa Devi defendant No.8 is also entitled to similar liberty as was given to defendant No.12 that is, in the order dated September 16, 2005. On such submission, the counsel for

Caravan could have stated before the Court, that Smt. Pushpa Devi is also entitled to part with the possession of the ground floor of the suit property. No such submission was made and the said order dated November 24, 2009 must be understood that the appellant Smt. Pushpa Devi was entitled to deal with the property in the same manner as defendant No.12 and nothing more.

34. Insofar as the submission made by Mr. Nigam that the order dated November 24, 2009 is susceptible to two interpretations is concerned, the same is also without any merit. We have already reproduced the orders passed by the learned Single Judge from time to time in the suit. The orders are very clear and explicit. There is nothing in the order dated November 24, 2009, which suggests that the prayers as made in IA 12948/2008 have been granted nor there is any express order giving liberty to the appellant Smt. Pushpa Devi to part with the possession of the property. The learned Single Judge was right in rejecting this plea in paras 12 and 13, which we have already reproduced above.

35. The reliance placed by Mr. Nigam on the judgments of the Supreme Court in the case of *State of Bihar v. Sonabati Kumari (supra)*, *Sushila Raje Holkar (supra)* and *Tamil Mercantile Bank (supra)* are not applicable in the facts of this case, as there is no ambiguity in the order and the same is capable of only one interpretation and not more than one interpretation, as sought to be contended by

Mr. Nigam. The prayers made in the application suggest that it is the understanding of Smt. Pushpa Devi also that there is a bar on her to part with the possession of the ground floor of the property in question, which surely would make the action as a deliberate and willful.

36. Insofar as the plea of Mr. Nigam that the legal heirs of late Smt. Bimla Devi have occupied more than 2/3rd of the suit property, much above the share of late Smt. Bimla Devi is also without merit, as the nature of property being undivided, and not partitioned, the shares are not determined. In any case, such an argument is not tenable when the allegation is of violation of orders passed by the Court.

37. Insofar as the plea of Mr. Nigam that two sons of late Smt. Bimla Devi including the respondents 1 and 2 never occupied any part of the ground floor of the suit property and their possession on the first floor and terrace remained undisturbed since 1994 with a separate entry/exit point is also without any merit, as the suit is for partition may be inter-se between the legal heirs of late Smt. Bimla Devi but there is no partition by metes and bounds between the legal heirs of late Smt. Bimla Devi, Smt. Pushpa Devi and the legal heirs of Smt. Shanti Devi. So, it was not conclusive that Smt. Pushpa Devi had a clear title of the ground floor so as to part with the possession of the same. The right was only an undivided right and occupation of the first floor cannot be construed to mean that Smt. Pushpa Devi has a right to part

with possession of the ground floor.

38. The plea of Mr. Nigam, that Caravan has been restrained from transferring the ground floor of the suit property in CS(OS) 1587/2011 and the appellant is ready and willing to undertake to be bound by the decision of the said suit and upon division of the property accept any part of the suit property as its share also does not appeal us, as we are in this case concerned with the violation of orders passed in suit being CS(OS) No.1561/1994 and it is the legality of the impugned order of the learned Single Judge, which needs to be adjudicated and nothing more. An order passed in another suit being CS(OS) No. 1587/2011 against M/s Caravan restraining it from transferring the ground floor would have no bearing on these appeals. The said order in CS(OS) No. 1587/2011 is to the effect that M/s Caravan would not create third party rights by transferring it further, which has no bearing on the fact whether Smt. Pushpa Devi could have parted with the possession of the ground floor.

39. The plea of Mr. Nigam that the plaintiff instituted the suit only in order to frustrate the suit of specific performance filed by M/s Caravan and the application under Order 39 Rule 2A CPC was filed by the plaintiff with ulterior motives is inconsequential when the Court below and this Court is concerned with violation of the orders passed in the suit.

40. Similarly, the plea of Mr. Nigam that the plaintiff has instituted the suit to overcome the Agreements to Sell dated November 15, 1991 and November 16, 1992 is also inconsequential, which has no bearing on the plea of the respondents 1 and 2 alleging violation of order dated November 24, 2009.

41. Further, the plea of Mr. Nigam that it was incumbent on the learned Single Judge to decide application being IA No. 15875/2013 under Order 7 Rule 11 CPC relating to the issue of maintainability of the suit first as the same goes to the root of the matter also does not appeal us, when the issue relates to non-compliance of orders in the suit where the said IA has been filed. The non consideration of the IA is no ground for violating orders already passed. The plea that sufficient time was not granted to put forth the arguments before the learned Single Judge is also not tenable, as we find that the appellants had in fact violated/overreached the orders. Further while hearing the appeals, this Court has granted sufficient time to the learned counsel for the parties to argue the appeals and as the final conclusion would determine, the appeals are without any merit, impugned order cannot be faulted on that ground.

42. On the submission relatable to Section 44 of the Transfer of Property Act, suffice to state the possession of the ground floor could not have been parted with, in violation of orders passed.

43. Insofar as the submission made on behalf of appellant Smt. Pushpa Devi by Mr. Deepak Sahni that the appellant being of old age, decided to settle the matter with M/s Caravan and agreed to sell her 1/3rd undivided share in the property to Caravan with delivery of possession of the ground floor on the advise of her counsel is not convincing. No argument has been made during the appeal neither by the counsel of the Caravan or the appellant herein that they are ready to reverse the possession. Her right to sell her 1/3rd share is not disputed/contested but she could not have parted with possession in view of order dated November 24, 2009, which was passed on her asking whereby she was permitted to deal with her undivided share. The contention that she had an absolute right including delivery/transfer of possession of the ground floor is not acceptable as the mandate of the orders including order dated November 24, 2009 was to maintain the sanctity of possession.

44. Insofar as the judgments referred to by Mr. Nigam are concerned, in *Sahdev @ Sahdo Singh (supra)*, is concerned, in the said case in para 16 and para 20, on which reliance was placed, the Supreme Court held that punishment under the law of contempt is called for when the lapse is deliberate and action cannot be taken in an unclear case and the charge has to be proved beyond reasonable doubt. In the case in hand, there is no doubt that the Court had not permitted Smt. Pushpa Devi to part with possession of the ground floor. In fact, it was also the understanding of

Smt. Pushpa Devi that there is no such order. It is her case that on legal advise, the possession was parted with. No attempt was made, at least not brought to our notice to give/take back the possession of the ground floor, surely suggest the contumacious conduct and act, which is not bonafide. The judgment has no applicability in the facts of this case.

45. Insofar as the judgment in the case of *State of Bihar v. Usha Devi (supra)* is concerned, the same has no applicability to the facts of this case. More so, when prejudice has been caused to the plaintiffs (respondents 1 and 2) with the parting with possession of the ground floor when partition has not been effected between the legal heirs of Late Bimla Devi, Smt. Pushpa Devi and the legal heirs of Shanti Devi.

46. In view of our discussion above, we are of the view that the appeals filed are devoid of any merit. The same are dismissed. Time to deliver/for taking possession of the entire ground floor of the suit property by Caravan and Smt. Pushpa Devi is extended by eight weeks from today.

47. As the Learned Single Judge has observed that the matter of awarding punishment will be dependant on the compliance of impugned order, which period, we have extended by eight weeks, list before the learned Single Judge on May 15, 2017 for compliance.

CM No. 14139/2014 in FAO(OS) 385/2014 (for stay)
CM No. 14143/2014 in FAO(OS) 386/2014(for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

INDIRA BANERJEE, J

MARCH 08, 2017/ak

