

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 321 of 2002

1. Rameshwar Prasad Gupta S/o Khaderan Sao, Aged About 46 Years
Businessmen and R/o Deviganj Road, Ambikapur, District Surguja,
Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
2. Subhash Chandra Gupta S/o Khaderan Sao Aged About 42 Years
Businessmen and R/o Deviganj Road, Ambikapur, District- Surguja,
Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Appellants

Versus

1. Bhagwan Das (Died) Through LR:

1 (i) Anandi Devi (Died) Through LRs :-

(a) Sudarshan Gupta, S/o Late Jagdish Prasad Gupta, aged
about 65 years, R/o Deviganj Road, Ambikapur, District-
Surguja (CG)

(b) Subhadra Gupta, Wd/o Late Lakshman Prasad Gupta,
aged about 70 years, R/o Chandrapur Road, Post
Chandrapur, District Janjgir-Champa (CG)

(c) Urmila Gupta, W/o Murari Prasads Gupta, aged about 58
years, R/o Deviganj Road, Ambikapur, District- Surguja (CG)

(d) Sheela Gupta, W/o Nand Kishore Gupta, aged about 58
years, R/o Maharaja Gali, Near Sindhu Dharmshala,
Ambikapur, District- Surguja (CG)

1(ii) Amrawati Devi D/o Late Bhagwandas, W/o Late Kedar Gupta,
R/o Sadar Road, Ambikapur, District Surguja Chhattisgarh

1 (iii) Deleted (Kalawati Devi) As Per Honble Court Order

1 (iv) Lilawati Devi (Died) Through LRs :-

(a) Rajesh Gupta S/o Brijmohan Gupta, Aged About 50 Years

(b) Sanjay Gupta S/o Brijmohan Gupta, Aged About 48 Years

(c) Anuj Gupta S/o Brijmohan Gupta, Aged About 45 Years

(d) Ajay Gupta S/o Brijmohan Gupta, Aged About 44 Years

(e) Tuni Gupta S/o Brijmohan Gupta Aged About 42 Years

(f) Apurna Gupta S/o Brijmohan Gupta, Aged About 40 Years

1 (v) Durgawati Devi D/o Late Bhagwandas, W/o Chedi Sao, R/o
Maharajagali, Deviganj Road, Ambikapur, District Surguja
Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

1 (vi) Arti Devi D/o Late Bhagwandas, W/o Prakash Gupta, R/o
Maharajagali, Deviganj Road, Ambikapur, District Surguja
Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Appellant/Defendant : Shri R.P. Agrawal Senior Advocate
with Shri Santosh Singh, Shri Sharad Gupta
and Shri Manoj Paranjpe, Advocates

For Respondents- Plaintiff : Shri Sushil Dubey, Advocate with Shri Aman
Upadhyay, Advocate

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

11/12/2019

1. This appeal is directed against the impugned judgment and decree dated 08.08.2002 passed by learned District Judge, Sarguja (Ambikapur) C.G. in Civil Appeal No.90-A of 2001 whereby the learned lower appellate Court has affirmed the judgment and decree dated 19.1.1996 passed by learned trial Court in Civil Suit No.12-A of 1994 in the matter of respondent-plaintiff's suit for recovery of possession and permanent injunction and also relief of mandatory injunction in respect of the disputed property.
2. Respondent-plaintiff Bhagwan Das and another filed a suit seeking decree of recovery of possession, damages and also mandatory injunction against the appellant-defendants on the pleadings, inter alia, that the property in dispute originally belonged to plaintiff and, later on, they effected partition amongst themselves. Further averment was that when the plaintiffs were in need of money, share of plaintiff No.1 was sold to defendant by registered sale deed dated 17.6.1976. Further case of the plaintiffs was that later on, the defendants, while raising construction of their house over the land purchased, which was only to the extent of 960 sq.ft. in khasra number 842, they encroached upon land admeasuring 112 sq.ft (7 x 16 feet) which was never sold by the plaintiffs to the defendant. Further case of the plaintiffs was that at the time of sale of the property which belonged to the plaintiff No.1, vide registered sale deed of 1976, it was clearly conditioned that the defendants shall not open window and doors on the side on which the plot of plaintiffs opens. The defendants,

however, while raising construction, opened a window and a door. On these pleadings, the plaintiffs sought recovery of possession of 112 sq.ft. of land and also for mandatory injunction against the defendants for closing use of door and window.

3. In the written statement, appellants- defendants came out with the plea that, though vide registered sale deed of 1976, a part of the land was purchased by the defendants, according to them, on the basis of permission granted by the plaintiffs, at the time of raising construction, they had opened door and window towards south direction. Further case of the defendant was that during construction when, later on, it was revealed that about 7-8 feet of the land of the plaintiffs was also used inadvertently, while raising construction of the house and that during construction, plaintiffs did not raise any objection, an offer was given to the plaintiff that in respect of the excess land on which construction has been raised, the defendants are prepared to purchase it for valuable consideration and the plaintiff agreed also and Rs.500/- was paid to the plaintiff and thereafter, the objection, if any, the plaintiff had, was withdrawn.
4. On the basis of the pleadings made by learned counsel for the parties, learned trial Court framed as many as 14 issues. One of the issue was as to whether, there was an agreement between the parties under which, the plaintiff had agreed to sell the property for consideration of Rs.500/- to the defendant, which according to defendant was inadvertently included during course of construction of their house. Learned trial Court held that no such agreement was entered into between the parties nor defendant had purchased. It was also found that the plaintiff was entitled to decree of mandatory injunction in respect of the door and window which were opened against terms and conditions on which sale was effected by sale deed of 1976 by plaintiff No.1 in favour of defendant. The suit of the plaintiff was accordingly dismissed. Aggrieved by the judgment and decree of the trial Court, appeal was preferred by the appellants-defendant which too was dismissed, affirming judgment and decree of learned trial Court. It is this judgment and decree passed by learned

lower appellate Court which is under challenge in this appeal.

5. This second appeal was admitted on following three substantial questions of law:

“1. Whether both the Courts below are justified in not dismissing the suit for permanent injunction to be barred by limitation by recording a finding which is perverse and contrary to the record?

2. Whether the trial Court as well as first appellate Court are justified in ordering demolition of permanent structure when alternatively the injury can be compensated to the respondents/legal representatives of plaintiff by directing payment of just and reasonable compensation in lieu of demolition in view of the judgment rendered by the Supreme Court in the matter of **Taher Khatoon Vs. Salam Bin Mohammad¹** ?

3. Whether both the Courts below are justified in decreeing the suit of the plaintiff by recording a finding which is perverse to the record?”

6. In this appeal, before I proceed to take up the matter on merits, it is noticed that number of interlocutory applications were filed by the respective parties. Appellant filed two applications for amendment of the written statement. However, on previous dates of hearing, including the last date when the case was directed to be listed for hearing, these applications were not pressed. Therefore, these applications are rejected as not pressed.

7. In this case, one of the purchasers filed an application purporting to be under Section 151 CPC seeking intervention in the appeal on the basis that he had purchased a part of the property in dispute during pendency of the case vide sale deed dated 4.1.1991 seeking to bring on record

1.(1999) 2 SCC 635

certain facts with regard to pendency of some other case filed by defendant seeking decree of specific performance.

Irrespective of the contents of the application, proposed intervenor was not a party nor is party in the present appeal. It appears that as during pendency of the suit, he had purchased a part of the said property by registered sale deed dated 4.1.1991, such application has been moved which is misconceived in law and it is, therefore, rejected.

8. Today, when the case was listed for final hearing, that very intervenor Pradeep Kumar Gupta filed an application under Order 22 Rule 10 CPC that he be also impleaded as plaintiff in the suit filed by respondent-plaintiff.

The application on the face of it, is filed only to delay hearing of this appeal. This applicant was in full notice and knowledge of the proceedings including present appeal. This fact is clear that he himself had moved an application for intervention way back in the year 2012. Therefore, the application is rejected.

9. There is another application filed by the appellant proposing payment of price of the suit land.

Such an application cannot be separately considered and any such offer is only matter of consideration while hearing of the appeal.

10. Two applications seeking to bring additional evidence on record shall be considered.

11. On merits, learned senior counsel appearing for the appellants-defendant, while arguing on the first substantial question of law, would submit that learned trial Court as well as appellate Court, both have recorded perverse finding in so far as issue with regard to limitation is concerned. He would argue that as per the plaint allegation itself, the plaintiff himself has stated that the defendants' house was constructed in the year 1978-79. According to him, the plaintiff's averment as contained in para-7 of the plaint, shows that at the time of construction, the plaintiff had objected to opening of the door and window, meaning thereby that

right from the time when construction was being raised, the plaintiff had full notice and knowledge of opening of door and window in the building which was constructed by the defendant in the year 1978-79. Thus cause of action for the plaintiff to seek relief of mandatory injunction seeking closure of door and window arose at the time when such doors and windows were opened in the building constructed by the defendants in the year 1978-79. The suit was filed only on 15.10.1984. According to him, as there is no specific period of limitation separately provided for filing of suit seeking mandatory injunction, residuary provision contained in Article 113 of the Limitation Act would be applicable and thus suit is required to be filed within a period of three years. In support of this submission, learned counsel for the appellant placed reliance upon the Supreme Court's decision in the case of **Gunwantbhai Mulchand Shah & Ors. Vs. Anton Elis Farel and Ors.** (2006) 3 SCC 634. He submits that while learned trial Court held that the period of limitation would not come in the way, learned lower appellate Court wrongly held that the period of limitation would be governed by provision contained in Article 65 of the Limitation Act.

12. On the second substantial question of law, learned counsel for the appellant-defendant would argue that in the present case, the law laid down by the Supreme Court in the case of **Taherakhatoon (d) by LRs. Vs. Salambin Mohammad** (1999) 2 SCC 635 is squarely applicable. It is argued that in the aforesaid case, the facts of which were similar to present case, taking note of the fact that the appellant therein was in longstanding possession of the house, the Supreme Court moulded relief directing payment of value of the suit land instead of demolition and dispossession of the building. Learned counsel for the appellant further argue that in appropriate cases, the power of the Court to mould relief is always available, as held in catena of decisions including decision of the Supreme Court in the cases of **Gaiv Dinshaw Irani Vs. Tehmtan Irani** (2014) 8 SCC 294 and **K. B. Ramachandra Raje URS (Dead) by Legal representatives Vs. State of Karnataka and Ors.** (2016) 3 SCC 422. He would argue that present is a case where the defendant had actually purchased substantive part of land of the plaintiff admesuring 916 sq.ft.

and had raised construction of their house and while raising construction, a small strip of land admeasuring $7 \times 16 = 112$ sq.ft. which belonged to the plaintiff came to be included in the construction part. Later on, when this was revealed, plaintiff had offered and had paid certain amount to the defendant. He would argue that even if the Courts below have held that defendant could not prove that he had paid any amount to the plaintiff as value of said part of the land, this would be a relevant aspect to consider moulding of relief in view of subsequent event that the property in dispute was, later on, bequeathed by way of 'Will', by the original plaintiff Bhagwandas to his daughter Durgawati Devi and she in turn, sold the property to different persons, as many as four in number, details of which have been given in application under Order 41 Rule 27 CPC filed by the appellant. He further argues that the dispute is with regard to a very small portion of land on which, a house is standing for last more than forty years. Further, in view of subsequent event, by which, the plaintiff had deliberately divested himself of the title of the property and it had passed on to large number of purchasers who are not before the Court, the plaintiff himself would not be getting any relief, though, the defendant's house will have to be demolished to deliver vacant possession. Therefore, in the present case, the relief as sought by the plaintiff may be moulded by granting a decree for payment of monetary value of the property instead of giving the benefit of the same in favour of the plaintiff.

13. The third question of law was not pressed into service.

14. On the other hand, learned counsel for the respondent -plaintiff would argue that the Courts below, as far as the encroachment made by the defendant is concerned, have recorded concurrent finding that the plaintiff had sold only 916 sq.ft. of land by sale deed of 1976 to defendant but the defendant while constructing their house, encroached upon plaintiff's land admeasuring 112 sq.ft. (7 /16 feet). His next submission is that as far as the limitation aspect is concerned, the plaint averments are clear that when the defendant started interfering with the possession and started raising construction of a wall, the plaintiff had to file suit. He

would further argue that plaintiff, in their plaint and in the evidence, have clearly stated that the defendant's action in opening window and doors came to be notice and knowledge of the plaintiff only in the year 1983 and therefore, soon thereafter, the plaintiff filed the suit in the year 1984 and thus it cannot be said to be beyond limitation.

15. Replying to the argument on the second question of law, learned counsel for the respondent-plaintiff argues that, even though, the Court is invested with the power to mould relief, in the present case, no such case is made out. He would argue that present is a case where the plaintiff has clearly proved, as held by the Court below, that defendant have encroached upon a part of their land as the learned trial Court granted decree in favour of plaintiff and appellate Court affirmed the same. It is also submitted that merely because there is subsequent event that plaintiff had divested itself of the title, would not be sufficient ground for the defendant/appellant to seek moulding of relief.

16. I have heard learned counsel for the parties and perused the records of the case.

17. On the first substantial question of law, the argument of learned counsel for the appellant-defendant has considerable force. The plaint averment as contained in para 6 & 7 recites that defendant's construction was raised in the year 1978-79 and at that time, they sought permission of the plaintiff to draw water from a well to facilitate construction which was permitted by the plaintiff. In para-7, it has further been pleaded that while constructing the house, defendant started opening the door contrary to the condition stated in the sale deed, the plaintiff No.1 raised objection to which defendant stated that the said construction is only till completion of construction and drawl of water and thereafter, it would be closed. In para-9 of the plaint, he has stated that defendant's act of raising construction and opening window and doors were not within his notice and knowledge because he was busy in agricultural activity in his village Kewara. In para 11 to 15 of the plaint, averments have been made regarding the cause of action according to which, the act of the defendant's in raising construction over the land of the plaintiff and

opening window and doors gave him cause of action to file suit. Apparently, from the plaintiff's own averment under para 6 & 7 of the plaint, the plaintiff had come to know about the opening of doors and windows at the time of construction of the house. According to the plaint's averment itself, the construction was made in the year 1978-79. In para-7 of the evidence of Bhagwan Das, the plaintiff No.1, it has been clearly stated that the plaintiff had asked the defendant to close the window but the defendant did not pay any heed. This part of evidence, read along with the pleadings made in para 6 & 7 of the plaint, proves that the plaintiff had full notice and knowledge of opening of the window and the doors at the time when construction was raised and completed i.e. prior to 1980. The plaintiff, however, sought mandatory injunction relief by filing suit on 15.10.1984. The legal position as to the period of limitation applicable in the matter of seeking relief for mandatory injunction is no longer res integra and well settled by the Supreme Court in the case of **Gunwantbhai Mulchand Shah** (supra). In para-13 and 14 of the said decision, it has been held as below :-

“13. Section 27 of the Limitation Act provides for extinguishment of right to property only at the determination of the period limited by the Limitation Act for instituting a suit for possession. Section 3 of the Limitation Act provides that subject to Sections 4 to 24 of the Act every suit instituted after the period prescribed therefor in the Limitation Act shall be dismissed. When the suit is for specific performance of an agreement for sale and we conduct a search in the Limitation Act in the context of Section 3 of the Act, we are obviously confronted only with Article 54 of the Schedule to the Limitation Act. We have already dealt with the scope of Article 54 and indicated that in this case it would be the second limb of the Article that would apply and consequentially the suit could not be held to be barred by limitation, having been filed

three years after the agreement for sale or the date for performance fixed in the agreement for sale. We have also noticed that the plaintiffs have pleaded that they are in possession of the suit property and since it is not a suit for possession as such, the applicability of Section 27 of the Limitation Act also may not arise. It is, therefore, a case where in the context of Article 54 of the Limitation Act, the question had to be decided on the pleadings and evidence to be adduced by the parties on the aspect of the second limb of Article 54 of the Limitation Act.

14. We have already indicated that the suit insofar as it relates to the prayer for a perpetual injunction restraining the defendants from interfering with the possession of the plaintiffs cannot be held to be barred by limitation. Whether the plaintiffs are able to prove that they are in possession of the suit property as on the date of suit and establish that they are entitled to the injunction prayed for, is a different matter. There is also the question whether the relief of injunction can be treated as being only a relief consequential to the relief of specific performance and the denial of one would automatically lead to the denial of the other, or whether it is an independent relief in itself and even if the plaintiffs are not entitled to a decree for specific performance they would still be entitled to a decree for injunction, a relief the grant of which is, of course, in the discretion of the court. It may be noticed that a suit for injunction would be governed by the residuary article, Article 113 of the Limitation Act and the cause of action for the said relief arises when the right to sue accrues. That

would depend upon the court deciding when the right accrued, on the pleadings and the evidence in the case. Therefore, the suit insofar as it relates to the prayer for a decree for perpetual injunction cannot be held to be barred by limitation at this preliminary stage. “

18. Clearly therefore, limitation in the matter of seeking relief by filing a suit for mandatory injunction would be governed by the provision contained under Article 113 of the Limitation Act.

19. The finding of learned trial Court in this regard, to say the least, is completely perverse and not in accordance with law. According to learned trial Court, the plaintiff could file such suit at any point of time. The finding of learned lower appellate Court is equally bad in law wherein it has been held that in such a case, Article 65 of the Limitation Act governs the period of limitation. The lower appellate Court seems to have taken this view, perhaps taking into consideration that the plaintiff had filed suit for recovery of possession.

Two reliefs sought by the plaintiff, one for mandatory injunction and other for recovery of possession are independent. It is not a case that relief of injunction has been sought as a consequence of principal relief of recovery of possession. Relief of mandatory injunction has been sought with respect to defendant's act of opening window and door while constructing the house which is alleged to be in violation of the terms and condition, on which, the land was sold by the plaintiff to defendant. Therefore, the suit of the plaintiff in so far as relief of mandatory injunction is concerned was clearly barred by limitation. That claim of the plaintiff is therefore liable to be rejected only on the ground of limitation.

20. As far as second substantial question of law is concerned, learned counsel for the respective parties have made their submissions by relying upon various decisions of the Supreme Court, particularly decision in the case of **Taherakhatoon** (supra).

21. The power of the Court to mould relief in appropriate cases has been examined in plethora of decisions. In the case of **Gaiv Dinshaw Irani** (supra), the principles applicable in this regard were discussed in the light of earlier decision, as below :-

“48. Considering the aforementioned changed circumstances, the High Court taking note of the subsequent events moulded the relief in the appeal under Section 96 of the Code of Civil Procedure and the same has been challenged by the appellants before us. In ordinary course of litigation, the rights of parties are crystallized on the date the suit is instituted and only the same set of facts must be considered. However, in the interest of justice, a court including a court of appeal under Section 96 of the Code of Civil Procedure is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or one the entire purpose of the suit, the Courts taking note of the same should mould the relief accordingly. This rule is one of ancient vintage adopted by the Supreme Court of America in *Patterson vs. State of Alabama* followed in *Lachmeshwar Prasad Shukul vs Keshwar Lal Choudhury*. The aforementioned cases were recognized by this Court in *Pasupuleti Venkateswarlu vs. The Motor and General Traders* wherein he stated that (SCC pp. 772-73, para 4):

“4... It is the basic to our processual jurisprudence that the right to relief must be judged to exist as on the date of suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has

come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

49. The abovementioned principle has been recognized in a catena of decisions. This Court by placing reliance on the *Pasupuleti Venkateswarlu Case*, held in *Ramesh Kumar vs. Kesho Ram* [SCC pp. 626-27, para 6)] that:

“6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a

material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

50. This was further followed in *Lekh Raj vs. Muni Lal & Ors.*. This Court in *Sheshambal (dead) through LRs vs. Chelur Corporation Chelur Building & Ors.* while discussing the issue of taking cognizance of subsequent events held that:

"19. To the same effect is the decision of this Court in *Om Prakash Gupta* case where the Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit yet the court has power to mould the relief in case the following three conditions are satisfied: (SCC p. 263, para 11)

"11. ... (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

51. This Court in *Rajesh D. Darbar and Ors. vs. Narasinghro Krishnaji Kulkarni and Ors.* a matter regarding the elections in a registered society, held that the courts can mould relief accordingly taking

note of subsequent events. Furthermore, in *Beg Raj Singh vs. State of Uttar Pradesh & Ors.* while deciding on the issue of renewal of a mining lease held that: (SCC pp. 729-30, para 7)

“7....A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment.”

52. Even this Court while exercising its powers under Article 136 can take note of subsequent events (See: *Bihar State Financial Corporation & Ors. vs. Chemicot India (P) Ltd. & Ors.*, *Parents Association of Students vs. M.A. Khan & Anr.*, *State of Uttar Pradesh & Ors. vs. Mahindra & Mahindra Ltd.*)

53. Thus, when the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed circumstances, the courts may mould the relief in accordance with the changed circumstances for shortening the litigation or to do complete justice. “

22. In one of the decisions, which was referred to in the aforesaid decision *Sheshambal Vs. Chelur Corpn. Chelur Building*, (2010) 3 SCC 470, three conditions, on which relief could be moulded in appropriate cases was

laid down. It was held that although, the ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit, yet the Court has power to mould the relief in case the following three conditions are satisfied:

"(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

23. One of the considerations is that relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted. Such power could also be exercised taking note of subsequent event or changed circumstances to enable complete justice. However, there is a rider that such subsequent event are required to be brought to notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. It has further been held that the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed circumstances, the Courts may mould the relief in accordance with the changed circumstance for shortening the litigation or to do complete justice.

24. Similar view was taken in another decision of the Supreme Court in the case of **K. B. Ramachandra Raje** (supra). The principles of law in this regard was authoritatively pronounced as below:-

"34. The acquisition under the 1903 Act and the allotment of 55 acres of land to the respondent No. 28 having been found to be contrary to law consequential

orders of handing over of possession of the entire land should normally follow. However, in granting relief at the end of a protracted litigation, as in the present case, the Court cannot be unmindful of facts and events that may have occurred during the pendency of the litigation. It may, at times, become necessary to balance the equities having regard to the fact situation and accordingly mould the relief(s). How the relief is to be moulded, in the light of all the relevant facts, essentially lies in the realm of the discretion of the courts whose ultimate duty is to uphold and further the mandate of law. If the issue is viewed from the aforesaid perspective the several decisions cited on behalf of the respondents in this regard, particularly by the respondent No. 28, i.e., *Competent Authority Vs. Barangore Jute Factory and Others, U.G. Hospitals Pvt. Ltd. Vs. State of Haryana and Others, Gaiv Dinshaw Irani and Others Vs. Tehmtan Irani and Others* and *Bhimandas Ambwani (Dead) Through Lrs. Vs. Delhi Power Company Limited* can at best indicate the manner of exercise of the judicial discretion in the facts surrounding the particular cases in question. “

25. There the Court had noted that even though, the consequential order of handing over possession should normally follow, it was noted that in granting relief at the end of a protracted litigation, Court cannot be unmindful of facts and events that may have occurred during the pendency of the litigation and, at times, it becomes necessary to balance the equities having regard to the fact situation and accordingly mould the relief. How the relief is to be moulded, in the light of all the relevant facts, which essentially lies in the realm of the discretion of the Courts whose ultimate duty is to uphold and further the mandate of law.

26. Another decision on which, heavy reliance is placed is the decision of the Supreme Court in the case of **Taherakhatoon** (supra). That was a case

where the Supreme Court, even after having found that a decree of possession was liable to be granted in favour of the other party, exercised discretion not to interfere with the order of the Court below in exercise of its discretion under Article 136 of the Constitution of India. The relevant circumstances for exercise of discretion in that case were that parties suffering decree of dispossession has constructed two rooms and even though, the other party had knowledge of such trespass, it did not raise any objection to such construction and suit came to be filed later on after the construction was raised. The rooms were found to be existing for last 30 years. This factual aspect of the said case were considered relevant for exercise of discretion to mould the relief. In that case, relevant consideration were that when construction was being raised, no objection was taken and long after construction was raised, suit was filed and that construction had remained standing for about three decades.

27. In the present case, the plaintiff's filed suit in the year 1984 on the pleadings that defendant had started raising construction in the year 1977 and it was completed during the period from 1978-79. Suit was filed in the year 1984. The parties have remained under litigation and now it is almost 49 years that the defendant have remained in possession of the house. Moreover, it is found that entire dispute is with regard to a very small strip of land admeasuring 7/16 feet which was adjacent to 960 sq. feet (16 / 60) of land which was sold by the plaintiff in favour of defendant. The defendant has admitted in his written statement that while constructing the house over 960 sq.ft. of land which was purchased from the plaintiff, a portion of plaintiff's land admeasuring 112 sq.ft. came to be included under construction part. Therefore, it is not a case which could be said to be a case where the huge portion of plaintiff's land has been occupied by the defendant. Moreover, the construction of house by the defendant between the period 1977-80 has also not been disputed and by now, more than 40 years elapsed. Moreover, if the plaintiff is granted a decree of possession, house of the defendant which is standing for 40 years will have to be demolished in part. As against this, it has been stated in application under Order 41 Rule 27 CPC by the appellant-defendant, which facts are not disputed by respondent-plaintiff that the

plaintiff had bequeathed his property by way of 'Will' in favour of his own daughter Durgawati and she, in turn, sold the property to as many as four purchasers. That means, as on the date, even if the decree of possession is granted in favour of plaintiff, the plaintiff would not get anything. Further more, in the present case, out of four purchasers, Pradeep Gupta filed application for being impleaded as party only today though he was fully knowing about the pending litigation and judgment passed by various Courts from time to time. This is clear from the fact that 7 years before, in the year 2012, he had filed an application seeking intervention in the present appeal.

28. Therefore, in the aforesaid circumstances, applying the law laid down in the decision referred to above and that on similar considerations, a discretion for payment of monetary compensation in lieu of delivery of possession was exercised by the Supreme Court in the case of **Taherakhatoon** (supra), I am inclined to mould the relief in the manner that instead of directing handing over possession of the disputed part of the land in favour of the plaintiff, the defendant are liable to be paid considerable monetary compensation to the plaintiff or the purchaser of the land. As to how that monetary compensation is to be computed, order of the Supreme Court in the case of **Taherakhatoon** (supra) provides sufficient guidelines wherein the Supreme Court had remitted the matter to the trial Court for deciding value of the suit land as on the particular date with liberty to the party to adduce evidence and direction to trial Court to fix the same so that the same could be paid by the defendant to the plaintiff and such amount determined by the Court be treated as money decree.

29. In the result, this appeal is partly allowed. The impugned judgment and decree in so far as grant of mandatory injunction is concerned is set aside. The decree with regard to recovery of possession is modified by moulding the relief in the manner that the respondent -plaintiff or plaintiff's purchaser or his successor in interest are entitled to appropriate monetary compensation. For this limited purpose, the case is remanded to the Trial Court where the parties shall be at liberty to lead

evidence only with regard to monetary value of the property i.e. the disputed land as on the date of passing the judgment and decree of the trial Court i.e. on 19.1.1996. The amount determined by the learned trial Court shall be payable by the defendant to the plaintiff or to successor in interest of the plaintiff. The purchaser/successor in interest of the plaintiff would be at liberty to appear before the trial Court and adduce evidence, if not led by the plaintiff to prove monetary compensation benefit in respect of the disputed land. Further, on the said amount of monetary compensation payable to the plaintiff, the plaintiff would also be entitled to interest @6% per annum till the date of actual payment. Any amount already deposited in the Court shall be adjusted. Let an appellate decree be drawn accordingly.

30. The parties shall appear before the Trial Court on **30th March 2020**.

Sd/-

(Manindra Mohan Shrivastava)
Judge