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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10.03.2021

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Pronounced on: 22.03.2021

+ RSA 181/2019

MRS.VEENA DEVI & ANR

..... Appellants

Through: Mr. Jayant K. Mehta, Amicus
Curiae with Ms. Sunita Devi,
Appellant No.2 and daughter of
Appellant No. 1 in person.

versus

MR. PRAVEEN KUMAR GUPTA & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. This Regular Second Appeal has been filed under Section 100 read with Order 42 Rule 1 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') against the impugned judgment dated 06.05.2019 whereby the appeal of the Appellants against the judgment and decree dated 24.09.2018 in Suit No. 607578/2016 has been dismissed.

2. Brief and relevant facts necessary for adjudication of the appeal are that Respondent Nos. 1 to 3 herein/ Plaintiffs in the Suit, being the sons of Late Shri Shankar Lal and Smt. Veena Devi, instituted a Suit for permanent injunction against their parents. Late Shri Shankar Lal was

Defendant No. 1 and Smt. Veena Devi was Defendant No. 2. The suit was filed to restrain the Defendants from dispossessing them from shop No. 5308, Shora Kothi, Paharganj, New Delhi (suit property). It was alleged that (a) the Plaintiffs were carrying out their business from the suit property at the time of institution of the suit; (b) Plaintiff No. 1 was carrying on business of catering for the last 12 years and his goods and other catering material were lying in the suit property; (c) Plaintiff No. 2 was carrying on business of tent/decorators and furniture for about 12 years and his tent material, utensils etc. were lying in the suit property; (d) Plaintiff No. 3 was carrying on business of sweets for the last 5 years and his articles were lying in the suit property; (e) Defendant No. 1 was mentally disturbed and the Plaintiffs were taking care of him including his treatment at various hospitals; (f) Plaintiffs were in settled possession of the suit property and the Defendants were trying to dispossess the Plaintiffs; (g) Defendant No. 2 was the owner of the suit property; (h) Defendant No. 1 threatened to oust the Plaintiffs from the suit property on 21.08.2005 and again on 22.08.2005, which gave rise to cause of action for filing the suit for permanent injunction. Together with the Plaint, the Plaintiffs also filed an application for temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the CPC.

3. Written statement was filed by the Defendants alleging (a) the suit was a gross abuse of the process of law; (b) Plaintiffs concealed material facts from the Court; (c) Neither of the Plaintiffs were in possession of the suit property; (d) Allegation that Defendant No.1 was mentally disturbed was false, defamatory and derogatory; (e) Defendant No. 1 had disowned the three sons by a notice, way back in January, 1994; (f) As

none of the Plaintiffs were in possession on the date of institution of the suit, the suit was not maintainable; (g) On 15.08.2005 suit property was leased to one Radhey Shyam and this triggered the Plaintiffs coming to the house of the Defendants and threatening the Defendants, which led to a Police Complaint by the Defendants. Replication was filed to the Written Statement by the Plaintiffs.

4. On 30.08.2005, Learned Trial Court appointed a Local Commissioner to ascertain the factum of the possession of the suit property. On 03.09.2005 a Report was rendered by the Local Commissioner as per which the suit property was in possession of Defendant No. 1/ Shri Shankar Lal. Based on the Report and relying on the judgments on the issue, learned Trial Court vide order dated 10.09.2005 dismissed the application for temporary injunction.

5. On 06.02.2006, the Trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for relief of permanent injunction, as prayed for? OPP

2. Relief.”

6. During the pendency of the suit Shri Shankar Lal expired on 05.04.2009 and his two daughters were brought on record vide order dated 09.02.2011 and arrayed as Defendant Nos. 1(b) & 1(c), while Smt. Veena Devi was arrayed as Defendant No.1(a). Defendant No.1(b), namely, Sangeeta did not contest the suit and is Respondent No.4 in the present appeal. In the meantime, on 27.09.2010 Smt. Veena Devi executed a registered Gift Deed, gifting the suit property to Defendant No. 1(c). For the sake of convenience, the Plaintiffs in the Suit are

referred to as Respondents and Defendants 1(a) and 1(c), who are Appellant Nos.1 and 2, respectively are referred to as Appellants hereinafter.

7. Parties led evidence in support of their claims. Respondents examined themselves as PW-1, PW-2 and PW-3, respectively and tendered evidence by way of affidavits, apart from examining certain other witnesses. Appellants examined Smt. Veena Devi as DW-1, who tendered affidavit in Examination-in-Chief but did not subject herself to cross-examination by the Respondents.

8. As per the case set up by the Appellants, on 22.02.2016, during the pendency of the Suit, Respondents entered the suit property and after removing the locks of the Appellants, placed their locks on the shutter of the suit property, thereby forcefully dispossessing the Appellants.

9. Appellants filed an application under Section 151 CPC seeking directions to the Respondents to remove the locks of the suit property. Respondents resisted the application on the ground that the application was not maintainable, in the absence of a counter-claim by the Appellants, though admitting that Appellant No. 1 was the owner of the suit property.

10. Learned Trial Court dismissed the application on 04.07.2018 on the ground that the application ought to have been filed by Defendant No. 1(c) who was now the owner through the Gift Deed and that the application disclosed a separate cause of action for which appropriate proceedings ought to have been instituted by Defendant No. 1(c). The said order was assailed by the Appellants by filing a Civil Revision Petition No. 222/2018 before this Court.

11. Learned Trial Court dismissed the suit by its judgment and decree dated 24.08.2018, observing that Plaintiff No. 2 had admitted that Plaintiffs were not in possession of the suit property at the time of filing the suit and the use of the property by the Plaintiffs was merely permissive/gratuitous. A finding was also rendered that it was undisputed that Smt. Veena Devi was the owner of the suit property. Since the suit was dismissed, this Court disposed of the Revision Petition as infructuous vide order dated 08.10.2018. Appellants filed Special Leave Petition No. 4375/2019 before the Supreme Court against the said order, which was dismissed as withdrawn with liberty to the Appellants to pursue the legal remedy against the final judgment dated 24.09.2018 passed by the learned Trial Court.

12. On 25.10.2018, Appellants No.1 filed another application in the disposed of suit for restoration of possession against the Respondents. Learned Trial Court vide order dated 03.11.2018 dismissed the application on the ground that the suit had been dismissed and that the application disclosed a separate cause of action for which the applicant has to avail an appropriate remedy under the law. Appellants thereafter on 17.11.2018 filed an appeal being Civil Appeal No. 182/2018 under Section 96 of the CPC before the First Appellate Court against the judgment and decree dated 24.09.2018, on account of their forcible dispossession by the Respondents and also filed an appeal being MCA No. 85/2018 on 17.12.2018, under Section 47 CPC against the order dated 03.11.2018, rejecting Appellant No.1's application for restoration of possession.

13. Vide order dated 06.05.2019, the appeal under Section 47 CPC was dismissed on the ground that the impugned order was not appealable by virtue of Section 104 CPC and Rule 1 of Order 43 CPC. Appeal under Section 96 CPC was also dismissed vide a separate order dated 06.05.2019 and it is this order which is impugned in the present appeal by the Appellants.

14. In a nutshell what emerges is that in the litigation between the parties before the Courts below, learned Trial Court in the Suit decided Issue No. 1 against the Respondents and held that they were not entitled to relief of permanent injunction and this was based on the admission of the Plaintiffs therein that Smt. Veena Devi was the owner of the property and the Plaintiffs were not in possession when the Suit was instituted. The possession of the Respondents was only gratuitous and thus no injunction could be granted against the owner of the property. The Suit was accordingly dismissed.

15. In appeal by the Appellants against the judgment and decree, seeking restoration of possession, the First Appellate Court declined to grant relief holding that (a) Trial Court dismissed the Suit only by considering the admission made by Plaintiff No. 2 and did not consider the extent to which the said admission would bind the other Plaintiffs; (b) Plaintiffs never admitted that Defendants were in possession of the suit property; (c) No order of injunction or status quo was violated by the Plaintiffs; (d) Defendants did not lead evidence to show their forcible dispossession during the pendency of the suit and Defendant No. 1 (c) did not enter the witness box.

16. In the present appeal, on 17.10.2019 this Court framed the following substantial questions of law:-

“(i). Whether the civil court is duty bound to direct restoration of possession to the defendant while dismissing the suit of the plaintiff for injunction against forcible dispossession if the material on record reveals that plaintiff was not in possession at the inception but had taken over during the pendency of the case?”

“(ii). Whether an appeal can be maintained by a defendant in facts and circumstances mentioned in preceding issue even though the suit against him has been dismissed?”

17. Arguments were addressed on factual aspects by Appellant No. 2 in person and on questions of law by Mr. Jayant Mehta, Amicus Curiae in the matter. It was contended that power of a Court to grant restitution is an inherent power and it encompasses all claims founded upon the principle of unjust enrichment and in essence provides for reparation to a wronged party for any wrongs committed in the course of a judicial proceeding. The Principle of Restitution is embodied *inter-alia* in Section 144 of the CPC, 1908. The Courts have held in a Catena of judgments that Section 144 of the CPC only incorporates part of the general law of restitution and is not exhaustive. Power of a Court to direct restitution is not limited to situations where party suffers an injury at the instance of the Court in its order or decree, but extends to cases where party is aggrieved by actions of another party. It was also argued that quite apart from Section 144, the Court has wide powers under Section 151 CPC to direct restitution in favour of an aggrieved party to meet the ends of justice. Reliance was placed on the following judgments:-

(i). Tanusree Basu v. Ishani Prasad Basu, (2008) 4 SCC 791

- (ii). ***Kavita Trehan v. Balsara Hygiene Products Ltd., (1994) 5 SCC 380***
- (iii). ***Kartick Chandra Boroye v. Kashi Nath Mondal, 1996 SCC OnLine Cal 365***
- (iv). ***State Govt. of A.P. v. Manickchand Jeevraj & Co., 1972 SCC OnLine AP 95***
- (v). ***Mohammad Salim v. Shahin Sah, 2006 SCC OnLine Raj 8***
- (vi). ***Pushap Raj v. Kuldeep Singh 1997 AHIC 3681***

18. Relying on the aforesaid judgments, it was contended that the Appellants herein were in possession of the suit property from the very inception of the Suit, but were subsequently dispossessed during its pendency. Having rendered a finding in favour of the Appellants to this extent, the Trial Court ought to have exercised its jurisdiction under Section 151 CPC to restore the possession of the Appellants, in the interest of justice.

19. It was next contended that 'possession' has been given paramount importance in law. Courts have recognized the right of a party to claim possession and even a person in unauthorized possession is given protection and can be dispossessed only after following due process of law. Section 6 of the Specific Relief Act, 1963 also affirms this important principle of substantive law i.e. 'protect possession' and for this reason prescribes a summary procedure with the object of discouraging illegal methods and means to dispossess a person. Reliance is placed on the judgment in ***S.R. Ejaz vs. T.N. Handloom Weavers' Coop. Society Ltd., (2002) 3 SCC 137*** and ***Adapa Tatarao vs. Chamantula Mahalakshmi, 2006 SCC Online AP 757***. For the proposition that where a person is in settled possession of a property, even on the assumption that he has no

right to remain on the property, he cannot be dispossessed except in accordance with law, reliance is placed on the judgment in *Sameer Sobhan Sanyal vs. Tracks Trade (P) Ltd. (1996) 4 SCC 144* and *Krishna Ram Mahale vs. Shobha Venkat Rao (1989) 4 SCC 131*.

20. The next contention was that Respondents cannot be allowed to reap the fruits of illegally dispossessing the Appellants. Respondents did not dispute the ownership of the suit property being vested in Smt. Veena Devi either in the Plaint or during evidence. The Local Commissioner found that the suit property was in possession of Shri Shankar Lal. Respondents failed to prove any right to possess the suit property and the Trial Court in fact rendered a finding that they were disentitled to seek injunction against the owner. It would thus be highly unjust if the owner of the suit property is not given back the possession and those who have been held disentitled in law to possess the property and seek injunction are permitted to place their locks on the property and oust the Appellants.

21. Mr. Mehta also contended that the order dated 04.07.2018 passed by the Trial Court in the application under Section 151 CPC stood merged in the judgment and decree dated 24.09.2018, which is also evident from the order dated 08.10.2018 passed in C.R.P. No. 222/2018. Thus, the Trial Court while passing the decree erred in not considering the events subsequent to the filing of the suit and failed to exercise its inherent jurisdiction to do substantive justice between the parties and the same error crept into the impugned order dated 06.05.2019. It is argued that the Court has complete power to take into account subsequent events which occur after the filing of the suit and this power is not limited to the Trial Court but can be exercised even by the Appellate Courts. Reliance

is placed on the judgment in *Shipping Corporation of India Ltd. vs. Machado Bros.*, (2004) 11 SCC 168 and *Pasupuleti Venkateswarlu v. Motor and General Traders*, (1975) 1 SCC 770. Thus, it is urged that the Courts below ought to have restored the possession to the Appellants, once it came on record that Respondents were not in possession when the suit was instituted.

22. With regard to the second question of law framed by the Court, Mr. Mehta urges that as per Section 100 of the CPC a second appeal lies to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Existence of a substantial question of law is the *sine qua non* for exercise of jurisdiction. A plain reading of Sections 96 and 100 CPC shows that it does not specify who can file a second appeal and, therefore, as long as a party is 'aggrieved' by the decision of the Lower Court, an appeal can be filed. In the facts of this case, it is evident that the Appellants are aggrieved by the failure of the Courts below to restore possession of the suit property despite there being sufficient material on record to show that they were in possession from the inception of the suit and, therefore, the present appeal is maintainable.

23. I have heard the learned Amicus Curiae and Appellant No. 2 in person. In so far as Respondents are concerned, they have chosen not to appear on 10.03.2021 when arguments were heard, despite the matter having being called twice and there was no appearance even on the date prior thereto. Hence, no arguments have been advanced to contest the case of the Appellants.

24. The first substantial question of law that needs consideration by this Court is whether the Trial Court was bound to direct restoration of possession to the Appellants while dismissing the suit of the Respondents for injunction, if the material on record revealed that the Appellants were in possession at the inception, but had been dispossessed during the pendency of the suit and the second substantial question is whether the Appellants can file the present appeal even though the suit against them has been dismissed.

25. In order to answer the first question, I may examine the provisions of Section 144 and Section 151 of the Civil Procedure Code, 1908. Provisions of Section 144 CPC enable a Court, which has passed the decree, to cause restitution, on an application of a party, entitled to seek restitution, wherever a decree or an order is varied or reversed in an appeal, revision or other proceedings or is set aside or modified. Sub-Section (2) of Section 144 provides that no Suit shall be instituted for obtaining any restitution which could be obtained by an application under Sub-Section (1). It was held by the Supreme Court in ***Kavita Trehan (supra)*** that the law of restitution encompasses claims founded upon the principle of unjust enrichment and restitutionary claims are found in equity as well as at law. It was also held that Section 144 incorporates only a part of the general law of restitution and is not exhaustive. Jurisdiction to make restitution is inherent in every Court and shall be exercised whenever justice of the case demands. Significantly, it was also held that jurisdiction will be exercised under inherent powers where the case does not strictly fall within the ambit of Section 144. Relevant paras of the judgment are as follows :-

“16. The Law of Restitution encompasses all claims founded upon the principle of unjust enrichment. ‘Restitutionary claims are to be found in equity as well as at law’. Restitutionary law has many branches. The law of quasi-contract is “that part of restitution which stems from the common Inebriates counts for money had and received and for money paid, and from quantum meruit and quantum vale bat claims.” [See ‘The Law of Restitution’ - Goff & Jones, 4th Edn. Page 3]. Halsburys Law of England, 4th Edn. Page 434 states :

“Common Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi contract or restitution.

For historical reasons, quasi contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles which are aimed at providing a remedy for unjustifiable enrichment. It may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed ‘restitution’.”

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“21. Section 144 CPC incorporates only a part of the general law of restitution. It is not exhaustive. (See Gangadhar and Ors. v. Raghubar Dayal and and State Govt. of Andhra Pradesh v. Manickchand Jeevraj & Co. .

22. *The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,..." The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court."*

26. In ***Tanusree Basu (supra)***, it was held that it is a settled principle of law that Order 39 Rules 1 & 2 CPC is not the sole repository of the power of Court to grant injunction and Section 151 confers powers upon the Court to grant injunction where the matter is not covered by Order 39 Rules 1 & 2. It was also held that it is not the law that a party to a suit during the pendency can take law into his own hands and dispossess the co-sharer. If a party takes recourse to dispossess another party, during pendency of the Suit, either in violation of the order of injunction or otherwise, Courts indisputably will have jurisdiction to restore the parties to the same position as it was before filing of the Suit. Relevant paras are as under:-

"16. It is now a well-settled principle of law that Order 39 Rule 1 of the Code of Civil Procedure (code) is not the sole repository of the power of the Court to grant injunction. Section 151 of the Code confers power upon the Court to grant injunction if the matter is not covered by Rules 1 and 2 of Order 39 of the Code. (see Manohar Lal Chopra v. Seth Hiralal and India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd.)"

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“23. It is not the law that a party to a suit during pendency thereof shall take law into his hands and dispossess the other co-sharer. If a party takes recourse to any contrivance to dispossess another, during pendency of the suit either in violation of the order of injunction or otherwise, the court indisputably will have jurisdiction to restore the parties back to the same position.”

27. In ***Kartick Chandra Boroye (supra)*** Calcutta High Court observed that while it is true that in certain cases Section 144 CPC may not be attracted, when in pursuance to an order or decree a person is dispossessed, which may not be a case of the decree being varied or set aside, but even then to meet the ends of justice, Court can exercise power of restitution under Section 151 CPC and can also order police help. To the same effect are the decisions in ***Soudamini Roy Chowdhary vs. Satyendra Nath Shankar, 85 CWN 958*** and ***Sujit Pal vs. Pabitra Kumar Sur, 1985 (II) CHN 433***.

28. At this stage, I may also advert to the concept of restitution as developed by judicial precedence. The earliest case on the point is ***Shama Purshad Hurro Purshad, (1863-66) 10 Moo Ind. App. 203 (PC)***, wherein the Judicial Committee observed as under:-

“If it (the original decree or judgment) has been so reversed or suspended the money recovered under it ought certainly to be refunded.”

29. The view was reiterated in the case of ***Alexander Roger vs. Comptoir D'Escompte De Paris, 1871 L.R. 3 P.C. 465*** by the Privy Council as follows:-

“One of the first and highest duties of all courts is to take care that the act of the Court does no injury to any of the suitors”

30. The view expressed by the Judicial Committee was subsequently incorporated in the Code as Section 583 of the Code of Civil Procedure, 1882 and Section 144(1) is the corresponding Section in the present Code, 1908. Relevant would be to refer to the decision of the Privy Council in ***Jai Berham vs. Kedarnath, AIR 1922 P.C. 269***, wherein it was observed that it is the duty of the Court under Section 144 CPC to place the parties in the position they would have occupied but for the decree that has been varied/reversed, but this duty or jurisdiction does not merely arise under the said Section and is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances. Relevant para is as under:-

“It is the duty of the court under Sec. 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree of such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the court to act rightly and fairly according to the circumstances towards all parties involved.”

31. This view was reiterated by the Supreme Court in the case of ***Bhagwant Singh vs. Kishen Das AIR 1953 SC 136*** which is as follows:-

“.....the doctrine of restitution..... is that on the reversal of a judgment the law raises an obligation on the party to the record who received the benefit of the erroneous judgment to make restitution to the other party for what he had lost and that it is the duty of the court to enforce that obligation unless it is shown that restitution would be clearly contrary to the real justice of the case.”

32. Relying on the said judgments, the Andhra Pradesh High Court in ***State Govt. of A.P. (supra)*** reaffirmed the principles and enumerated them as follows:-

“7. The principle of restitution envisaged under section 144(1) of the code of civil procedure shall be applied for the purpose of restoring the parties to a cause to their respective places where a decree or order is varied or reversed by the same court or appellate or revisional court. The essence of this rule is to see that no party should derive any benefit or advantage on account of an erroneous or illegal order or decree of a court, which is ultimately varied or reversed in due course of law. In other words, where parties have pursuant to a decree or order passed by the court of first instance obtained any advantage or benefit either by execution of such order or decree or otherwise, the court, under sec. 144, has a duty to restore the parties to their respective original positions or places as if the original decree or order which has been reversed or varied subsequently either by the same, appellate or revisional court was not passed or in existence. No party can take advantage of the wrongful acts or orders or decrees of any court. The provisions of section 144 are mandatory. The use of the word ‘shall’ makes it obligatory on the court, on the application of any party entitled for restitution, to place the parties in the position which they would have occupied but

for such erroneous or illegal decree or order or any part thereof as has been varied or reversed. The court has no discretion to refuse the application to grant restitution if the ingredients of section 144 are satisfied.”

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“12. It is well-settled that restitution can be ordered either under section 144 or section 151 of the Code of Civil Procedure. Vide Jai Berham v. Redar Nath] , J.P. Rego v. Ananthamathi] , Palaniappa Chettiar v. Ramanathan Chettiar] , Alapati Anakamma v. Pavuluri Basava Pumayya] and Mohammed Hussain v. A.K.M. Pitchai] . Where the ingredients of section 144 C.P.C. are satisfied, the Court has no discretion to refuse restitution as the provisions of section 144 are mandatory. There may be cases where the provisions of section 144 are not strictly satisfied but at the same time it is just, proper and equitable to order restitution as no party should be allowed to take advantage or benefit of a wrong or illegal order of a court of law. In such cases, the court must step in and exercise its inherent power invested under section 151 and do real and substantial justice to the parties, the very intendment and purpose of sec. 151 being only to meet the ends of justice and to prevent miscarriage of justice. The power vested under sec. 151 being discretionary and to be used to do real and substantial justice to the parties, must be exercised fairly, reasonably and objectively but not arbitrarily. Even assuming that the provisions of section 144 C.P.C. are not attracted, it admits of no doubt that the court has inherent jurisdiction under section 151 to order restitution and payment of reasonable rate of interest on the amount directed to be paid back to the party from whom it was erroneously or illegally collected. Admittedly the respondent was deprived of the utility and benefit of the sum of Rs. 24,000/- paid by it to the state. The State has had really the advantage and benefit of the use of such sum. Hence, in the circumstances, we are satisfied that this is a fit case where the restitution must be ordered. We are also of

the view that payment of 6% interest on the amount of the deposit, i.e., 24,000/- is just, fair, proper and reasonable.”

33. The High Court of Rajasthan in ***Mohammad Salim (supra)*** observed that Section 151 CPC merely furnishes Legislative recognition of an age-old principle that every Court has inherent power to do real and substantial justice and to prevent abuse of process of Court. Reliance was placed on an earlier judgment of the Rajasthan High Court in ***Pushap Raj (supra)*** wherein the Defendant was forcibly dispossessed after filing the Suit and the Court had invoked inherent powers to restore the position as it stood on the date of filing of the Suit and granted mandatory injunction.

Relevant paras in ***Mohammad Salim (supra)*** are as follows:-

“21. Section 151 CPC is an addition in the Code of 1908, which is based on many earlier decisions which clearly reveal that what was implicit has been made explicit. The Section merely furnishes legislative recognition of an age-old and well established principle that every Court has inherent power to act ex debito justitiae to do the real and substantial justice for the administration of which alone it exists or to prevent abuse of process of the Court. In 1868, PEACOCK CJ, in case of Hurro v. Shoorodhonee, 9 WR 402 at page 406 said:” Since laws are general rules, they cannot regulate for all time to come so as to make express provisions against all the cases that may possibly happen.....It is the duty of the judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases to which a just application of them may be made, and which appear to be comprehended either within the express sense of the law or within the consequences that may be gathered from it.” (The aforesaid observation of PEACOCK CJ has been taken from page 697 of Sarkar's C.P.C., Xth reprint Edition, 2004, Vol. I). The identical observations were made by the Supreme

Court in Manohar v. Hiralal, AIR 1962 SC 532 in paragraph Nos. 18 and 23 of the aforesaid judgment of the Supreme Court, which are as follows:—

“18. It is well settled that the provisions of the Code are not exhaustive for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them.....”

23.The section itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it.”

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“23. In view of the discussions made herein above, I approve the findings of both the Courts below on the issue of prima facie case, balance of convenience and irreparable loss and further agree with the specific observations in case where a person has been dispossessed to overreach the proceedings of the Court and make application infructuous and further in case the possession is not restored, then the tendency of taking the law in hands without following in the due process of law will be increased. The aforesaid act of the party will also result in possible increase of anarchy in the society. I would also further like to add that in such type of cases, restoration of the possession will not only do substantial justice to the respondent-plaintiff but also restore the confidence of the public in Courts. Thus, both the Courts

below have rightly invoked the inherent powers of the civil Court while passing the order of restoration of possession.”

34. I may also usefully allude to a judgment by the Supreme Court in ***Bansidhar Sharma (since deceased) Rep. by his Legal Representative v. The State of Rajasthan and Ors. (2019) 19 SCC 701***. In the said case, the predecessor of the Appellant before the Supreme Court, had filed a suit for possession and permanent injunction, which was dismissed and the appeal was filed before the Rajasthan High Court. During the pendency, the High Court passed an interim order directing that the appellant shall not be dispossessed from the premises where he resided. Finally, however, the appeal was dismissed and the challenge before the Supreme Court was unsuccessful. After the dismissal of the SLP, the Respondents sought possession of the premises and sent an intimation to the Appellant. When no action was taken, interlocutory application was filed under Section 151 read with Section 144 CPC, before the Single Judge of the High Court. The Court allowed the application with liberty to the Respondent/ State to take possession of the suit property with police or other aid, if necessary. The order was thereafter challenged by the Appellant. The bone of contention of the Appellant was that the execution application would lie only before the Court of first instance and not the High Court. Counsel for the Respondents, *per contra*, supported the finding of the High Court and argued that there was no decree or order of the Trial Court by virtue of which the appellant was given possession of the subject property as a Suit came to be dismissed in the first instance by the Trial Court and this was affirmed upto the Supreme

Court. Relying on the decisions of the Supreme Court in *Neelathupara Kummi Seethi Koya Phangal (Dead) by L.Rs. v. Montharapalla Padippua Attakoya and Ors.* 1995 Supp (3) SCC 760 and *Murti Bhawani Mata Mandir Rep. Through Pujari Ganeshi Lal (D) Through LR Kailash v. Rajesh and Ors.* 2019 (3) SCC 707, the Court held as under:-

“18. Indisputedly, in the instant case, there was no decree or order of the trial Court by virtue of which the Appellant was given possession of the subject property. On the contrary, the suit filed at the instance of the Appellant-Plaintiff came to be dismissed with costs and that came to be confirmed on dismissal of the first appeal by the Single Judge of the High Court and special leave petition filed before this Court also came to be dismissed. The possession was handed over to the Appellant of the subject property under the interim order passed by the High Court pending first appeal of which a reference has been made and after the appeal came to be dismissed, its logical consequence was noticed by the High Court in its judgment dated 20th April, 2018 directing the Appellant to hand over possession of the subject property to the Respondents-Defendants obviously for the reason that on dismissal of the first appeal preferred by the Appellant, he was under an obligation to restore back peaceful possession to the Respondents on vacation of the interim orders.

19. In the present facts and circumstances, the Respondents have not committed any error in taking decision to call upon the Appellant for handing over possession of the subject property at least after the special leave petition filed at the instance of the Appellant came to be dismissed Under Order dated 17th May, 2018 and in sequel thereto, there was no other remedy left with the Respondents than to file an application Under Section 151 Code of Civil Procedure before the High Court for restoration of possession of the subject property.”

“21. The submission of the learned Counsel for the Appellant that execution application Under Section 144 Code of Civil Procedure would lie only before the Court of first instance, which in the instant case is Additional District and Session Judge, No. 1, Jaipur City and not the High Court and the impugned judgment is without jurisdiction, is without substance for the reason that there was no decree or order of the trial Court which is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. Indisputedly, the possession was handed over to the Appellant-Plaintiff pursuant to the interim order passed by the High Court, pending first appeal which finally came to be dismissed, its logical consequence was to restore back the peaceful possession of the subject property to Respondents-Defendants. In the given circumstances, the provisions of Section 144 Code of Civil Procedure, in our view, are not attracted as there being no variation or reversal of a decree or order as contemplated by Section 144 Code of Civil Procedure.

22. Before parting with the order, taking note of the fact that the proceedings were initiated at the instance of the Appellant-Plaintiff way back in the year 1961 and almost 59 years have rolled by now, to give a quietus to the litigation and also the fact that the Appellant had failed at all the stages, having no authority to hold possession of the subject property, we, therefore, consider it appropriate to direct the Appellant to hand over peaceful possession of the subject property to the Respondents-Defendants in compliance of the judgment of the High Court dated 20th April, 2018 followed with order dated 21st August, 2019 positively within a period of eight weeks from today failing which this Court will take serious note of the matter and proceedings may be instituted against the Appellant-Plaintiff for deliberate defiance of the order of this Court.”

35. From the conspectus of the above judgments, there is no doubt that powers of a Court under Section 151 are inherent powers to act *ex debito justitiae* i.e. to do substantial justice. As reiterated and reaffirmed by the Courts, it is the foremost duty of the Courts to take care that an act of a Court does no injury to any of the parties and this is the essence of the Doctrine of Restitution, which, in my view, explicitly mandates the Court to place the parties in a position which they would have occupied but for the order of the Court, to the contrary and also to ensure that a party to a suit or any proceeding, who has received the benefit of an erroneous order restitutes the other party. No party can be permitted to take advantage of the wrongful acts or orders of a Court. Even assuming that Section 144 CPC does not strictly apply to the facts of a case, there being no reversal or variation of the decree, the Court can certainly invoke its inherent powers under Section 151 CPC to do substantial justice between the parties and must step in and exercise that power to prevent miscarriage of justice.

36. In the present case, two facts are clearly undisputed. Appellant No.1 was the owner of the suit property and had gifted the same to Appellant No.2 and the Respondents were not in possession when the Suit was instituted by them. This, in fact, needs no further elaboration as this is a clear finding in the judgment and decree of the Trial Court dated 24.09.2018, which has admittedly attained finality between the parties to the *lis*. Relevant would it be to extract hereunder the findings of the Trial Court on this aspect:-

“1. Whether the plaintiff is entitled for relief of permanent injunction, as prayed for? OPP

Plaintiffs are the sons of defendant no. 1 and 2. Plaintiffs have admitted in the plaint that owner of the suit property i.e. shop no. 5308, Shora Kothi, Pahar Ganj, New Delhi is defendant no. 2. The testimony of PW2 show that he admitted that plaintiffs were not in possession of suit property and adjoining shop no. 5307, Shora Kothi, Pahar Ganj, New Delhi at the time of filing of the suit. So the undisputed fact is that the defendant no. 2 is the owner of the suit property and plaintiffs were not in possession of the suit property at the time of filing of the suit. Plaintiffs have claimed permanent injunction against the defendants for restraining them from dispossessing the plaintiffs without due course of law, on the premise that they are in settled possession of the suit property however, the testimony of PW2 reveals that they were not in a possession at the time of filing the suit. Also in the plaint, the plaintiffs have averred that plaintiff no. 1 is carrying on business from the suit property for the last 12 years, plaintiff no. 2 is also carrying the business from the suit property for the last 12 years and plaintiff no. 3 is also carrying his business for the last 5 years and the said averment in the plaint appears to be without foundation if seen in the light of testimony of PW2.

“Injunction is an equitable relief and is afforded to a party who comes to the court with clean hands. This equitable remedy is not available to any party who avers wrong facts intentionally or is guilty of suppression of material facts from the court. Where the pleadings of a party stands contradicted from

his own testimony before the court, the said party is guilty of stating wrong facts before the court in his pleadings as such makes that party dis-entitled for seeking equitable relief.”

In the present suit, plaintiffs themselves admitted in the plaint that defendant no. 2 is owner of the property and they have been doing business from the suit property for the last many years. However, the said claim to the extent that plaintiffs had possession of the suit property at the time of filing of the suit turned flat from the admission of the plaintiff no. 2 during his cross examination where he said that plaintiff were not in possession of the suit property at the time of filing of the suit.

Further, plaintiffs were sons of defendants and as such their stay/use of the suit property was permissive/gratuitous and as such they can not seek permanent injunction against the true owner of the suit property. In this regard, the judgment of the Hon’ble Supreme Court titled as “Maria Margarida Sequeira Fernandes vs. Erasmo Jack D. Sequeira (2012) 5 SCC 370” is relevant wherein it was held that:-

“a. No one acquires title to the property if, he or she was allowed to stay in the premises gratuitously. Even by long possession of years of decades such person would not acquire any right or interest in the said property.

b. Caretaker, watchman or servant can never acquire interest in the property irrespective of

his long possession. The caretaker or servant has to give possession forthwith on demand.

c. The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, caretaker or as a servant.

d. The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.”.....

The plaintiffs are the sons of the defendants as such they were using the suit property under the permission of the defendants. Further, their possession of the suit property is gratuitous in nature. Once that permission to use and occupy the suit property is revoked, plaintiffs are bound to surrender the suit property to the defendants. Plaintiffs can not seek permanent injunction against the defendants as defendant no. 2 is the true owner of the suit property. On this reason alone, the suit of the plaintiffs fails. Accordingly, this issued is decided against the plaintiff and in favour of the defendants.”

37. On account of three clear findings viz.: (a) Plaintiff No.2 admitted that plaintiffs were not in possession at the time of filing of the Suit; (b) Defendant No.1(a) is the owner of the suit property; (c) Plaintiffs’ use of the suit property was merely permissive/gratuitous, the trial court dismissed the Suit for permanent injunction filed by the Respondents seeking to restrain the Appellants from dispossessing them from the suit property. In my view, having so held it was the obligation and duty of the Trial Court to have exercised the inherent powers and restored the

possession to the Appellants, more particularly, having observed that the Respondents were not in possession when the Suit was instituted and the Appellant No.1 is the owner of the property.

38. Order of the First Appellate Court impugned herein, in my view, also suffers from a clear error of law. The First Appellate Court dismissed the appeal by the Appellants and declined to restore possession on the ground that the Plaintiffs never admitted that the Defendants were in possession and admission of one of the Plaintiffs did not bind the other Plaintiffs and that the Local Commissioner's report did not indicate the possession of the Defendants. Appellate Court also observed that the Plaintiffs had not violated any order or injunction or status quo and the Defendants have not led any evidence to show forcible dispossession. Once the Trial Court had passed a decree dismissing the suit of the Plaintiffs on the ground that Plaintiff No.2 had admitted that the Plaintiffs were not in possession at the time of institution of Suit, it was not open to the Appellate Court to go behind the decree and hold that the admission did not bind the other plaintiffs, as the decree was un-assailed by the plaintiffs and had become final qua the parties to the *lis*. The Trial Court had also taken into account the Local Commissioner's report which clearly stated that Defendant No.1/father of the Plaintiffs was in possession and had accepted the report, against which no objections were filed by the Plaintiffs. The Appellants herein had filed an application during the pendency of the Suit bringing on record of the Trial Court the fact of forcible dispossession as the Plaintiffs had broken their locks and placed their own locks on the suit property. The Trial Court at this stage did not take cognizance of this significant development and dismissed the

application by holding that the application should have been filed by the daughter who had become the owner by virtue of the Gift Deed and that the application disclosed a separate cause of action. Appellants challenged the order in a Revision Petition before this Court, which was, however, disposed of as infructuous as in the meantime the suit was dismissed. This Court, therefore, did not have an occasion to deal with the order dismissing the application, but I may only pen down for the sake of record that the observation of the Trial Court was completely erroneous and contrary to the record, as a bare perusal of the application shows that it was filed by both the Appellants herein, which included the beneficiary of the Gift Deed.

39. What is important to note is that the order disposing of the Revision Petition was assailed by the Appellants before the Supreme Court in SLP No.4375/2019 and while disposing of the petition, the Supreme Court granted liberty to the Appellants to pursue appropriate legal remedies against the judgment and decree dated 24.09.2018. Being a short order, the same is extracted as under:-

“Learned counsel appearing for the petitioner prays for withdrawal of this petition with liberty to pursue the legal remedy against the final judgment dated 24.09.2018 passed by the learned Civil Judge, Tiz Hazari, Delhi, in the suit being C.S. no. 607578 of 2016.

Prayer is allowed.

Accordingly, the special leave petition is dismissed as withdrawn with the liberty aforesaid.”

40. Learned Appellate Court thus had sufficient material before it to conclude that the Appellants had been dispossessed from the suit property during the pendency of the Suit, in the form of a decree by the Trial Court, which had attained finality, report of the Local Commissioner forming a part of the decree and a clear admission of one of the Plaintiffs, which formed the main premise for the decree. The Court committed an error in declining to restore possession of the suit premises to the Appellants and restitute status quo ante.

41. Having perused the entire record of the Trial Court, it is clearly established that the Appellants were in possession and were forcibly dispossessed during the pendency of the Suit. The facts were eloquent and self speaking and needed no further evidence, more particularly, in view of the findings in the decree. Being the owner of the suit property, Appellants are moving from pillar to post for the last several years to get justice and the Respondents, who are the sons/brothers, respectively despite having lost in the Suit for permanent injunction, are enjoying the possession of the property and have placed their locks on the same. This, in my view, is a classic case of travesty of justice and high handedness by the Respondents in forcibly dispossessing their mother and sister. I would in this regard quote a passage from a judgment of Supreme Court in **S.R. Ejaz (supra)** as follows:-

“In our view, if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor the citizens can protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or the legal

rights would be given go bye either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and 'might would be right' instead of 'right being might'. This Court in State of U.P. and others vs. Maharaja Dharmander Prasad Singh and others dealt with the provisions of Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The Court also held that there is no question of Government withdrawing or appropriating to it an extra judicial right of re-entry and the possession of the property can be resumed by the Government only in a manner known to or recognized by law."

42. Further, Supreme Court in ***K.K. Velusamy vs. N. Palanisamy***, (2011) 11 SCC 275 has summarized the scope of Section 151 CPC. The relevant paras are as under:-

"12. The respondent contended that Section 151 cannot be used for reopening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that Section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of Section 151 has been explained by this Court in several decisions [see Padam Sen v. State of U.P. [AIR 1961 SC 218 : (1961) 1 Cri LJ 322] , Manohar Lal Chopra v. Seth Hiralal [AIR 1962 SC 527] , Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] , Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava [AIR 1966 SC 1899] , Nain Singh v. Koonwarjee [(1970) 1 SCC 732] , Newabganj Sugar Mills Co. Ltd. v. Union of India [(1976) 1 SCC 120 : AIR 1976 SC 1152] , Jaipur Mineral Development

Syndicate v. CIT [(1977) 1 SCC 508 : 1977 SCC (Tax) 208 : AIR 1977 SC 1348] , National Institute of Mental Health & Neuro Sciences v. C. Parameshwara [(2005) 2 SCC 256] and Vinod Seth v. Devinder Bajaj [(2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212]]. We may summarise them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is “right” and undo what is “wrong”, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is coextensive with the need to exercise such power on the facts and circumstances.

(c) A court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or in a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where

the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and in the facts and circumstances of the case. The absence of an express provision in the Code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.”

43. Thus, in my view, the Trial Court as well as the First Appellate Court have fallen in error of law in not exercising their inherent powers provided under Section 151 CPC and restoring the possession to the Appellants.

44. Insofar as the second question is concerned, I find merit in the contention of Mr. Mehta that provisions of Sections 96 and 100 CPC do not specify who can file an appeal. As long as a party is 'aggrieved' by the decision of a subordinate court, a second appeal is maintainable. The Appellants are clearly aggrieved by the decision of the courts below as the possession was not restored to them, despite their ownership in the Suit property and possession at the stage of institution of the Suit by the Respondents. Hence, the Appellants are entitled to file the present appeal and the same is maintainable before this Court.

45. In light of the above discussion, the substantial questions of law are answered in favour of the Appellants and against the Respondents.

46. Accordingly, a decree is passed in the above terms and a direction is issued to the Respondents/Plaintiffs in the Suit bearing No. 607578/2016 to forthwith hand over vacant and peaceful physical possession of the suit property, bearing shop No. 5308, Shora Kothi, Paharganj, New Delhi to the Appellants herein/Defendant Nos.1(a) and 1(c) in the Suit.

47. Appeal is allowed in the above terms.

48. At this stage, Court records its appreciation for the able assistance rendered by Mr. Jayant Mehta, learned Amicus Curiae.

JYOTI SINGH, J

MARCH 22nd, 2021

yo/yg