

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL REVISION APPLICATION NO. 308 OF 2018**

- 1 Manjulaben Shah, Indian  
Inhabitant, R/at Bangali Bldg,  
2<sup>nd</sup> Floor, Chandawarkar Road,  
Borivali (W), Mumbai
- 2 Julie B. Kasvada, Indian  
Inhabitant, R/at Rajendra Complex,  
1<sup>st</sup> floor, Anand Nagar, Dahisar (E)  
Mumbai.
- 3 Vaishali (Poonam) V. Parmar,  
Indian Inhabitant, R/at B/401-402,  
Sai Dham, Carter Rd, Borivli(E),  
Mumbai.
- 4 Balkrishna Shetty, Indian  
Inhabitant, The Landlord of Soni  
House, R/at Chandavarkar Lane,  
Borivali (W), Mumbai.
- 5 Shankar Shetty (Since deceased)  
Thru Lrs,
  - 5a. Indira Shetty, R/at Soni  
House, Chandawarkar Lane,  
Borivali(W), Mumbai.
  - 5b. Smriti Sachin Shetty, R/at  
Soni House, Chandawarkar Lane,  
Borivali(W), Mumbai.
  - 5c. Jivesh Shetty, R/at  
Soni House, Chandawarkar Lane,  
Borivali(W), Mumbai.

- 6 Indira Shetty, R/at Soni  
House, Chandawarkar Lane,  
Borivali(W), Mumbai.
- 7 Jivesh Shetty, R/at  
Soni House, Chandawarkar Lane,  
Borivali(W), Mumbai. .. Applicants

Versus

Madhuriben Meghji Shah  
Indian Inhabitant, Occ. Housewife,  
Previously residing at Flat No.A/5,  
Soni House, Chandavarkar Lane,  
Borivali (W), Mumbai 400092. .. Respondent

...

Mr.Y.S. Jahagirdar, Senior Advocate with Mr.S.S. Kanetkar i/b  
Mr.Uday G. Jaguste for the applicants.  
Mr.Vineet B. Naik, Sr.Advocate with Mr.V.T.Lulia, Sumanth  
Anchan, Poonam Madhwani and Megha Chobadia i/b Mr.Lulia  
Vashdev Tikamdas for the respondent.

**CORAM: BHARATI DANGRE, J.**

**RESERVED : 1<sup>st</sup> DECEMBER 2021**

**PRONOUNCED : 2<sup>nd</sup> MARCH, 2022**

**JUDGMENT:-**

1 The Civil Revision Application is directed against the  
order/judgment dated 10<sup>th</sup> April 2018, by the learned Judge, City  
Civil Court, Dindoshi, thereby decreeing Suit No.226 of 2009  
filed by Madhuriben Meghji Shah, the respondent in the  
application.

*Tilak*

By order dated 22<sup>nd</sup> January 2019, it was directed that the Revision Application shall be decided at the stage of admission itself, and from time to time, it was listed for final hearing.

While issuing notice, this Court has extended the stay granted by the trial Court and the stay is continued from time to time.

2 I have heard the learned Senior counsel, Shri Jahagirdar for the revision applicant and the learned senior counsel Shri Vineet Naik for the respondent.

In order to appreciate the arguments of the rival parties so as to enable me to ascertain the legality of the impugned judgment, some facts in the background are necessary.

3 The applicant no.1 Manjulaben Shah claim to be the wife of late Mr.Meghji Shah, who expired on 13<sup>th</sup> April 1997 whereas the applicant nos.2 and 3 are her married daughters. The applicant no.4 is the landlord of the building where the subject flat is situated. The applicant nos. 5 to 7 to the application are the occupants of the subject flat and according to the respondent, they are illegal occupants who are put in possession, by the applicant nos.1 to 4 after illegally dispossessing her.

The respondent Madhuriben also claims to be the wife of Mr.Meghji Shah and she stake her claim that she is

residing in the subject flat i.e. flat A-5, Soni House, Chandawarkar Lane, Mumbai 400092.(hereinafter referred to as 'subject flat')

The subject flat is located in Borivali, Mumbai and Smt.Madhuriben Shah claim to be in continuous uninterrupted possession of the subject property, till an attempt was made at the instance of the applicant nos.1 to 4 to dispossess her illegally and this happened precisely on 16<sup>th</sup> July 2008, when she claim that some carpenters were engaged in carrying out the work in the subject flat, when applicant nos.1 to 4 obtained a forceful entry in the flat, and assaulted and confined the carpenters to one room and removed all the belongings of Smt.Madhuriben and stored them on the terrace of the building. This prompted her to file a complaint with the concerned police station which was registered as N.C. Complaint No. 1831/2008 u/s.504 and 506 of the IPC. On 19/7/2018, complaint came to be filed with the Sr. Inspector of Police about her illegal dispossession.

4           The aforesaid events led to the filing of Suit by Smt.Madhuriben Shah against Manjulaben Shah, and her daughters the landlord of Soni house and three other defendants who have been impleaded in the suit as it was alleged that Suit property was sublet in their favour.

In the Suit, the plaintiff claimed the following reliefs :

- (a) That this Hon'ble Court be pleased to order and decree the Defendants to handover quiet, vacant and peaceful possession of the suit premises more particularly described in (Exhibit 'A' hereto) to the Plaintiff:
- (b) That pending the hearing and final disposal of the suit the Court Receiver, High Court Bombay or some other fit or proper person be appointed Receiver of the suit premises (Exhibit 'A' hereto) with all powers under Order XL Rule I of the Code of Civil Procedure, 1908 including the power to take forcible physical possession thereof and to put the Plaintiff in possession of the suit premises :
- (c) That pending the hearing and final disposal of the suit, the Defendants, by themselves their servants. and/or agents, be restrained by a temporary order and injunction of this Hon'ble Court from in any manner whatsoever selling, alienating, encumbering, transferring, giving on leave and license, or rent or creating and third party rights and/or interest in respect of the suit premises (Exhibit 'A' hereto)

The reliefs sought in Suit No.226/2009 instituted by Smt.Madhuriben was premised on the pleading that she is the wife of Mr.Meghji Shah and the defendant no.1 also alleges to be the wife of her husband and alleged tenant in respect of the suit premises. It was pleaded that the defendant no.4 is the landlord of the building where the suit premises are situated and defendant no.1 allegedly sublet the premises to defendant nos.5 to 7 on 15<sup>th</sup> July 2008.

5           The plaintiff pleaded that on 16 July 2008, an attempt was made by the defendant nos.1 to 3 in collusion and connivance with defendant no.4, and 20 to 25 other persons who illegally and forcibly entered into the suit premises and wrongfully restrained the carpenter and his two helpers from carrying out the work. It was specifically pleaded that the defendants and their men threw all the house articles on the terrace and forcibly took possession of the suit premises which was occupied by her since 1983 till the date of dispossession i.e. 16<sup>th</sup> July 2008. Pleading that the plaintiff was illegally, unlawfully and forcibly dispossessed from the suit premises, she was forced to move in the residence of her son at Carter Road, Borivali.

6           The plaintiff pleaded the steps taken by her to redress her grievance about the illegal dispossession, before she instituted the Suit under Section 6 of the Specific Relief Act. In order to establish her continuous possession over the suit premises from 1983, till the date of her dispossession, she relied upon a series of documents and this included affidavit of her neighbors, delivery of certain items in her name on the address of the suit premises, the issuance of ration card on 10<sup>th</sup> August 1983 on the address of the suit premises, the identity card issued in her favour by the Election Commission of India on the address of the suit premises, the electricity bills on her name on the address of the suit premises etc. She also relied upon a copy of the Petition

instituted by her against one M/s.Ajanta Exhibitors in the year 2004, where her address is that of the suit premises. The telephone bills for the month of September 1995 and November 2007 are also relied upon to demonstrate her possession over the suit premises. The cable connection receipts is also other evidence pleaded in the plaint to establish the possession. Suit No.2 of 1999 in Testamentary Petition No.468 of 1998 where the plaintiff was the petitioner and the defendant no.1 was caveator is also pleaded as evidence of her possession of the suit premises. In contrast, the residence of the defendant being shown at Laxmi Niwas, Chandawarkar Lane, Borivali. The plaintiff relied upon several other documents in form of certain certificates issued in the name of the plaintiff's daughter along with the policy issued in the name of her children, which all mention the address of the plaintiff at the suit property. Copy of the Suit filed by the defendant no.1 vide Suit No.1905/2000 is also put forth as evidence of her possession.

7           On the basis of the aforesaid documents, plaintiff pleaded that she was residing in the suit premises since 1983 till the date of her illegal dispossession and since the plaintiff had received various papers, documents, writings from various companies and authorities on the address of the suit premises and the neighbors had deposed that she was residing in the Suit premises, whereas the defendant no.1 was not residing at the suit

address, the plaintiff sought a relief to the effect that the defendants be ordered to hand over quiet, vacant and peaceful possession to the plaintiff, which she is enjoying since more than 20 years.

8           Manjulaben M. Shah, the defendant in the said Suit along with the other defendants file a common written statement, on 1<sup>st</sup> April 2009, raising issue of title of the plaintiff in respect of the subject flat and denying the contents in the plaint and in particular, the claim staked by the plaintiff, that she was in peaceful possession of the subject flat.

9           Upon the written statement being filed, the following issues came to be framed by the Civil Court at Dindoshi on 30<sup>th</sup> November 2010.

- (1) Does the plaintiff prove her settled possession over the suit property?
- (2) Does she prove that the defendant forcibly dispossessed her from the suit property without her consent ?
- (3) Whether this Court has jurisdiction to try the suit ?
- (4) What order and decree ?

10          In support of her claim, the plaintiff entered the witness box and also examined her daughter. The Rationing Officer was examined as PW 3 and the Police Inspector came to be examined as PW no.4. As against this, the defendants in the

suit led their evidence through Manjulaben being examined as DW 1, Shri Balkrishna Shetty being examined as DW 2, Smt.Indira Shetty being examined as DW 3 and the erstwhile owner Ramesh Bhatia being examined as DW 4.

11 On appreciating the oral and documentary evidence, the trial Court decreed the Suit on 27<sup>th</sup> January 2017, in favour of the plaintiffs, which has constrained the rival parties to file Civil Revision Application No.316 of 2017.

This Court by judgment dated 30/1/2018 allowed the Revision Application by setting aside the judgment and order passed by the trial Court and remanded the matter to the trial Court for hearing of the arguments afresh and for its decision by a well reasoned judgment.

Upon the direction issued by this Court, the trial Court embarked upon *denovo* hearing and by a judgment dated 10<sup>th</sup> April 2018, determined the issues in the Suit and decreed the Suit filed by the plaintiff in terms of prayer clause (a).

The trial Court, in its detail judgment, recorded that from the documents produced on record and on the basis of the defendants' own admission in various proceedings, the long settled possession of the plaintiff over the subject property is clearly established. The rent receipts produced by the defendant was held not sufficient to demonstrate the possession. The trial Court arrived at a finding that the plaintiff had addressed

numerous correspondence upon her illegal dispossession which reflect that she was illegally dispossessed on 16<sup>th</sup> July 2008 and by referring to various documents in support of the claim of the plaintiff to prove her possession, the documents were held to be indicative of the possession of the plaintiff. The learned Judge also found favour with the claim in the plaint about dispossession of the plaintiff from the suit premises on 16/7/2008. Recording that the plaintiff had filed the Suit u/s.6 of the Specific Relief Act and the defendant has not led any evidence to show that the Court had no jurisdiction, the Suit came to be entertained by rejecting the plea of the defendant about limitation.

Referring to the decision in case of Margarida Sequeira Fernandes & Ors Vs. Erasmo Jack De Sequeira (dead) through LRs, the learned Judge discerned the principles laid down by the Apex Court and by applying the said principle to the facts, rendered a finding that the plaintiff has established her possession over the suit flat, which is for a long period of duration, which goes for years together and she being in settled position, was dispossessed by the defendant no.1, who do not hold ownership title over the suit premises. Since the plaintiff had proved her settled possession and the relief sought by her was under Section 6 of the Specific Relief Act, the Suit came to be decreed.

12           The learned senior counsel Mr.Jahagirdar appearing

for the revision applicant/defendants in the Suit, would submit that the Suit was filed by the plaintiff u/s.6 of the Specific Relief Act, seeking a mandatory injunction to the defendants to remove themselves from the suit premises and hand over the same to the plaintiff. He would submit that the plaintiff and the defendant, claim to be the widow of Shri Meghji Shah and it is submitted by him that the Defendant is the tenant of the suit premises and she had sublet the suit premises to the applicant nos.6 and 7 on 15/7/2018. The case of the plaintiff, as pleaded in the plaint, according to Shri Jahagirdar, is utterly false and he would submit that the plaintiff, who was her husband's first wife, stood cordial relations and therefore, defendant no.1 permitted the plaintiff and daughters to come and stay in the suit premises, when the only son of the plaintiff by name Haresh Shah harassed her. This was the permissible user of the suit premises by the plaintiff, though the keys of the suit premises were always with the defendant no.1, is his submission.

The learned counsel has raised a plea of limitation by submitting that such a suit filed beyond limitation is not maintainable u/s.6 of the Specific Relief Act, since it was filed on 14/1/2009 and it ought to have been filed within six months prior to 14<sup>th</sup> January 2009 i.e. within six months from the date of dispossession. The perversity in the findings rendered by the learned Judge are highlighted by Mr.Jahagirdar by submitting that the trial Court ought to have appreciated the gracious relationship

between the plaintiff and the defendant, which has been exploited by the plaintiff which do not entitle her for a relief.

13           Per contra, the learned senior counsel Mr.Vineet Naik would submit that the revisional jurisdiction of the Court is only permitted to be exercised when the trial Court has acted arbitrarily, illegally or has exceeded it's jurisdiction. In the light of the proceedings instituted in form of a Suit u/s.6 of the Specific Relief Act, which is in the nature of summary suit, where the inquiry is confined to a limited aspect of possession and dispossession, has to be decided ignoring the question of title. The learned senior counsel would submit that sub-section (3) of Section 6 provide that no Appeal shall lie from any order or decree passed in any Suit instituted under the Section and the remedy available to a person who is unsuccessful in the Suit filed u/s.6 of the Act is to file a regular Suit, establishing his title to the suit property and in the event of succeeding, he will be entitled to recover the possession of the property, notwithstanding the adverse decision u/s.6 of the Act.

14           The emphasis of Mr.Naik is on the plea of the plaintiff to the effect that she was in possession of the subject flat and has been dispossessed without adhering to the process of law. It is also his submission that if a suit has been filed within a period of six months from the date of dispossession, then the evidence as

to the title of the subject flat and the exact date of possession has no material bearing.

Addressing upon the facts and the evidence brought before the Court, he would submit that the respondents to the Suit have admitted the settled possession of the plaintiff and he makes reference to various proceedings, wherein the address of the plaintiff is recorded as the address of the suit property, clearly depicting her possession.

Submitting that the plaintiff has established the settled position since the year 1988 till her illegal dispossession on 16/7/2018 and since the possession was effective, undisturbed and to the knowledge of the owner and without any attempt of concealment, according to him, the possession was settled. In the wake of the above, the precise date and manner of dispossession bears no significance, is his argument.

15           In the wake of the pleadings and the rival contentions advanced, I proceed to deal with the impugned judgment which has decreed the Suit by recording that the plaintiff was enjoying the settled possession over the suit property and she was dispossessed without due process of law.

16           The Suit is filed by the respondent Madhuriben u/s. 6 of the Specific Relief Act, seeking a decree against the defendants to hand over quiet, vacant and peaceful possession of the suit

premises to her.

The plaintiff of the said Suit plead that since 1988, she is in peaceful possession of the suit premises and to prove the undisturbed possession, she has relied upon several documents, establishing her possession. Pertinent to note that since the Suit is under Section 6 of the Specific Relief Act, the necessary ingredient, justifying the relief is dispossession of the person without his consent of the immovable property, otherwise in due course of law. Upon such dispossession being proved, he may recover the possession, thereof notwithstanding any other title that may be set up in such a suit.

In a Suit under Section 6 of the Specific Relief Act, the only question that has to be determined by the Court is whether the plaintiff was in possession of the disputed property and whether he has been illegally dispossessed thereof from any date within six months prior to filing of the Suit. The intention of the legislature embodied in Section 6, being to restrain a person from using force and to dispossess a person without his consent and without following the procedure of law. In the wake of the aforesaid legal position, the plaintiff had to establish possession over the suit property and her dispossession from the suit property without following the process of law.

The plaintiff specifically pleaded in the plaint, that she was in use, occupation and possession of the suit premises, whereas the defendant no.1, who is the other wife of defendant

no.1, is residing at the address mentioned in the clause title i.e. Bangali building, 2<sup>nd</sup> floor, Chandawarkar Road, Borivali (W), Mumbai. The suit premises which is a flat, is situated in a building belonging to defendant no.4 and the plaintiff pleaded that the defendant no.1 has illegally sublet the suit premises to the defendant nos.5, 6 and 7 on 15/7/2008, but she continued to be in possession of the suit premises when she was dispossessed. Per contra, the defendant's case pleaded before the trial Court is that the suit flat was a tenanted premises standing in the name of defendant no.1's maiden name Manjula Kanji Shah for the last more than 25 years and the defendant no.1 specifically pleaded that the relationship between the plaintiff and herself was so cordial that she permitted the plaintiff to reside in the said flat which was rented in the defendant no.1's maiden name by her later father Kanji Shah. The defendant no.1 specifically put forth her case that in the month of March 2008, she decided to sublet the tenancy on account of some financial difficulty faced by her, since she had to face many litigations in different Courts between Haresh Shah, i.e. son of the plaintiff on one hand, and she and her daughters on the other, and therefore, she sublet the suit premises to defendant nos.6 and 7 by affidavit dated 15/7/2008. The defendant no.1 pleaded that the defendant nos.5 to 7 needed the said premises for marriage of their son and therefore, they agreed to pay compensation of Rs.five lakhs to her for a period of 10 years in advance and this arrangement was also approved by

the landlord i.e. defendant no.4 and on completing the formality of making the payment to the defendant no.1, the keys of the flat were handed over to defendant nos.5 and 6. The case pleaded by defendant no.1 is, that defendant nos.5 and 6 were handed over vacant possession of the suit premises by executing one affidavit on stamp paper of Rs.100/-.

The defendants defend the Suit by alleging that the plaintiff, through her son hired *goondas* to gain entry in the suit premises and when the situation went out of hand of the defendant nos.5 and 6, Police help was called for. The defendant no.1 pleaded that defendant nos.5 to 7 acquired the suit premises from her with the consent of the landlord i.e. defendant no.4, the plaintiff has no right to enter into the suit premises.

17 In order to prove the case, the plaintiff had examined himself (PW 1), her daughter (PW 2), examined the clerk from the office of the rationing department (PW 3) and the police Inspector (PW 4). Apart from this, the documents from Exhibit 8 to Exhibit 23 and Exhibit 41 to Exhibit 47, were produced by her to establish her possession, since before she is held entitled for the relief of restoration of possession, on account of the wrongful dispossession without following the process of law, it was imperative for her to establish her settled possession over the suit premises and her forcible dispossession. The plaintiff examined herself and also exhibited numerous documents to prove her

settled possession, which include the ration card, electricity bill, telephone bills, certain vouchers, all which mention her address to be that of the suit premises. The plaintiff also relied upon the agreement entered into with one M/s.Akshay Plantation by her daughter Jayshree Savla, who was residing with her and the agreement dated 24<sup>th</sup> June 1996 and the insurance policy drawn in the name of Jayshree's son, Mr.Kashyap, the address mentioned is of the suit premises. By relying upon the bunch of documents, the plaintiff projected that she is in possession of the suit premises.

The plaintiff also examined her daughter as PW 2 who deposed in sync with her mother.

18           The two witnesses are subjected to extensive cross-examination but the defendants did not succeed in rebutting her claim of being in possession of the suit premises. She deny the suggestion that the rent receipts were in the name of Manjulaben i.e. defendant no.1. As far as PW 2, i.e. the daughter of the plaintiff is concerned, she has deposed that, from childhood, she is residing at Sardar Bhavan, where her father was having three flats. She specifically deposed that her father was residing separately along with Manjulaben. Even from her cross-examination, nothing has been elicited to damage the claim of the plaintiff that they were in possession.

PW 3 is a clerk in rationing office, Borivali, who is examined by the plaintiff who brought before the Court a reference register in respect of the ration card issued in the name of the plaintiff Madhuriben Meghji Shah on the address of Soni House, Chandavarkar Road, Borivali. He confirmed the entry to that effect at Sr.No.684 in the Register maintained in the regular course of business. He deposed that the ration card is valid till date.

Another witness of the plaintiff is the Police Inspector who was attached to Borivali police station, when C.R No. 295 of 2008 filed at the instance of the plaintiff Madhuriben, came to be registered u/s.452, 448, 341, 504, 506, 427 read with Section 34 of the IPC and the said witness refer to the panchnama prepared by him which form part of the charge-sheet. The panchnama record that, Smt.Madhuriben Shah is residing in flat No.A-5, Soni House, which is located on 2<sup>nd</sup> floor of the building and the flat of the plaintiff is locked and her belongings have been removed on the terrace by accused Manjula Shah, Shankar Shetty and other persons on 16<sup>th</sup> July 2008 at between 6.00 p.m to 20.30 p.m. On visiting the terrace of the building, the belongings of the complainant Madhuriben were noticed which included wooden furniture, fridge, washing machine, gas cylinder, suit cases, utensils and clothes tied in different bundles, plastic chairs. The panchnama form part of the charge-sheet and is prepared in presence of panchas on 30<sup>th</sup> July 2008. The certified copy of the

panchnama is produced by the said witness.

19           The defendant also examined herself as DW 1 and she examined the landlord as DW 2, occupier of the suit premises as DW 3 and the previous landlord as DW 4. She produced on record the rent receipts and the defendant no.1 deposed that her husband Meghji Shah was a rich businessman and had entrusted several properties to the plaintiff, which she was in possession and collecting rent. She specifically deposed that the son of the plaintiff Haresh Shah filed many cases against her to gain control over the properties of her husband as well as her properties and the properties of her daughter. The rent receipt dated 7/2/2006 is produced on record, through the defendant no.1 since she deposed that the flat was rented out to her in her maiden name i.e. Manjula K. Shah for more than 25 years and the rent receipt is issued by the erstwhile landlord Ramesh Bhatia.

She has further relied upon the xerox copy of the electricity bill issued for the month of January 1996, as the original was not traceable. She also referred to the proceedings filed in the year 1994 by the landlord Ramesh Bhatia against her in the Small Court Court at Bandra, which was dismissed confirming her tenancy. Her deposition further divulge that in the year 2008, Shri Ramesh Bhatia sold the property to Mr. Balkrishna Shetty, the defendant no.4. He issued a letter of Attornment to all the tenants, informing about the said

conveyance and thereafter, she started forwarding the rent to defendant no.4. The rent receipts for the month of March, April and May is produced on record under the signature of Balkrishna Shetty, defendant no.4.

20           The defendant no.1 was cross-examined extensively and on being confronted with an affidavit dated 25/9/2020 filed by her and exhibited as Exhibit-82, where defendant no.1 admitted that the plaintiff is in possession of the suit premises and this affidavit is filed in Testamentary Petition No.468/1998 and the admission is to the effect that the plaintiff Madhuriben had taken forcible possession of the suit flat and she is residing in the flat till today. Further, in her cross-examination, she specifically admit that she was residing in Bangali building and she is in possession of flat no..11 in Bangali building since last 18 years.

          The other two witnesses examined by the defendant, include the owner of the building Balkrishna Shetty, who depose that he had purchased the Soni House from previous owner Ramesh Bhatia and the counter foils of rent receipts are in the name of Manjula Kanji Shah and he produced the receipts pertaining to the year 1991 and 1992. He admit that he has received the rent of the suit premises upto June 2008 from defendant no.1 and in June 2008, the defendant no.1 requested him to allow her to sublet the premises to Mr.Jivesh Shetty and Indira Shetty jointly and accordingly, he granted permission on

15th June 2008. On 16<sup>th</sup> July 2008, he was informed that some hooligans had broken open the door of flat No.5 which was sublet. He state that he is aware about the persons who are occupying the premises and defendant no.1 was occupying the suit premises.

The subsequent tenant i.e. Indira Shetty is also examined on behalf of the defendant and in her cross-examination, she has deposed that she know Manjulaben Shah and she met her for the first time in March 2008 in Soni House building. She also deposed that from March 2008, till filing of the suit, she met her on five to six occasions and she specifically depose that Manjula was residing opposite Borivali station but she do not know the exact address. Her earlier statement is clarified by stating that she was not aware that before she came to reside in the suit property, whether Manjulaben was residing there or not.

21           It is in the wake of the aforesaid evidence which has been laid before the learned Judge, in the Suit filed by Madhuriben, he has referred to the admission of the defendant no.1 in the Testamentary Suit and stressed upon the fact that, the summons of various suits came to be served upon the plaintiff on the address of the suit premises. The affidavit of service of the plaintiff served on 27/5/2008 was also on the address of the suit property, and the bailiff's report to that effect was exhibited as Exhibit-79.

22           Based on the documentary evidence as well as the oral evidence brought on record, the learned Judge arrived at a conclusion and he record the same in paragraph no.26 to the following effect :-

26. On appreciating the evidence, it is just to state that documents filed on record by the plaintiff shows continuous settled possession of the plaintiff over the suit property since long. Defendant no.1 has admitted the possession of plaintiff in the suit premises in her affidavit. Defendant no.1 has failed to show that how the plaintiff was put in possession, except the averments that she was permitted to reside some time in the suit premises due to ill-treatment inflicted by plaintiff's son upon her. In any case, the dispute between the parties is on a different pedestal, wherein the plaintiff and defendant no.1 claims to be the wives of late Meghji Shah. It is manifest that the plaintiff had two daughters and one son and defendant no.1 had three daughters born from said Meghji Shah, Defendant no.1 do not dispute that plaintiff is the first legally wedded wife of Meghji Shah. In any case plaintiff is the first legally wedded wife of Meghji Shah and defendant no.1 has subsequently married to Meghji Shah, therefore their relationship appears to be strained”.

23           The learned Judge return a finding that on the basis of documents filed on record, the plaintiff has successfully established that she was in long standing possession of the suit premises and even her daughters were residing in the suit premises. In any case, since the defendant no.1 do not claim to be

the owner of the suit premises, but claim to be only the tenant but the rent receipts are on record are of the year 1991-92, but since the documents produced by the plaintiff depict her possession over the suit premises, the same are believed and accepted by the impugned judgment.

An admission of the defendant no.1 in the cross-examination, that she is residing in Bangali building in flat no.11 since last 18 years, and her admission in the written statement that she has allowed the plaintiff to reside in the suit premises for a while has been accepted as a fact proving the possession of the plaintiff over the suit premises. The stand of the defendant that she had subletted the premises, is not accepted since in the cross-examination, defendant no.3 has admitted that defendant nos.5 to 7 were put in possession by the defendant no.1 on accepting consolidated amount of Rs. Five lakhs as consideration, but it is manifest that if they were to be inducted as sub-tenant, there was no question of paying any consideration and the theory of subletting by defendant no.1 do not hold any substance. Further, this document is only on stamp paper. The defendant no.1 has admitted in her affidavit that plaintiff has taken forcible possession of the suit premises, but at what point of time, she was restored the possession, has not been brought on record. Mere rent receipts are not sufficient to establish the possession and particularly when the rent receipts are old.

24           Considering the scope of the suit which is filed u/s.6 of the Specific Relief Act, where the settled position of law is, that the said provision provides a summary remedy for a person, who, being in possession of the immovable property is ousted therefrom. It is a remedy available to such a person who is dispossessed and can be availed in the Civil Court, where he can seek restoration of possession.

          The aforesaid provision is a reproduction of the provision of the Roman law under which by an *interdictum de vi*, a person wrongfully dispossessed from the property could recover it by proving previous possession, without being required to prove his title. Disputed questions of title are to be decided by due process of law but the peaceful possession is to be protected from a trespasser u/s.6 of the Specific Relief Act, without having any regard to the question of the origin of the possession. The Suit u/s.6 can be entertained and decreed, when both the plaintiff and the defendant have no title to the suit land but when the plaintiff proves his/her prior possession, he is entitled to decree for possession against the defendant, who has dispossessed him. A plaint seeking such a relief must thus only aver previous possession of the plaintiff and dispossession by the defendant, otherwise in due course of law.

          In Suit u/s.6, the question of title cannot be gone into and the only question that deserve a consideration is whether the plaintiff or was not in actual possession of the property and

whether he was dispossessed within six months of the date of the suit, except in accordance with the law, and a Suit for such a nature can be decided where neither party has a title.

25           In the wake of the aforesaid settled position, when the right, title and interest of the parties need not be decided in the suit, the learned Judge vide the impugned judgment has merely decided the issue as to whether the plaintiff was in possession and whether she has been dispossessed without her consent and otherwise than by due process of law.

As far as the issue of limitation is concerned, the Suit is filed within a period of six months from the date of dispossession and therefore, the question of limitation has rightly been brushed aside by the learned Judge.

26           The learned senior counsel Mr.Naik has perfectly justified in placing reliance upon the decision of the Apex Court in case of ITC Ltd vs. Adarsh Co-operative Society, 2013(10) SCC 169, and in his submission that when the trial court has arrived at a conclusion that the plaintiff was in possession and was illegally dispossessed by the defendant, the Civil Revision Application having limited scope, since the issue regarding possession of suit property was decided on the basis of material placed on record, do not warrant any interference and deserve a dismissal.

27 Law respects possession and forbids forcible dispossession, even with the basis of the title, a person who is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed except, by due process of law. The disputed questions of title would be decided by the competent court by adhering to the prescribed process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. In a case like this, where the defendant is not the owner of the suit property and has failed to prove her title, the plaintiff who has secured a decree or possession on the basis of prior possession against the defendant who has dispossessed her, deserve a protection by upholding the impugned judgment. The plaintiff being in peaceful possession of the suit property is entitled to retain her possession and in order to protect her possession, she may be entitled to use reasonable force to keep out the defendant, who is not the owner of the premises. Law comes to the aid of a person who is in peaceful and settled possession, by injunctioning even a rightful owner from using force and also by restoring him in possession even from the rightful owner, if the latter dispossesses the prior possessor by use of force. In absence of proof of better title, possession or prior peaceful settled possession is itself admissible as evidence of title, since law presumes possession to go with the title unless rebutted.

If the possession is settled or effective, though without title, it would be entitled to be protected even as against the true owner. In Munshi Ram And Others vs Delhi Administration AIR 1968 SC 702, it is categorically held that no one, including the true owner, has a right to dispossess the trespasser by force, if the trespasser is in settled dispossession of the land and in such a case, unless he is evicted by due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or an intermittent act of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary. Such entry will be viewed only as a resistance to an intrusion upon possession which has never been lost. The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time, to remove the obstruction even by using necessary force.

28           The position of law being settled long back ago and reiterated by the Apex Court as well as this Court from time and again, by applying the same to the facts in hand, the impugned judgment do not suffer from any perversity and do not warrant any interference, in exercise of the revisional jurisdiction of this Court.

                  In the wake of the above, by upholding the order, the Application is dismissed. Rule is discharged.

29           On pronouncement of the judgment, the learned counsel for the applicant seek extension of stay granted by this Court on 25th June 2018.

                  On 25<sup>th</sup> June 2018, the stay granted by the trial court till 26th June 2018, came to be extended and the said order remain in force till date. The said order shall continue to remain in force for a further period of eight weeks from today.

**SMT. BHARATI DANGRE, J**