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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.140 OF 2010

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Aslam Nabi Baksh Qureshi

... Applicant

V/s.

Tahera Banoo Iqbal Ahmed & Ors.

... Respondents

Mr. A. R. Shaikh for the applicant.

Mr. Rupesh R. Lanjekar for respondent Nos.1 to 4.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 3, 2023

P.C.:

1. The unsuccessful plaintiff in a suit for possession under section 6 of the Specific Relief Act, 1963, is challenging judgment and order dated 17th December 2009, dismissing the suit on the ground that the plaintiff failed to prove his possession over the suit property.

2. According to the plaintiff, he is a tenant of residential suit premises. The landlord executed a tenancy agreement in the plaintiff's favour on 15th April 2004. The earlier tenants, i.e. Mustaq and Anwar, surrendered their right, title and interest in the suit premises to the landlord on 1st May 2004, and thereafter, the landlord executed a tenancy agreement in favour of the plaintiff for consideration of Rs.60,000/-. They removed their belongings

on 7th May 2004. The plaintiff, thereafter, put his lock after putting his household articles in the suit premises on 7th May 2004. According to the applicant, the landlord handed over possession of the suit premises in the plaintiff's favour on 1st May 2004. However, on 8th May 2004, when the plaintiff returned, he found a lock of the suit premises broken and a new lock having been put on by someone. He, therefore, lodged a complaint with the concerned police station against an unknown person bearing N.C. No.634 of 2004 dated 8th May 2004. When the plaintiff returned from the police station, he found that the defendants had taken forcible possession of the suit premises.

3. According to the plaintiff, the defendants also filed R.A.D. Suit No.1022 of 2004 against the landlord for declaration of their tenancy with respect to the suit premises. Therefore, the plaintiff seeks restoration of possession under section 6 of the Specific Relief Act.

4. The defendants contested the suit, contending that the landlord led the suit premises to Iqbal and Bashir in 1978. Since then, family members of Iqbal have been residing in the suit premises. They have also filed Suit No.1022 of 2004 in May 2004 seeking a declaration of their tenancy rights. The Court Commissioner appointed in the said suit found their possession in the suit premises. The defendants allowed the Mushtaq to reside in the suit premises along with them after the death of Iqbal Ahmed. According to the defendants, Mushtaq and Anwar have surrendered their tenancy rights to the landlord. Defendants denied physical possession of the plaintiff over the suit property

and, therefore, prayed for dismissal of the suit.

5. The Trial Court framed necessary issues.

6. The parameters for adjudication of the issue under section 6 of the Specific Relief Act are laid down by the Apex Court in the case of **Rame Gowda (dead) by LRs vs. M. Varadappa Naidu (dead) by LRs and Another** reported in (2004) 1 SCC 769. It is held that a person in settled possession cannot be evicted without following due process of law. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment. It is held that the owner of any property may prevent, even by using reasonable force, a trespasser from an attempted trespass when it is in the process of being committed or is of a flimsy character or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to take recourse to the law.

7. The attributes of settled possession have been laid down in paragraph 9, which are as under:

“9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.* (AIR 1968 702 : (1986) 2 SCR 455 : 1968 Cri LJ 806), *Puran Singh v. State of Punjab* ((1975) 4 SCC 518 : 1975 SCC (Cri.) 608), *Ram Rattan v. State of U.P.* ((1977) 1 SCC 188 : 1977 SCC (Cri.) 85). The authorities

need not be multiplied. In *Munshi Ram case*, it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts 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 settled possession, extending over a sufficiently long period of time and acquiesced to 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 is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh case* the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The “Settled possession” must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the power or without any attempt at concealment by the trespasser. The phrase “settled possession” does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined to a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of “settled possession” (SCC p. 527, para 12):

- (i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
- (ii) that the possession must be to the knowledge (either

express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

8. In light of the parameters laid down by the Apex Court, it is necessary to consider the facts of the case as to whether the plaintiff has proved his settled possession over the suit premises. According to the plaintiff's case in the plaint, he was to be in possession by the landlord on 1st May 2004. According to him, he was dispossessed on 8th May 2004. Therefore, according to his own version, the plaintiff was in possession of the suit premises for eight days.

9. The Trial Court relied upon a non-cognizable complaint referred by the plaintiff in his plaint. In the non-cognizable complaint, the applicant (plaintiff) stated that he obtained suit premises on tenancy three days before the filing of the complaint. However, he never resided in the suit premises. There was a dispute regarding the suit premises, and the applicant had put up his lock on 7th May 2004, which the defendants broke. On perusal

of the averments in the non-cognizable complaint filed by the plaintiff, it appears that the plaintiff was never put in actual possession by the landlord as alleged in the suit.

10. Moreover, in a suit filed by the defendants for declaration of tenancy, the erstwhile landlord and the developer accepted the defendants to be a tenant in the property, and the consent terms to that effect were filed in a suit filed by the defendants against the landlord.

11. Moreover, the suit filed by the plaintiff seeking his declaration of tenancy in relation to the suit premises was dismissed for want of prosecution on 12th April 2017. According to the applicant, the order of dismissal of the suit is unchallenged before the Superior Court.

12. Considering possession of suit premises for a period of eight days claimed by the plaintiff, accepting the plaintiff's case, his possession cannot be termed as settled possession. Therefore, in my opinion, the plaintiff has failed to prove his settled possession over the suit property. The Trial Court, based on the plaintiff's non-cognizable complaint referred to in the plaint, has rightly recorded a finding that the plaintiff himself admitted that he is not in actual possession of the suit premises. Therefore, there is no error of jurisdiction committed by the Trial Court while dismissing the suit.

13. The revision application is dismissed. No costs.

(AMIT BORKAR, J.)