

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO.353 OF 2021
IN
SUIT NO.517 OF 1966**

The Trustees of the Port of Bombay
Being a statutory Corporation, incorporated
under the Bombay Act VI of 1879,
having their principal Place at Ballard
Estate within the port of Mumbai ... Plaintiff

versus

1. Sayed Abdul Hamid Mohammed Shah
Kadri, residing at Kadri House, 2,
Cadell Road, Mahim, Mumbai – 400 016
(since deceased)
and
1(A) Hafiza Begum A.H.Kadri
1(B) Sayed Mohammed Shah Kadri
1(C) Sayed Alam Shah Kadri
1(D) Sayed Kutub Shah Kadri
1(E) Sayed Munawar Shah Kadri
1(F) Khurshid Begam Kadri
1(G) Hamida Begam Kadri,
1(H) Zubeida Begam Kadri,
being the heirs and legal representatives
of the deceased Defendant No.1
and residing at C/o Hamza Quadri,
Byculla Co-op. Hsg. Soc. Ltd.,
G Block, Mirza Ghalib Marg,
Mumbai – 400 008. ... Defendants

WITH
COURT RECEIVER'S REPORT NO.353 OF 2022
AND
COURT RECEIVER'S REPORT NO.345 OF 2022

Mr. Umesh Shetty with Mr. Shanay Shah, Mr. Rahul Jain, Ms. Khushboo Rupani, Mr. Nikhil Verma i/by HSA for Plaintiff.

Mr. Denzil D'Mello with Mr. Austin Fernandes, for Respondent No.1.

Mr. Mustafa Bohra with Mr. Vivek Sharma i/by Solomon and Co., for Defendant Nos.1(A) to 1(H).

Mr. A.S.Khandeparkar, Senior Advocate with Mr. Niranjan Shimpi, for Union of India.

Mr. Mayur Khandeparkar with Mr. Chaitanya Nikte i/by Mr. Prasad Sarvankar, for Noticee – Sahebrao Kadam.

Mr. S.K.Dhekale, Court Receiver with Mr. E.B.Sivakumar, 1st Assistant to Court Receiver, present.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 16 JANUARY 2023

PRONOUNCED ON : 5 JUNE 2023

JUDGMENT :

1. By this Report, the Court Receiver, inter alia, seeks the following directions :

“(a) What steps the Court Receiver should take as the third party viz. Mr. Sahebrao Kadam is found occupying of ground floor (east and west wing), 1st floor (east and west wing), 2nd floor (east and west wing), 3rd floor (east and west wing), 4th floor (east and west wing) suit premises situated at Commerce House, Ballard Estate, Currimbhoy Road, Mumbai and he is doing repairing work of entire building ?”

2. The litigation has a chequered history spanning over half a century. It reflects the vicissitudes of the litigation brought about by a variety of factors; inertia and inaction on the part of the parties not in less measure. Thus, I deem it in the fitness of things to summarize the nature and outcome of the proceedings leading to

the situation which obtains today where a third party is found to be occupying a substantial portion of the suit property.

3. Mumbai Port Trust (MPT) – the Plaintiff, is the owner of plot of land bearing City Survey No.39 / 1187 admeasuring 1012 sq. yards (the suit plot). The Plaintiff had leased the said plot to M/s. Hoare Miller and Company Ltd. for a period of 99 years commencing from 21 June 1920. The lessee constructed a building on the demised land known as “Commerce House” (the suit building). The said plot and the suit building are hereinafter referred to as ‘the suit property’, wherever warranted.

4. Under a Deed of Assignment, the lessee assigned its interest in the suit property to Sayed Abdul Hamid Mohammad Shah Kadri – Original Defendant No.1. Defendant Nos.1(A) to 1(H) are the legal representatives of the deceased Defendant No.1. The assignment was with the approval of the trustees of the MPT.

5. MPT instituted Suit No.517 of 1966 for the recovery of arrears of rent and possession of the demised premises. During the pendency of the said suit, Defendant No.1 was adjudged insolvent on 7 February 1967 and the Official Assignee was brought on record as Defendant No.2. A decree for possession and money was passed by this Court on 15 November 1967.

6. On 6 September, 1976, Chamber Summons No.239 of 1976 was taken out by the Plaintiff to appoint Court Receiver, High Court, Bombay, as Receiver in execution of the ex-parte decree dated 15 November 1967. By an order dated 6

September 1976, the said Chamber Summons was made absolute in terms of prayer clause (a). The Court Receiver came to be appointed as Receiver in execution.

7. On 21 June 1984, a learned Single Judge of this Court directed the Court Receiver to handover possession of the suit property to MPT – the decree holder after a period of one month thereof. In the meanwhile, the legal representatives of the judgment debtor were granted permission to remove the structures which were built on the suit plot. The Receiver was directed to handover the property to the decree holder with the superstructure, if the suit building was not removed.

8. The Defendants challenged the said order in Appeal No.612 of 1984. By a judgment and order dated 24 November 1987, the Division Bench set aside the said order. The Division Bench observed that the Court Receiver was appointed only as a Receiver to safeguard the property and to pay the rent and taxes and no more. If the decree holder wanted possession, they would only do so by resorting to execution proceedings under Order XXI of the Code of Civil Procedure (CPC). Since no possession warrant was issued in execution of the decree, possession could not be handed over to the decree holder. The Court Receiver came to be reappointed as the Receiver. The Report of the Court Receiver and the Chamber Summons taken out by the Decree holder were remanded back to the learned Single Judge for being disposed of in accordance with law.

9. On 4 December 2002, Court Receiver's Report dated 7 October 2002

came to be disposed of with a direction to the Court Receiver to take steps to execute the decree in accordance with law. In a further order dated 29 January 2003, the learned Single Judge recorded statement of the Counsel for the decree holder that 'there was no order passed in execution of the decree, according to which the Court Receiver could take possession of the property to which the decree related.' This statement was accepted and the Report of the Receiver was disposed of.

10. In Court Receiver's Report No.59 of 2006 by an order dated 26 September 2006, the Court Receiver was directed to handover possession of the property back to the party(ies) from whom the Receiver had taken possession. The Court was persuaded to pass such order holding that when the Receiver takes possession in execution of the decree obviously it is for the benefit of the decree holder. But when the decree holder himself says that the Receiver is not entitled to take possession, then the inquiry should end. Thus, there was no point in Receiver maintaining possession because the Receiver was maintaining possession obviously for the benefit of the decree holder.

11. The decree holder took out Chamber Summons No.1465 of 2006 for a direction to the Court Receiver to handover symbolic possession of the land and building which is the subject matter of the decree dated 15 November 1967 to the Plaintiff/DH and for a further direction that the Sheriff of Mumbai be directed to execute warrant of possession pursuant to the decree dated 15 November 1967 in

accordance with the prescribed procedure after symbolic possession of the land and building was handed over to the Plaintiff. An endeavour was made before the learned Single Judge in the said Chamber Summons to urge that the statement made on behalf of MPT and recorded in the previous order dated 26 September 2006 was erroneous.

12. The learned Single Judge rejected the aforesaid submission and went on to dismiss the Chamber Summons. The learned Single Judge was of the view that even if the possession of the property was to be handed over to the Plaintiff, the Plaintiff would be entitled to obtain possession in accordance with Order 21 Rule 36 because the Plaintiff could only take symbolic possession of the suit plot since admittedly the lessee had constructed a structure (suit building) thereon and that building had been occupied by several occupants who claimed independent rights. The learned Single Judge, however, allowed assistance in execution application and directed the Prothonotary and Senior Master to issue warrant of possession in respect of the suit plot (excluding the built up structure thereon and the suit building) under Order 21 Rule 36 and the decree would then be executed in accordance with the law by following the procedure prescribed under Order 21 Rule 36 of CPC.

13. An endeavour was made to challenge the said order in the year 2010 by taking out a Notice of Motion for condonation of delay in filing the Appeal (being Notice of Motion No.16 of 2010 in Appeal (L) No.612 of 2009). The Division Bench of this Court by an order dated 5 July 2011 declined to condone the delay. It was noted

that the Applicant-Plaintiff had, in fact, acted on the order dated 12 December 2006 as the Plaintiff/DH had moved the Prothonotary and Senior Master for issue of warrant of possession. Special Leave Petition (C) No.29157 of 2013 came to be withdrawn on 11 January 2018 with liberty to the Petitioner – Plaintiff/DH to take such proceedings as may be available to him in law.

14. In the intervening period, in Court Receiver's Report No.332 of 2015 seeking directions to the parties to deposit the amount to pay arrears of property tax and repair cess in respect of the suit property, noting that the Plaintiff has not deposited the amount towards the property tax, this Court directed the Plaintiff to deposit with the Court Receiver an amount of Rs,48,79,762/- on or before 15 December 2015 to enable the Court Receiver to pay arrears of property tax, repair cess and MTOB. It was further provided that in the event of failure on the part of the Plaintiff to deposit the above amount with the Court Receiver, the Court Receiver shall submit his report seeking discharge after giving notice to all the parties.

16. Court Receiver's Report No.190 of 2016 came up before the Court on 24 January 2017. The Court noted that the Plaintiff had not made deposit with the Court Receiver and the Defendants remained absent. Thus, the Court Receiver was discharged without passing accounts. What was further noted in the said order, and which gives rise to the controversy at hand, as regards the delivery of possession of the suit property is of material significance and, thus, extracted below :

“5.The Court Receiver had taken symbolic and formal possession of the Suit property. The Court Receiver will remove his board. He confirms today that he has not taken actual physical possession of or the keys to any of the premises.”

17. Court Receiver’s Report No.190 of 2016 was again moved before the Court on 24 February 2017. A submission was then made before the Court that the Court Receiver had obtained keys to 9 premises and those occupants had voluntarily tendered the keys to the Court Receiver. Thereupon, the Court passed the following order :

“Mentioned and taken on board at the instance of Court Receiver. The Receiver points out that he has obtained the keys to 9 premises. The occupants of these premises voluntarily tendered the keys to the Court Receiver, and this is how the Court Receiver comes to be in possession of the keys. The order of 24th January 2017 requires the Receiver to remove his board as it was said then that he had taken symbolic and formal possession. At that point it was not pointed out that Court Receiver held keys to any of these premises. The Court Receiver will now take the necessary steps to return the keys to the various persons who voluntarily gave those keys to him.

18. Notice of Motion No.634 of 2017 was taken out by Associate Corporation of Industries (I) Pvt. Ltd., who was not a party to the suit, to direct the Court Receiver to deliver to it possession of three cabins in certain premises on the first floor of the suit building and also pay accumulated monthly compensation

deposited by the 3rd and 4th Defendants, aggregating to Rs.36,14,200/- and Rs.3,00,000/- respectively. The said Notice of Motion was made absolute in terms of prayer clauses (a) and (b), without prejudice to all the rights and contentions of MPT and the Defendants. In the said order dated 20 April 2017, this Court noted that the only decree that the Plaintiff holds is against the head lessor or tenant, Mr. Kadri, who has since passed away and whose heirs are now on record. Any possessory decree that the plaintiff seeks to execute must also necessarily be subject to the rights of ACI, Respondent No.4, because as between the Plaintiff and ACI, the Plaintiff has obtained no orders or any decree and has in fact not initiated any proceedings at all.

19. Now comes the present Report No.353 of 2021. The Court Receiver states, pursuant to the order dated 20 April 2017, the Court Receiver handed over keys of the three cabins to ACI on 29 April 2017. It had fixed an appointment on 17 April 2017 to handover the keys of the suit premises i.e. East Wing of basement, East and West wing of 2nd floor, East and West Wing of 3rd floor, West Wing of 4th floor situated at Commerce House, Currimbhoy Road, Ballard Estate, Mumbai – 400 038 to the Estate Manager, Government of India. However, nobody remained present to proceed at site and accept the keys. No reply was received from the Estate Manager, Government of India in response to the communication as to whether they were ready to accept the keys of the aforesaid suit premises.

20. In the meanwhile, on 30 June 2021 a communication was received on

behalf of the Plaintiff that Mr.Sahebrao Kadam, the alleged trespasser, had carried out repair works in the suit property. In a visit to the suit property, the said Sahebrao Kadam claimed to be in possession of ground floor (east and west wing), 1st floor (east and west wing) 2nd floor (east and west wing), 3rd floor (east and west wing), 4th floor (east and west wing) since last 50 years. It further transpired that Mr. Sahebrao Kadam allegedly without informing the Court Receiver took out Writ Petition No.1209 of 2020 and obtained an order of repairing Unit No.302, third floor, West Wing. Since the Government of India is not coming forward to accept the keys of the aforesaid portion of the suit property, despite intimation, the Court Receiver has submitted the Court Receiver's Report No.123 of 2019 for necessary directions. In these circumstances, the Court Receiver seeks the aforeextracted directions.

21. When the Report was first listed before the Court on 27 October 2021, this Court recorded that prima facie it appeared that Mr. Sahebrao Kadam has interfered with the possession of the Court and as such deserves to be removed from the suit property. Mr. Kadam appeared and sought time to file an Affidavit.

22. Pursuant to the order of this Court dated 19 October 2022, the Court Receiver has submitted a further report being Report No.353 of 2022 pointing out the situation at site.

23. Mr. Sahebrao Kadam, the noticee, has filed an Affidavit in Reply. ACI – Respondent No.1 has also filed an Affidavit in Reply contesting the claim of Mr.

Sahebrao Kadam. An Affidavit in Reply is filed on behalf of the Post Master, Government of India. The Plaintiff has also filed an Affidavit to deal with the Court Receiver's Report and the Affidavit in Reply filed by Mr. Sahebrao Kadam. Legal representatives of the Defendants have also filed Affidavits resisting the claim of Mr. Sahebrao Kadam.

24. As the stand of the noticee – Mr. Sahebrao Kadam assumes importance in the determination of this Report, I deem it appropriate to briefly note the case put forth by Mr. Sahebrao Kadam. He seeks to derive possessory title to the suit building on the strength of a Deed of Assignment dated 27 March 1946 executed by Late Sayed H.M.Kadri, the assignee of M/s. Hoare Miller and Company Ltd., original lessee, in favour of late Gangadhar P. Kadam, his father. According to Mr. Sahebrao Kadam, the said assignment could not be registered with MPT as late Kadri was in arrears of the lease rent.

25. Mr. Sahebrao Kadam contends that the Plaintiff/DH despite being fully aware that the suit building has been in his possession, he was not impleaded in any of the proceedings instituted against late Kadri. At any rate, according to Mr. Sahebrao Kadam, in view of the order dated 12 December 2006 in Chamber Summons No.1465 of 2006 passed by the learned Single Judge, the decree was to be executed qua the suit plot only, excluding the suit building. Thus the decree in Suit No.517 of 1966 did not affect the right and interest of Mr. Sahebrao Kadam in the suit building. Mr. Sahebrao

Kadam categorically contends that with the discharge of the Court Receiver, pursuant to the order dated 24 January 2017 passed in Report No.190 of 2016, the Court Receiver became functionous officio and had no authority to enter into the suit building and prepare the report.

26. Mr. Kadam further contends that his continuous possession over the suit building is evidenced by a number of documents like the telephone bills, electricity bills, establishment licence. Since the suit building is a cessed structure, he had carried out repairs with the approval of MHADA. He had also paid rent to the Plaintiff. The possession of Mr. Kadam also stands confirmed by the proceedings initiated by the Plaintiff to evict the occupants of the building including Mr. Kadam under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

27. Banking upon the notices dated 25 March 2021 and 19 December 2018 issued by the Estate Officer, Mumbai Port Trust under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, Mr. Sahebrao Kadam contends that the Plaintiff cannot seek to evict him from the suit building in a Court Receiver's Report. Mr. Kadam also adverts to the Writ Petition which he had instituted seeking permission to repair a portion of the suit building and direct MHADA to initiate action under Section 95A of the MHADA Act, against the ACI and the suit instituted against the Plaintiff and the legal representatives of late Kadri in assertion of the

possessory title over the suit building.

28. In the Affidavits in Reply filed on behalf of the Plaintiff, Defendant Nos.1(A) to 1(H), ACI – Respondent No.1, and the Union of India, the aforesaid stand of Mr. Sahebrao Kadam has been assailed by placing on record facts and documents which run counter to the claim of Mr. Sahebrao Kadam. I do not deem it necessary to make a detailed reference to the Affidavits in Reply as the common ground of opposition is that Mr. Kadam is a rank trespasser and has barged into suit building taking undue advantage of the orders passed by this Court discharging the Court Receiver.

29. I have heard Mr. Shetty, learned Counsel for the Plaintiff, Mr. D'Mello, learned Counsel for Respondent No.1, Mr. Bohra, learned Counsel for Defendant Nos.1(A) to 1(H), Mr. Abhay Khandeparkar, Senior Advocate, for Union of India and Mr. Mayur Khandeparkar, learned Counsel for Noticee – Mr. Sahebrao Kadam at some length.

30. Mr. Shetty, learned Counsel for the Plaintiff would urge that Mr. Sahebrao Kadam has usurped the suit building by taking mutually destructive stands in various proceedings. Stated case of Mr. Kadam that late Kadri had assigned the leasehold interest in the suit building to late father of Mr. Kadam was demonstrably false and fabricated. It was submitted that the instrument under which Mr. Kadam's father allegedly acquired possessory interest in the suit building does not exist.

31. Inviting the attention of the Court to the communication received from the Registrar of Assurances that the instrument bearing No.Bombay 393/1946 is, in fact, a second copy of the instrument bearing No.Bombay 392/1946 executed between Lala Karamchand Govindram and Karbhari Govind Kakad in respect of a totally different property and that the instrument bearing No.Mumbai 393/1946 was not registered with the Registrar of Assurances, it was urged that the edifice of Mr. Kadam's defence is based on a false and fabricated instrument.

32. Mr. Shetty would further urge that Mr. Kadam was nowhere in picture till the Court Receiver came to be discharged pursuant to orders dated 24 January 2017 and 24 February 2017. Laying emphasis on the report dated 5 February 2011 wherein the official of the Court Receiver had recorded that he had taken vacant and physical possession of the suit premises i.e. east wing of basement, east and west wing of second floor, east and west wing of third floor and west wing of fourth floor from the Assistant Estate Manager, Government of India, Mr. Shetty strenuously submitted that the Court Receiver had, in fact, taken physical possession of the portions of the suit building and it was not symbolic. Taking undue advantage of the statement made before the Court that only keys of the portions of the premises were voluntarily handed over to the Court Receiver, Mr. Sahebrao Kadam has brazenly barged into the suit building while it was *custodia legis*.

33. Mr. Shetty made an endeavour to impress upon the Court that in fact the

Receiver was appointed for suit plot and suit building. Therefore, any interference with the possession of the Court Receiver, while the property was *custodia legis*, cannot be countenanced. It was further urged that the property cannot be said to have been ceased to be *custodia legis* the moment the order of discharge of the Court Receiver was passed. The Court Receiver was entrusted with the responsibility to deliver the keys to the persons from whom he had taken possession of the portions of the suit building. Till the said duty was performed, the property continued to remain *custodia legis*, urged Mr. Shetty. To bolster up this submission, Mr. Shetty placed a strong reliance on a judgment of a learned Single Judge of this Court in the case of **Atul D. Sohni and Anr. V/s. B.M.Choksey and Ors.**¹

34. Mr. Denzil D'Mello, learned Counsel for Respondent No.1, Mr. Mustafa Bohra, learned Counsel for Defendant Nos.1(A) to 1(H), Mr. Abhay Khandeparkar, Senior Advocate for Union of India, supplemented the submissions of Mr. Shetty.

35. Mr. D'Mello laid emphasis on the fact that Mr. Kadam's case that he was in possession of the entire suit building since 1946, is belied by the fact that Mr. Kadam had filed Writ Petition No.145 of 2021 against ACI and MHADA seeking directions against the latter to initiate appropriate action under Section 95A of the MHADA Act, 1976 and in the said Petition, it was asserted that ACI has been in the possession of the cabins on the first floor, west wing, of the suit building, since 1954.

1 1998(3) Mh.L.J. 258

SSP (corrected order as per Speaking to Minutes of Order dt. 3 July 2023)

36. Mr. Bohra, learned Counsel for Defendant Nos.1(A) to 1(H) strenuously submitted that the stand of Mr. Sahebrao Kadam in the instant Report is at stark variance with the case set up by Mr. Kadam in S.C.Suit No.1600 of 2019 instituted against the legal representatives of late Kadri. In the plaint therein, Mr. Kadam claimed that late Kadri had executed a Deed of Assignment and Lease Deed on 7 March 1966 in favour of Mr. Sahebrao Kadam, who was then two year old, and his late father Gangadhar.

37. Taking the Court through the intrinsic evidence of the copies of the Deed of Assignment annexed to the Plaint, Mr. Bohra urged with tenacity that the falsity of Mr. Kadam's claim is borne out by the recitals therein. According to Mr. Bohra, the claims of Mr. Kadam, of being an assignee of late Kadri, both under the purported Deed of Assignment dated 27 March 1946 and the Deed of Assignment dated 7 March 1966, are clearly false and fabricated. Mr. Bohra would urge that in the circumstances of the case where the Union of India has conveyed its disinclination to have possession of the portions of the suit building, the Court Receiver must be directed to handover possession of those portions to the legal heirs of late Kadri, the original sub-lessee - assignee.

38. Mr. Abhay Khandeparkar, learned Senior Advocate, submitted that there is no material on record to show as to how and when Mr. Sahebrao Kadam came into possession of the portions of the suit property. In the backdrop of the nature of the

claim, which is riddled with irreconcilable inconsistencies, according to Mr. Khandeparkar, Mr. Sahebrao Kadam cannot claim any equities.

39. Mr. Mahyur Khandeparkar, learned Counsel for Noticee – Sahebrao Kadam, made an effort to stoutly repel each of the aforesaid submissions on behalf of the parties to the Suit and the Respondents. First and foremost, according to Mr. Mayur Khandeparkar, the order passed by this Court on 12 December 2006 deciding in equivocal terms that the Plaintiff was entitled to symbolic possession of the suit plot, excluding the suit building, which has attained finality, is a complete answer to the endeavour on the part of the Plaintiff to lay claim over the suit building.

40. Mr. Mayur Khandeparkar submitted that, in fact, the decree in Suit No.517 of 1966 was in respect of the suit plot only. Inviting the attention of the Court Schedule of the property (Exhibit A appended to the Plaint in Suit No.517 of 1966), Mr. Mayur Khandeparkar submitted that the execution of the decree all along was qua the suit plot and only in Chamber Summons No.1465 of 2006, for the first time, prayers were made in respect of the suit land and the suit building, which came to be decisively answered against the Plaintiff in the order dated 12 December 2006. Therefore, according to Mr. Mayur Khandeparkar, it is now not open to the parties to assert any right over the suit building, especially in Court Receiver's Report.

41. To bolster up the submission that the order passed by this Court on 12 December 2006 operates as res-judicata, as the principle applies to execution

proceedings as well, Mr. Mayur Khandeparkar placed reliance on a judgment of the Supreme Court in the case of **Prem Lata Agarwal V/s. Lakshman Prasad Gupta and Ors.**² wherein it was ruled that the principle of res-judicata applies to execution proceedings as well.

42. Mr. Mayur Khandeparkar further submitted that the Court has recorded in more than one order that the Court Receiver had not taken physical possession of the suit building. In fact, it was the case of the Plaintiff that the Court Receiver was not entitled to take possession of the suit building. The only task to be performed by the Court Receiver was, to handover the keys of the portion of the suit building to the occupants from whom the Court Receiver claimed to have allegedly received the keys. In this backdrop, it cannot be urged that the property continued to remain *custodia legis*.

43. Mr. Mayur Khandeparkar urged with a degree of vehemence that when the Court Receiver was not appointed qua the suit building, there was no question of the Court Receiver displacing the possessory rights of the occupant. Mr. Mayur Khandeparkar would urge that the appointment of the Court Receiver does not imply that the property vests in the Court Receiver and the rights of the third parties are subjugated.

44. To lend support to this submission, Mr. Mayur Khandeparkar placed a

² (1970) 3 SCC 440

strong reliance on a judgment of the Supreme Court in the case of **Anthony C. Leo V/s. Nandlal Bal Krishnan and Ors.**³ Reliance was also placed on another judgment of Supreme Court in the case of **Meenakshi Saxena and Anr. V/s. ECGC Ltd. And Anr.**⁴ wherein the scope of the execution proceedings was explained.

45. Mr. Mayur Khandeparkar would further urge that, in any event, the question as to whether Mr. Sahebrao Kadam is in unauthorized possession of the suit building is a contentious issue and it cannot be decided in a Court Receiver's Report. It was submitted that the Court Receiver's Report is not a substantive proceedings. If at all, Plaintiff or any of the parties desire to evict Mr. Sahebrao Kadam, it is incumbent upon them to institute a substantive proceedings before the appropriate forum. In substance, Court Receiver Report cannot be converted into a substantive proceedings. To buttress this submission, Mr. Mayur Khandeparkar placed a very strong reliance on the judgment of a learned Single Judge of this Court in the case of **Sherali Khan Mohd. Manekia and Ors. V/s. State of Maharashtra and Ors.**⁵

46. I have given anxious consideration to the submissions canvassed across the bar. I have carefully perused the record including various orders passed over a period of half a century.

47. To begin with, I am mindful of the nature of the instant proceedings. The Court Receiver having found that Mr. Sahebrao Kadam is in possession of the

3 (1996) 11 SCC 376

4 (2018) 7 SCC 479

5 2013 SCC Online Bom 65

portions of the suit building, and has, in turn, further let out few of those portions to third parties, has moved the Court for directions. I have noted the facts little elaborately, on purpose. On law as well, with the order passed by this Court in Chamber Summons No.1465 of 2006 dated 12 December 2006, which has attained finality, an inescapable conclusion is that under the Decree dated 15 November 1967, the Plaintiff is entitled to possession of the suit plot, excluding the building/structure thereon. Equally indisputable is the fact that the Court Receiver was initially appointed by an order dated 6 September 1976 in Chamber Summons No.239 of 1976 as Receiver in execution of the ex-parte decree dated 15 September 1967. At the same time, the court cannot be oblivious to the fact that the Court Receiver did collect rent from the occupants of the suit building and post vacation of the portions of the suit building by the Estate Manager, Union of India, at least the keys of the said portions of the suit building were delivered to the Court Receiver.

48. The question as to whether actual possession of the portions of the suit building was handed over to the Court Receiver, thus, bears upon the determination of this Report. If the Report of the Court Receiver dated 5 February 2011 (Exhibit D) is considered in conjunction with the Affidavit in Reply on behalf of the Union of India, it becomes abundantly clear that the Court Receiver claimed to have been put in physical possession of the portions of the suit building namely east wing basement and east and west wings of 2nd and 3rd floor and west wing of 4th floor.

49. Contrast this with the statements made before the Court in Court Receiver's Report No.190 of 2016 which led to the passing of the orders dated 24 January 2017 and 24 February 2017. On 24 January 2017, a statement was made that the Court Receiver had taken symbolic and formal possession and not actual physical possession or the keys of any of the premises. In contrast, on 24 February 2017, it was submitted that the occupants of the suit building had voluntarily tendered the keys to the Court Receiver and that is how the Court Receiver was in possession of the keys. The Court, thus, directed that the Court Receiver shall take necessary steps to return the keys to the various persons who voluntarily gave those keys to him.

50. In the backdrop of the aforesaid facts, crucial question that wrenches to the fore is whether the suit building still remains *custodia legis*? As noted above, it was a categorical stand of the Union of India that it was in possession of east and west basement, west part of ground floor, east portion of first floor and east and west wings of 2nd floor and 3rd floor and west wing of 4th floor of the suit building and had surrendered possession thereof to the Court Receiver in the month of February 2011 and December 2011. In Court Receiver's Report No.123 of 2019, it was stated on an Affidavit on behalf of the Union of India that since the date of the surrender of those premises, they were in actual physical possession of the Court Receiver and Union of India was not interested in taking back possession of those premises.

51. Thereupon, by an order dated 4 March 2022 in Court Receiver's Report

No.123 of 2019, this Court directed that till the disposal of this Report i.e. 353 of 2021, the Court Receiver shall continue to hold keys of the premises mentioned in table extracted in paragraph No.3 of the said order.

52. Mr. Mayur Khandeparkar strenuously submitted that with the aforesaid order, the inquiry must end at this stage.

53. The question as to whether the Court Receiver continued to be in physical possession of the portions of the suit building and whether Mr. Sabebrao Kadam had allegedly encroached upon the portions of the suit building are matters which warrant adjudication in appropriate proceedings. Since the aforesaid submission touches upon the remit of the inquiry in this Report, I deem it appropriate to decide the same at the threshold.

54. It is true that the Court Receiver's Report is not a substantive proceedings. Complicated question of facts where there are rival assertions of right, title and interest in the property in the custody of the Court Receiver, cannot be legitimately decided in a Court Receiver's Report. Adjudication of such questions is neither practicable, nor legally permissible. The observations of this Court in the case of **Sherali Khan (supra)**, wherein the Court Receiver had sought directions as to what steps the Court Receiver should take in respect of the encroachment of the suit property, to the effect that the Receiver's Report cannot be treated as substantive proceedings, and the Court Receiver's request and report do not partake the character

of any independent proceedings wherein substantive reliefs can be granted after full adjudication of the respective claims, and versions regarding right, title and interest in property, lay down the correct position in law.

55. However, application of the aforesaid proposition, in my considered view, would depend upon the fact-situation of a given case. Where it could be clearly demonstrated that, while the property had been *custodia legis*, a party has interfered with the possession of the Court Receiver, without resorting to the legal proceedings, it would be a dangerous proposition to lay down that whatever be the nature of the encroachment, the underlying claim to possessory right and the manner in which the Court Receiver's possession is violated, the Court would not be in a position to pass appropriate directions and the parties must be relegated to the substantive proceedings. Such a broad proposition would impinge upon the foundational premise of the appointment of the Court Receiver to protect the subject matter of the lis during the pendency of the proceedings of the execution. I am, thus, persuaded to hold that the Court is not denuded of the jurisdiction to inquire into the nature of the violation of the Court Receiver's possession and justifiability of the claim of the alleged trespasser.

56. Undoubtedly, the appointment of the Court Receiver does not imply that the property vests in the Court Receiver and the rights of the third parties are subordinated to the rights of the parties to the suit. The object of the appointment of

the Court Receiver was expounded by the Supreme Court in the case of **Anthony C. Leo (supra)**, on which reliance was placed by Mr. Mayur Khandeparkar, as under :

“28. Giving our careful consideration to the facts and circumstances of the case and submissions made by the learned counsel for the parties, it appears to us that a receiver is appointed by the court when the court entertains a view that for preservation of the properties in suit, till the rights of the parties to the suit are finally adjudicated, such properties should be preserved by exercising control and supervision of the same through the officer of the court, the receiver. The court becomes custodia legis of the properties in suit in respect of which the receiver is appointed. Such de jure possession of the court through its receiver, however, does not bring about vesting of the properties in the receiver or in court free from encumbrances even pendente lite. Despite appointment of a receiver, rights and obligations of third parties in respect of properties in custodia legis remain unaffected. Where a receiver appointed by the court is in actual physical possession of a property, no one, whoever he may be, can disturb the possession of the receiver and the court may hold such person who disturbs the receiver’s possession as guilty for committing contempt of court. A man, who thinks he has a right paramount to that of the receiver, must, before he takes any step of his own motion, apply to the court for leave to assert his right. Grant of leave in such case is the rule and refusal to grant leave is an exception (**Everest Coal Co. (P) Ltd. V/s. State of Bihar**⁶). The rule that the receiver’s possession will not be disturbed without leave of the court is, however, not applicable if the receiver is not in actual physical possession of the property.”

(Emphasis supplied)

57. The aforesaid pronouncement, it must be noted, also underscores inviolability of the Court Receiver’s possession. It was laid down in clear and explicit

6 (1978) 1 SCC 12

SSP (corrected order as per Speaking to Minutes of Order dt. 3 July 2023)

terms that where the receiver is in actual possession of the property, no one can disturb possession of the Court Receiver and the court may hold such person who disturb possession of the receiver for committing contempt of court. A person who claims right paramount to that of receiver must apply to the court for leave to assert his right. It was further clarified that the aforesaid rule does not apply where the court receiver is not in actual physical possession of the property.

58. This brings us to the pivotal question of the nature of the possession. Inconsistency in the stand, be that of the Plaintiff, the Court Receiver, or for that matter, Mr. Sahebrao Kadam, has been the consistent feature of this case. In such circumstances, it may not be appropriate to base a finding on the strength of the statements made across the bar. In my view, in the light of the rather uncontroverted facts and attendant circumstances, a broad view of the matter is required to be taken on the aspect as to whether the suit building was, in fact, custodia legis ? It is imperative to note that there is not much controversy over the fact that east and west basement, west part of ground floor, east portion of first floor and east and west wings of 2nd floor and 3rd floor and west wing of 4th floor of the suit building were in possession of Union of India and the possession thereof had been surrendered. The Court Receiver claimed to have taken actual physical possession thereof in the year 2011, to which Union of India concurs.

59. Interestingly, in the Affidavit in Reply, Mr. Sahebrao Kadam does not

dispute that the Union of India was in possession of the aforesaid portions of the suit building. Mr. Kadam asserts that the Estate Manager handed over possession of those portions to him in the year 2006. More interestingly, Mr. Kadam claimed to have handed over one spare key to the Court Receiver which was documented in the report dated 5 February 2011. Mr. Kadam, however, clarified that physical possession continued to remain with him. If not anything else, the aforesaid contentions in the Affidavit in Reply of Mr. Kadam, would substantiate the fact that the portions of the premises were in the occupation of the Union of India and in the month of February 2011, the keys of the premises were delivered to the Court Receiver to the knowledge of Mr. Kadam. In addition, Mr. Kadam also claimed to have delivered spare keys of the portions of the suit building, which were allegedly in his occupation. Thus, Mr. Kadam would not be in a position to feign ignorance about the appointment of the Court Receiver and the steps taken by the Court Receiver to collect the keys of the portions of the suit building, at least in the year 2011.

60. The claim of Mr. Kadam to possessory title now deserves to be appreciated, albeit, prima facie. I consider it appropriate to delve into this aspect of the matter in two parts. First, the instruments under which the predecessor in title of Mr. Sahebrao Kadam was allegedly inducted in the suit building. Second, the weight to be attached to the documents pressed into service by Mr. Kadam in support of the said claim, again prima facie.

61. On the first count, as noted above, Mr. Kadam asserted the possessory title over the suit building on the strength of Deed of Assignment dated 27 March 1946. Prima facie, this claim is not free from infirmities. One, the existence of the instrument and its registration with the Registrar of Assurances is in the corridor of uncertainty as the Registrar of Assurances has categorically stated that the instrument No.Bom 393 / 1946 is the second copy of the another instrument which is unconnected with the suit property and that instrument No.Bom 393 / 1946 is not available with the said office. Two, it is on the own showing of Mr. Kadam the said instrument had not been recorded with the MPT. Three, the time lag of more than 70 years in asserting possessory title on the strength of the aforesaid instrument, prima facie, corrodes the credibility of the claim. Had it been a case of mere unavailability of an instrument of assignment, different consideration would have come into play. However, there is a notorious inconsistency in the versions with regard to the possessory title, not in the correspondence exchanged between the parties, but on solemn pleadings. In suit No.1600 of 2019 seeking declaration of title and injunctive reliefs against the legal representatives of late Kadri, Mr. Kadam approached the court with a case that late Kadri had executed a Deed of Assignment and Lease Deed dated 7 March 1966 in favour of his late father Gangadhar Kadam and in his favour and, since then, he has been in possession of the suit building. Copies of the Deed of Assignment and Lease Deed purported to have been executed on 7 March 1966 erode

the veracity of the Plaintiff's claim.

62. Intrinsic evidence of the aforesaid instrument tells a tale. It is imperative to note that the second party is shown as late Kadri. However, in the body of the Lease Deed, second party is described as the legal heirs of late Kadri. What irremediably impairs the probative value of this instrument is the stipulation therein that the lease fee would be sent by NEFT, RTGS to Kadri family. Those modes of remittances were not in vogue in 1966. Realizing the unsustainability of the claim, it seems, in other proceedings, Mr. Kadam asserted the possessory title on the basis of the alleged Deed of Assignment dated 27 March 1946. Nonetheless, the averments in the plaint in S.C.Suit No.1600 of 2019 cannot be wished away as inconsequential. This irreconcilable inconsistency as to the source of the possessory title, if considered in conjunction with the inaction till the year 2018, renders it unsafe to readily accede to Mr Kadam's claim.

63. The documents which are sought to be pressed into service, namely, the telephone bills, electricity bills, letters remitting rent, are all of relatively recent origin. The telephone bills are of 2018 and rest are of 2019 onwards. Had Mr. Kadam or his father been in possession of the portions of the suit building, since the year 1946, there must have been documents which would evidence the said possession. Yet Mr Kadam presses into service the documents which are of recent origin and, in any event, after the order was passed by this Court in February 2017 to discharge the Court Receiver.

I am afraid, those documents are of assistance to substantiate the claim of Mr. Kadam that he had been in possession of the suit building since more than 50 years.

64. The fact that ACI had been in possession of first floor, west wing, of the suit building and the Department of Posts, Government of India, continued to occupy the Unit No.1, ground floor, east wing, has been established by the Petition instituted by Mr. Kadam, again in recent past. Writ Petition No.145 of 2021 was instituted seeking directions to MHADA to take action under Section 95A of MHADA Act, in respect of the premises on the first floor, west wing, of the suit building, with a assertion that ACI had been in occupation of the said portion since 1954.

65. In OS Writ Petition LDVC 189 of 2020, on 18 September 2020, an order was passed to allow the Petitioner – Mr. Kadam to carry out repairs in respect of Unit No.1, ground floor. It was further clarified that Respondent No.2 – Post Master therein, shall continue to be in possession of the suit property. It would be contextually relevant to note that in the site report dated 24 October 2022, the east wing of ground floor was found to be in possession of Rare World Gallery Pvt. Ltd. The said occupant claimed to be in possession of the said premises since January 2021 under the leave and licence agreement with Mr Kadam. In fact, the occupants of the ground floor, west wing, first floor, east wing, 2nd floor, east and west wings, claimed that they have been in occupation of the respective premises on the strength of the documents executed by Mr Kadam. Interestingly, all these documents have been

executed since the year 2019 and onwards. These facts lend, prima facie, credence to the contention of the Post Master that taking advantage of the order dated 18 September 2020, Mr. Kadam trespassed in the suit premises by breaking open the lock of the Post Master.

66. The situation which thus obtains is that there is overwhelming material to prima facie indicate that the possession of Mr. Kadam over the portions of the suit building is of relatively recent origin, if considered through the prism of the life of the instant litigation. It is not the case that the Court Receiver had not been pursuing the matter. Pursuant to the orders passed by this Court on 24 January 2017 and 24 February 2017, the Court Receiver made an endeavour to return the keys to the occupants, who had delivered the keys to him in the year 2011. There is material on record to indicate that the Union of India, the major occupant, declined to take possession of the said premises. The Court Receiver sought directions. In the intervening period, it transpired that Mr. Kadam had allegedly established unauthorized possession over the suit building and carried out repairs.

67. In a situation of this nature, in my view, the matter cannot be determined on the basis of an abstract proposition that once the Court Receiver stood discharged, the Court Receiver, or for that matter, the Court also becomes functus officio. At any rate, the Court Receiver was yet to discharge obligation cast upon him to return the keys to the occupants of the portions of the suit building, from whom he had taken

the keys. Nor I am persuaded to proceed on a technical premise that only the keys of the premises were taken and not physical possession thereof. Such a contention, in any event, does not sit well with a person whose claim to possessory title is shown to be prima facie contradictory. I am, therefore, persuaded to hold that the suit building still remains custodia legis and the possession of the Court Receiver was, prima facie, violated.

68. Reliance placed by Mr. Shetty on a judgment of this Court in the case of Atul D. Sohni (supra) appears to be well founded. Repelling the contention that the Receiver stands discharged on and from the date of the order, irrespective of the duty which was cast on the Receiver, this Court held that such proposition had the propensity to result in disastrous consequences. The observations in paragraphs 17 and 18 are material and, hence, extracted below :

“17. If the object of appointment of Receiver, the duties of the Court Receiver and the obligations cast upon the Court Receiver are considered along with the aforesaid observations of the author on judgment and the Original Side Rules quoted above, it becomes clear that an order of discharge of the Receiver by the Court does not in itself bring an end to the office of the Court Receiver vis-a-vis the suit property and the parties to the suit. But the Court Receiver stands discharged only after he puts the property to its status quo anti-position unless otherwise directed by the Court or unless the Receiver was required to do something new in respect of the property and unless and until the Receiver has submitted his accounts and they have been approved by the Commissioner for accounts.

18. If the argument of Mr. Anney is accepted that a Receiver stands discharged on and from the date of the order by the Court to that effect then

it will result in disastrous consequences because after appointment particularly in respect of immovable property, the Receiver may take physical possession or may take symbolic possession, may appoint the person in actual possession as his agent, may take steps to improve the property, (depending upon the facts of the case and the powers given to him), may recover rent and royalty from the occupants, may file suits for protection of the property, may have leased the property or the Receiver may be taking steps for sale of the property. If the Receiver is to cease the function in any manner whatsoever from the date of his discharge, then all the work undertaken by him will come to a standstill and even he will not be able to give effect to the order of his discharge. He will also not be in a position to put back the property to the status-quo ante that was in existence on the date of his appointment as Receiver and his taking charge of the property and therefore if the argument of Mr. Anney is accepted then all the parties to the suit in which Receiver is appointed will suffer. All these consequences will be vis-a-vis the Receiver and the property and/or the Receiver and the parties to the suit or those in occupation of the property, are concerned with the property. So far as the obligations of the Receiver to the Court are concerned, he will not be accountable and he will not be under obligation to render accounts and get them approved from the Commissioner. In my opinion, therefore, the arguments of Mr. Anney that the Court Receiver ceases to function immediately from the date of the order of his discharge has to be rejected. It may be that after the order of discharge the Receiver may not take new decisions in respect of the property and may not encumber or burden the property additionally by his actions but he can certainly take those steps which are necessary for the purpose of maintaining the possession of the property, as between the parties to the suit or as between the third parties.”

69. The conspectus of aforesaid consideration is that the Court Receiver is

required to be put back in possession of the suit building to discharge the duties cast in the order dated 24 February 2017. The Court cannot countenance a situation where the possession of the Court Receiver is violated with impunity on the premise that the third parties have their remedies. Nonetheless, I deem it appropriate to provide an opportunity to Mr. Sahebrao Kadam to establish his claim to possessory title over the suit building and his entitlement to continue to occupy the portions of the suit building by instituting appropriate proceedings within a period of two months from today. If no order to protect the possession of Mr. Kadam is passed, the Court Receiver would be free to take physical possession of the suit building and, thereupon, take out appropriate report seeking further directions.

61. Hence, the following order :

ORDER

(i) The Court Receiver shall take physical possession of the suit building on 5 August 2023, excluding west wing, first floor, in the possession of ACI.

(ii) In the event of resistance, the Court Receiver shall be at liberty to take assistance of the jurisdictional police.

(iii) In the meanwhile, Mr Kadam shall be at liberty to institute appropriate proceedings before the appropriate forum to establish his possessory title over the suit building and entitlement to continue to occupy the portions of the suit building.

(iv) If no order to protect the possession of Mr. Kadam is passed in such proceedings during the said period of two months, the Court Receiver shall be free to take physical possession of the suit building on 5 August 2023 without further reference to the Court and, thereafter, file appropriate report seeking further directions.

(v) It is, however, clarified that, in the meanwhile, neither Mr. Kadam nor any of the occupants of the suit building shall create further third party rights or part with possession of the suit building.

(vi) The Court Receiver's Report No.353 of 2021 stands disposed.

(vii) In view of the disposal of Court Receiver's Report No.353 of 2021, Court Receiver's Report Nos.353 of 2022 and 345 of 2022 also stand disposed.

(N.J.JAMADAR, J.)