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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 29th August, 2024**Date of Decision: 13th November, 2024*+ **CS(OS) 608/2024 & I.A. 36928/2024 I.A. 37063/2024****DUSHYANT CHIKARA****.....Plaintiff**Through: Plaintiff in person alongwith his wife
Mrs. Bhawna Malik

versus

ZEESHAN ALI AND ANR**.....Defendants**Through: Mr Mukul Gupta, Sr Adv., Mr Tushar
Gupta, Mr Sumit Mishra, Mr Parinay
Gupta, Advs. for D-1
Mr. M.A. Inayati, Adv. for D-2

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CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:****I.A. 37063/2024 (application under order VII Rule 11 CPC)**

1. This is an application filed by the defendant no. 2 under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC') seeking rejection of the plaint.

Background of the case

2. The present suit has been filed by the plaintiff seeking a declaration that the plaintiff is the owner of the property i.e. B-100, Second Floor, Gulmohar Park, Delhi measuring 300 Sq. yds. ('suit property') on the premise that the plaintiff has been in continuous possession of the suit



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property since January, 2007 to the knowledge of the recorded title holder, late Sh. S.K. Zaman.

2.1. The plaintiff has also sought a decree seeking permanent injunction restraining the defendant nos. 1 and 2 from (i) interfering in the possession of the plaintiff over the suit property; (ii) representing themselves as owner of the suit property; and (iii) from creating any third-party interest in respect of the suit property.

2.2. This suit was initially filed before the Court of learned ADJ-06, South, Saket as CS DJ No. 305/2024 ('Trial Court'), however, as the matter in issue and the suit property was identical to the matters already pending before this Court [i.e. CS (OS) 113/2023] therefore, vide order dated 17.05.2024, the said suit was transferred to this Court and re-numbered as CS (OS) 608/2024.

2.3. An interim order was passed by the Trial Court vide order 03.05.2024. The relevant portion reads as under:

“Though this Court is not inclined to grant ad-interim ex-parte injunction order in favour of the plaintiff, however, still in order to protect the suit property being frittered away and to avoid multiplicity of the proceedings, **it is ordered that till disposal of application U/o 39 rule 1 & 2 CPC, defendants are restrained from creating third party interest in the suit property in any manner.**”

3. The defendants seek rejection of the plaint on the pleas that inter-alia the suit is without any cause of action, the reliefs sought are barred in law and the plaintiff has not approached the Court with clean hands.

Arguments on behalf of the plaintiff

4. The present suit was listed on 29.08.2024 along with CS (OS) 113/2023 and CS (OS) 114/2023. The plaintiff herein is duly represented by Mr. N. Pradeep Rai, Advocate in the said suits wherein an application for



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impleadment has been filed by the plaintiff, however, inexplicably it was submitted by the plaintiff that in the present proceedings he will be represented by his wife Mrs. Bhawna Malik and not Mr. N. Pradeep Rai, Advocate. Accordingly, submissions for the present suit were addressed by Mrs. Bhawna Malik.

4.1. The plaintiff admits that late Sh. S.K. Zaman is the title holder of the suit property and he had purchased the suit property vide sale deed dated 13.11.2006. The plaintiff admits that late Sh. S.K. Zaman was the father of defendant no. 1 and husband of defendant no.2.

4.2. It is stated in the plaint that the late Sh. S.K. Zaman had taken a loan of Rs.25 lakh from the plaintiff and it was this loan amount which was used to purchase the suit property in 2006.

4.3. It is stated that late Sh. S.K. Zaman failed to repay the said loan amount of Rs. 25 lakhs and therefore, plaintiff took possession of the suit property in or around January 2007 and since then the plaintiff has been in possession of the suit property.

4.4. It is stated that Sh. S.K. Zaman expired on 30.03.2018, however, none of the legal heirs of late Sh. S.K. Zaman initiated any legal action to recover possession of the suit property from the plaintiff herein.

4.5. It is stated that after taking possession of the suit property, plaintiff has represented himself as the owner of the suit property. In this regard, it is stated that plaintiff had published an advertisement in the Yellow Pages magazine namely 'The Winner' and a daily newspaper to invite offers for sale of the suit property. It is stated that the plaintiff has let out the suit property to different tenants from time to time. It is stated that, thus, the



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plaintiff has been having a peaceful, open and continuous possession of the suit property for around 17 years.

4.6. It is stated that there are also disputes between the plaintiff and defendant no. 1 qua the lower ground floor (basement) and ground floor located in property i.e., B-100, Gulmohar Park, Delhi qua a separate loan transaction of Rs. 35 lakhs between the plaintiff and Sh. S.K. Zaman. The said disputes are with respect to Memorandum of Understanding dated 16.07.2012 ('MoU'). It is stated that, however, the said dispute is a subject matter of separate arbitration proceedings and criminal proceedings pertaining to allegations of forgery of the MoU.

4.7. It is stated that the cause of action for filing the present suit arose in December 2020 when M/s Jairaj Developers LLP filed a suit for specific performance against the legal heirs of Sh. S.K. Zaman in respect of the suit property to perform their obligation under the Agreement to Sell ('ATS') dated 06.12.2017. It is stated that M/s Jairaj Developers LLP is aware that the plaintiff is in possession of the suit property. It is stated that the plaintiff herein, therefore, also seeks leave of this Court to file an appropriate suit for cancellation of the agreement to sell dated 06.12.2017 and apply for impleadment as defendant in the cases bearing no. CS (OS) 113/2023 and CS(OS) 114/2023 filed by M/s Jairaj Developers LLP, which are pending before this Court.

4.8. The plaintiff relies upon the fact that electricity connection existing in the suit property is installed in the name of the plaintiff as evidence of his possession over the suit property.



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**Arguments on behalf of the counsel of defendant no. 2**

5. Mr. M.A. Inayati, learned counsel for defendant no. 2 states that it is admitted by the plaintiff that the suit property was purchased by late Sh. S.K. Zaman vide registered Sale Deed dated 13.11.2006. He states that the title of the suit property, thus, vested with the husband of defendant no.2 i.e., late Sh. S.K. Zaman.

5.1. He states that defendant nos. 1 and 2 are the only natural legal heirs of late Sh. S.K. Zaman and thus the suit property devolved upon the said legal heirs. He states that, in these admitted facts, the plaintiff admittedly has no right, title or interest in the suit property and is a rank trespasser. He states that the plaintiff has itself admitted in the plaint that he is a trespasser in the suit property.

5.2. He states that averments qua possession made in this suit by the plaintiff are inconsistent with the averments made in I.A. 38668/2024 filed in CS(OS) 113/2023 seeking impleadment. He states that whereas in the captioned plaint the plaintiff has pleaded that he trespassed into the suit property and acquired possession in the year 2007, however, in the I.A. 38668/2024 filed in CS(OS) 113/2023 it has been specifically pleaded that the plaintiff entered into possession of the suit property in the year 2015.

5.3. He states that plaintiff in Writ Petition (Crl.) 1173/2021 had pleaded that he is in possession of the lower ground floor (basement) and ground floor of property since 10.08.2015; however, there is no averment in the writ with respect to the possession of the second floor i.e. the suit property. He states that along with Writ Petition (Crl.) 1173/2021 plaintiff has filed a copy of his complaint dated 27.08.2019 and 03.06.2021 wherein as well the year



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of taking possession of lower ground floor (basement) and ground floor of property has been disclosed as 2015.

5.4. He states that the falsity of the claim of the plaintiff with respect to the possession of the suit property since 2007 is evidenced from the fact that the suit property was let out by late Sh. S.K. Zaman to Mr. Chandrashekhar vide rent agreement dated 12.01.2015 for a monthly rent of Rs.60,000/- and the plaintiff herein signed as a witness to the said agreement. He states that the said rent agreement evidences that the possession of the suit property in the year 2015 as well rested with late Sh. S.K. Zaman. He states that the rent agreement has not been disputed by the plaintiff. He relies upon the bank statement of late Sh. S.K. Zaman which evidences that late Sh. S.K. Zaman received the security deposit and rental income from the said tenant Mr. Chandrashekhar.

5.5. He also relies upon the documents evidencing that house tax for the suit property was deposited by late Sh. S.K. Zaman on 08.03.2018.

5.6. He states that possession of the suit property has always remained with late Sh. S.K. Zaman until his demise and after that with his legal heirs. He states that in fact defendant no. 2 has resided in the suit property from December, 2021 to April, 2023 and placed on record documents evidencing that defendant no. 2 resided at the suit property during that period.

5.7. He states that the keys to the locks that were put by the defendant no. 2 for the suit property and the original documents pertaining to the suit property are in the possession of the applicant i.e. defendant no. 2. He states that the locks of the property have been wrongfully changed by plaintiff and this fact came to the knowledge of the applicant/defendant no. 2 on 21.02.2024.



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5.8. He states that the plaintiff has trespassed into the second floor of the property while the applicant/defendant no. 2 herein was away to Bhubaneshwar. He states that the plaintiff was aware of the fact that defendant no. 1 has been residing in Gurugram and trespassed during the absence of defendant no. 2.

Arguments on behalf of defendant no. 1

6. Mr. Mukul Gupta, learned senior counsel for defendant no. 1 states that defendant no. 1 is the son of late Sh. S.K. Zaman.

6.1. He states that late Sh. S.K. Zaman was the owner and in possession of the suit property until his demise on 30.03.2018.

6.2. He states that during his lifetime late Sh. S.K. Zaman had executed an ATS dated 06.12.2017 with respect to the suit property with one M/s Jairaj Developers Pvt. Ltd. He states that suit for specific performance of the said ATS is pending and is a subject matter of CS (OS) 113/2023.

6.3. He states that the allegation of the plaintiff that a sum of Rs. 25,00,000/- was advanced to late Sh. S.K. Zaman for purchase of the suit property is not substantiated with any documentary evidence on record. He states that the said assertion in the plaint is bogus.

6.4. He states that further assuming that any such alleged loan was advanced by the plaintiff to late Sh. S.K. Zaman, the said fact would not entitle the plaintiff to trespass in the suit property and take/retain physical possession of the suit property.

6.5. He states that the stand of the plaintiff that plaintiff is in the possession of suit property since April, 2007 is falsified by the assertion made in the pleading I.A. 38668/2024 filed before this Court in CS (OS) 113/2023.



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6.6. He states that the alleged advertisement in the magazine inviting offers for sale or purchase in the year 2007 fails to evidence that the plaintiff was in possession of the suit property.

6.7. He states that to the knowledge of the plaintiff herein, the possession of the suit property has been illegally taken by the plaintiff herein during the pendency of CS (OS) 113/2023 and CS (OS) 114/2023.

Findings and Analysis

7. This Court has considered the submissions of the parties and perused the record.

Claim of the plaintiff vis-a-vis possession since 2007

8. The plaintiff has filed the present suit seeking a declaration that the plaintiff is the owner of the suit property and for permanent injunction restraining the defendants from (i) interfering in the possession of the plaintiff over the suit property; (ii) representing themselves as owner of the suit property; and (iii) from creating any third-party interest in respect of the suit property.

9. The plaintiff admits that late Sh. S. K. Zaman is the recorded title holder of the suit property and defendants herein are the natural legal heirs of late Sh. S. K. Zaman and thus the property has devolved on the defendants.

10. In the captioned suit filed in April, 2024, the plaintiff has alleged that the plaintiff took possession of the suit property around January, 2007. However, in I.A. 38668/2024 filed on 24.08.2024 for impleadment in **CS (OS) 113/2023** titled as '**Jairaj Developers LLP v. Fauzia Sultana & Anr.**' the plaintiff herein has categorically asserted that he gained possession in the



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year 2015. The inconsistent stand in regards to the possession of the suit property taken by the plaintiff in both the pleadings are quoted hereinbelow:

CS(OS) 608/2024	I.A. 38668/2024 in CS (OS) 113/2024
4. Mr. Zaman assured the plaintiff to repay the loan amount within 2 months but failed to repay the loan amount <u>thereafter the plaintiff took possession of the suit property around January 2007 and since then the plaintiff has had possession over the suit property.</u> 5. After taking possession of the suit property, the plaintiff represented himself as the owner of the suit property and also published an advertisement in the yellow page magazine "The Winner" and daily newspaper to sell the suit property. <u>Therefore, the plaintiff has had peaceful, open and continuous possession of the suit property for around 17 years.</u>	11. <u>That the applicant respectfully submits that he has been in possession of the suit property ever since 2015</u> to the full knowledge of the parties to the suit as he has been put in possession by late Mr. S. K. Zaman in conscious contemplation of discharging his legal obligations as recorded in the MOU dated 16.07.2012 (the original copy of which is on record as basis of claim in O.M.P. (I) (COMM) No. 290 of 2019).

(Emphasis Supplied)

11. The plaintiff has not explained during arguments the said inconsistency in the pleadings. The pleadings of I.A. 38668/2024 have remained unamended till the passing of this judgment. The plaintiff is thus, bound by the said averment in I.A. 38668/2024 as the said averment is also affirmed on oath.

12. In addition, both defendant no. 1 and defendant no. 2 have separately placed on record the rent agreement dated 12.01.2015 executed between late Sh. S.K. Zaman and one Mr. Chandrashekhar [tenant] evidencing that the suit property was let out by late Sh. S.K. Zaman in 2015. The rent agreement is witnessed by plaintiff herein. The plaintiff has also not disputed the rent



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agreement during arguments. The plaintiff has not filed his affidavit of admission/denial of documents within the permissible period of 45 days and thus, the said rent agreement is even otherwise deemed to have been admitted as per Rule 7 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018 ('Original Side Rules').

13. Defendant no. 2 has placed on record the bank statement of late Sh. S.K. Zaman issued by the banker Kotak Mahindra, which shows that as a landlord, late Sh. S.K. Zaman collected the rent for the suit property from the tenant Mr. Chandrashekhar during the period 2015 to 2018, which document is not disputed by the plaintiff. The said document as well has not been disputed by the plaintiff and even otherwise, the same has been issued by the bank and its veracity is not in doubt.

14. The plaintiff has also not disputed the documents evidencing deposit of house tax with Municipal Corporation of Delhi ('MCD') by late Sh. S.K. Zaman for the suit property during his lifetime till 2018. The said fact as well is even otherwise a matter of public record and hence indisputable.

15. In the considered opinion of this Court, the aforesaid (i) pleading of the plaintiff in I.A. No. 38668/2024 filed in CS (OS) 113/2023, (ii) the rent agreement dated 12.01.2015 between late Sh. S.K. Zaman and the tenant which is witnessed by the plaintiff itself, (iii) the bank statement of Sh. S.K. Zaman issued by Kotak Mahindra Bank and (iv) the house tax records maintained with MCD **belie** and falsify the assertion in the plaint that the plaintiff has been in peaceful, open and continuous possession of the suit property for 17 years since the year 2007. In fact, the said documents show that late Sh. S.K. Zaman remained in possession of the suit property right until his death on 30.03.2018



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16. The plaintiff has further relied upon an advertisement allegedly published in the year 2007 in a local Magazine 'The Winner' inviting offers for sale of the suit property to assert his claim of possession. However, perusal of the said advertisement does not substantiate the plaintiff's claim of possession. In the advertisement, offers have been invited for sale/purchase of lower ground floor, ground floor, second floor and terrace. The details of the contact person for making the offer are mentioned of the plaintiff. The plaintiff herein in bail proceedings before Additional Sessions Judge, Saket Court in bail application no. 2069/2021 ('ADJ') had pleaded that the said advertisement was issued by him at the request of late Sh. S.K. Zaman to enable late Sh. S.K. Zaman to raise funds. This submission of the plaintiff was recorded by the ADJ in its order dated 23.09.2021. Thus, the reliance placed on the said advertisement to contend independent possession of the plaintiff open and hostile to late Sh. S.K. Zaman in the suit property is without any basis and is contrary to the submissions made before the Ld. ADJ. The relevant portion of the order dated 23.09.2021 reads as under:

"16 It was further submitted that applicant/accused was asked by the father of the complainant to sell off the property bearing no. B-100, Gulmohar Park, New Delhi for which advertisement were given in the magazine "The Winners" by the applicant. Eventually, the father of the complainant showed his inability to pay the amount and executed a MOU on 16.07.2012, wherein it was agreed that the father of the complainant would pay a sum of Rs. 1,50,00,000/- as a lumpsum amount of settlement within a period of 3 years from the date of MOU (copy of MOU is attached as Annexure-A9)."

(Emphasis supplied)

17. Lastly, the plaintiff at paragraph 12 of the plaint has alleged that electricity connection of the suit property is installed in the name of the plaintiff and this evidences the possession of the plaintiff. The plaintiff has



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filed one electricity bill which bears a due date of 24.02.2020. However, the said bill records that it is an assessment of direct theft bill of February, 2020. The bill relied upon by the plaintiff, therefore, does not pertain to a regular connection but is for theft of electricity. This bill fails to substantiate the plea of possession of the plaintiff since 2007 and it does not even state that it pertains to Second Floor of B-100, Gulmohar Park, Delhi. The Local Commissioner¹ in the report dated 21.05.2024 filed in the present suit has reported that the electricity meter found in the second floor stands in the name of Mr. Rakesh Murgai. There is no dispute to the contents of the report of the Local Commissioner by the plaintiff. Thus, the averment at paragraph 12 of the plaint pertaining to electric connection is ex-facie false.

18. The plaintiff has averred in the plaint that he let out the suit property to tenants from time to time. No documents in support of this bald plea have been placed on record. On the contrary, the defendant nos. 1 and 2 have placed on record the rent agreement dated 12.01.2015 executed by late sh. S.K. Zaman with the tenant which was witnessed by the plaintiff. As noted above, the plaintiff has not disputed the said rent agreement and has deemed to have admitted the same under the Original Side Rules.

19. Thus, the bald plea in the plaint that the plaintiff has been in possession of the suit property since 2007 are not even proved prima facie from the documents annexed with the plaint; on the contrary the said plea of the plaintiff is falsified by the undisputed documents filed on record by the defendants.

20. The plaintiff is bound by his undisputed pleadings made in I.A. No. 38668/2024 filed in CS (OS) 113/2023 for impleadment in the said suit,

¹ Ms. Hena Lamba, Advocate



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wherein the plaintiff has stated that he entered into possession of the suit property in the year 2015 and this was done in furtherance of the MoU executed in 2012.

Claim of the plaintiff for declaration of ownership

21. In this background this Court proceeds to examine the maintainability in law of the plaintiff's claim that he is entitled to a decree for declaration of ownership of the suit property.

22. The plaintiff has relied upon three facts for asserting ownership; (a) the plaintiff alleges that he advanced a loan of Rs. 25,00,000/- to late Sh. S.K. Zaman and it was this loan amount which was used by late Sh. S.K. Zaman for purchasing the suit property; (b) as late Sh. S.K. Zaman allegedly failed to repay the said loan amount thus the plaintiff took possession of the suit property; and (c) since then the plaintiff has represented himself as the owner of the suit property.

23. This Court is of the view that firstly, no document evidencing advancement of the alleged loan of Rs. 25,00,000/- to late Sh. S.K. Zaman has been placed on record by the plaintiff. No material particulars of the alleged loan have been placed on record. The said fact is capable of being proved by documents and the absence of any such documents with the plaintiff, fails to give any credence to this plea. Secondly, assuming such a loan was advanced and the said loan amount remained unpaid, even, this fact by itself would not afford any legal basis for the plaintiff herein to seek a declaration that he has become the owner of the suit property.

24. In I.A. 38668/2024 the plaintiff herein has alleged that he entered into possession of the suit property in furtherance of the MoU. However, the said



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MoU does not pertain to the suit property and does not record any such permission to the plaintiff to occupy the suit property.

25. The plaintiff has not pleaded any agreement of transfer between late Sh. S.K. Zaman and himself; and assuming there was such an agreement the plaintiff has not sought any specific performance of the agreement.

26. In the plaint, the plaintiff at paragraph nos. 4 and 5 has averred that he has been in peaceful, open and continuous possession of the suit property. The plaintiff has, however, not raised any plea of adverse possession qua the true owner in the plaint, which is the sine qua non. The relevant paras of the plaint read as under:

“4. Mr. Zaman assured the plaintiff to repay the loan amount within 2 months but failed to repay the loan amount thereafter the plaintiff took possession of the suit property around January 2007 and since then the plaintiff has had possession over the suit property.

5. After taking possession of the suit property, the plaintiff represented himself as the owner of the suit property and also published an advertisement in the yellow page magazine "The Winner" and daily newspaper to sell the suit property. Therefore, the plaintiff has had peaceful, open and continuous possession of the suit property for around 17 years.

...

(Emphasis supplied)

27. In this regard it would be relevant to refer to the judgment of the Supreme Court passed in **M. Radheshyamlal v. V. Sandhya and Anr.**² wherein it was observed as under:

“9. As far as the suit filed by the plaintiff for the declaration of ownership based on adverse possession is concerned, the plaintiff can never succeed unless he proves the plea of adverse possession.

² 2024 SCC OnLine SC 318



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There is a concurrent finding of fact on this issue against the plaintiff.

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12. Therefore, to prove the plea of adverse possession: —

- (a) The plaintiff must **plead and prove** that he was **claiming possession adverse to the true owner**;
- (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;
- (c) The plaintiff must also **plead and establish** when he came into possession; and
- (d) The plaintiff must establish that his possession was open and undisturbed.

13. It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.

14. Therefore, it is necessary to consider the averments made in Original Suit No. 12091 of 2010.

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15. As stated earlier, the suit was filed on 17th November 1995. Therefore, going by the averments in paragraph 3 of the plaint, the plaintiff can, at the highest, claim to be in possession from the year 1950. In the same paragraph, the plaintiff stated that the original owner died in 1947. It is not pleaded that even before the year 1947, the plaintiff or his father were in hostile possession to the knowledge of the original owner. When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the plaint. Therefore, there is no proper foundation for the plea of adverse possession in the plaint.”

(Emphasis supplied)



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28. In the facts of this case, there is no foundation for the plea of adverse possession in the plaint and, therefore, no relief for declaration of ownership can follow on the pleas raised in paragraph nos. 4 and 5 of the plaint.

29. Further it would be apposite to refer to the judgment passed by the Supreme Court in **Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) Thr. Lrs.**³ where in cases with regards to assertion of possession by a party which does not have a title against the true owner, the Supreme Court has held that the civil court entertaining a suit or a defence on behalf of the non-title holder must satisfy itself with respect to existence of a prima facie claim in favour of the non-title holder before setting down the matter to trial. The relevant portion of the judgment reads as under:

“68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is **resisting** the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;

³ (2012) 5 SCC 370



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- (f) how he came into possession-whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;
- (h) **If taken on rent licence fee or lease-then insist on rent deed, licence deed or lease deed;**
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;
- (j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. **While dealing with the civil suits, at the threshold the court must carefully and critically examine the pleading and documents.**

.....

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74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. **Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.**”

(Emphasis supplied)

30. Thus, as per the dicta of the aforesaid judgement, in a suit filed by a non-title holder against the title holders on the basis of possession, this Court is bound down to undertake a scrutiny of the maintainability of the claims in the plaint as per the mandate of **Maria Margarida Sequeira Fernandes** (supra). In the facts of this case, on the pleas made in the plaint and documents filed therewith no cause of action for grant of relief for declaration of ownership is maintainable in law. Consequently, the reliefs for injunction are also not maintainable as the plaintiff has no right, title or interest in the suit property.



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31. The plaintiff is not entitled to continue with his unauthorised and illegal possession. The plaintiff cannot be declared as the owner of the suit property owing to his unlawful possession of the suit property. This Court, therefore, in the first instance allows the application filed by defendant no. 2 under Order VII Rule 11 of CPC and, hereby, rejects this suit as being an abuse of process of law.

Directions to handover the possession to the true owner

32. The plaintiff has not only made bald and incorrect averments regarding its possession in the suit property, however, he has himself admitted in the plaint that he is a rank trespasser in the suit property. The said paragraph no. 15 of the plaint to this aspect reads as under:

That the cause of action accrued as above mentioned. The cause of action accrued when the plaintiff learned about the suit of specific performance filed by M/s Jairaj Developers LLP against the defendants in respect of the suit property. **The cause of action accrued when the plaintiff denied the ownership of the Mr S K Zaman and trespassed the suit property and further published an advertisement in the Yellow page magazine "The Winner" and newspapers showing himself as the owner of the suit property.** The cause of action further accrued when Mr. SK Zaman failed to repay the sale consideration to the plaintiff. The cause of action also accrued when the plaintiff's peaceful, open and continuous possession was never challenged by Mr S K Zaman and his legal heirs including the defendants herein. The cause of action is continuing in favour of the plaintiff and against the defendants herein

(Emphasis Supplied)

33. Taking into account the aforesaid admission of trespass, this Court is of the view that the plaintiff cannot be permitted to continue to retain possession. The only document filed on record to show possession is an illegible/incomplete electricity theft bill of the year 2020, which bill itself does not refer to the Second Floor B-100, Gulmohar Park, Delhi. There is no jurisprudence cited before this Court by the plaintiff, which entitles a rank



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trespasser to seek a declaration of ownership on the basis of his unlawful possession of four (4) years.

34. In light of the unequivocal admission by the plaintiff of being a trespasser in the suit property, this, however, now brings the Court to another question that should the plaintiff who admits the ownership of late Sh. S.K. Zaman and the defendants are the legal heirs of late Sh. S.K. Zaman, be permitted to continue with his illegal possession.

35. During the course of arguments upon repeatedly asking the plaintiff to show the legal basis of his right to continue to occupy the suit property, there was no answer forthcoming. The plaintiff only relied upon the averments of being a trespasser to justify his claim for maintaining the suit for relief of protection against dispossession. Since, the plaintiff's possession is illegal, therefore, it would be appropriate and necessary that this Court issues appropriate directions to the plaintiff to handover the possession to the true owner.

36. The true owner in this case is admittedly defendant nos. 1 and 2, being the natural legal heirs of late Sh. S.K. Zaman.

37. At this stage, it would be apposite to draw attention to the dictum laid down by the Supreme Court and Division Bench of this Court wherein after taking note of unlawful claims filed by trespassers, has held that when the trespasser approaches the Court as a plaintiff, the Court can itself issue directions to the said plaintiff/trespasser to return possession to the true owner. The Supreme Court in **Maria Margarida Sequeira Fernandes** (supra)- held that 'due process' need not always mean a process initiated by the owner, it can be any judicial proceedings where the respective contentions of the parties are adjudicated in a free and fair manner and with



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proper opportunity being afforded to the parties. The relevant portion of the said judgment read as under:

“

.....

79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court.

80. The High Court of Delhi in *Thomas Cook (India) Ltd. v. Hotel Imperial* [(2006) 88 DRJ 545] held as under: (DRJ p. 566, para 28)

“28. The expressions ‘due process of law’, ‘due course of law’ and ‘recourse to law’ have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed ‘forcibly’ by the true owner taking law in his own hands. All these expressions, however, mean the same thing—ejectment from settled possession can only be had by recourse to a court of law. Clearly, ‘due process of law’ or ‘due course of law’, here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this ‘due process’ or ‘due course’ condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the ‘bare minimum’ requirement of ‘due process’ or ‘due course’ of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case,



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can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

We approve the findings of the High Court of Delhi on this issue in the aforesaid case.

81. False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our courts. If pragmatic approach is adopted, then this problem can be minimised to a large extent.

82. This Court in a recent judgment in *Ramrameshwari Devi* [(2011) 8 SCC 249 : (2011) 3 SCC (Cri) 481 : (2011) 4 SCC (Civ) 1] aptly observed at p. 266, para 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. The Court observed at pp. 267-68, para 58 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

.....



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97. Principles of law which emerge in this case are crystallised as under:

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

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

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

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

98. In this view of the matter, the impugned judgment of the High Court as also of the trial court deserve to be set aside and we accordingly do so. **Consequently, this Court directs that the possession of the suit premises be handed over to the appellant, who is admittedly the owner of the suit property.**”

(Emphasis Supplied)

37.1. The Division Bench of this Court in **Thomas Cook India Ltd. v. Hotel Imperial & Ors.**⁴ has made some relevant observations with respect to trespassers and the doctrine of due process of law, which stand approved at paragraph 80 in the aforesaid judgment of the Supreme Court.

37.2. Recently, Supreme Court in the case **Padhiyar Prahladi Chenaji (Deceased) Thr. LRs. v. Maniben Jagmalbhai (Deceased) Thr. LRs &**

⁴ 2006 (88) DRJ 545



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Ors.⁵ relying upon **Maria Margadia** (supra) and noting with approval **Thomas Cook India Ltd.** (supra) similarly held that when the trespasser approaches the Court, the Court can issue directions to the said trespassers to return possession to the true owner. The relevant portion of the judgment reads as under :

....

“

26. Now, so far as the submission on behalf of the plaintiff that even if the plaintiff failed to get the declaratory relief and relief for cancellation of registered sale deed and her suit for the said reliefs came to be dismissed and the plaintiff is found to be in possession and therefore, the only remedy available to Defendant 1 would be to file a substantive suit to get back the possession is noticed only to be rejected outright. It is the contention on behalf of the plaintiff that once the plaintiff is found to be in possession, her possession cannot be disturbed except by due process of law and Defendant 1 though may be the true owner has to file a substantive suit for recovery of possession.

27. While considering the aforesaid submission, the decision of this Court in *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira* [*Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126] is required to be referred to. What is meant by due process of law has been explained by this Court in para 79, which reads as under : (SCC p. 392)

“79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court.”

28. In the said decision in *Maria Margarida* [*Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 :

⁵ (2022) 12 SCC 128



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(2012) 3 SCC (Civ) 126] , this Court has approved the following findings of the High Court of Delhi in *Thomas Cook (India) Ltd. v. Hotel Imperial* [*Thomas Cook (India) Ltd. v. Hotel Imperial*, 2006 SCC OnLine Del 36 : (2006) 88 DRJ 545] : (*Hotel Imperial case* [*Thomas Cook (India) Ltd. v. Hotel Imperial*, 2006 SCC OnLine Del 36 : (2006) 88 DRJ 545] , SCC OnLine Del para 28)

.....

29. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand and once the rights of the parties are adjudicated and Defendant 1 is held to be the true owner on the basis of the registered sale deed and on payment of full sale consideration, it can be said that due process of law has been followed and thereafter the plaintiff is not entitled to any permanent injunction against the true owner.”

(Emphasis Supplied)

37.3. Similarly, a Co-ordinate bench of this Court in **Nathu Ram v. DDA & Anr.**⁶ held that when the trespasser approaches the Court, the Court can issue directions to the said trespassers to return possession to the true owner.

38. In view of the law laid down in the aforesaid judgments and the finding of this Court that the plaintiff has no right, title or interest to continue to be in possession of the suit property and the plaintiff on his own admission is a rank trespasser, who has been enjoying the suit property wrongfully, therefore, the following directions are hereby being passed:

38.1. The plaintiff is directed to handover the vacant and peaceful possession of the suit property to defendant nos. 1 and 2 within a period of four (4) weeks from today.

38.2. This Court takes judicial notice of the fact that rent of the suit property i.e. B-100, second Floor, Gulmohar Park, New Delhi similar to the property located in the same neighbourhood would be to the extent of Rs.

⁶ 2022 SCC OnLine 215 at paras 25 to 29



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1,00,000/- per month and if the plaintiff fails to handover the vacant and peaceful possession within a period of four (4) weeks from today, he shall therefore become liable to pay the defendants mesne profits at the rate of Rs. 1,00,000/-.

38.3. The rental in the year 2015 as per rent agreement for the suit property was reserved at Rs. 60,000/- per month and this Court takes judicial notice that rent in 2023-24 has increased and would be in the range of Rs. 1,25,000 to Rs. 1,50,000/- per month; however, this Court has fixed the amount of mesne profits at a lower rate of Rs. 1,00,000/-.

38.4. It is the case of defendant no. 2 that she last resided in the suit property till April, 2023 and she reasonably believes that the plaintiff trespassed into the suit property subsequently. Therefore, in case plaintiff becomes liable to pay mesne profits, it will be paid with effect from 01.05.2023 at Rs. 1,00,000/- per month until the date of handing over of the possession of the suit property.

38.5. However, if the plaintiff peacefully vacates and handover the possession within a period of four (4) weeks from today, he will not be liable to pay the aforesaid mesne profits.

38.6. The Local Commissioner⁷ in her report dated 18.03.2024 filed in CS (OS) 113/2023 has reported that there are third-parties occupying the Second Floor, who are paying rent to the plaintiff and Ms. Bhawna Malik. The plaintiff will ensure that the said third-parties vacate the property within a period of four (4) weeks as their induction by the plaintiff is without any authority in law.

⁷ Ms. Seema Tiwari, Advocate



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39. With the aforesaid directions a decree for possession of the suit property and mesne profits is hereby passed in favour of defendant no. 1 and defendant no. 2.

40. The Registry is directed to draw up a decree in the aforesaid terms, which will include the rejection of the plaint and the passing of the decree of possession and mesne profits in favour of the defendants.

41. This Court is also satisfied in the facts of this case that the interim order has been obtained by the plaintiff by withholding material facts from the Trial Court on 03.05.2024. It is apparent that the suit was filed to over reach the proceedings in CS (OS) 113/2023 in which the plaintiff herein has duly participated on 19.02.2024.

42. Accordingly, all pending applications stands disposed of and interim order dated 03.05.2024 passed by the Trial Court stands vacated.

43. The suit is hereby rejected and the registry is directed to not list this matter.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 13, 2024/mt/ms

Click here to check corrigendum, if any