IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.365 OF 2023

Ashok Kacharu Gaikwad ... Applicant

V/s.

Rev. Samuel Shankar Chandekar (deceased)
through his legal heirs
1A Smt. Nirmalabai Samuel Chandekar
and Ors. ... Respondents

Mr. Ajinkya J. Jaibhave *for the Applicant.*

Mr. Vikram A. Sathaye *i/b. Mr. Hrishikesh Shinde for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 11 FEBRUARY 2026.

PRONOUNCED ON: 27 FEBRUARY 2026

JUDGMENT:

1) The Applicant has preferred the present Revision Application under Section 115 of the Code of Civil Procedure, 1908 (**the Code**) challenging the Judgment and Order dated 21 May 2022 passed by the learned 3rd Joint Civil Judge, Senior Division, Nashik, decreeing Special Civil Suit No.218 of 2016 and directing the Applicant/Defendant to restore possession of the suit property to the Plaintiff under Section 6 of the Specific Relief Act, 1963.

2) Applicant is the Defendant in Special Civil Suit No.218 of 2016. The Suit was originally instituted by Rev. Samuel Shankar Chandekar and another under Section 6 of the Specific Relief Act, 1963 seeking restoration of the possession in respect of the suit property from the Applicant-Defendant.

3) At the heart of the controversy between the parties is a British owned and constructed bungalow named 'Barley Bungalow' together with five outhouses located at Igatpuri, District-Nashik and which is situated on land bearing City Survey No.570 (Survey No.155-A) admeasuring 1 Hector 14 R (**suit property**).

4) It is Plaintiffs' pleaded case in the plaint that the suit property was owned by one Barley family, which was of British origin. The suit property was inherited by Arthur Robert Mitchell, who executed Power of Attorney in favour of Plaintiff No.1. Plaintiff No.1 claims possession in respect of the suit property. According to the Plaintiffs, after death of Arthur Robert Mitchell, the suit property was inherited by his wife- Nahiya and his son-Parsy. Plaintiffs claim that the suit property and other properties are gifted to Plaintiff No.1 on 7 November 2014. However, Plaintiffs are in possession of the suit property for over 50 years.

5) According to the Plaintiffs, Defendant's father Kacharu Gaikwad was in service at Igatpuri Nagar Parishad and he was appointed as watchman to look after the suit property and other properties by the Plaintiffs. That Kacharu Gaikwad was allowed to reside in one out of the five outhouses of the bunglow. That Plaintiff

No.1 used to pay him salary on behalf of the owners. Kacharu Gaikwad passed away in 1999. It is Plaintiffs' case that the Defendant is a Government servant and employed in the services of Railways at Kalyan and was residing at Trimurti Chowk, CIDCO, Nashik. He requested Plaintiff No.1 to permit him to reside in the outhouse of the suit property and promised to look after the suit property. Plaintiff No.1 appointed the Defendant on 24 February 2006 as watchman and permitted him to reside in one of the outhouses of the bunglow. Accordingly, Defendant started residing in the outhouse of the suit property in capacity as watchman.

6) Plaintiffs applied to Igatpuri Nagar Parishad for carrying out repairs of the bungalow. That in 2011, the Defendant carried out unauthorised construction in the suit property, which led to filing of police complaint on 18 April 2011 by the Plaintiffs. Plaintiffs commenced repairs in the suit property in 2012 and the repair work was further carried out in May 2012 onwards. That till 13 February 2016, the repair work in the bungalow was going on. That on 13 February 2016, the workers locked the bungalow after finishing the work in the evening. However, the Defendant broke open the lock of the bungalow on 14 February 2016 and committed trespass into the bungalow and occupied the same. Daughter of Plaintiff No.1 approached police station on the same day. According to the Plaintiffs the Defendant also committed theft of the material and equipment of the workers, which led to filing of police complaint on 22 February 2016. Plaintiff No.1 was aged 96 years at that time and approached police station on 26 February 2016 in an ambulance.

7) This is how Plaintiffs claimed that they were dispossessed on 14 February 2016 by the Defendant. Plaintiffs instituted Special Civil Suit No.218 of 2016 in the Court of Civil Judge, Senior Division, Nashik on 9 February 2021. Defendant appeared in the suit and filed written statement and claimed that he and his family have been resident of the bunglow for a long time and denied the story of Plaintiff's possession or of dispossession on 14 February 2016. During pendency of the Suit, Plaintiff No.1 passed away and his legal heirs were brought on record. The Defendant appeared in the Suit and filed written statement. In the meantime, the Defendant filed Special Civil Suit No.157 of 2017 challenging the Gift Deed executed in favour of the Plaintiffs.

8) The Trial Court framed issues in Special Civil Suit No.218 of 2016. Parties led evidence in support of their respective cases. Plaintiffs examined *inter alia* Plaintiff No.2 as witness No.1, Mr. Somnath Kashinath Shirsath(carpenter) as witness No.2, Mr. Shivaji Dhanaraj Beldar (Mason) as witness No.3, Mr. Sayyed Jafarali Kamarali as Witness No.4 and Mr. Gajanan Nivrutti Somwanshi as witness No.5. Plaintiffs also relied on several documents. The Defendant examined himself in addition to other witnesses and also relied on several documents.

9) After considering the documentary and oral evidence on record, the Trial Court proceeded to decree the Suit on 21 May 2022 directing the Defendant to restore the possession of the suit property to the Plaintiffs. Judgment and order dated 21 May 2022 is the subject matter of challenge in the present Petition. By order dated 18 July 2023 this Court recorded a statement made on behalf of the Respondents

that execution proceedings will not be proceeded till disposal of the Civil Revision Application and the Civil Revision Application is directed to be listed for final disposal at admission stage. The Revision Application is called out for hearing and disposal.

10) Mr. Jaibhave, the learned counsel appearing for the Applicant-Defendant submits that the Trial Court has erred in decreeing the Suit filed by the Plaintiffs. That the Defendant and his father has been admittedly possessing the suit property for over 50 years. That Plaint itself contains specific admission of induction of Defendant's father in the suit property and thereafter of the Defendant. That Defendant and his family are resident of the bungalow for the last several decades and in such circumstances, their ouster could not have been directed in a Suit filed under Section 6 of the Specific Relief Act. Relying on provisions of Section 6 of the Specific Relief Act, Mr. Jaibhave would submit that the first essential ingredient of Section 6 of the Specific Relief Act of Plaintiffs being in settled possession of the suit property is not established in the present case. That the moment Defendant's residence in the suit property is admitted in the Plaint, Suit ought to have been dismissed.

11) Mr. Jaibhave further submits that the Plaintiffs came with a imaginary story of being dispossessed from the suit property on 14 February 2016. That when the Defendant was in continuous and uninterrupted possession of the suit property for several decades, there was no reason for him to dispossess the Plaintiffs on 14 February 2016. Mr. Jaibhave submits that the Plaintiffs claim rights in respect of the suit property on the basis of Gift Deed dated 7 November 2014. He

submits that the Gift Deed specifically records that the possession of the suit property was handed over to the Plaintiffs simultaneously with the execution of the Gift Deed. That the Gift Deed belies the theory of the Plaintiffs that they are in possession since the year 1958. He further submits that the Defendant has challenged the Gift Deed by filing Special Civil Suit No.157 of 2017.

12) Mr. Jaibhave further submits that the entire objective behind Section 6 of the Specific Relief Act is frustrated since the enquiry is enlarged by the Trial Court and relief of recovery of possession is granted in favour of the Plaintiffs. He submits that there is voluminous documentary evidence in the form of ration card, birth certificate of children, electricity bills, tax receipts, etc. in the name of the Defendant showing him as the possessor of the suit property. That no steps were taken by the Plaintiffs to correct the entry of being '*Bhogavatadar*' in the assessment records or for cancellation of MSEB connection issued in the name of the Defendant. He would therefore pray for setting aside the impugned judgment and the decree.

13) *Per contra*, Mr. Sathaye, the learned counsel appearing for the Respondents-Plaintiffs opposes the Revision Application contending that the Trial Court has conducted an indepth enquiry into the three aspects of (i) Plaintiffs' possession, (ii) act of dispossession by the Defendant and (iii) date of dispossession. That findings of fact are recorded by the Trial Court, which cannot be interfered in revisional jurisdiction under Section 115 of the Code. The Trial Court has acted within the bounds of its jurisdiction and has exercised the jurisdiction strictly in accordance with law and that there is no illegality or material

irregularity in exercise of jurisdiction. That therefore there is no warrant for interference in the impugned judgment and order in exercise of revisional jurisdiction by this Court. In support of his contention of limited scope of enquiry in Section 6 Suit, he relies on judgments of the Apex Court in ***I.T.C. Limited V/s. Adarsh Coop. Housing Soc. Ltd.***[1] and ***Sanjay Kumar Pandey V/s. Gulbahar Sheikh***[2]***.***

14) Mr. Sathaye would further submit that the Defendant and his father were permitted to reside in capacity as watchman in one of the five outhouses. That occupation of insignificant portion of the suit property (outhouses) in the capacity as watchman does not elevate Defendant to the position of settled possessor, that too of the entire bunglow. He relies on judgment of the Apex Court in ***Behram Tejani and others V/s. Azeem Jagani***[3] in support of his contention that mere permissive use as a gratuitous licensee does not mean possession of the premises. He also relies on judgment of this Court in ***Ashapura Options Private Limited V/s. Ashapura Developers and Ors.***[4] in support of his contention that occupation of the premises by caretaker or servant does not mean possession of the premises for the purpose of Section 6 of the Specific Relief Act.

15) Mr. Sathaye would further submit that Plaintiffs led evidence of independent witnesses including the carpenters and mason to prove the fact that they were executing the work of repairs of suit property (bungalow) at the instance of the Plaintiffs and that the act of

1 2013 (10) SCC 169
2 2004 AIR SC 3354
3 2017 (2) SCC 759
4 Interim Application (L) No.14261 of 2025, decided on 16 October 2025.

dispossession occurred on 14 February 2016. He submits that since findings are well supported by evidence on record, no interference is warranted in the impugned order in exercise of revisionary jurisdiction by this Court.

16) Rival contentions of the parties now fall for my consideration.

17) Plaintiffs filed the Suit under Section 6 of the Specific Relief Act for restoration of the possession of the suit property from the Defendant. They complained of dispossession by the Defendant on 14 February 2016. Since Plaintiffs filed Suit under Section 6 of the Specific Relief Act, only a summary enquiry was required to be conducted as opposed to an indepth enquiry in a normal Suit. Section 6 of the Specific Relief Act provides thus:

> **6. Suit by person dispossessed of immovable property.—**
> (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.
>
> (2) No suit under this section shall be brought—
> (a) after the expiry of six months from the date of dispossession; or
> (b) against the Government.
>
> (3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.
>
> (4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

18) Section 6 thus provides for both special and summary remedy to protect a possessor of immovable property from being dispossessed without his consent or without following due process of law. It is a speedy remedy aimed at discouraging dispossession without following due process of law. The remedy under Section 6 of the Specific Relief Act thus partakes the character of special remedy on account of the factors of (i) specification of different period of limitation than the one prescribed under the Limitation Act, 1963. (ii) impermissibility to file appeal or review against decree for restoration of possession and (iii) non-applicability of principles of *res judicata* enabling the parties to file separate Suit for recovery of possession lost to a decree passed under Section 6 of the Specific Relief Act.

19) Since remedy under Section 6 of the Specific Relief Act is a special and speedy remedy, limited enquiry that needs to be conducted is about (i) possession of Plaintiff on the date of dispossession (ii) act of dispossession and (iii) of dispossession taking place within six months of filing of the Suit. The limited scope of enquiry in Section 6 Suit has been outlined by the Apex Court in the judgment in ***I.T.C. Limited*** (supra), which also take into consideration the ratio of the judgment in ***Sanjay Kumar Pandey*** (supra). In paragraphs 9 and 10 of the judgment in ***I.T.C. Limited,*** the Apex Court has held as under:

> 9. Section 6 of the Specific Relief Act, 1963 under which provision of law the suit in question was filed by the respondent-plaintiff is in pari materia with Section 9 of the 1877 Act. A bare reading of the provisions contained in Section 6 of the 1963 Act would go to show that a person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him

recover such possession by filing a suit. In such a suit, the entitlement of the plaintiff to recover possession of property from which he claims to have been illegally dispossessed has to be adjudicated independently of the question of title that may be set up by the defendant in such a suit. In fact, in a suit under Section 6, the only question that has to be determined by the Court is: whether the plaintiff was in possession of the disputed property and he had been illegally dispossessed therefrom on any date within six months prior to the filing of the suit? This is because Section 6(2) prescribes a period of six months from the date of dispossession as the outer limit for filing of a suit. As the question of possession and illegal dispossession therefrom is the only issue germane to a suit under Section 6, a proceeding thereunder, naturally, would partake the character of a summary proceeding against which the remedy by way of appeal or review has been specifically excluded by sub-section (3) of Section 6. Sub-section (4) also makes it clear that an unsuccessful litigant in a suit under Section 6 would have the option of filing a fresh suit for recovery of possession on the basis of title, if any.

10. In fact, the above view has found expression in several pronouncements of this Court of which reference may be made to the decisions in Lallu Yeshwant Singh v. Rao Jagdish Singh [AIR 1968 SC 620] , Krishna Ram Mahale v. Shobha Venkat Rao [(1989) 4 SCC 131] and ***Sanjay Kumar Pandey v. Gulbahar Sheikh*** [(2004) 4 SCC 664] . In fact, para 4 of this Court's judgment passed in Sanjay Kumar Pandey [(2004) 4 SCC 664] may be a useful reiteration of the law in this regard. The same is, therefore, extracted hereinbelow: (SCC p. 665)

> "4. A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out

> within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code."

20) Present case involves a unique circumstance where Defendant's father was initially inducted into part of the suit property and was permitted to reside in one of the outhouses in capacity as watchman. According to the Plaintiff, Defendant's father passed away in the year 1999 and at that time, Defendant used to reside at Trimurti Chowk, CIDCO, Nashik. Plaintiff claims that the Defendant entered the outhouse in the suit property on 24 February 2006 and continued to function as a watchman. Thus, presence of the Defendant in the part of the suit property since 24 February 2006 is admitted by the Plaintiffs. Plaintiffs claimed that the suit bungalow was under repairs and their workers were carrying out the repairs till 13 February 2016. According to the Plaintiffs, the Defendant entered into the suit bungalow on 14 February 2016 and started occupying whole of the bungalow.

21) In a Section 6 Suit, it is not necessary for either of the parties to prove title. Plaintiffs however claimed that a Gift Deed has been executed in their favour on 7 November 2014 by the original owners. As against this, the Defendant does not really have any claim of title in respect of the suit property. In Section 6 Suit, he need not prove title. He needs to merely dislodge Plaintiff's theory of being in possession and the allegation of dispossession without consent or without following due process of law. Plaintiffs, on the other hand, need to prove their possession in respect of the suit property as on the date of dispossession. In the present case, both the parties claimed possession of the entire bunglow. Defendant claimed that he and his

family always resided in the entire bunglow for a long time and relied on several documents to prove the residence. On the other hand, Plaintiff's case was that the Defendant and his family were permitted to occupy only one out of the five outhouses of the bunglow.

22) After assessment of the entire evidence on record, the Trial Court has accepted the version of the Plaintiffs that the possession of the entire bungalow was always with them and the Defendant, and his father were inducted only in one of the outhouses of the suit property. To prove possession, Plaintiffs examined carpenter- Somnath Kashinath Shirsath, who carried out various works in the bungalow and narrated the details of various works executed by him. He produced and proved the Agreement for execution of the work as well as encashment of cheque dated 10 July 2015 of Rs.25,000/-. He produced total 15 bills of raw material purchased for execution of the work. He also produced copy of permit for bringing the raw material to Igatpuri. This witness also narrated as to how the Defendant and his family members unauthorisedly entered the bungalow on 14 February 2016. He was subjected to cross-examination, and the Defendant was not in a position to poke holes in the evidence of the witness. Plaintiffs also examined the Mason-Mr. Shivaji Dhanaraj Beldar, who again led evidence of various works executed in the suit property. He produced and proved Agreement dated 30 April 2015. He produced railway pass for travelling to Igatpuri Railway station. He produced invoices for purchasing the material required for carrying out the work. He also gave evidence as to how the suit property (bungalow) was locked on 13 February 2016 and how the Defendant broke open the lock and entered

the bungalow on 14 February 2016. The cross-examination of the witness- Mr. Shivaji Dhanaraj Beldar is not of much assistance to the Defendant. Both the witnesses also led evidence as to how their material and equipment was lying the bunglow and how Defendant unauthorisedly removed the same. Additionally, evidence of other witnesses was also led by the Plaintiffs.

23) Thus, Plaintiffs proved by leading cogent and credible evidence that they carried out repair works at the bunglow and that the work went upto 14 February 2014. If Defendant was in possession of the entire bungalow as claimed by him, there was no need for the Plaintiffs to carry out such extensive work in the bungalow. The evidence clearly shows that massive repairs works were carried out in the bungalow by the Plaintiffs. To dislodge Plaintiff's claim of repair works, the Defendant made a feeble attempt to prove that he also carried out the repair works at the bunglow and examined Shri. Ramrao Shinde as a witness. However, in the cross-examination, the witness admitted that he did not have any evidence to prove purchase of material for execution of repair works. He could not produce shop act license, GST registration, or income tax returns to prove that he was indeed engaged in the business or profession of civil contractor. Though he produced two bills and claimed receipt of Rs.50,000/-, the payment is made in cash. As against this, the witnesses of the Plaintiffs proved payment of charges by the Plaintiffs by cheque.

24) The Trial Court believed the story of the Plaintiffs about carrying out repair works in the suit property and I am in agreement

with that finding. The factum of Plaintiffs' personnel carrying out repairs in the bunglow clearly indicates possession thereof by the Plaintiffs. The conclusions drawn by the Trial Court is well supported by evidence on record.

25) Defendant could not cite any believable reason as to why anybody would ever induct him into such a large bungalow. He could not justify his story of being in possession of the entire bungalow. He did not even know the name of the original owner. He had no idea as to how his father came into the suit property. He gave a specific admission that he does not have any evidence of the suit property being in possession. He could not name the person who handed over possession of the suit property to him. Though the issue of title is irrelevant to the suit filed under Section 6 of the Act, Plaintiffs gave some justification for their claim of possession.

26) In the present case, Defendant's presence in the suit property is in capacity as watchman/caretaker. By now, it is well settled position that mere occupation as caretaker or servant does not elevate status of occupier to that of a possessor. This court in ***Ashapura Options Private Limited*** (supra) has discussed the concept of possession in relation to Section 6 Suit. It is held in paragraphs 17 to 22 of the judgment as under:-

> 17) The two most illustrative authorities on the concept of possession are ***Rame Gowda*** (supra) and Poona Ram (supra). No doubt, the judgments arise out of dispute between parties regarding possession in suits based on title. However, the Apex Court has discussed the principles as to when a person can be said to be in possession of immovable property and what his rights are. In Rame Gowda, it is held in paras-8 and 9 as under:

8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. **If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force.** In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram v. Delhi Admn. (AIR 1968 SC 702), Puran Singh v. State of Punjab ((1975) 4 SCC 518) and Ram Rattan v. State of U.P. ((1977) 1 SCC 188). The authorities need not be multiplied. In Munshi Ram case it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over

a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh case the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. **The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser.** The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a d straitjacket. **An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession.** The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession":

> (i) that the trespasser must be in actual physical possession of the e property over a sufficiently long period;
> (ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;
> (iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner;and
> (iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.
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> (emphasis and underlining added)

18) In ***Poona Ram*** (supra) the principles are reiterated, and it is held in para-15 as under:

> 15. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently tong period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent of a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of animus possidendi. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case.

19) In ***Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*** [(2012) 5 SCC 3707] the Apex Court has summarized the principles with regard to claims of possession by a gratuitous occupier as under:

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.

20) Similarly, in ***Behram Tejani*** (supra), it is held that a person holding the premises gratuitously or in a capacity as a caretaker or servant does not acquire any right or interest in the property and even long possession of the property is of no consequence. It is held in para-14 as under:

> 14. **Thus, a person holding the premises gratuitously or in the capacity as a caretaker or a servant would not acquire any right or interest in the property and even long possession in that capacity would be of no legal consequences.** In the circumstances, the City Civil Court was right and justified in rejecting the prayer for interim injunction and that decision ought not to have been set aside by the High Court. We, therefore, allow the appeal, set aside the judgment under appeal and restore the order dated 29-4-2013 passed by the Bombay City Civil Court in Notice of Motion No. 344 of 2013 in Suit No. 408 of 2013.

21) In ***A. Shanmugam***, (supra) the Apex Court has held in paras-43.6 and 43.7 as under:

> **43.6 The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession.** The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.
>
> 43.7 The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.
>
> (emphasis added)

22) Thus, settled and effective possession of a person without title would entitle him to protect his possession even as against the true owner. The possession needs to be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. Even a trespasser can be in a settled possession and can prevent the owner from taking over possession except in accordance with procedure prescribed in law. **The possession should contain an element of animus possidendi i.e. intention to**

> **possess. Occupation of property by a caretaker, servant or agent, even for a long time, would not elevate him to the status of a possessor as such person holds possession on behalf of his principal or employer.**
>
> *(emphasis added)*

27) This Court thus took note of the judgments in ***Behram Tejani and others*** (supra) and ***A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam and others***[5] in which it is held that a person holding premises gratuitously or in capacity as caretaker or servant can never acquire interest in the property irrespective of the long occupation. The ratio of the above judgments squarely applied in the facts of the present case. Mere presence of the Defendant in one of the outhouses in capacity as caretaker does not elevate him to the status of being in settled possession even *qua* that outhouse. Once the claim of possession of entire bungalow is proved to be utterly false, admission made by the Plaintiffs about Defendant's presence in the suit property as a watchman since 2008 is of no consequence for the Defendant in view of the ratio of the judgments discussed above. All documents produced by the Defendant to show his and his family's presence in the part of the suit property (outhouse) are also inconsequential as the presence is only in the capacity as watchman/caretaker of the suit property, that too in respect of the outhouse only.

28) Defendant's reliance on the stipulation in the Gift Deed of putting Plaintiffs in possession on the date of execution of Gift Deed again does not cut any ice. Plaintiffs need not prove their possession prior to execution of Gift Deed. All that is required to be proved in a

5 (2012) 6 SCC 430

Section 6 Suit is that the Plaintiffs were in possession on the date of dispossession, which is proved by them by leading cogent and credible evidence. Defendant's challenge to the Gift Deed is of no consequence as the issue of title cannot be decided in a Suit filed under Section 6 of the Specific Relief Act. In the event the Defendant succeeds in getting the Gift Deed cancelled, he can also seek recovery of possession of the suit property in his own Suit. Mere passing of decree for restoration of possession under Section 6 of the Specific Relief Act does not preclude the Defendant from seeking recovery of possession from the Plaintiffs.

29) Considering the overall conspectus of the case, I am of the view that no interference is warranted in the impugned judgment and order, which appears, to my mind, to be unexceptionable. Revision Application is therefore liable to be rejected.

30) Civil Revision Application is accordingly **dismissed.** There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

31) After the judgment is pronounced, Mr. Jaibhave prays for time to vacate the premises. Accordingly, the Applicant is permitted time upto 30 April 2026 for vacation of the premises.

[SANDEEP V. MARNE, J.]