



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L)NO. 30022 OF 2025

IN

SUIT (L) NO. 30021 OF 2025

Gaurav Sri Kalyan

s/o Shri Jayant Kumar Gupta

....Applicant/

Original/Plaintiff

In the Matter Between

Gaurav Sri Kalyan

s/o Shri Jayant Kumar Gupta

..... Plaintiff

: *Versus* :

Ram Naresh Singh and Others

.....Defendants

Mr. Shailesh Shah, Senior Advocate with Mr. Karl Shroff, Mr. Vaibhav Mehta & Mr. Nishant Tanna i/b Vaibhav Mehta & Associates, for the Plaintiff.

Mr. Surel Shah, Senior Advocate i/b Mr. Anil Mishra with Mr. U.V. Singh, for Defendant No. 1 & for Applicant in IAL/31732/2025.

Mr. Mayur Khandeparkar with Mr. Ratnakar Singh, for Defendant No. 2.

Mr. Salil Choudhari, for Defendant No. 3.

CORAM : SANDEEP V. MARNE, J.

DATED : 13 OCTOBER 2025.

JUDGMENT:

1) Plaintiff has filed the present Interim Application seeking temporary injunction for restoration of possession of the suit premises during pendency of the Suit.

2) Plaintiff has filed the present Suit under Section 6 of the Specific Relief Act, 1963 (**the Act**) complaining of dispossession by the Defendants on 8 September 2025. Block Nos.1 and 3 on ground floor of the building named 'Laxmi Sadan' situated at Plot No.123, Sir Bhalchandra Road, 5th Lane Corner, Hindu Colony, Dadar (East), Mumbai are the '**suit premises**'.

3) Plaintiff's pleaded case in the Complaint is that he is a nephew and Class-II legal heir of Radheshyam Chhotelal Shah (**Radheshyam**) who was a tenant in respect of the suit premises. It is also Plaintiff's case that Smt. Saroj Krishnaji Salakade (**Saroj**) had 1/6th undivided share in the land and the building in which the suit premises are located. That the other co-owners had transferred/released their respective 1/6th shares in the land and the building in her favor thereby making Saroj 50% owner in respect of the land and the building. That Radheshyam took possession of Block No.1 on the ground floor from another tenant and acquired tenancy rights therein by paying consideration. That Radheshyam also acquired tenancy rights in respect of Block No.3 on the ground floor from Saroj for valid consideration. This is how Radheshyam claimed tenancy rights in respect of Block Nos.1 and 3 which are the suit premises.

4) Saroj was occupying Block No.9 and Radheshyam and his wife used to take care of her and started residing with Saroj in Block No.9 since 1993-94. That said Saroj bequeathed her entire share in the land and building in favour of Radheshyam vide Will dated 25 January 2006. That Plaintiff is the executor of the Will executed by Saroj. After the death of Saroj, Defendant No.2, with the aid of Defendant No.3

and Defendant No.1 forcibly dispossessed Radheshyam on 3 September 2006 in respect of possession of Block No.9. Radheshyam returned to the suit premises. Radheshyam had instituted S.C. Suit No. 4835/2006 under Section 6 of the Act complaining about forcible dispossession from Block No.9, which is still pending.

5) Radheshyam is the brother of Plaintiff's father. Radheshyam did not have any issue and his wife had passed away in the year 2012. Plaintiff claims to be the sole legal heir of Radheshyam. Plaintiff's father passed away in the year 1999 after which he shifted to Mumbai and started residing with Radheshyam earlier in Block No.9 as a member of his family. Plaintiff took up employment in Jordan but continued visiting Radheshyam almost every year by residing with him in Block No.9. After death of Saroj on 8 August 2006, Plaintiff had resided with Radheshyam in Block No.9. After forcible dispossession of Radheshyam from Block No. 9 in September 2006, he shifted to the suit premises and Plaintiff resided with Radheshyam in suit premises as a member of his family. That as per the wish of Radheshyam, Plaintiff had given up employment in Jordan with intention to permanently settle down in India in the year 2012 and resided with Radheshyam in the suit premises as family member. That in 2016, due to personal reasons, Plaintiff was constrained back to travel back to Jordan. That during 2016 to 2025, Plaintiff used to regularly visit Radheshyam and reside in the suit premises as a member of his family. That Plaintiff used to take care of Radheshyam. Plaintiff relies upon several documents to prove his residence in the suit premises. Radheshyam passed away on 2 July 2025. Plaintiff immediately flew down to India on 3 July 2025 from Jordan and performed last rites of

Radheshyam. At about 2.00 p.m. on 8 September 2025, Plaintiff was forcibly dispossessed from the suit premises by the Defendants. Plaintiff has narrated the account of the events that allegedly occurred on 8 September 2025 leading to his dispossession from the suit premises, to which detailed reference at this stage is unnecessary.

6) After Plaintiff's alleged forcible dispossession from the suit premises, S.C. Suit No. 2136/2025 is filed by Defendant No.1 on 10 September 2025 in City Civil Court, Mumbai seeking injunction against Plaintiff from disturbing his possession. Defendant No.1 claims to be tenant inducted in respect of the suit premises. In the above backdrop, Plaintiff has filed the present Suit on 19 September 2025 under Section 6 of the Specific Relief Act seeking following prayers :-

a) Defendants jointly and severally be directed by a Decree of this Hon'ble Court U/s.6 of the Specific Relief Act, 1963, to forthwith restore to the Plaintiff the possession of the Suit Premises, as more particularly described in Schedule I annexed hereto at Exhibit - A;

(b) Defendants jointly and severally be directed by a Decree of this Hon'ble Court to forthwith return to the Plaintiff all the movables, belongings, articles, things, documents, etc., a detailed list whereof is found in the Schedule II annexed hereto at Exhibit - W, which were lying on 08/09/2025 inside the Suit Premises;

(c) In the alternative to the prayer clause (b) hereinabove, Defendants jointly and severally be directed by a Decree of this Hon'ble Court to pay over to the Plaintiff a sum of Rs.2,31,13,000.00, being the value of the Moveables, belongings, articles, things, etc., a detailed list whereof is found in the Schedule II annexed hereto at Exhibit W, which were lying on 08/09/2025 inside the Suit Premises alongwith simple interest @ 18% p.a. thereon from the date of dispossession i.e. 08/09/2025 till payment and/or actual realization;

(d) Defendants jointly and severally be directed by a Decree of this Hon'ble Court to pay to the Plaintiff a sum of Rs. 10,00,00,000/- (Rupees Ten Crores Only) towards the damages, the detailed particulars whereof is found in the Schedule III annexed hereto and marked as

Exhibit - X along with simple interest thereon @ 15% per annum from 08/09/2025 till the actual payment and/or realisation thereof,

(e) Pending the hearing and final disposal of the present Suit, the Defendants and/or such of them as this Hon'ble Court may deem fit and proper, be directed by a Mandatory Injunction of this Hon'ble Court to remove the iron door affixed by them on the Suit Premises, as more particularly described in Schedule 1 annexed to the Plaint at Exhibit A and/or to remove all such obstruction and/or hindrance placed by them or found on the entrance thereof, and thereby to ensure that the Plaintiff has the free ingress and egress to the same,

(f) Upon the grant of the Prayer Clause (e) hereinabove, pending the hearing and final disposal of the present Suit, the Defendants, their servants, agents and/or anybody claiming through or under them be restrained by temporary Order and Injunction of this Hon'ble Court from dispossessing the Plaintiff from the Suit Premises, as more particularly described in Schedule 1 annexed to the Plaint at Exhibit - A or otherwise interfering with and/or obstructing the Plaintiff's quiet and peaceful use, occupation and possession thereof;

(g) Pending the hearing and final disposal of the present Suit, the Defendants jointly and severally be directed by an interim Order and Injunction of this Hon'ble Court to refrain from creating third party rights, title or interest and/or parting with use, occupation and possession of the Suit Premises as more particularly described in Schedule I annexed hereto at Exhibit A in any manner whatsoever and/or otherwise dealing with the same under any clandestine arrangement/agreement of whatsoever nature;

(h) Pending the hearing and final disposal of the present Suit, the Defendants jointly and severally be directed by an interim Order and Injunction of this Hon'ble Court to refrain from causing any change in the records of the providers of essential facilities, supplies, utilities, etc., including, in the records of Bombay Electric Supply & Transport i.e. BEST Authorities, Mahanagar Gas Limited, i.e. MGL., etc. as far as the holder / user thereof concerning the Suit Premises as more particularly described in Schedule I annexed hereto at Exhibit-A is concerned;

(i) Pending the hearing and final disposal of the present Suit, the Court Receiver attached to this Hon'ble Court, be appointed as the Receiver in respect of the Suit Premises, as more particularly described in Schedule I annexed to the Plaint at Exhibit - A, with all powers under the provisions of Order XL of C.P.C., 1908, including of the power to take possession of the Suit Premises from the Defendants, their servants, agents and/or from any person whosoever is found to be in possession thereof and to put the Plaintiff into the possession thereof as his Agent, without royalty;

(j) Pending the hearing and final disposal of the present Suit, any person, whom this Hon'ble Court may deem fit and proper be appointed

as the Commissioner to inspect the Suit Premises, as more particularly described in Schedule 1 annexed to the Plaint at Exhibit - A, along with the photographer/videographer and to place a detailed Report before this Hon'ble Court along with the photographs as to the actual and factual position prevalent thereat;

(k) Interim and ad-interim reliefs in terms of prayer clauses (e) to (j) hereinabove be granted;

(L) Costs of the Suit be provided for;

(m) Such other and further reliefs as the facts and circumstances of the case may require, be granted.

7) In his suit , the Plaintiff has filed the present Interim Application seeking temporary injunction in terms of the following prayers :-

(a) Pending the hearing and final disposal of the present Suit, the Defendants and/or such of them as this Hon'ble Court may deem fit and proper, be directed by a Mandatory Injunction of this Hon'ble Court to remove the iron door affixed by them on the Suit Premises, as more particularly described in Schedule 1 annexed at Exhibit A to the Plaint and/or to remove all such obstruction and/or hindrance placed by them or found on the entrance thereof, and thereby to ensure that the Plaintiff has the free ingress and egress to the same;

(b) Upon the grant of the Prayer Clause (a) hereinabove, pending the hearing and final disposal of the present Suit, the Defendants, their servants agents and/or anybody claiming through or under them be restrained by temporary Order and Injunction of this Hon'ble Court from dispossessing the Plaintiff from the Suit Premises, as more particularly described in Schedule I annexed at Exhibit A to the Plaint or otherwise interfering with and/or obstructing the Plaintiff's quiet and peaceful use, occupation and possession thereof;

(c) Pending the hearing and final disposal of the present Suit, the Defendants jointly and severally be directed by an interim Order and Injunction of this Hon'ble Court to refrain from creating third party rights, title or interest and/or parting with use, occupation and possession of the Suit Premises as more particularly described in Schedule I annexed at Exhibit A to the Plaint in any manner whatsoever and/or otherwise dealing with the same under any clandestine arrangement / agreement of whatsoever nature;

(d) Pending the hearing and final disposal of the present Suit, the Defendants jointly and severally be directed by an interim Order and Injunction of this Hon'ble Court to refrain from causing any change in the records of the providers of essential facilities, supplies, utilities, etc., including, in the records of Bombay Electric Supply & Transport i.e. BEST Authorities, Mahanagar Gas Limited, i.e. MGL, etc. as far as the holder / user thereof concerning the Suit Premises as more particularly described in Schedule I annexed at Exhibit-A to the Plaint is concerned;

(e) Pending the hearing and final disposal of the present Suit, the Court Receiver attached to this Hon'ble Court, be appointed as the Receiver in respect of the Suit Premises, as more particularly described in Schedule I annexed at Exhibit - A to the Plaint, with all powers under the provisions of Order XL of C.P.C., 1908. including of the power to take possession of the Suit Premises from the Defendants, their servants, agents and/or from any person whosoever is found to be in possession thereof and to put the Plaintiff into the possession thereof as his Agent, without royalty;

(f) Pending the hearing and final disposal of the present Suit, any person, whom this Hon'ble Court may deem fit and proper be appointed as the Commissioner to inspect the Suit Premises, as more particularly described in Schedule I annexed at Exhibit - A to the Plaint, along with the photographer/videographer and to place a detailed Report before this Hon'ble Court along with the photographs as to the actual and factual position prevalent thereat:

(g) Interim and ad-interim reliefs in terms of prayer clauses (a) to (f) hereinabove be granted;

(h) Costs of the Interim Application be provided for,

(i) Such other and further reliefs as the facts and circumstance of the case may require be granted.

8) Mr. Shailesh Shah, the learned Senior Advocate appearing for Plaintiff would submit that Plaintiff is entitled to restoration of possession of suit premises since he is forcibly dispossessed by the Defendants without following due process of law. That Plaintiff's possession of the suit premises as on 8 September 2025 is clearly proved. That the only requirement for securing an order under Section 6 of the Specific Relief Act is to prove possession of the suit premises at any point of time before 6 months of filing of the suit. That Plaintiff

has accordingly proved his possession of the suit premises and is therefore entitled to restoration of his possession. That plaintiff is a nephew of deceased Radheshyam and not a stranger. That he always resided with Radheshyam as a member of his family. That mere employment of the Plaintiff in Jordan cannot be a reason to assume that Plaintiff was not in possession of the suit premises. He would take me through various documents to prove residence of the Plaintiff with Radheshyam in the suit premises. That Plaintiff resided in the suit premises with Radheshyam during 2012 to 2016 whereafter he was required to return to Jordan due to his matrimonial disputes. That Plaintiff is entitled to claim tenancy rights in respect of the suit premises under Section 7(15) of the Maharashtra Rent Control Act, 1999.

9) Mr. Shailesh Shah would further submit that Plaintiff is also an executor in respect of will dated 25 January 2006 executed by Saroj bequeathing 50% title in the land and the building in favour of Radheshyam. That being the sole legal heir of Radheshyam, Plaintiff is actually entitled to succeed to 50% share of Saroj in the land and building. That Plaintiff has filed Testamentary Suit No. 42/2007 in his capacity as executor of Will of Saroj. That Plaintiff is thus entitled to succeed to the right, title and interest of deceased, Saroj in respect of 50% of the land and building in which suit premises are located. Plaintiff is thus not a stranger to the suit premises. He is not only relative of Radheshyam residing in the suit premises as member of his family, but also executor of Will of Saroj.

10) Mr. Shailesh Shah, would submit that it is not necessary to demonstrate settled possession for succeeding in Section 6 suit and

proof of mere possession is sufficient. In support, he would rely upon Apex Court judgment in ITC Limited Versus. Adarsh Co-operative Housing Society Limited¹. He would also rely upon judgment in Sanjay Kumar Pandey & Others Versus. Gulbahar Sheikh & Others² in support of his contention that since suit under Section 6 of the Act is of summary nature, demonstration of mere possession is sufficient. He would submit that a false case of creation of tenancy in favour of Defendant No.1 is created, who is actually a goon from Uttar Pradesh. That Plaintiff has been mishandled, threatened and unlawfully confined and assaulted on 8 September 2025 at the time of his forcible dispossession. That the entire movables of Plaintiff and deceased Radheshyam worth Rs.2.31 crores were lying inside the suit premises. He would therefore pray for appointment of Court Receiver for taking over of possession of the suit premises from the Defendants and for handing over the same to the Plaintiffs.

11) The application is opposed by Mr. Surel Shah, the learned Senior Advocate appearing for Defendant No.1. He would submit that Plaintiff is a resident of Jordan and cannot claim possession of the suit premises. That admittedly he was in Jordan at the time of death of Radheshyam. That after death of Radheshyam, no one else has put Plaintiff into possession of the suit premises. That for securing relief under Section 6 of the Act, it is necessary for the Plaintiff to prove settled possession of the suit premises. That a stray or casual possession is not sufficient for securing relief under Section 6 of the Act. In support, he would rely upon judgments of the Apex Court in

1 2013 (10) SCC 169

2 2004 (4) SCC 664

Rame Gowda Versus. M. Vardhappa Naidu And Another³ and Poona Ram Versus. Moti Ram(dead) through legal heirs,⁴ . He would also rely upon Division bench judgment of this Court in Pandhari Shamrao Kolhe Versus. Meerabai Laxman Kolhe and others⁵ He would pray for rejection of the Application.

12) Mr. Khandeparkar, the learned Counsel appearing for Defendant No.2 would also oppose the Interim Application contending that since Section 6 of the Act provides relief from 'dispossession' it is essential that the Plaintiff proves his settled possession. Somebody who is not in settled possession can neither be dispossessed nor can secure any relief under Section 6 of the Act. That in the present case, possession of the suit premises was with deceased Radheshyam upto 2 July 2025. Plaintiff needs to prove possession in his own right and he cannot rely upon possession of the premises by Radheshyam. He would submit that both for the purposes of securing a relief under Section 6 of the Act as well as for protecting possession by way of injunction, it is necessary for the Plaintiff to prove settled possession of the property. He would rely upon judgment of the Apex court in Behram Tejani & Others. Versus. Azeem Jagani ⁶ in support of his contention of need to prove settled possession. He would also rely upon judgment of this court in Sushma Sharma Versus. Vishal Sharma & Anr.⁷ He would pray for rejection of the Application.

3 2004 (1) SCC 769

4 2019 11 SCC 309

5 1980 MHLJ. 39

6 2017 (2) SCC 759

7 IA (L) No. 15013/2025 DECIDED ON 23 SEPTEMBER 2025.

13) Mr. Choudhari, the learned Counsel appearing for Defendant No.3 would adopt the submissions of Mr. Surel Shah and Mr. Khandeparkar.

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

15) Plaintiff has filed the present Suit under the provisions of Section 6 of the Act for restoration of possession of suit premises from which he is allegedly forcibly dispossessed on 8 September 2025. Section 6 of the Act provides for a special and summary remedy from dispossession where it is not necessary for possessor to prove title or even legal nature of possession. The only requirement for a suit under Section 6 of the Act is to prove that Plaintiff was in possession of immovable property and that he has been dispossessed within 6 months without following due process of law. Section 6 of the Act ensures that status prior to dispossession is restored and parties can then exercise substantive remedies either for proving title or for recovery of possession of property. Section 6 of the 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.

16) Section 6 of the Act uses the words 'dispossessed' and 'possession'. The short issue that arises for *prima-facie* determination in the present case is about the nature of possession which Section 6 of the Act seeks to protect. Whether it is necessary to prove 'settled possession' or whether mere presence of Plaintiff in the suit property prior to the alleged act of dispossession is sufficient to secure relief under Section 6 of the Act. In my view, mere proof of presence of Plaintiff in the suit property is not sufficient for securing relief under Section 6 of the Act. What needs to be proved is 'possession'. In the present case, Plaintiff is admittedly a resident of Jordan. He is mere occasional visitor to India and claims that during his yearly visits to India, he used to reside with deceased Radheshyam in the suit premises. As on the day of death of Radheshyam on 2 July 2025, Plaintiff was admittedly at Jordan. He flew down from Jordan to India for performance of last rites of Radheshyam and happened to be in the suit premises on 8 September 2025 when he was allegedly forcibly dispossessed.

17) In the facts of the present case, mere act of Plaintiff visiting the suit premises to perform last rites of Radheshyam is not sufficient to infer possession of suit premises by him. There is no denial to the position that Plaintiff intends to return to Jordan in connection with his employment and does not even have intention of residing in

the suit premises. Thus, Plaintiff neither actually resided in the suit premises nor has intention of doing so after securing possession thereof. Section 6 of the Act providing for summary remedy of restoration of possession is not aimed at granting any relief to a person like Plaintiff. The special provision is made to ensure that a person who has unlawfully lost his shelter or possession of place of business or any property, is put back in possession thereof notwithstanding any dispute relating to title or validity of possession. The fact that no remedy of appeal or review is provided for against order passed under Section 6 of the Act also makes it clear that the relief under Section 6 of the Act is essentially by way of temporary arrangement of restoration of possession till parties finally get their rival claims relating to title or possession adjudicated. The objective is thus to put a person in same position as he was prior to the act of dispossession. Whether this objective would be served if temporary injunction is granted in favour of the Plaintiff in the present case ? The answer to the question appears to be in emphatic negative. Plaintiff would secure back possession of the suit premises lock the same and return to Jordan for his employment. What Radheshyam enjoyed was actual physical possession in his capacity as tenant, whereas what Plaintiff essentially seeks to buttress is his claim to have possession passed over from Radheshyam to himself. Section 6 of the Act is not aimed at protecting mere 'claim to possession'. It is aimed at protecting 'actual possession'. What Plaintiff seeks to secure through the Suit and Interim Application is mere protection of his claim of possession. He wants to possess the suit premises either in his capacity as tenant by buttressing the claim of family relationship and residence with deceased Radheshyam. Alternatively, he wants to have possession of the suit premises towards

his claim of title in the land and the building. He did not have actual physical possession of the suit premises, which was with Radheshyam and seeks to secure the same in his capacity as alleged sole legal heir.

18) So far as possession as tenant is concerned, the same was with Radheshyam. Plaintiff was admittedly not residing with Radheshyam in the suit premises when he passed away. He was at Jordan at that point of time. The suit premises got vacated with death of deceased Radheshyam. Plaintiff appears to have secured an entry into the suit premises for the purpose of performance of last rites of deceased Radheshyam in July 2025. Such entry for the purposes of performance of last rites of the deceased tenant cannot be confused with the concept of 'possession' of the property. For possessing an immovable property, there must be an element of *animus possidendi* i.e. intention to possess involving the mental element of possession, requiring a conscious intent to control and exclude others from the property. Plaintiff cannot be said to have any intention of possessing the suit premises for residence either before or after death of Radheshyam. He admittedly resides in Jordan and will return for residence at Jordan. Upon being queried, Mr. Shailesh Shah has fairly admitted that Plaintiff may have to return to Jordan for his employment purpose. Thus there is complete absence of element of *animus possidendi* in the present case. In this regard, it would be apposite to refer to the judgment of the Apex Court in **Rame Gowda** (supra), wherein the Apex Court has dealt with the concept of possession and has held in para-8 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.

19) The judgment in *Rame Gowda* has been followed by the Apex Court in *Poona Ram* (supra) in which 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 long 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 or 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.
(emphasis added)

20) Mr. Shailesh Shah has attempted to distinguish the judgments in **Rame Gowda** and **Poona Ram** by contending that both the judgments involved dispute about title and that the observations made in the judgments cannot be used for deciding a suit under Section 6 of the Act. Though the judgments in **Rame Gowda** and **Poona Ram** may involve dispute relating to title, both judgments deal with the concept of 'possession'. The judgments deal with requirement to prove possession by plaintiffs seeking temporary injunction to protect his possession. In my view, the test of proving possession cannot be different for a Plaintiff seeking injunction against defendant to protect possession and Plaintiff who is already dispossessed and seeks restoration of possession. For both suits, it is necessary to prove settled possession. A person who happens to be present in the property or who is in casual occupation cannot claim protection in respect of possessory rights. The settled possession must be effective, undisturbed and to the knowledge of the owner. In the present case, there is not even a single factor to infer that Plaintiff was in settled possession of the suit premises for protecting his alleged possessory right. He has arrived in the suit premises for the specific purpose of performance of last rites of deceased Radheshyam. The Plaint contains a specific admission that the Plaintiff flew down from Jordan to attend the funeral of deceased Radheshyam. If the contention of the Plaintiff is to be accepted, every person who visited suit premises to pay last rites to the deceased Radheshyam, would then claim possession of suit premises in absence of any Class-I legal heir of deceased Radheshyam. Apart from the fact

that Plaintiff claims to be the real nephew of Radheshyam, I do not see much difference between Plaintiff and other visitors visiting the suit premises attending funeral of deceased Radheshyam so far as issue of possession of suit premises is concerned.

21) The contention of Mr. Shailesh Shah that it is not necessary to prove settled possession and that proof of possession even for some time at the time of dispossession is sufficient, cannot be accepted. If this contention is accepted, a person entering the suit property one day prior to the act of dispossession would be entitled to claim relief under Section 6 of the Act. There is a difference between the concept of 'possession' and 'mere presence in the property'. It is therefore necessary that the act of possession must be something more than mere casual occupation or presence in the property. This is a reason why Courts have insisted upon requirement to prove settled possession. Therefore, reliance by Mr. Shailesh Shah on judgments of the Apex Court in *ITC Limited* (supra) and *Sanjay Kumar Pandey* (supra) which mere discuss the scope of enquiry under Section 6 of the Act, does not provide any assistance for deciding the issue at hand.

22) In *Behram Tejani* (supra), the Apex Court has dealt with claim of possession by a relative upon death of the original possessor. In case before the Apex Court, Plaintiff's grandmother was a mere gratuitous licensee permitted to occupy the premises and Plaintiff was a relative staying with the gratuitous licensee. The Apex Court accordingly held in para-11 to 14 as under :-

11. Having gone through the record, the submission of the Appellants that the grand-mother of the Respondent though did not have any right qua the premises was permitted to occupy purely out of love and affection is not without merit. The status of the grand-mother is thus of a gratuitous licensee and that of the Respondent is purely of a relative staying with such gratuitous licensee.

12. Rame Gowda (supra) was a case in which two adjoining owners were claiming independent right of ownership in respect of a strip of land in between their holdings. That piece of land was in possession of the Plaintiff and as such while dealing with the controversy, this Court held that a person in peaceful possession is entitled to retain his possession. However, while dealing with the concept of "settled possession" it was observed in paragraph 9 as under:

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 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.

13. The matter was further elaborated in subsequent decision of this Court in Maria Margarida (Supra) as under:

97. Principles of law which emerge in this case are crystallized 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 license 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.

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 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 29.04.2013 passed by the Bombay City Civil Court in Notice of Motion No. 344 of 2013 in Suit No. 408 of 2013.

23) In *Sushma Sharma*, this court has discussed the requirement of being in settled possession for claiming a relief in a suit filed under Section 6 of the Act. This Court held in para-26 and 27 as under:

26. Also what is important for Suit filed under Section 6 of the Specific Relief Act is settled possession of Plaintiff. There is absolutely no document on record from which it can be inferred that Defendants vacated Flat No.14A after dismissal of Suit (L) No.882 of 2015 or that Plaintiff was put in physical possession thereof. In fact, the plaint is silent as to how Plaintiff came in possession of Flat No.14A after passing of order dated 20 October 2015. By that order, Plaintiff was put in possession only of Flat No.14B and Defendants were put in possession of Flat No.14A. It is therefore necessary for the Plaintiff to show some document by which she was put in physical possession of Flat No.14A.

27. I am therefore unable to prima facie hold that Plaintiff was in settled physical possession of Flat No.14A in May 2025 when she was allegedly dispossessed. The object of Section 6 of the Specific Relief Act is to discourage people from taking law into their own hands for dispossessing a person who is in physical possession of immovable property. Possession of immovable property is sine qua non for maintaining a suit under Section 6 of the Specific Relief Act. There is nothing on record to indicate Plaintiff's possession of Flat No.14A. Parties were put in possession of Flat Nos.14A and 14B by a judicial order and therefore it became incumbent upon Plaintiff to demonstrate as to how Defendants got dispossessed in respect of Flat No.14A or how she came in physical possession thereof.

24) Considering the overall conspectus of the case, I am of the view that Plaintiff has thoroughly failed to prove *prima facie* case of being in settled possession of the suit premises as on the date of alleged dispossession. He is a permanent resident of Jordan. He has neither resided continuously or permanently in the suit premises nor has any intention of doing so. Restoring his alleged occupation of suit premises would merely result in Plaintiff locking the suit premises and returning to Jordan. Relief under Section 6 of the Act cannot *prima facie* be granted in favour of Plaintiff who never had the intention of possessing the suit premises. In absence of element of *animus possidendi*, Plaintiff's settled possession of the suit premises is *prima facie* not established. Plaintiff would also not suffer any irreparable loss if temporary injunction is refused as he is otherwise not a resident of the suit premises. He will not lose his shelter on account of non-restoration of possession during pendency of the suit. The balance of convenience is also heavily tilted against the Plaintiff. If Plaintiff claims tenancy right in the suit premises, he can file a declaratory suit in Court of Small Causes and secure appropriate relief for restoration of possession of the suit premises. If on the other hand, Plaintiff claims ownership in respect of the suit premises, he can institute a suit for recovery of possession based on title. In both his capacities as alleged tenant or owner, he will have to 'claim' possession of suit premises, which was with Radheshyam. Thus, there are ample remedies available to the Plaintiff to seek possession of the suit premises and no loss or prejudice would be caused to him if he is not immediately put in occupation of the suit premises.

25) Plaintiff has thus failed to make out a case for grant of temporary injunction in his favour. The Interim Application is accordingly **rejected**.

[SANDEEP V. MARNE, J.]