

**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE,
DWARKA**

RCS/63/2025

Order below Exh.13

(1) The present application has been filed by the defendants under O.7, R.11(a) (d) of the CPC for rejection of plaint.

(2) I have considered the arguments advanced by Ld.Advocates for the parties and perused the plaint and the documents annexed with the plaint.

(3) Ld. Advocate for the defendants has mainly argued that the plaintiff has suppressed material document showing possession of the defendant of the suit land and though the copy of plaint of RCS/17/2006 (Mark.3/7) is produced, the documents revealing possession of the defendant have not been brought on record. It is argued that material facts are to be stated and if the documents of defendant, Mark.19/19 and 19/23 are looked into, they bring out the actual position of the plaintiff. It is emphasised that in Para-6 of the plaint of RCS/17/2006, it is clearly mentioned that by issuance of notice dated 03/12/2001, the defendant in that case has cautioned to hand over possession of the property by terming it as benami property. There is nowhere admission on the part of the defendant regarding possession of the plaintiff of the suit land. It is submitted that the defendants are in possession of the suit

land. The Court Commissioner's report cannot be read to determine possession of the parties. The observation made in the order below temporary injunction application cannot be the basis for accrual of cause of action to the plaintiff. The plaintiff has not produced those documents, Exh.147 and Exh.148. Self declaration of possession would not make out possession in favour of a party. It is argued that the plaintiff has not joined other trustees as parties. The present suit, as per the plaint averments and heading of the plaint is for restoration of possession, declaration and perpetual injunction. The oral submission as to the suit merely for restoration of possession alone does not match with either the form or contents of the plaint. The plaintiff cannot club other reliefs along with the relief of restoration of possession. It is argued that the suit is not maintainable for want of permission of the Charity Commissioner. It is submitted that the suit has to be filed by all the Trustees. There is no document empowering the present trustee to file the present litigation. No co-trustees have been joined as parties. Neither the Trust Deed nor PTR is produced. There is defect of locus of the present plaintiff to file this suit. It is further submitted that the description of suit property is not given anywhere. It is further submitted by Ld. Advocate for the defendants that the plaintiff has nothing to show possession of the suit land. The suit is not filed for title or cancellation of sale deed. It is submitted that the present suit is also vexatious and meritless. Therefore, the plaint is required to be rejected on the above grounds.

(4) The defendants have relied upon the following decisions and observations of the Hon'ble Supreme Court and Hon'ble High Court.

(4.1) *Bhargavi Construction & Anr. vs. Kothakapu Muthyam Reddy & Ors.* [(2018) 13 SCC 480] :

The expression 'law' included in Order 7, Rule 11(d) of the CPC includes the law of declared by the Hon'ble Supreme Court.

(4.2) *T.Arivandandam vs. TV Satyapal* [(1977) 4 SCC 467]

(4.3) *Rajhans Infrancon (India) Pvt. Ltd. vs. Santosh Rameshbhai Rathod* [2019: GUJHC: 59360]

(4.4) *K.Akbar Ali vs. K.Umar Khan & Ors.* [(2021) 14 SCC 51]

(4.5) *J.P.Srivastava & Sons (P) Ltd. & Ors. vs. Gwalior Sugar Co. Ltd. & Ors.* [(2005) 1 SCC 172]

"Therefore although as a rule, trustees must execute their duties of their office jointly, this general principle is subject to the following exceptions when one trustee may act for all (1) where the Trust Deed allows the trusts to be executed by one or more or by majority of trustees (2) where there is express sanction or approval of the act by the co-trustees; (3) where the delegation of power is necessary; (4) where the beneficiaries competent to

contract consent to the delegation; (5) where the delegation to a co-trustee is in the regular course of the business; (6) where the co-trustee merely gives effect to a decision taken by the trustees jointly.”

(4.6) *Vaneeta Khanna & Anr. vs. Rajeev Gupta & Ors.* [2008 SC Online Del 122]

(4.7) *Ravinder Chaudhary vs. Kishan Kumar Pauchauri & Ors.* [2018 SCC Online Del 9631]

(4.8) *Atmaram Ranchhodbhai vs. Gulamhusein Gulam Mohiyaddin & Anr.* [1972 SCC Online Guj 10]

“11. We are, therefore, of the view that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. All co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to join them as plaintiffs, they must be impleaded as defendants so that all co-trustees are before the Court.”

(5) On the other hand, it is argued by Ld. Advocate for the plaintiff that the plaintiff has given pursis, Exh.148 in RCS/17/2006 and declared that he is in occupation of the suit property. It is also observed in the order below Exh.5 in RCS/17/2006 that the defendant has failed to establish his possession in the report of the Court Commissioner. Further, the said order passed below Exh.5 has not been challenged. The plaintiff is in possession of suit land since 2006. The bar of Section 50 and Section 51 of the Gujarat Public Trusts Act is not attracted for the filing of this suit against third party. It is further submitted that whether the possession is lawful or not is to be decided at the trial. It is further added that the resolution of the Trust can also be passed later. It is further submitted that only the plaint averments are material. It is further submitted that this application is given to delay the proceedings and the same is required to be rejected.

(6) The plaintiff has relied upon the following decisions and observations of the Hon'ble Supreme Court and Hon'ble High Court.

(6.1) *Mayar (HK) Ltd. & Ors. vs. Owners & Parties, Vessel M.V.Fortune Express & Ors. [(2006)3 SCC 100]*

“From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for

rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

(6.2) *Liverpool & London S.P. & I Association Ltd. vs. M.V.Sea Success I and Anr.* [(2004)9 SCC 512]

“It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. The approach adopted by the High Court, in this behalf, in our opinion, is not correct.”

“In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown.”

(6.3) *D.Ramchandran vs. R.V.Janakiraman & Ors.* [(1999) 3 SCC 267]

(6.4) *Shri Hari Ashram (through its Trustees) vs. Vijay Jayantilal Patel & Anr.* [2025:BHC-OS:17757]:

“35. I am therefore of the view that for filing the present suit by trustees of the Trust, for recovery of possession of Trust property from defendants, written consent of Charity Commissioner under Sections 50 and 51 of the BPT Act or MPT Act is not necessary. The plaint in the suit therefore cannot be rejected on account of failure to seek such written consent.”

(6.5) *Krishna Ram Mahale(dead) by his LRs. vs. Shobha Venkat Rao [Laws(SC)-1989-8-7]*

(6.6) *Puran Singh & Ors. vs. The State of Punjab [1975 AIR (SC) 1974]*

(6.7) *Rame Gowda(D) by LRs. vs. M.Varadappa Naidu (D) by LRs. & Anr. [AIR 2004 SC 4609]*

(6.8) *Shamji Premaji Kasarani vs. State of Gujarat [SCA/401/2017]*

(6.9) *Karam Singh vs. Amarjit Sindh & Ors. [2025 INSC 1238]*

ANALYSIS

(7) Trust Requirements

(7.1) The present suit has been filed by the plaintiff Hemaben Virendrakuma Sharma as a Trustee on behalf of the Trust

registered as *Sanatan Seva Mandal*. It is averred that the suit land belongs to the Trust and the defendants have illegally dispossessed them of the suit land on 26/09/2025.

(7.2) It is argued by Ld.Advocate for the defendants that the suit has been filed without obtaining permission of the Charity Commissioner, as required under Section 50 and Section 51 of the Gujarat Public Trusts Act and therefore the same is barred by law.

(7.3) The plaintiff has relied upon the decision of the Hon'ble Bombay High Court in the judgement dated 03/10/2025 in IA/4436/2025 in Suit No.13/2025 in the case of *Shri Hari Ashram (though its Trustees) vs. Vijay Jayantilal Patel & Anr.*, holding that,

“29. The conspectus of above discussion is that trustees in their capacity as natural legal owners of Trust property do not require permission of Charity Commissioner for institution of proceedings for recovery of possession of Trust property from a trespasser.”

(7.4) However, on perusal of plaint, there appear no pleadings to the effect that the defendants are trespassers.

(7.5) It is further contention of the defendants that the present suit has been filed without passing any resolution empowering the present Trustee. It is submitted that the co-trustees have not been joined as parties. Neither the Trust Deed nor PTR is produced. As such, there is defect of locus of the present plaintiff to file this suit.

(7.6) As regards non-impleadment of other co-trustees and absence of legally valid authority of the plaintiff to file the present suit on behalf of the Trust, the defendants have argued that there is defect of locus of the present plaintiff to file this suit by relying upon the Full Bench decision of the Hon'ble Gujarat High Court in the case of *Atmaram Rachhodbhai vs Gulamhusein Gulam Mohiyaddin and Anr.* [1972 SCC OnLine Guj 10] laying down the following ratio :

“11. We are, therefore, of the view that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. **All co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to join**

them as plaintiffs, they must be impleaded as defendants so that all co-trustees are before the Court.”

(7.7) As regards rejection of the plaint for invalidity of cause of action on account of contravention of statutory law or case law, it is held by the Hon’ble Gujarat High Court in the case of *Chandrakant Kantilal Jhaveri vs. Madhuriben Gautambhai* [2010(0) AIJEL - HC 224147] as under:

“6. The aforesaid shows that if it is found that the plaint does not disclose the cause of action, the Court has no option but to reject the plaint. But for deciding such aspects of cause of action, the Court should take into consideration the averments made in the plaint for the purpose of deciding the question as to whether the averment made in the plaint discloses the cause of action or not and while doing so, it cannot be said that the Court is precluded from applying the statutory provisions or case law to the averments made in the plaint. If the assertion made in the plaint is **contrary to the statutory law or case law, it cannot be considered as the valid cause of action.**”

(7.8) As such, non-impleadment by the plaintiff, of all the co-trustees as parties to the suit in the absence of legally valid authority executed by the co-trustees, while filing the suit, the suit can be said to be in violation of the law laid down by the

Hon'ble High Court in the case of *Atmaram Rachhodbhai(supra)* and thereby rendering the plaint liable to be rejected.

(8) **Possession**

(8.1) It is settled that mere possession howsoever long is not enough to sustain the plea of adverse possession. Claim of title and possession adverse to the title holder do not go together. A person who has perfected his title by way of adverse possession can file a suit for restoration of possession in case of dispossession. A person claiming decree of possession has to establish his entitlement to get such possession. It is only if the plaintiff has filed a suit under section 6 of the Specific Relief Act that the Court is required to determine two things: (1) whether the plaintiff was in possession of the property and (2) whether he has been illegally dispossessed. Further, casual act of possession does not have the effect of interrupting the possession of the rightful owner. Where the basis of relief of possession is the title of property then in such cases the relief for permanent injunction can be said to be a consequential relief and not the substantive relief. Once the dispute with respect to title is settled and it is held against the plaintiff, in that case the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. If the person who seeks to dispossess the other party has a better right in the form of ownership or entitlement to possession, the other party would not be entitled to protect and save his possession.

(8.2) It is held by the Hon'ble Supreme Court in the decision in the case of *Maria Margadia Sequeria Fernandes & Ors. vs. Erasmo Jack De Sequeria* [AIR 2012 SC 1727] that in civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question. It is further held that possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact.

(8.3) It is further held by the Hon'ble Supreme Court in the above decision that the person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession. It is further held that possession is important when there are no title documents and other relevant records before the Court, but, once the documents and records of title come before the Court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum. It is further held that in pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date

did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

(8.4) On perusal of plaint averments, it appears that they are more of concealing rather than revealing facts about possession of the suit land. The plaintiff has taken pains and cleverly avoided to disclose in the plaint with particularized pleadings regarding possession of suit land as to who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit.

(8.5) It is held by the Hon'ble Supreme Court in its decision dated 03/12/2018 in Civil Appeal No.11761 of 2018 in the case of *Masroor Ahmad Khan vs. State of Uttarakhand & Ors.* as under:

“13. It is a settled principle of law that in order to prove that the possession of any person in any immovable property is legal, it is necessary for such person to prove prima facie that **he is either the owner of such property or is in possession as a lawful tenant or is in its permissive possession with the express**

consent of its true owner. Such is not the case here."

(8.6) It is argued by the defendants that the plaintiff has pleaded in Para-2 of the plaint that the trust land is used for religious, social and educational activities and the entire land is compound walled, whereas in Para-3, it is described as open plot measuring 14818 sq.ft, and whereas in Para-5, it is described that the defendants removed cows from the premises and entered forcefully in the premises. It is therefore argued that the contradictory pleadings are result of an effort to create illusion of cause of action. Though contradictory pleadings alone may not be a ground of rejection of plaint, such pleadings on the part of the plaintiff significantly betray uncertainty and unreality regarding actual cause of action in relation to suit land.

(8.7) The plaint averments must demonstrate existence of specific 'right', 'title' or 'interest' of the plaintiff on the suit land. The averments in the plaint here do not give sufficient particulars to qualify for either settled possession (inevitable requirement for restoration of possession) or for that matter any right, title or interest in the suit land and the vague averments miserably fall short of providing valid cause of action.

(9) Defendant's documents

(9.1) It is argued by Ld.Advocate for the defendants that the plaintiff has based his suit on the foundation of Exh.148 self-serving pursis declaring possession of suit land, given in RCS/17/06 and the plaintiff has conveniently ignored and rather suppressed the notice dated 03/12/2001 referred in Para-6 of the plaint of RCS/17/06, produced at Mark.3/7 by the plaintiff herself. The notice dated 03/12/2001, produced by the present defendant, given on behalf of the present plaintiff to the predecessor of the present defendants shows demand for handing over possession of actual, vacant and peaceful possession of both the plots within seven days. It is held by the Hon'ble Supreme Court in the decision in the case of *K.Akbar Ali vs. K.Umar Khan & Ors. [(2021) 14 SCC 51]*, relied upon by the defendants, as under:

“9. Where on the face of the averments in the plaint, the claim in a suit is based on an agreement executed through a Power of Attorney holder, the Court is not debarred from looking into the Power of Attorney. It is open to the Court to read the terms of the Power of Attorney along with the plaint **in the same manner as documents appended to the plaint**, which form part of the plaint.”

(9.2) In this regard , it is also held by the Hon'ble Gujarat High Court in the decision dated 26/12/2019 in CRA/343/2019 in the case of *Rajhans Infracon (India) Pvt. Ltd. vs. Santosh*

Rameshbhai Rathod [2019: GUJHC: 59360], relied upon by the defendants, as under:

“6.1 Order 7 Rule 11 of the CPC itself is a sufficient notice to the plaintiff for non-sustenance of the plaint for the defects contemplated therein. It would, therefore, be obligatory for the plaintiff to plead the cause of action with full material particulars, documents, facts, facts in issue and the relevant facts to his knowledge, information and belief. It would be obligatory on the part of the plaintiff to explain in the pleadings that the relief claimed is properly valued or that it has been corrected within time allowed by the Court. It would also be obligatory for the plaintiff to satisfy the Court that the plaint is written upon sufficient stamp or that requisite stamp paper is supplied within the time allowed by the Court.

6.2 It would also be obligatory for the plaintiff to explain in the pleadings that the plaint does not suffer from a legal bar. It would be obligatory for the plaintiff to comprehend the relevant legal provisions and to lay a foundation of facts explaining in detail how the plaint does not suffer a legal bar. **It is settled legal position that the plaint would not be saved by clever drafting, therefore, pleading of all the facts and production of the relevant documents which may be in the knowledge and information of the plaintiff**

is an obligation cast upon it and it is not the matter of choice of the plaintiff. The Court, therefore, may be justified in comprehending such concealed facts and documents, when brought to its notice, for an order under Order 7 Rule 11 of the CPC and in such an eventuality the plaintiff cannot accuse the Court being unfair to him."

(9.3) It is also held by the Division Bench of the Hon'ble Gujarat High Court in the decision in the case of *Dhaniben D/o Morarbhai Bapubhai Rohit And W/o Parshottambhai Chhotabhai Rohit Vs. Rohit Kanubhai Morarbhai* [2024 (0) *AIJEL-HC 249324*] as under:

"6.3 Reliance placed on an order of the Honble Supreme Court in the case of Keshav Sood (supra) wherein in Para 5 the Supreme Court has observed that while rejecting a plaint the Court cannot go into the documents produced by the defendants. The observations were made by the Hon'ble Supreme Court in context of a plea by the defendant-applicant of Order VII Rule XI on the issue of res-judicata by referring to certain documents. Here, in the facts of the present case when the Trial Court found that the foundational facts themselves were not correctly stated, the Court when found that it was a case of suppression of facts the Court had to consider the documents of

the defendant on the issue of suppression made by the plaintiff of the very documents which should have been in his custody. The contention of the Counsel for the appellants cannot be accepted. When the case of the plaintiff was based on a false claim on suppression of facts which were material to the issue, **the Trial Court committed no error in relying on the documents produced by the defendants.** The documents produced by the defendants indicated that notices under Section 135D were issued and acknowledgements were produced. This belied a statement in the plaint that no notices under Section 135-D were received. The case was further exposed to suppression when signed release deeds were placed on record which struck at the plaintiffs root to further their case for partition of properties. Only when these documents were produced did the plaintiffs come forward then to change track to suggest that the signatures on the release deed was forged."

(10) Description of property

(10.1) As regards absence of description of suit property, no case is made out for rejection of plaint on this ground.

(11) Vexatiousness and Multifariousness

(11.1) It is held by the Hon'ble Supreme Court in its decision dated 12.02.2021 in Special Leave Petition (Civil) No.31844 of 2018 in the case of *K Akbar Ali vs. K Umar Khan [(2021) 14 SCC 51]*, relied upon by the defendants, as under:

“7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in *ITC v. Debts Recovery Appellate Tribunal* reported in AIR 1998 SC 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly, the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. **Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.**”

(11.2) As per the law laid down by the Hon'ble Supreme Court in its decision dated 07/09/2017 in Civil Appeal No.11345 of 2017 in the case of *Bhargavi Constructions vs Kothakapu Muthyam Reddy [(2018)13 SCC 480]*, the expression "barred by any law" occurring in clause (d) of Rule 11 of Order 7 not only includes any Act enacted by the legislature creating a “bar” but

the expression "law" includes therein "judicial decision of the Supreme Court" also.

(11.3) The document Mark. 3/3 is produced by the plaintiff in an attempt to suggest ownership, but the suit is not for establishment of benami property. The plaintiff has not given any material particular to show how the trust came to own the suit land. The present suit is not for adverse possession. The present suit is also not filed under S.6 of the Specific Relief Act reclaiming possession on the ground of illegal dispossession. There is no legal ground pleaded in the plaint entitling the plaintiff for right to sue and valid cause of action for the relief of possession. Moreover, there is no document to show possession or lawful possession of the suit land.

(11.4) The plaintiff has filed the present suit praying for:

(A) DECLARATION that

- (i) The act of the defendants of dispossession of the disputed land from the plaintiff is illegal,
- (ii) That the plaintiff is entitled to recovery of disputed land from the defendants,
- (iii) That the construction activity started by the defendants on the disputed land since 26/09/2025 is illegal,
- (iv) That the defendants have no right to otherwise sell, transfer, assign or mortgage the suit property to anybody.

(B) MANDATORY INJUNCTION to

- (i) Direct the defendants to hand over the possession of the suit land to the plaintiff.

(C) PERMANENT INJUNCTION to

- (i) Restrain the defendants from putting any construction on the disputed land.

(11.5) The present suit has been filed by the plaintiff under the heading: “સ્પેસિફિક રીલીફ એક્ટની કલમ-૩૪ તળે દાવો ડેક્લેરેશન તથા દાવાવાળી જગ્યાનો કબજો પરત મેળવવા અંગેનો”. Looking to the reliefs sought by the plaintiff for denying ownership rights of the defendants in the words that, “the defendants have no right to otherwise sell, transfer, assign or mortgage the suit property to anybody” and the averments of the plaint, even though it is argued by the plaintiff that the suit is for recovery of possession, the suit cannot obviously be termed as for restoration of possession under Section 6 of the Specific Relief Act.

(11.6) The present suit is also not for claiming adverse possession. It is also not for setting aside Sale Deed conferring title upon the defendants on the ground of benami transaction. On perusal of entire pleading, except the pleading of the self serving pursis, Exh.148 tendered by the plaintiff in RCS/17/2006, there is substantially nothing to disclose the plaintiff’s right to or entitlement for lawful possession of the disputed land, open plot admeasuring 14818 sq.ft.

(11.7) The entitlement for lawful possession which has been cleverly avoided and illusorily projected in the form of Exh.148 pursis, has been revealed by the plaintiff herself in the document (Mark.3/2) annexed with the plaint in the following terms:

“રવીન્દ્ર બ્રહ્મદેવ ચોબે કોર્ટ કમિશનને બોલાવ્યા ત્યારે બાઉન્ડરી વોલ ઉપર બ્રહ્મદેવ ચોબેના લગાવેલા તખ્તીને સાફ કરીને વાંચી તેમાં લખેલું છે સનાતન સેવા મંડળ દ્વારા ૨૮/૦૬/૧૯૮૬ આ જમીન સનાતન સેવા મંડળના અધ્યક્ષ શ્રી સ્વામી કેશવાનંદના પૈસાથી ખરીદવામાં આવેલ છે. આ જમીન સનાતન સેવા મંડળની માલિકીની છે અને સનાતન સેવા મંડળના કબ્જા અને ઉપયોગમાં છે...”

(11.8) The present suit purported by the plaintiff to be for possessory right in asserting previous possession, but it is not filed under section 6 of the Specific Relief Act. Such a suit may be filed, as per Article 64 of the Limitation Act, within 12 years of dispossession. But the primary condition for that restoration of possession is previous possession and not title. Though the plaintiff's pleadings are intended to give impression of previous possession, details are lacking as to existence of lawful or settled possession and the documents appended with the plaint, on the contrary, are in the nature of assertion of title by the plaintiff herself. Such multifariousness of reliefs render the suit non-maintainable in law. Ld. Advocate for the defendants has relief upon the decision of the Hon'ble Delhi

High Court in the case of *Vaneeta Khanna & Anr. vs. Rajeev Gupta & Ors.* [2008 SCC Online Del 122] holding as under:

“3. In view of the observations of the Supreme Court that the suit filed by the plaintiff claiming multifarious reliefs under Section 5 and 6 of the Specific Relief Act was not maintainable and the plaintiff can file an appropriate suit, the plaintiffs filed instant suit before this Court whereby plaintiffs had prayed for a decree of declaration that plaintiff No. 1 was the sole and exclusive owner of the property in question and also sought a decree of possession and decree for mesne profits and damages amounting to Rs. 3,16,000/- for wrongful usage and occupation of the property by the defendants. The plaintiffs also sought decree for permanent injunction against further sale or transfer of the property and decree for declaring the various documents as null and void which were executed by the defendants subsequent to the execution of documents in favor of the plaintiffs.”

(11.9) The suit under Section 6 of the Specific Relief Act does not require title to be looked into, while in the suit under Section 5 of the Specific Relief Act, title is the primary issue. In a Section 6 suit, the defendant cannot set up a plea of title as a defence. In Section 5, title is the core defence. If the court fee is

paid for a regular title suit, it is treated as a Section 5 suit, and the summary benefits of Section 6 are lost. Even if it is a suit for adverse possession, the title of the other side has is a pre-condition to advance the plea. In the suit for restoration of possession, the question of title is central. In a suit for restoration of possession under S.6 of the Specific Relief Act, the dispossessed person is put back into possession, irrespective of ultimate title. The key requirements for the plaintiff in Section 6 of the Specific Relief Act are the proof of actual prior possession (settled possession, not casual) and dispossession without consent and not in due course of law.

(11.10) It is held by the Hon'ble Gujarat High Court in the decision in the case of *Ramanlal Ambalal Patel vs. Hina Industries* [1993(0) AIJEL-HC 210160] as under:

“7. It may be mentioned here that Sec. 5 of the Act corresponds to Sec. 8 of the Specific Relief Act, 1877 and Sec. 6 of the Act corresponds to Sec. 9 of the Specific Relief Act, 1877 (for short "the 1877 Act"). While analysing the scheme of Secs. 8 and 9 of the 1877 Act, at page 180 of the report, the Full Bench of the Allahabad High Court said :

"The two sections give alternative remedies and are in our opinion mutually exclusive. If a suit is brought under Sec.9 for recovery of possession, no question of title can be raised or determined. The object of the section is clearly to discourage forcible dispossession

and to enable the person dispossessed to recover possession by merely proving previous possession and wrongful dispossession without proving title, but that is not his only remedy. He may, if he so chooses, bring a suit for possession on the basis of his title. But we do not think that he can combine both remedies in the same suit and that he can get a decree for possession even if he fails to prove title. Such a combination would, to say the least of it, result in anomaly and inconvenience. In a suit under Sec. 9 no question of title is to be determined, but that question may be tried in another suit instituted after the decree in that suit. If a claim for establishment of title can be combined with a claim under Sec. 9, the Court will have to grant a decree for possession on dispossession being proved, in spite of its finding that the plaintiff had no title and that title was in the defendant. It could not surely be the intention of the legislature that the question of title could be litigated in another suit which under the second paragraph of Sec. 9, the defendant would have the right to bring. In the case relied on, the claim for establishment of the plaintiff's title and for damages was dismissed, but he was granted a decree for possession. The defendant was entitled under Sec. 9 to bring a suit for establishment of his title, and in such suit the

decision in the former suit as to title would be conclusive between the parties. So that the defendant in the first suit had merely to file his plaint in order to entitle him to a decree. This would only lead to anomaly and would promote litigation. In our judgment, when a plaintiff sues for possession on the basis of title and fails to establish title, he cannot be granted a decree for possession under the first paragraph of Sec. 9 of the Specific Relief Act."

8. Here in the case before me, the opponent-plaintiff in the plaint as originally filed, while seeking a decree for specific performance of the oral agreement also sought a decree for possession of the suit property against the petitioner. The relief for possession as prayed for in the original plaint was certainly based on the title to possess the property the title flowing from the agreement under which allegedly the petitioner had agreed to transfer his tenancy rights and to hand over the possession of the property to the opponent. Such a suit would certainly fail within Sec. 5 of the Act corresponding to Sec. 8 of the 1877 Act. By the amendment in question, the opponent-plaintiff inter alia wants to pray the relief for possession not on any title flowing from the agreement, or elsewhere but de hors the agreement, on the fact of possession alone. That is a relief that the opponent wants to incorporate in the plaint on the basis of Sec. 6

of the Act corresponding to Sec. 9 of the 1877 Act. As held by the Full Bench of the Allahabad High Court, the two Sections - Secs. 8 and 9 of the 1877 Act give alternative remedies which are mutually exclusive, and the plaintiff cannot combine both the remedies in one and the same suit. The Allahabad High Court has pointed out as to what anomaly would creep in, if the plaintiff is permitted to combine both the remedies in one and the same suit I am in respectful agreement with that view.

10. Furthermore, in a suit under Sec. 6 of the Act, what the plaintiff has to prove is that within six months prior to the filing of the suit, he was in possession of the suit property, and that, without his consent, he has been dispossessed of the property by the defendant, otherwise than in due course of law. If the plaintiff proves only this, he is entitled to get the relief under Sec. 6 of the Act. In such a suit, he is not required to prove his title to possess the property, nor is the defendant in such a suit permitted to establish his title to the suit property. In such a suit, the plaintiff is not entitled to claim mesne profits or damages. In such a suit the only relief that the plaintiff can seek is for possession and nothing else. Such a suit is a summary remedy available to the plaintiff who once was in possession of the immovable property, and

who, without his consent, has been dispossessed otherwise than in due course of law, provided he initiates his action within six months from the date of dispossession. In a suit contemplated by Sec. 5 of the Act, entirely different consideration would govern. In a suit under Sec. 5 of the Act corresponding to Sec. 8 of the 1877 Act, the plaintiff, who seeks possession of the immovable property has to prove his title to get the possession of the property. In such a suit, the defendant would have entirely a different complexion of defences available to him. In a suit under Sec. 6 of the Act, the only probable defence of the defendant could be the denial of the allegation that the plaintiff was in possession of the suit property within six months preceding the filing of the suit. In a suit under Sec. 5 of the Act, which would obviously be based on some sort of title to possess the property, the defendant can conceivably raise a defence that the plaintiff has no title to be in possession of the property. Secondly, in a given case, the defendant can take up the plea of adverse possession or part performance, delay, laches, acquiescence, and so on and so forth. To put it differently, in a suit under Sec. 6 of the Act, the scope of the inquiry is very narrow. The facts required to be proved by the plaintiff would also lie in a narrow compass and the defence available to the defendant would also

lie in a narrow compass. But that would not be the case in a suit contemplated by Sec. 5 of the Act. Therefore, if the suit based on Sec. 5 of the Act is permitted to be converted even alternatively into a suit under Sec. 6 of the Act, that would certainly prejudice the defence of the petitioner. This is one more aspect of the matter, which is required to be borne in mind."

(12) In view of the facts, circumstances and the legal position discussed as above, the suit **being vexatious, not disclosing a cause of action and barred by law**, the following order is passed:

ORDER

The present application is allowed and the plaint is ordered to be rejected. No orders as to costs. Decree be drawn accordingly.

Order pronounced in the open Court today.

Date: 11/06/2026

(Jagdish.S.Prajapati)
Additional Senior Civil Judge,
Dwarka
GJ 01227

RCS/63/2025

Order below Exh.1

In view of the order passed below Exh.13, the plaint has been ordered to be rejected and as such present the suit stands disposed as dismissed. The order of decree and costs shall be as per the aforesaid order.

Order pronounced in the open Court today.

Date: 11/06/2026

(Jagdish.S.Prajapati)
Additional Senior Civil Judge,
Dwarka
GJ 01227

Self