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**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
 AHMEDABAD [RURAL], AT. MIRZAPUR, AHMEDABAD.**

Exh. 62

SPECIAL CIVIL SUIT NO. 260 OF 2017

Plaintiff : Arunaben Nareshbhai Anant

Age : 60 years

Through her power of attorney holder
Ritaben Deepakbhai Joshi

Age : 53 years
 Having address at: B-404, Saga, B/h.
 Nirma University,
 Tragad Road,
 Ahmedabad -
 382470

VERSUS

Defendant : Manishaben Manishkumar Bhatt

Age : 44 years
 Residing at : 24, Amrutbagh
 Society, Jivraj
 Park, Ahmedabad.

Subject : Suit valued at Rs.55,00,000/- under Section 6 Of
 Specific Relief Act Read With Other Relevant
 Provisions Of Law.

APPEARANCE :-

(i) Ld. Advocate for the Plaintiff : (i) Mr. S. J. Thaker.
 (ii) Ld. Advocate for the Defendant : (i) Mr. R. G. Panchal.

:: J U D G M E N T ::

The facts of the present case is as under :

- 1) The plaintiff is the owner of the property situated at 24, Amrutbagh Society, Jivraj Park, Vejalpur, Mouje : Vejalpur, Taluka : Vejalpur, District : Ahmedabad having revenue Survey No. 465 admeasuring approximately 275 Sq.yards in T.P. Scheme No. 1 (hereinafter referred to as "the suit property or "the suit premises" for the sake of convenience). The suit property belonged to plaintiff's father - Rasiklal Chimanlal Bhatt. The plaintiff has become the exclusive owner of the said premises by a Will executed on dated 29/04/2015. The suit property was bequeathed to the plaintiff by Lt. Rasiklal Chimanlal Bhatt who died on dated 13/12/2015 and after his death the present plaintiff became the exclusive owner of the suit premises and the possession of the suit premises was also with the plaintiff and the plaintiff has not handed over the possession to any third party. The defendant is the wife of plaintiff's brother and since very long time neither plaintiff nor his brother have cordial relationship with the defendant. Plaintiff is residing at London and has given power of attorney to Ritaben Joshi to look after all properties as the plaintiff is not residing in India but the possession of all suit properties was with the plaintiff. It has been further submitted by the plaintiff that the dispute between defendant and her husband was so intense that they have filed complaints against each other and the defendant had also filed application under Protection of Women Domestic Violence Act before the Ld. Principal Civil Judge & Judicial Magistrate First Class, Kheda wherein, the present plaintiff is also joined as defendant to the said application and after hearing all parties, the Hon'ble Court on dated 30/03/2013 decided that there is no domestic violence done by present plaintiff. In the said application the present defendant sought relief to permit her to reside in the suit premises as well as sought relief that possession of the

suit premises shall be given to her and after hearing all parties the Hon'ble Court has rejected all prayers stating that the defendant has no right to stay in the suit premises.

- 2) It has been further submitted by the plaintiff that the said order has not been challenged by the defendant and after the declaration of said order, present plaintiff came to know that compromise has been arrived between defendant and plaintiff's brother and they started residing in rented premises near Bopal. The defendant and her husband never resided in the suit premises after death of plaintiff's father. Thereafter, as defendant failed to get possession of the suit premises by law, she hatched a plan and according to said plan defendant along with other people on dated 11/05/2017 broke open the lock of suit premises and entered into the suit premises. On dated 14/05/2017 when the power of attorney of plaintiff went to the suit premises with great shock and surprise she came to know that the defendant has illegally broke open the lock of the suit premises and entered the suit premises dispossessing the plaintiff from the suit premises. When the power of attorney holder of the plaintiff tried to talk with the defendant, the defendant refused to leave the suit premises and threatened the power of attorney to not come near the suit premises. Thereafter, the power of attorney moved an application before the Vejalpur police station.
- 3) It has been further submitted by the plaintiff that on dated 11/05/2017 with a pre-planned conspiracy with head-strong persons and close associates, defendant entered the suit premises and dispossessed the plaintiff who was in actual and physical possession of the suit premises. The defendant has forcibly and without following due process of law took law in her hands and dispossessed the plaintiff from the suit property, therefore, being aggrieved and dissatisfied with said

act of the defendant, plaintiff has filed the present suit with prayers as follows :

- (a) The Hon'ble Court be pleased to declare that the defendant has illegally dispossessed the plaintiff from suit premises without the due process of law.
 - (b) The Hon'ble Court be pleased to restore the possession of suit premises to the plaintiff.
 - (c) The Hon'ble Court be pleased to restrain the defendant, her servants, agents and anybody claiming through the defendant from transferring, assigning, subletting, entering in the premises and from disturbing, dispossessing and creating any nuisance to the plaintiff's peaceful enjoyment of suit premises.
- 4) On issuance of summons/notice the defendant has appeared through her Ld. Advocate and submitted her written statement vide Exh. 15 against the plaint and injunction application of the plaintiff wherein, after denials it has been submitted that actually when the defendant got married and came to the suit premises since then i.e., since the year 1999 she resided in joint family and at present also residing in joint family. It has been admitted by the defendant that she is the wife of the brother of plaintiff and Court case is pending between them and therefore, she is not any third party. It has been further submitted by the defendant that she had not committed any illegal act or entered the suit premises illegally. The possession of the suit property was not of the plaintiff or her sisters and they also didn't resided in the suit property infact the father-in-law of the defendant gave the possession of the suit property to the defendant, therefore, the defendant is not illegal possessor. Further, the plaintiff and the defendant executed an oral agreement that if the

defendant will withdraw the Criminal Case No. 2977/2011 then after as per the Will plaintiff will hand over the suit premises to the defendant and believing the plaintiff, defendant withdrawn the said case. But after withdrawing the said case, the plaintiff gave power of attorney with regard to the suit premises to Ritaben and informed her to dispossess the defendant from the suit premises at any cost. Therefore, the power of attorney holder of plaintiff lodged false complaint against the defendant, against which the defendant also lodged complaint against her. The plaintiff has filed this illegal suit in collusion with the husband of the defendant viz. Manishbhai Rasiklal in order to dispossess the defendant from the suit property and with a view spoil the future of the children of the defendant and therefore, the same is required to be rejected. The present suit filed by the plaintiff is against the settled principles of law and therefore also the same is required to be rejected with costs.

5) On the basis of above pleadings of parties following issues were framed at Exh. 25.

- (i) Whether plaintiff proves that she has become lawful occupant of the suit residential house under Will of her father ?
- (ii) Whether plaintiff proves that she is dispossessed of the suit premises by defendant under coercion and high-handedness ?
- (iii) Whether defendant proves that she has right to occupy suit premises, inspite of devolution of premises to plaintiff under Will of her father (Testator) ?
- (iv) Whether plaintiff is entitled to recover possession under Section 6 of Specific Relief Act ?

(v) What order and decree ?

6) The answers to the above issues is as under :

- (i) Negative.
- (ii) Negative.
- (iii) Affirmative.
- (iv) Negative
- (v) As per final order.

7) In support of their case parties have produced following oral as well as documentary evidence.

(i) Oral evidence on behalf of Plaintiff's side :

Sr. No.	Particulars	Exh.
1	Examination-in-chief of plaintiff.	29
2	Examination-in-chief of Plaintiff's witness No. 2 viz. Arunaben Nareshbhai Anant.	46

(ii) Documentary evidence on behalf of Plaintiff's side :

Sr. No.	Particulars	Mark/ Exh.
1	Original power of attorney of plaintiff.	30
2	Original death certificate of Rasiklal.	31
3	True copy of Will of Rasiklal C. Bhatt.	32
4	Share certificate No. 27 of Amrutbaug Co.Op.Housing Society Ltd.	33
5	Certificate dated 06/11/2012 issued by Amrutbaug Co.Op.Housing Society Ltd.	34
6	Paper cutting of daily newspaper Divya Bhaskar.	35
7	Copy of police complaint, Vejalpur police station.	36
8	Certified copy of Charge-sheet No. 6/2011 (C.C. No. 2977/2011).	37

9	Original affidavit with declaration.	38
10	Original affidavit with declaration of P.M. Ojha.	39
11	Certified copy of FIR No. I-147/2017, Vejalpur Police station.	40
12	True copy of Resolution No. 2 issued by Amrutbaug Co.Op.Housing Society Ltd.	41
13	Copy of complaint being CRMA No. 51/2011 with order.	53
14	Copy of Whatsapp message.	27/20

(iii) Oral evidence on behalf of the defendant :

Sr. No.	Particulars	Exh.
1	Examination-in-chief of the defendant.	49
2	Examination-in-chief of defendant's witness viz. Jayeshkumar Ghanshyambhai Bhatt.	54

8) The Ld. Advocate for the plaintiff had submitted closing purshis vide Exh. 47 and the Ld. Advocate for the defendant had submitted closing purshis vide Exh. 55.

9) The Ld. Advocates for the plaintiff and the defendant have submitted their written arguments vide Exh. 57 & 61 respectively which is considered.

:: Appreciation of Evidence ::

Issue No. 1 :

10) As per the plaintiff's case she became owner and possessor of the suit property through Will which was executed by her father and after death of her father she became real owner and possessor of the suit premises. But

looking to the Exh. 33 which is share certificate issued by the Amrutbaug Co.Op.Housing Society Ltd., that the name of the plaintiff's father viz. Rasiklal Chimanlal Bhatt was entered in the share certificate of the suit premises on dated 15/09/2013. But before it, plaintiff's mother viz. Bhartiben Pandya was the owner of the suit premises according to this certificate. Moreover, considering cross-examination of plaintiff vide Exh. 47, where plaintiff herself viz. Arunaben had admitted that the suit property is originally belong to her mother. Her mother has not executed any Will of the suit premises. Looking to this admission it is very clear that plaintiff's father was not original owner of the suit premises, but plaintiff's mother was the original owner of the suit premises and she has not executed any Will of the suit premises, even though the said house was entered in the name of plaintiff's father in the record of Society. It means plaintiff's father has received this suit premises as legal heir of plaintiff's mother. Plaintiff's mother has not executed any Will of the suit premises therefore, every legal heir of plaintiff's mother are co-owner of the suit property. Therefore, plaintiff's father hold co-owner share of the suit premises as legal heir of his wife. Even though, he has executed Will of the entire suit premises, therefore, it is not according to law, because, every person has right to execute Will of his property, but there should be pre-condition that he / she must be owner of the such premises. Therefore, he / she has right to execute Will of said premises through Will. As per the Hindu Succession Act, legal heirs of the Bhartiben Pandya are co-owners of the suit premises therefore, plaintiff's father and plaintiff and her sisters and brother are co-owners of the suit premises after the death of Bhartiben Pandya i.e., mother of plaintiff. Therefore, plaintiff's father viz. Rasiklal was not the sole owner of the suit premises, even though, he has executed the Will of entire suit property, therefore, it cannot be considered as valid Will for entire suit premises instead of

his share according to provisions of Indian Succession Act. At this juncture, it is required to refer Section 59 of the Indian Succession Act which says that *"every person of sound mind not being a minor may dispose of his property by Will"* it means every person who has sound mind he is capable for making Will of his property. Therefore, it is a pre-condition that whatever property mentioned in the Will it is belong to the testator of the Will. But in the present case Rasiklal had hold his share in the suit premises as a legal heir of Bhartiben. Other legal heirs of Bhartiben are also co-owners of the suit premises. Therefore, Rasiklal has no right to execute the Will of entire suit premises. He is entitled to execute the Will upto the extent of his share in the suit premises. Even though he has executed the Will for entire suit property, therefore, the Will of the entire suit property executed by Rasiklal is not valid Will. Hence, plaintiff has not received ownership or title through this Will with respect to entire suit premises. There is no doubt that Rasiklal has right to execute Will of his share and plaintiff may obtain such right through this Will. The suit premises is a residential house. After death of Bhartiben, her husband Rasiklal and her five daughters and one son are survived as legal heirs of Bhartiben and all these have equal right in the suit premises because they are Class I legal heirs of Bhartiben. Therefore, Rasiklal has hold 1/7th share in the suit premises and he is entitled to execute Will of 1/7th share of the suit property in the favour of plaintiff but instead it he executed Will of entire suit property which is not valid in the eye of law. It is not possible to partition of the suit premises in 7 equal parts. Therefore, it is not possible to execute the Will up to the Rasiklal's share in the suit premises as per the wish of testator viz. Rasiklal. Therefore, contents of the entire Will cannot be enforced, hence, it is not valid Will in the eye of law. When Will is not valid in the eye of law then, plaintiff has not obtained ownership of the entire suit property through this Will. Hence, plaintiff does not become a lawful occupant

of the suit premises through this Will. Therefore, answer of Issue No. 1 is negative.

Issue No. 2 :

- 11) As per the plaintiff's case, she became owner and possessor of the suit premises according to Will after death of his father. The plaintiff's father died on dated 13/12/2015, if plaintiff would have occupied the possession of the suit premises since dated 13/12/2015 then definitely she would have paid the tax of the house to the authorities concerned. Plaintiff has neither submitted any document except will, wherein mentioned that the possession of the suit premises is hold by the plaintiff nor submitted any tax bills or receipts to prove her contention regarding her possession. As per plaint, the defendant has entered into suit premises on dated 11/05/2015 and she has dispossessed the plaintiff from the suit premises. But looking to the cross-examination of Ritaben wherein, she has admitted that she does not remember that on which date the defendant has dispossessed the plaintiff from the suit premises. She has further admitted that such date is 14, but she has not clarified the month and year of said date. This date is the crux of the suit, from which defendant has dispossessed the plaintiff from the suit property, even though, plaintiff - Ritaben does not remember the said date. As per the defendant's case, she has stated in her written statement that she has resided in the suit premises since she got married, but looking to the record and cross-examination of the defendant it is found that defendant had resided at District : Kheda during sometime and she has also resided at Bopal in rented house with her husband. Therefore, it is not true that the defendant resided in the suit premises since she got married, but looking to the cross-examination of the defendant wherein, she admitted that she has been continue residing in the suit premises since dated

11/05/2017. She had also admitted in her cross-examination that she and her children had resided at Bopal till dated 10/05/2017 and her husband had resided in the suit premises till dated 10/05/2017. It means the possession of the suit property was hold by the plaintiff's brother and not by the plaintiff herself. The defendant has entered in the suit premises on dated 11/05/2017. When the defendant had entered in the suit premises on dated 11/05/2017, on same day one person viz. Mr. Alpesh had sent a message to plaintiff's brother viz. Manish that "Your wife had entered with children" the print out of said message is submitted by the plaintiff vide Mark. 27/20. There is no doubt that plaintiff has not examined Mr. Alpesh to prove this message, but said document was submitted by the plaintiff in her support. Looking to this document it is clear that plaintiff's brother viz. Manish had knowledge through this message that defendant and her children had entered in the suit premises. Even though, plaintiff stated that when Ritaben went to the suit premises on dated 14/05/2017, she got knowledge that defendant had entered in the suit premises. It means plaintiff's brother viz. Manish already had knowledge regarding the entry of the defendant in the suit premises. Even though plaintiff has not stated about the said fact in her plaint. Therefore, plaintiff had suppressed the fact regarding the actual date of knowledge regarding entry of the defendant in the suit premises. The plaintiff has submitted the zerox copy of photographs of suit premises vide Mark. 27/17 but she had not submitted the original photographs, but nowhere it is found the date of photographs itself, therefore, it is difficult to say that suit premises was possessed by the plaintiff on dated 11/05/2017 and she had locked the door by herself.

- 12) The defendant took defense that compromise had been arrived between parties in Criminal Case No. 2977/2011 with

condition that after recording of compromise before the Court, plaintiff shall obtain probate of Will, then after the suit premises be entered in the name of the defendant and her husband. Looking to this defence and judgment in C.C. No. 2977/2011 vide Exh. 37 wherein, the defendant had made deposition in the favour of accused hence, Court has acquitted all accused persons. Looking to this order it appears that compromise had been arrived between parties. Hence, Court has acquitted the accused persons. The said defence is a preponderance probale defence, because the defendant and her in-laws have dispute since long time even though, the defendant had entered into compromise with them. Other side - the plaintiff has not provided best evidence regarding the possession hold by her. Looking to the true fact came out in the cross-examination of the defendant, it is clear that defendant's husband had resided in the suit premises till dated 10/05/2017 and the defendant had entered in the suit premises on dated 11/05/2017. In between plaintiff had not hold the possession of the suit premises. If the defendant had forcefully entered in the suit premises then the husband of the defendant would have file a suit as per Section 6 of the Specific Relief Act because at that time he was residing in the suit premises. Therefore, either husband of the defendant or any person claiming through him may by suit, recover the possession thereof. In the present case, the plaintiff has not come on behalf of her brother who was dispossessed by the defendant, as per the true facts which came out in the cross-examination of the defendant. In short plaintiff has not hold the possession of the suit premises on dated 11/05/2017, but on the contrary plaintiff's brother has hold the possession, but plaintiff choose to file this suit as a owner of the suit premises and sought relief with regard to recovery of possession of the suit premises. The said relief is not covered under Section 6 of The Specific Relief Act, because she was not dispossessed from the suit premises on dated 11/05/2017, because that

day possession was already hold by her brother. If the defendant has entered in the suit premises then plaintiff's brother or any other person on behalf of him may file a suit against the defendant. In the present suit plaintiff has not come before the Court on behalf of her brother.

- 13) Moreover, as per the discussion made in Issue No. 1, plaintiff is not the sole owner of the suit premises, other co-owners are also there, including husband of the defendant. Therefore, the defendant being wife of legal heir of Bhartiben Pandya, viz Manish bhatt has also right in the suit premises. Therefore, no consent of other co-owners is necessary regarding entry of the defendant in the suit premises because she herself has right being a family member of Lt. Bhartiben. Therefore, consent is not a necessary ingredient in the present case. Therefore, it cannot be said that the defendant had dispossessed the plaintiff by without her consent and under coercion and high-handedness, because the defendant has right in the suit premises. Therefore, answer of Issue No. 2 is negative.

Issue No. 3 :

- 14) As per the discussion made in Issue No. 1, it is very clear that plaintiff's father was not the original owner of the suit premises. As per the share certificate submitted by the plaintiff vide Exh. 33, suit premises was originally belonged to Lt. Bhartiben Pandya who is the mother of the plaintiff. Lt. Bhartiben Pandya died intestate and after the death of Lt. Bhartiben Pandya suit premises was entered in the name of Rasiklal Chimanlal Bhatt as legal heir of Bhartiben in the record of the society. Rasiklal Chimanlal Bhatt was not sole legal heir of Bhartiben but there as also other legal heirs of Lt. Bhartiben and each legal heir has equal right in the suit premises. Manish Bhatt is the one of the legal heir of Lt.

Bharitben therefore, he has also 1/7th share in the suit premises. The defendant being wife of Manish Bhatt has also share in the suit premises. Therefore, Rasiklal Chimanlal Bhatt has executed Will of the entire suit property is against the law and the said Will is not enforceable because testator was not the sole owner of the suit premises. Hence, after execution of disputed Will the defendant has right to occupy the suit premises as a legal heir of Lt. Bhartiben through her husband viz. Manish Bhatt. Hence, answer of Issue No. 3 is affirmative.

Issue No. 4 :

- 15) As per the discussion made in Issue No. 2, when the defendant entered in the suit premises on dated 11/05/2017, at that time the possession of the suit premises was hold by the husband of the defendant. The said true fact came out from the cross-examination of the defendant. Moreover, the plaintiff has not submitted any best evidence regarding her possession. If plaintiff really hold the possession of the suit premises then definitely she would have submitted the municipal tax receipts or maintenance receipts, but she failed to produced such documents. Therefore, it is not proved that she is the real possessor of the suit premises on dated 11/05/2017. On the contrary her brother hold the possession of the suit premises on said date. Hence, plaintiff's suit does not cover under Section 6 of The Specific Relief Act, therefore, she is not entitled to reliefs mentioned in her plaint. Therefore, answer of Issue No. 4 is negative and following final order is passed below Issue No. 5 in the interest of justice.

:: O R D E R ::

- 1) Plaintiff's suit is hereby disallowed.

2) Both parties are directed to bear their own costs.

3) Decree be drawn accordingly.

Signed and pronounced in the open Court today i.e., on 18th day of January, 2020.

Date : 18.01.2020

Place : Ahmedabad

[VANRAJSINH A. DHADHAL]

(UIC No.GJ00891)

Principal Senior Civil Judge
Ahmedabad (Rural) at Mirzapur.

A.V. Jani