

Om Prakash Vs. Smt. Sashi and Anr

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Court : Rajasthan Jodhpur

Decided On : Sep-21-2015

Appellant : Om Prakash

Respondent : Smt. Sashi and Anr

Judgement :

S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 1/39 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ::

JUDGMENT

:: S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash s/o Rajaram Vs. Smt.Shashi w/o Late Narendra Kumar & Anr. Date of Order ::: Monday, 21st September, 2015. PRESENT HON'BLE DR. JUSTICE VINEET KOTHARI Appearance: Mr.R.R.Nagori, Senior Advocate assisted by Mr.Alkesh Agarwal and Mr.V.L.Thanvi, for the defendant-appellant. Mr.Ashok Chhangani for the plaintiffs-respondents. <<>> REPORTABLE BY THE COURT (ORAL) :- 1. The defendant-Om Prakash has filed the present first appeal under Section 96 of the Code of Civil Procedure against the plaintiffs/decreed-holders Smt.Shashi w/o Late Shri Narendra Kumar and her son Shailendra, aggrieved by the decree of possession dated 13.12.1999 in Civil Original Suit S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 2/39 No.120/89 - Smt.Shashi & Anr. Vs. Om Prakash passed by the learned Additional District Judge No.3, Jodhpur, in respect of plot No.27 - its western side portion

measuring 60 x 45 feet situated at Bheru Vilas, near Sardar Club, Jodhpur.

2. The plaintiffs filed the suit for possession on the ground that the plot No.27 measuring 90 x 60 feet was purchased by Late Shri Narendra Kumar, the husband of the plaintiff-Smt.Shashi, and his brother Lakhpatraj through their father Pukhraj alongwith three other plots No.1, 18, 22 & 27 for a sum of Rs.4500/- way back on 30.05.1966 by registered sale deed Exhibit-1 and by Exhibit-2 relinquishment deed, the share in the said plots of land of father Pukhraj, mother Smt.Sumitra Devi and brother Lakhpatraj was relinquished in favour of the plaintiff No.1-Smt.Shashi Jain, whose husband Narendra Kumar unfortunately died after two years of their marriage at the young age of 23 years. The relinquishment deed was executed on 18.05.1987. The plaintiffs further claim that the defendant-Om Prakash was given permissive possession of the portion of the said plot No.27 as Chowkidaar/Caretaker, on which a two rooms' construction was also raised by the father Shri Pukhraj in the year 1985, but later on, upon revocation of such license or permission, when the possession of the said portion of the plot No.27 was claimed S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 3/39 from the defendant, he disputed and denied the same, and therefore, the present suit was filed in the year 1989 seeking possession.

3. The defendant on the other hand, claimed that he was not in permissive possession of the said portion of plot No.27, but had purchased plot No.27-A measuring 60 x 45 feet from one Smt.Sheila Kumari holding Power of Attorney on behalf of her two sons, namely, Lalit Singh and Himmat Singh. The said Smt.Sheila Kumari was wife of one Shri Takht Singh, and being owner under the registered sale deed executed in his favour Exhibit-A/1A dated 05.10.1983 for a sum of Rs.12,000/-, he was not liable to hand over the possession to the plaintiffs.

4. The learned trial court framed eight issues on the basis of pleadings of the parties and after taking oral as well as documentary evidence on record, including both the sale deeds in favour of the plaintiffs and defendant, decided the said issues in favour of the plaintiffs, except issue No.3 relating to one Affidavit of the defendant-Om Prakash dated 06.08.1985 admitting his possession as one of

Chowkidar given in a previous suit between the plaintiffs and father Pukhraj, namely, Civil Suit No.313/1985 - Smt.Shashi Vs. Pukhraj, which was ultimately decided by the learned trial court upon a compromise between the family members of the plaintiffs and defendant. S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 4/39 The learned trial court found that the alleged plots No.27-A and 27-B are not different plots than the plot No.27 claimed by the plaintiffs and the sale deed executed in favour of the defendant- Om Prakash on 05.10.1983 was a sham and non est document conferring no right upon him and the permissive possession of the defendant having been revoked by the plaintiffs, the defendant was bound to hand over the possession of the western portion of plot No.27 measuring 60 x 45 feet to the plaintiffs.

5. The relevant findings of the learned trial court on issues No.4 & 6 in this regard are quoted below for ready reference:-

12. 4 6 4 .6 \$ () (\$ 1 \$ \$ 2 .) .) <= .27) <= <= .27-) (\$ 1 ? .) S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 5/39 . <=) . (.1 . <= -) .) . <= . 20 ? . \$. 20 ? .) \$ 1 . F7 \$. 30 ? . (H . 50 ? . (H) \$. \$ 1 . .) . <= .27) <= (. . K) . ? . 5.10.83 < K) . 20 ? .) . K . 20 ? .) \$ 1 . . 50 ? .) . H 1)

24. Learned Judge in Moolchand Soni Vs. Virendra Kumar, (1981 RLW121 has observed as under:-

30. We have, therefore, no hesitation in holding that the decision in Mool Chand's case fails to lay-down the correct law. The decision in Suresh Kumar Sharma v. Idol Laxmanji Maharaj, (1973 RLW160 lays down the correct position of law in respect of Rule 234 and 235 of the General Rules.

. The questions referred to us, as a matter of fact have already ben adjudicated and answered by Division Bench of this Court in Ram Lal v. Bhanwari Devi, (1984 RLW605, hence no further adjudication of the issue is desirable. The reference made to this Bench hence is answered in the terms of the law laid down in the case of Ram Lal v. Bhanwari Devi (supra). Let the appeal be listed before learned

Single Bench for disposal of the same in accordance with law. Early disposal of the appeal is highly desirable as the same is pending at its preliminary stage since the year 2000. sd/- sd/- sd/- (ARUN BHANSALI),J.

(GOPAL KRISHAN VYAS),J.

(GOVIND MATHUR),J.

. S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 12/39 7. On merits of the appeal, Mr.R.R.Nagori, learned Senior Counsel appearing for the defendant-appellant raised the following submissions:- (i) That the sale in favour of the plaintiffs of the plot No.27 by Exhibit-1 sale deed dated 30.05.1966 was not proved by the plaintiffs, and even if the signatures on the sale deed can be said to have been proved, the contents of the said sale deed were not proved before the learned trial court, and therefore, in view of Section 67 of the Indian Evidence Act, 1872, the sale of plot No.27 in favour of the plaintiffs is not proved, and thus, subsequent sale of plot No.27-A in favour of the defendant-Om Prakash by Sheila Kumari could not be held to be non est and void by the learned trial court. Hence, the decree of possession under appeal deserves to be set aside. (ii) That the defendant-Om Prakash had purchased the said plot No.27-A by registered sale deed dated 05.10.1983 and he is in possession of the same as owner thereof, and it was not a case of permissive possession given by the plaintiffs or father Pukhraj to him in the year 1985 as claimed, and therefore, the decree of possession could not be given. (iii) That the Affidavit dated 06.08.1985 purportedly given by the defendant-Om Prakash in the previous Civil Suit No.313/1985 - Smt.Shashi Vs. Pukhraj filed by the plaintiff S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 13/39 Shashi against her father-in-law Pukhraj, which was an injunction suit, was not given by him and the plaintiffs failed to prove the said fact and the defendant-Om Prakash himself had raised the construction on his plot No.27-A and was living therein since 1984, and had taken power and water connections in his name on the said plot of land and the findings in favour of the defendant by the learned trial court about this Affidavit are correct and the suit therefore, deserves to be dismissed.

8. He relied upon a number of case laws in support of his contention, mainly on the submission that in the absence of proof of the contents of the document, namely, sale deed Exhibit-1 dated 30.05.1996, which has not been proved by the plaintiffs, the plaintiffs were not entitled to claim the possession and decree in their favour. The list of cases relied upon by Mr.R.R.Nagori, learned Senior Counsel appearing for the defendant-appellant is given below for ready reference:- (a) Om Prakash Berlia & Anr. Vs. Unit Trust of India & Ors., AIR 1983 BOMBAY1 (b) Ramji Dayawala & Sons (P) Ltd. Vs. Invest Import, AIR 1981 SC2085 (c) Bishwanath Rai Vs. Sachhidanand Singh, AIR 1971 SC1949 (d) Madholal Sindhu Vs. Asian Assurance Co. Ltd., AIR S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 14/39 1954 BOMBAY305(Vol.41, C.N.87). (e) Sir Mohammed Yusuf & Anr. Vs. D & Anr., AIR 1968 BOMBAY112(V55C20. (f) Prakash Cotton Mills Pvt. Ltd. Vs. Municipal Commissioner for Greater Bombay & Anr., AIR 1982 BOMBAY387 (g) Smt. Lalita James & Ors. Vs. Ajit Kumar & Ors., AIR 1991 MADHYA PRADESH15 (h) Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif & Ors., AIR 1968 SC1413 (i) S.P. Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs & Ors., AIR 1994 SC853 (j) Kanhaiyalal through LRs Vs. Nanagram through LRs, 2009(4) WLC (Raj.) 366. (k) Shobha Satyanarayan Birla Vs. Janabai Parshuram Pawar, 2004(3) CIVIL COURT CASES69(BOMBAY).

9. Per contra, Mr.Ashok Chhangani, learned counsel appearing for the respondents-plaintiffs/decreed-holders vehemently urged that the permissive possession given to the Chowkidar/Caretaker-Om Prakash was sought to be abused by setting up a false title over the portion of the suit property, namely, plot No.27 situated in a prime locality of Jodhpur and S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 15/39 the defendant had failed to prove any consideration having been given by him to Smt.Sheila Kumari of Rs.12,000/- or otherwise, for purchase of the said plot No.27-A and the said alleged contract was hit by Section 25 of the Contract Act. Mr.Ashok Chhangani also submitted that there were no plots No.27-A or 27-B, as claimed by the defendant, whereas the Sale Deed in favour of the plaintiffs alongwith Relinquishment Deed Exhibits 1 & 2 respectively clearly establish their title and legal possession right from the year 1966 and the

defendant- Om Prakash had himself admitted in his Affidavit dated 06.08.1985 Exhibits 3 & 4 given in Civil Suit No.313/1985 - Smt.Shashi Vs. Pukhraj, which ended in a compromise that he was in permissive possession through father Shri Pukhraj since the year 1985 in that plot No.27, and therefore, he cannot be permitted to resile from his own affidavit.

10. Mr.Ashok Chhangani also urged that the findings of the learned trial court on issue No.3 in this regard deserve to be reversed by this Court as the plaintiffs had well proved before the learned trial court the swearing-in of the said Affidavit by the defendant-Om Prakash in Civil Suit No.313/1985 - Smt.Shashi Vs. Pukhraj. He also relied upon the following judgments in support of his contention :- (a) Jagdish Singh Vs. Madhuri Devi, (2008) 10 SCC497 S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 16/39 (b) Smt.Narendra Kumari Vs. Smt.Shanta Kothari, 2014(3) WLC (Raj.) 789. (c) Hardevinder Singh Vs. Paramjit Singh & Ors., 2013 AIR SCW447 (d) Pusaram & Ors. Vs. Manmal & Ors., AIR1955 Rajasthan 186 (Vol. 42, C. 59 Nov.). (e) Ramdas Bansal (Dead) through LR Vs. Kharag Singh Baid & Ors., (2012) 2 SCC548 (f) Pormanani & Ors. Vs. P. Thiagarajan, 2011 AIR CC941(MAD). (g) Shyam Lal & Anr. Vs. Vijay Singh alias Bijendra Singh & Ors., AIR 2008 ALLAHABAD1 (h) Chhaju & Ors. Vs. Gian Chand & Anr., 2013 (130) AIC765(H.P., H.C.). (J) Maria Margardia Sequeira Fernandes & ors. Vs. Erasmo Jack De Sequeira - (2012) 5 SCC370 11. I have heard the learned counsels for the parties and perused the record, as well as the judgments cited at the Bar, which to the relevant extent are discussed below.

12. In the considered opinion of this Court, the present appeal of the defendant-Om Prakash deserves to be dismissed, as the defendant-Om Prakash has made a futile attempt to set S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 17/39 up a title over the portion of the plot No.27 under the guise of a sale deed in his favour purportedly executed by Smt.Sheila Kumari on 05.10.1983 as a Power of Attorney holder of her sons, namely, Lalit Singh and Himmat Singh. A bare perusal of Exhibit-1 Sale Deed executed in favour of the plaintiffs' father Shri Pukhraj on 30.05.1966, would reveal that the said sale deed was executed by Shri Takht Singh, his wife

Smt. Sheila Kumari, their major son Lalit Singh and Shri Takhat Singh in the capacity of guardian of minor son Himmat Singh. The said sale deed for four plots No.1, 18, 22 & 27 inter alia of plot No.27 measuring 90 x 60 feet gave full details of the other plots and neighbourhood and the said sale deed has never been challenged by any party. After subsequent relinquishment deed Exhibit-02 dated 18.05.1987, the rights of the other family members also came to be relinquished in favour of the plaintiff No.1-Smt. Shashi Jain wife of Late Shri Narendra Kumar. The findings of the trial court about matching of neighbourhood are absolutely correct based on the evidence before it.

13. The Affidavit Exhibit-3 dated 06.08.1985 of defendant-Om Prakash in Civil Suit No.313/1985 - Smt. Shashi Vs. Pukhraj makes an interesting reading, and therefore, the same is quoted in extenso below for ready reference:- S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt. Shashi & Anr. Order, Monday, dated 21.09.2015. 18/39 . ? . ` 0 1, ? . Civil Suit No.313/1985 - Smt. Shashi Vs. Pukhraj) ? .) : - : ? . <= 0 27, < < , ? . \$:- <= 0 27 ? . . < . < ? .) <= (? . < <= ? .) <= 0 27 < : <=) ? .) <= (H \$ sd/- \$:- S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt. Shashi & Anr. Order, Monday, dated 21.09.2015. 19/39 ? . , <= 0 27, < < , ? . . < 1 3)) ? . ? .) . . sd/- "\$ 14. As against fair and unambiguous title at earlier point of time in favour of the plaintiffs, the defendant-Om Prakash Dhobi, who was put in permissive possession as Chowkidar/Caretaker of the said plot, tried to set up his own title over the said plot or part thereof, claiming the Exhibit-A-1A Sale Deed dated 05.10.1983 for Rs.12,000/- executed by Smt. Sheila Kumari w/o Shri Takht Singh as Power of Attorney of Shri Lalit Singh and Shri Himmat Singh. Neither any such Power of Attorney was produced before the learned trial court, nor the principals Shri Lalit Singh and Shri Himmat Singh who had admittedly become major by 1983, have signed the said sale deed. From the statements of DW-1 Om Prakash himself, he utterly failed to establish giving of any consideration to Smt. Sheila Kumari. His statements are in fact riddled with inconsistencies and false statements. In the examination-in- S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt. Shashi & Anr. Order, Monday, dated 21.09.2015. 20/39 chief, he states that he is living in plot No.27-A since 1984, which he purchased from Smt. Sheila Kumari on 05.10.1983 for Rs.12,000/-. Then he constructed a boundary wall with stone pattis and two rooms, toilet and

bathroom and two kitchens thereon, which construction work went on for about three years; then he took power and water connections in his name on the said plot. But in his cross-examination, he contradicts himself by saying that he was serving in Air Force and was living in Air Force Officers' Mess Servant Quarters and in July, 1983 he made payment of the said amount to Smt. Sheila Kumari in instalments. He also admits that the stone pattis were constructed by one Shri Mahavir Kumar Mehta. He did not take any permission for construction from the then UIT or Municipal Corporation. The plot in question was vacant from 1983 to 1986. He did not know as to when he purchased the said plot from Smt. Sheila Kumari, whether she had left the civil world and had become a Sadhvi, and that, he took possession of the said plot in the year 1986 and then constructed the boundary wall thereon.

15. The relevant extracts of his cross-examination dated 24.09.1998 are quoted below for ready reference:- <= < < S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt. Shashi & Anr. Order, Monday, dated 21.09.2015. 21/39 ? . <= < H) a (? . < < ? . (? . < ? . ? . < <= .) ? . < < < ? . < ? . .) < ? . < <= < H ? . < ? . <= ? . < ? . < <= < ? . < ? . ` < <= 27 ? . < ? . . . . < <= ) <= 1 < 27 ? . ` . < <= . 27 < ? .) ` H < . \$ ` K \$ <= . 27 a , ? . < . (<) \$ - 4) ? .) <) . ? . S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt. Shashi & Anr. Order, Monday, dated 21.09.2015. 22/39 ? . . ? . ? . . <= 27 (H \$ \$ - 4 < ? . . <= 27 . < ? . (< . (. <) (. . K <) <= 27 \$ \$ m ? . < < ? .) \$? . \$ \$ \$ 1986 . ? . 1983 1986 <= < <= < ? . ? . ? . ? . \$ - 8 ? . < ? . < . . ` <= 27 a 1966 . ` (? .) a \$ - 1 < < ? .) ? . <= , <= .) < < H < H) ? . < \$ - 1 ` < ) ? . <= S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt. Shashi & Anr. Order, Monday, dated 21.09.2015. 23/39 a 1966 . M ? . < < ? . <= 27 < < ? . \$ - 1 ( . K < ? . ) a 1983 . < < < ? . < ? . < ? . ` <= 24 ? . < < < ? . <= 27 (? . < ? . < < < ? . <= 27 (? . . ` < < < ? . \$ - 1 ( H < ? . \$ - 1 ` ? . \$ - 1 ? . H ? . \$ - 1 < ? . ` . <= 27 . . < ? . < . < < ? . . < ? . < . < . . < S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt. Shashi & Anr. Order, Monday, dated 21.09.2015. 24/39 < . 1983 . ? . ` < ` . ? . < < ` . ` < ? . <) <= 1986 . n 1986 . < ? . H ? . . < ? . < < ? . < ? . < < . ? . < <= 27 \$ 1989 . <= 27 H ? . <= 27 ? . . < < < ? . < < < ? . <= 27 < M ? . 30.5.66 (M ? . < ? . M ? . \$ M ? . ? . 1989 . <= 27 ? . " 16. It is also worthwhile to notice the statements of father Shri Pukhraj, whose statements were recorded by the learned trial court on 21.02.1998. His statements are quoted in S.B. CIVIL FIRST APPEAL

NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 25/39 extenso as under for ready reference :- < ?. < ?. (1966 . < < (\$-1) < \$-1 n (. < . \$-1 K) \$-1 < F < ?. <<) \$-1 < < ((. (. < <= M ?. < ?.) (< M ?. \$) ? .) M ? .) \$. ? . <

19. Here this Court would also like to observe that the findings of the learned trial court on issue No.3 about the failure of the plaintiffs to prove the Affidavit of the defendant-Om Prakash dated 06.08.1985 are not sustainable. The father Shri Pukhraj PW-2 clearly stated before the court in his afore- extracted statement that the said Affidavit was signed by Om Prakash and was given by him in the previous Civil Suit S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 31/39 No.313/1985 - Smt.Shashi Vs. Pukhraj filed by his daughter- in-law, which was ultimately decided in view of the compromise between the parties and this statement of Shri Pukhraj not having been rebutted and also in view of the fact that the affidavit duly sworn-in before the Oath Commissioner was filed before the competent civil court and was marked as Exhibit-3 by the Court, therefore, the learned trial court has fallen into error in holding that the plaintiffs failed to prove the said Affidavit of the defendant, in which he clearly admitted that he was only living on plot No.27 as Chowkidar permitted by Shri Pukhraj. The findings on issue No.3 therefore, deserves to be reversed, and it is held that the Affidavit dated 06.08.1985 was very much given by the defendant-Om Prakash in a competent civil court admitting his capacity of permissive possession as a Chowkidar of the said plot No.27 and he cannot be permitted to resile from the same in the present suit subsequently, which was required to be filed by the plaintiffs upon its refusal to hand over the possession to them.

20. The judgments relied upon by Mr.R.R.Nagori, learned Senior Counsel appearing for the defendant-Om Prakash are of little help to him in the facts of the present case, as none of these judgments relate to the construction of a registered sale deed and there is a strong presumption of S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 32/39 correctness of the said sale deed registered way back in the year 1966. The presumption of its correctness is also available as per Section 90

of the Evidence Act, 1872, as more than 30 years had lapsed before the trial court considered the said document, while passing the decree under appeal in the year 1999, and therefore, the court was entitled to rely upon the said documents Exhibit-1 sale deed and its contents also as proved. Moreover this Court is of the opinion that at the instance of a Caretaker or person in permissive possession, who sets up a false title in his own favour, the enquiry into the chain of title of the plaintiffs gone cannot be into, as if the plaintiffs themselves were claiming the declaration of their title.

21. On the other hand, if the defendant fails to establish any semblance his own title in the property, the plaintiffs are entitled to the decree of possession.

22. Recently, the Honble Supreme Court in a very detailed and researching judgment in the case of Maria Margardia Sequeira Fernandes & ors. Vs. Erasmo Jack De Sequeria - (2012) 5 SCC370 detailing the four types of possession under property law; Easements Act, 1882, Transfer of Property Act, 1882 and Specific Relief Act, 1963, dealing with a case of a well known and respected Christian family of Goa where the permissive & free of cost possession of suit S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 33/39 premises was given by a sister to her brother as a caretaker, while the sister with her husband was out of Goa in relation to his service in Navy and which brother illegally denied her possession of her own house with title undisputed for 20 long years. The Honble Supreme Court allowing the sisters appeal with costs of Rs.50,000/- and mesne profits of Rs.1 lac per month for the residential house, held in para 32 to 36 as under:- Truth as guiding star in judicial process 32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.

33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In Mohanlal Shamji Soni v. Union of India 1991 Supp (1) SCC271 this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 34/39 simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice?. It is a well accepted and settled principle that a Court must discharge its statutory functions - whether discretionary or obligatory- according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In Ritesh Tewari and Another v. State of U.P. and Others (2010) 10 SCC677 this Court reproduced often quoted quotation which reads as under: Every trial is voyage of discovery in which truth is the quest" The quest of truth continues....., also in this case. S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 35/39 23. Deprecating false claims and defences, which are considered really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate, the Honble Supreme Court in the aforesaid judgment in para 81 and 82 observed as under:- False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in the Courts. The Supreme Court in Ramrameshwari Devi case, (2011) 8 SCC249 aptly observed that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts

have to ensure that there is no incentive or motive for uncalled for litigation. This problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate case would go a long way in controlling the tendency of introducing S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 36/39 false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.. 24. And then finally, allowing the sisters appeal as aforesaid and laying down the principles of law in para 97 to 101, the Honble Supreme Court held 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 S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 37/39 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.

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

99. In the peculiar facts and circumstances of this case, the legal representatives of the respondent are granted three months time to vacate the suit premises. They are further directed that after the expiry of the three months period, the vacant and peaceful possession of the suit property be handed over to the appellant. The usual undertaking to this effect be filed by the legal representatives of the respondent in this Court within two weeks. S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 38/39 100. The legal representatives of the respondent are also directed to pay Rs.1,00,000/- (Rupees one Lakh) per month towards the use and occupation of the premises for a period of three months. The said amount for use and occupation be given to the appellant on or before the 10th of every month. In case the legal representatives of the respondent are not willing to pay the amount for use and occupation as directed by this Court, they must hand over the possession of the premises within two weeks from the date of this judgment. Thereafter, if the legal representatives of the respondent do not hand over peaceful possession of the suit property, in that event, the appellant would be at liberty to get the possession of the premises by taking police help.

101. As a result, the appeal of the appellant is allowed. In the facts and circumstances of the case, the respondents are directed to pay a cost of Rs.50,000/- to the appellant within four weeks. (We have imposed the moderate cost in view of the fact that the original respondent has expired). Ordered accordingly.

. S.B. CIVIL FIRST APPEAL NO.646/2011 Om Prakash Vs. Smt.Shashi & Anr. Order, Monday, dated 21.09.2015. 39/39 25. Thus, the present appeal filed by the defendant is liable to be dismissed with costs.

26. Accordingly, the present appeal filed by the defendant-Om Prakash is dismissed with costs, which is determined at Rs.10,000/- to be paid by the

defendant-appellant to the plaintiffs-respondents. The defendant will also pay the arrears of mesne profits as claimed by the plaintiffs and directed by the learned trial court throughout this period and from now onwards @ Rs.5,000/- per month from the month of October, 2015, till he hands over the possession of the plot No.27 in question including the so-called Plot No.27A measuring 60'x45' to the plaintiffs within a period of six months from today. The trial court will draw the decree of possession and mesne profits accordingly immediately. If the defendant fails to hand over the possession and pay mesne profits or costs, as directed, the plaintiffs/respondents, besides seeking expeditious execution of the decree, shall be free to invoke the contempt jurisdiction of this Court. Copy of this judgment may be sent to all the parties concerned and the trial court below forthwith. (Dr. VINEET KOTHARI), J.

/skant//1(m) /

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