REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4912-4913 OF 2011
(Arising out of SLP(C) Nos. 3157-3158 of 2011)

Ramrameshwari Devi and Ors. …Appellants

Versus

Nirmala Devi and Ors. …Respondents

JUDGEMENT

Dalveer Bhandari, J.

1. Leave granted.

2. These appeals are directed against the judgment and order dated 01.09.2010 passed in Civil Miscellaneous Petition (Main) No. 1084 of 2010 and the order dated 25.10.2010 passed in Review Petition No. 429 of 2010 in Civil Miscellaneous Petition (Main) No. 1084 of 2010 by the High Court of Delhi at New Delhi.

3. The apparent discernible question which requires adjudication in this case seems to be a trivial, insignificant and small one regarding imposition of costs, but in fact, these appeals have raised several important questions of law of great importance which we propose to deal in this judgment. Looking to the importance of the matter we requested Dr. Arun Mohan, a distinguished senior advocate to assist this court as an Amicus Curiae.

4. This is a classic example which abundantly depicts the picture of how the civil litigation moves in our courts and how unscrupulous litigants (appellants in this case) can till eternity harass the respondents and their children by abusing the judicial system.

5. The basic facts which are necessary to dispose of these appeals are recapitulated as under:-

6. In the year 1952, almost about half a century ago, the government allotted a residential house bearing nos. 61-62,

I-Block, Lajpat Nagar-I, measuring 200 yards to Ram Parshad. The Lease Deed was executed in his favour on 31.10.1964.

7. On humane considerations of shelter, Ram Parshad allowed his three younger brothers – Madan Lal, Krishan Gopal and Manohar Lal to reside with him in the house. On 16.11.1977, these three younger brothers filed a Civil Suit No.993 of 1977 in the High Court of Delhi claiming that this Lajpat Nagar property belonged to a joint Hindu Family and sought partition of the property on that basis.

8. The suit was dismissed by a judgment dated 18.01.1982 by the learned Single Judge of the High Court of Delhi. The appellants (younger brothers) of Ram Parshad, aggrieved by the said judgment preferred a Regular First Appeal (Original Side) 4 of 1982 which was admitted to hearing on 09.03.1982. During the pendency of the appeal, Ram Parshad on 15.01.1992 filed a suit against his three younger brothers for mandatory injunction to remove them and for recovery of mesne profits. In 1984 Ram Parshad sold western half (No.61) to an outsider. That matter is no longer in dispute.

9. The first appeal filed by the other three younger brothers of Ram Parshad against Ram Parshad was dismissed on 09.11.2000. Against the concurrent findings of both of the judgments, the appellants filed a Special Leave Petition No.3740 of 2001 in this court which was also dismissed on 16.03.2001.

10. In the suit filed by Ram Parshad (one of the respondents) (now deceased) against the appellants in these appeals the following issues were framed:

1. Whether the suit is liable to be stayed under Section 10 CPC as alleged in para no.1 of Preliminary Objection?
2. Whether defendants are licencees in the suit premises and if so whether the plaintiff is entitled to recover possession of the same from them?
3. Whether suit of plaintiff is time barred?
4. Whether suit has been properly valued for the purpose of court fees and jurisdiction?

5. Whether the suit property is joint family property of parties?

6. Whether the plaintiff is entitled to mesne profits for use and occupation of the suit property by the defendants and if so at what rate and for which period?

7. Whether defendants have become the owner of three-fourth share of the suit property by adverse possession?

8. Relief.

and fixed the matter for evidence on 22.11.2004.

11. The defendants in the suit contended that inasmuch as Regular First Appeal (Original Side) 4 of 1982 was still pending, therefore, Ram Parshad's suit be stayed under section 10 of the Code of Civil Procedure. Accepting the contention, on 20.07.1992, the 1992 suit was ordered to be stayed.

12. The Regular First Appeal was dismissed on 9.11.2000 and the Special leave petition against the said appeal was also

dismissed on 16.3.2001. Consequently, the suit filed by Ram Parshad for mandatory injunction and for mesne profit stood revived on 05.12.2001.

13. In the first round of litigation from 16.11.1977 to 16.3.2001 it took about twenty four years and thereafter it had taken 10 years from 16.3.2001. In the 1992 suit, the defendants (appellants herein) sought amendment of the written statement which was refused on 28.07.2004. Against this order, a Civil Miscellaneous (Main) 1153 of 2004 was filed in the High Court which was disposed of on 02.09.2004 with liberty to move an application before the trial court for framing an additional issue. The additional issue regarding the claim of adverse possession by the three younger brothers was framed on 6.10.2004. The issue was whether the defendants have become the owner of three-fourth share of the suit property by adverse possession and the case was fixed up for recording of the evidence. According to the learned Amicus Curiae, the court before framing Issue Number 7 and retaining the other issues, ought to have recorded the statement of defendants under Order 10 Rule 2 of the Code of the Civil

Procedure (for short, CPC) and then re-cast the issues as would have been appropriate on the pleadings of the parties as they would survive after the decision in the previous litigation.

14. According to the learned Amicus Curiae, the practice of mechanically framing the issues needs to be discouraged. Framing of issues is an important exercise. Utmost care and attention is required to be bestowed by the judicial officers/judges at the time of framing of issues. According to Dr. Arun Mohan, twenty minutes spent at that time would have saved several years in court proceedings.

15. In the suit, on 6.11.2004 the application seeking transfer of the suit from that court was filed which was dismissed by the learned District Judge on 22.3.2005. The trial commenced on 22.11.2004, adjournment was sought and was granted against costs. The plaintiffs' evidence was concluded on 10.2.2005.

16. On 28.5.2005 the defendants failed to produce the evidence and their evidence was closed. Against that order, Civil Miscellaneous (Main) 1490 of 2005 was filed in the Delhi High Court. Stay was granted on 15.7.2005 and the

application was dismissed on 17.12.2007 with liberty to move an application for taking on record further documents.

17. On 12.2.2008, an application under Order 18 Rule 17A of the CPC was moved. On 'No Objection' from the plaintiff, it was allowed on 31.7.2008 and the documents and affidavits were taken on record. On 23.10.2009, the matter was fixed for evidence. The appellants filed an application under Order 7 Rule 11 (b) of the CPC for rejection of the 1992 plaint on the ground of not paying ad valorem court fees on the market value of property and for under-valuation of relief. This application was dismissed by the Civil Judge on 09.07.2010 by the following order :-

> "M-61/2006
> 09.07.2010
> Present : Ld. Counsel for plaintiff
> Ld. Counsel for defendant
>
> Application under section 151 CPC is filed by defendant for treating Issue No.4 as preliminary issue. It pertains to court fees and jurisdiction. It is pertinent to mention that suit is at the stage of final arguments and both the parties have led the entire evidence. Ld. Counsel for defendant submits that this application has been filed by the defendant in view of the liberty granted to the defendant by the Hon'ble High Court vide order dated 26.4.2010 dismissing the

Civil Revision Petition application no.76/10 as withdrawn against the order dated 12.10.2006 passed by this court. It is pointed out to the counsel for defendant that case is at the stage of final arguments and law enjoins upon the court to return finding on all the issues. Counsel for the defendant filing this application seeks disposal of the same. Perused the application and gone through record. Order 20 Rule 5 clearly states that court has to return finding on each issue. Even Order 14 Rule 2 CPC states that the court has to pronounce the judgment on all issues notwithstanding that the case may be disposed off on preliminary issue. Sub Rule 2 refers to the discretion given to the court where the court may try issue relating to the jurisdiction of the court or the bar to the suit created by any law for the time being in force as preliminary issue. It further relates to disposal of the suit treating these points as preliminary issues and also relates to deferring the settlement of other issues. But there is no such case. Entire evidence has been led, the matter is at the stage of final arguments and the point raised does not relate to the point pertaining to Sub Rule 2. Neither it relates to bar created by any law nor the jurisdiction of the court to entertain the suit. It is averments made in the plaint. Contention of the applicant for treating the issue as preliminary issue is against the spirit of law as referred in Order 20 Rule 5 and Order 14 Rule 5 CPC. I do not see any merit in this application and the same is dismissed with the costs of Rs.2000/-.

To come up for payment of cost and final arguments.

Put up on 09.08.2010

(Vipin Kumar Rai)

ACJ/ARC(W)"

18. Aggrieved by the order dated 23.10.2009, the defendants (appellants herein) preferred a Civil Revision Petition No.76 of 2010 in the High Court of Delhi. At the preliminary hearing, the petition was allowed to be withdrawn, leaving the trial court at liberty to consider the request of the appellants to treat Issue Number 4 regarding court fee as a preliminary issue.

19. On 09.07.2010, the defendants filed an application before the Civil Judge for treating Issue Number 4 as a preliminary issue. This application was rejected by the Civil Court on 9.7.2010 with costs. The matter is at the stage of final arguments before the trial court. At this stage, against the order of the Civil Judge, on 7.8.2010, the appellants filed a petition being Civil Miscellaneous (Main) No.1084 of 2010 under Article 227 of the Constitution in the High Court which came up for preliminary hearing on 26.8.2010. On 1.9.2010, the High Court dismissed the Civil Miscellaneous (Main) No.1084 of 2010 by a detailed judgment rendered at the

preliminary hearing and imposed cost of Rs.75000/- to be deposited with the Registrar General. Review Petition No. 429 of 2010 was filed which was dismissed on 25.10.2010.

20. These appeals have been filed against the order imposing costs and dismissing the review petition.

21. The learned Single Judge observed that the present appellants belong to that category of litigants whose only motive is to create obstacles during the course of trial and not to let the trial conclude. Applications after applications are being filed by the appellants at every stage, even though orders of the trial court are based on sound reasoning. Moreover, the appellants have tried to mislead the court also by filing wrong synopsis and incorrect dates of events.

22. The High Court further observed that the purpose of filing of brief synopsis with list of dates and events is to give brief and correct summary of the case and not to mislead the court. Those litigants or their advocates who mislead the

courts by filing wrong and incorrect particulars (the list of dates and events) must be dealt with heavy hands.

23. In the list of dates and events, it is stated that the respondents filed a suit for mandatory injunction and recovery of Rs.36,000/- on 22nd September, 2003. In fact, as per typed copy of the plaint placed on record, the suit was filed by the predecessor-in-interest of the respondents in 1992. Written statement was filed by the predecessor-in-interest of the appellants in 1992. Thus, the appellants tried to mislead the court by mentioning wrong date of 22nd September, 2003 as the date of filing.

24. The High Court has also dealt with number of judgments dealing with the power of the High Court under Article 227 of the Constitution. According to the High Court, the suit was filed in the trial court in 1992. The written statement was filed as far back on 15th April, 1992. On pleadings, Issue Number 4 was framed with regard to court fee and jurisdiction. The appellants never pressed that Issue Number 4 be treated as a preliminary issue. Both the parties led their respective

evidence. When the suit was fixed before the trial court for final arguments, application in question was filed. The appellants argued that Issue Number 4 would also be determined along with other issues.

25. In the impugned judgment, it is also observed that it is revealed from the record that the appellants have been moving one application after the other, though all were dismissed with costs.

26. It may be pertinent to mention that the appellants also moved transfer application apprehending adverse order from the trial judge, which was also dismissed by the learned District Judge. This conduct of the appellants demonstrates that they are determined not to allow the trial court to proceed with the suit. They are creating all kinds of hurdles and obstacles at every stage of the proceedings.

27. The learned Single Judge observed that even according to Order 14 Rule 2 CPC the court has to pronounce the judgment on all issues notwithstanding that the case may be disposed of

on preliminary issue. Order 14 Rule 2 of the CPC is reads as under:

> "ORDER XIV: SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON.
>
> … … …
>
> … … …
>
> 2. Court to pronounce judgment on all issues: (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.
>
> … … …
>
> … … …"

28. Sub Rule 2 refers to the discretion given to the court where the court may try issue relating to the jurisdiction of the court or the bar to the suit created by any law for the time being in force as preliminary issue. It further relates to disposal of the suit treating these points as preliminary issues and also relates to deferring the settlement of other issues, but there is no such case. The entire evidence has been led, the matter is at the stage of final arguments and the point raised does not relate to the point pertaining to Sub Rule 2. Neither it relates to bar created by any law nor the jurisdiction of the court to entertain the suit. It is just an averment made in the

plaint. Contention of the appellants for treating the said issue as preliminary issue is against the spirit of law as referred in Order 20 Rule 5 and Order 14 Rule 5 of the CPC. These observations of the courts below are correct and in pursuance of the provisions of the Act. The High Court properly analysed the order of the trial court and observed as under:-

> "Looking from any angle, no illegality or infirmity can be found in the impugned order. The only object of petitioners is just to delay the trial, which is pending for the last more than 18 years. To a large extent, petitioners have been successful in delaying the judicial proceedings by filing false, frivolous and bogus applications, one after the other.
>
> It is well settled that frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to the genuine litigations.
>
> Dismissed
> List for compliance on 7th October, 2010."

29. We have carefully examined the impugned judgment of the High Court and also order dated 9.7.2010 passed by the learned Civil Judge, Delhi.

30. It is abundantly clear from the facts and circumstances of this case that the appellants have seriously created obstacles at every stage during the course of trial and virtually prevented the court from proceeding with the suit. This is a typical example of how an ordinary suit moves in our courts. Some cantankerous and unscrupulous litigants on one ground or the other do not permit the courts to proceed further in the matter.

31. The learned Amicus Curiae has taken great pains in giving details of how the case has proceeded in the trial court by reproducing the entire court orders of 1992 suit. In order to properly comprehend the functioning of the trial courts, while dealing with civil cases, we deem it appropriate to reproduce the order sheets of 1992 suit. This is a typical example of how a usual civil trial proceeds in our courts. The credibility of entire judiciary is at stake unless effective remedial steps are taken without further loss of time. Though original litigation and the appeal which commenced from 1977 but in order to avoid expanding the scope of these appeals, we

are dealing only with the second litigation which commenced in 1992. The order sheets of the suit of 1992 are reproduced as under :-

Proceedings of Suit - 1992

17.01.1992	Summons to Defendants on plaintiff and RC
28.02.1992	Fresh summons to Defendants 1 & 2. Defendant No. 3 refused service. Proceeded ex-parte
30.03.1992	Time sought to file Written Statement for all the Defendants. Allowed.
20.04.1992	Written Statement filed. Fixed on 30.04.1992 for replication, admission/denial and framing of issues.
01.05.1992	Plaintiff sought time to file replication.
11.05.1992	Replication filed. Adjourned for admission/ denial on joint request.
26.05.1992	No document for admission/denial. Issues framed. Fixed for arguments on 17.07.1992.
17.07.1992	Arguments heard on preliminary issue.

20.07.1992	Suit stayed. Plaintiff granted liberty to make application for revival after disposal of RFA (OS) 4/82.
01.06.2001	File sent to District Judge for transferring the case to proper court.
04.06.2001	District Judge marked to case to the court of Shri Naipal Singh, Additional District Judge.
02.07.2001	Presiding Officer is on vacation leave. Fixed for 03.07.2001.
03.07.2001	Miscellaneous application notice issued to the respondent. Main Suit 47/92 summoned.
23.08.2001	Suit file be summoned. Notice of application to Defendant on PF & RC.
16.10.2001	Copy of application given to all the Defendants. Adjourned for reply to application and further proceedings.
05.12.2001	Suit has to proceed for the decision on merits.
28.02.2002	Application under Order 6 Rule 17 moved by Defendant for amendment of Written Statement. Adjourned for reply and arguments on the application.
16.04.2002	As the value of the suit is below 3 lakhs, the suit transferred to the court of Civil Judge.

23.04.2002	Reply to application filed. Summons to Defendants other than Defendant No. 3.
21.08.2002	Counsel for the parties not present.
28.11.2002	Presiding Officer on leave.
07.12.2002	At joint request, adjourned. Last opportunity.
22.09.2003	None present. Adjourned for arguments on Order 6 Rule 17. File transferred to the court of Shri Prashant Kumar, Civil Judge.
12.11.2003	Son of the Plaintiff stated that the Plaintiff has expired. Adjourned.
06.12.2003	Presiding Officer not available.
16.01.2004	Copy of application under Order 22 Rule 3 supplied. As requested, adjourned.
16.02.2004	Reply not filed. Counsel for the Defendant seeks time to file reply.
01.03.2004	Reply filed. Counsel for the Defendant objected that the addresses of Legal Representatives are not correct.
24.03.2004	Application Order 22 Rule 3 is allowed. Right to sue survives. Order 6 Rule 17 pending for disposal.

27.04.2004	Arguments heard.
22.05.2004	Plaintiff wants to file written submissions with regard to clarification. Allowed.
03.07.2004	None for Defendants. Written submissions filed by Plaintiff.
28.7.2004	Present none. Order 6 Rule 17 dismissed.
02.09.2004 to 06.10.2004	None for Defendants. Fixed for PE
28.09.2004	Defendant moved application Order 14 Rule 5. Notice issued.
06.10.2004	Issues reframed. Defendant sought time to cross-examine PW.
22.11.2004	PW present. Defendant prayed for adjournment. Defendant moved application for transfer of the case. Last opportunity for cross-examination.
21.12.2004	PW present. Previous cost not pressed for. PW sought time for obtaining copies of documents.
10.02.2005	PW cross-examined. PE closed.
15.03.2005	No DW present
19.04.2005	Affidavit of DW filed. However DW stated that he is not feeling well. Adjourned.

28.05.2004	Defendant stated that he does not want to lead evidence. DE closed. Fixed for final arguments.
15.07.2005	Stay by the High Court in CM (Main) 1490/2005.
18.07.2005	Counsel for the Defendant states that the High Court has stayed the matter. Directed to file the copy of the order.
25.08.2005	No copy of the order is filed.
29.10.2005	Matter under stay by High Court.
30.01.2006	Fresh suit received by transfer. Adjourned for proper orders.
02.05.2006	Notice to Defendants.
31.05.2006	Counsel for the Defendants served but none appeared. Adjourned for final arguments.
21.08.2006	File not traceable. Adjourned.
09.12.2006	Present: Counsel for the plaintiff. Adjourned for final arguments.
19.02.2007	Counsel for the plaintiff. Proceedings stayed by the High Court.
21.08.2007	Counsel for the Plaintiff. Matter under stay by the High Court.
17.12.2007	CM (Main) 1490/2005 dismissed by the High Court. Stay vacated.

10.1.2008	Counsel for the Plaintiff. None for the Defendant. Adjourned.
12.02.2008	Defendant filed application O18 R17A. Copy supplied. Adjourned for reply and ar guments.
30.04.2008	Reply filed by the Plaintiff. Application allowed to cost of Rs.7,000/-, out of which Rs.1,000/- to be deposited in Legal Aid. Adjourned for DE.
31.07.2008	Defendant sought adjournment on the ground that witness is not feeling well.
29.9.2008	Plaintiff moved application Order 6 Rule 17. Copy supplied.
23.12.2008	Reply filed. Come up for arguments on the application.
21.5.2009	Part arguments heard.
22.07.2009	Plaintiff does not press for the application. Dismissed. To come up for DE.
05.10.2009	Defendants witness not present. Application for exemption allowed. Affidavit already filed.
23.10.2009	Application under Order 7 Rule 1 CPC filed. Dismissed. Affidavit of Kishan Gopal tendered as DW1, and he is cross-examined and

	discharged. No other witness. DE closed.
11.01.2010	Presiding Officer on leave.
23.03.2010	Defendant seeks adjournment on the ground that main counsel not available.
3.5.2010	Adjournment sought on behalf of the parties.
26.5.2010	File not traceable.
9.7.2010	Application under Section 151 CPC for treating No. 4 as preliminary issue. Dismissed with cost of Rs.2,000/-
9.8.2010	Application for adjournment filed.
27.9.2010	Presiding Officer on leave.
23.10.2010	For final arguments.
18.12.2010	For final arguments.
22.1.2011	For final arguments.
5.2.2011	For final arguments.
26.2.2011	Sought adjournment on the ground that the matter regarding cost is pending in Hon'ble Supreme Court.

32. Dr. Arun Mohan, learned amicus curiae, has written an extremely useful, informative and unusual book *"Justice,*

Courts and Delays". This book also deals with the main causes of delay in the administration of justice. He has also suggested some effective remedial measures. We would briefly deal with the aspect of delay in disposal of civil cases and some remedial measures and suggestions to improve the situation. According to our considered view, if these suggestions are implemented in proper perspective, then the present justice delivery system of civil litigation would certainly improve to a great extent.

33. According to the learned author, 90% of our court time and resources are consumed in attending to uncalled for litigation, which is created only because our current procedures and practices hold out an incentive for the wrong-doer. Those involved receive less than full justice and there are many more in the country, in fact, a greater number than those involved who suffer injustice because they have little access to justice, in fact, lack of awareness and confidence in the justice system.

34. According to Dr. Mohan, in our legal system, uncalled for litigation gets encouragement because our courts do not impose realistic costs. The parties raise unwarranted claims and defences and also adopt obstructionist and delaying tactics because the courts do not impose actual or realistic costs. Ordinarily, the successful party usually remains uncompensated in our courts and that operates as the main motivating factor for unscrupulous litigants. Unless the courts, by appropriate orders or directions remove the cause for motivation or the incentives, uncalled for litigation will continue to accrue, and there will be expansion and obstruction of the litigation. Court time and resources will be consumed and justice will be both delayed and denied.

35. According to the learned author lesser the court's attention towards full restitution and realistic costs, which translates as profit for the wrongdoer, the greater would be the generation of uncalled for litigation and exercise of skills for achieving delays by impurity in presentation and deployment of obstructive tactics.

36. According to him the cost (risk) – benefit ratio is directly dependent on what costs and penalties will the court impose on him; and the benefit will come in as the other 'succumbing' en route and or leaving a profit for him, or even if it is a fight to the end, the court still leaving a profit with him as unrestituted gains or unassessed short levied costs. Litigation perception of the probability of the other party getting tired and succumbing to the delays and settling with him and the court ultimately awarding what kind of restitution, costs and fines against him – paltry or realistic. This perception ought to be the real risk evaluation.

37. According to the learned Amicus Curiae if the appellants had the apprehension of imposition of realistic costs or restitution, then this litigation perhaps would not have been filed. According to him, ideally, having lost up to the highest court (16.03.2001), the appellants (defendants in the suit) ought to have vacated the premises and moved out on their own, but the appellants seem to have acted as most parties do–calculate the cost (risk)-benefit ratio between surrendering

on their own and continuing to contest before the court. Procrastinating litigation is common place because, in practice, the courts are reluctant to order restitution and actual cost incurred by the other side.

Profits for the wrongdoer

38. According to the learned Amicus Curiae, every lease on its expiry, or a license on its revocation cannot be converted itself into litigation. Unfortunately, our courts are flooded with these cases because there is an inherent profit for the wrong-doers in our system. It is a matter of common knowledge that domestic servants, gardeners, watchmen, caretakers or security men employed in a premises, whose status is that of a licensee indiscriminately file suits for injunction not to be dispossessed by making all kinds of averments and may be even filing a forged document, and then demands a chunk of money for withdrawing the suit. It is happening because it is the general impression that even if ultimately unauthorized person is thrown out of the premises the court would not ordinarily punish the unauthorized person by awarding

realistic and actual mesne profits, imposing costs or ordering prosecution.

39. It is a matter of common knowledge that lakhs of flats and houses are kept locked for years, particularly in big cities and metropolitan cities, because owners are not certain that even after expiry of lease or licence period, the house, flat or the apartment would be vacated or not. It takes decades for final determination of the controversy and wrongdoers are never adequately punished. Pragmatic approach of the courts would partly solve the housing problem of this country.

40. The courts have to be extremely careful in granting ad-interim ex-parte injunction. If injunction has been granted on the basis of false pleadings or forged documents, then the concerned court must impose costs, grant realistic or actual mesne profits and/or order prosecution. This must be done to discourage the dishonest and unscrupulous litigants from abusing the judicial system. In substance, we have to remove the incentive or profit for the wrongdoer.

41. While granting ad interim ex-parte injunction or stay order the court must record undertaking from the plaintiff or the petitioner that he will have to pay mesne profits at the market rate and costs in the event of dismissal of interim application and the suit.

42. According to the learned Amicus Curiae the court should have first examined the pleadings and then not only granted leave to amend but directed amendment of the pleadings so that the parties were confined to those pleas which still survived the High Court's decision. Secondly, it should have directed discovery and production of documents and their admission/denial. Thirdly, if the civil judge on 6.10.2004, which was three and a half years after the dismissal of the Special Leave Petition on 16.3.2001, instead of framing the issues that he did, had, after recording the statements of the parties and partially hearing the matter should have passed the following order:

> "In my prima facie view, your pleadings are not sufficient to raise an issue for adverse possession, secondly how can you contend adverse possession of three-fourth share? And thirdly, your pleadings

and contentions before the High Court had the effect of completely negating any claim to adverse possession. ..."

43. Framing of issues is a very important stage in the civil litigation and it is the bounden duty of the court that due care, caution, diligence and attention must be bestowed by the learned Presiding Judge while framing of issues.

44. In the instant case when the entire question of title has been determined by the High Court and the Special Leave Petition against that judgment has been dismissed by this court, thereafter the trial court ought not to have framed such an issue on a point which has been finally determined upto this Court. In any case, the same was exclusively barred by the principles of res judicata. That clearly demonstrates total non-application of mind.

45. We have carefully examined the written submissions of the learned Amicus Curiae and learned counsel for the parties. We are clearly of the view that unless we ensure that wrong-doers are denied profit or undue benefit from the frivolous

litigation, it would be difficult to control frivolous and uncalled for litigations. 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. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

46. Usually the court should be cautious and extremely careful while granting ex-parte ad interim injunctions. The better course for the court is to give a short notice and in some cases even dasti notice, hear both the parties and then pass suitable biparte orders. Experience reveals that ex-parte interim injunction orders in some cases can create havoc and getting them vacated or modified in our existing judicial system is a nightmare. Therefore, as a rule, the court should grant interim injunction or stay order only after hearing the defendants or the respondents and in case the court has to grant *ex-parte* injunction in exceptional cases then while granting injunction it must record in the order that if the suit

is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution, actual or realistic costs and *mesne* profits.

47. If an exparte injunction order is granted, then in that case an endeavour should be made to dispose of the application for injunction as expeditiously as may be possible, preferably as soon as the defendant appears in the court.

48. It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of the *ex*-parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioners after obtaining *ex-parte* injunction orders or stay orders may not find encouragement. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the

true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In ***Swaran Singh v. State of Punjab (2000) 5 SCC 668*** this court was constrained to observe that perjury has become a way of life in our courts.

49. It is a typical example how a litigation proceeds and continues and in the end there is a profit for the wrongdoer.

50. Learned amicus articulated common man's general impression about litigation in following words:

> "Make any false averment, conceal any fact, raise any plea, produce any false document, deny any genuine document, it will successfully stall the litigation, and in any case, delay the matter endlessly. The other party will be coerced into a settlement which will be profitable for me and the probability of the court ordering prosecution for perjury is less than that of meeting with an accident while crossing the road."

This court in ***Swaran Singh*** (Supra) observed as under:

> "… … …Perjury has also become a way of life in the law courts. A trial Judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint. Perhaps law needs amendment to clause (b) of Section 340 (3) of the Code of Criminal Procedure in this respect as the High Court can direct any officer to file a complaint. To get rid of the evil of perjury, the court should resort to the use of the provisions of law as contained in Chapter XXVI of the Code of Criminal Procedure."

51. In a recent judgment in the case of ***Mahila Vinod Kumari v. State of Madhya Pradesh (2008) 8 SCC 34*** this court has shown great concern about alarming proportion of perjury cases in our country.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Code. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice.

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing 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.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the defendants or respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings

and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

H. Every case emanates from a human or a commercial problem and the Court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.

53. According to us, these aforementioned steps may help the courts to drastically improve the existing system of administration of civil litigation in our Courts. No doubt, it would take some time for the courts, litigants and the advocates to follow the aforesaid steps, but once it is observed across the country, then prevailing system of adjudication of civil courts is bound to improve.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the

well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs.2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.

57. The appellants are directed to pay the costs imposed by this court along with the costs imposed by the High Court to the respondents within six weeks from today.

58. The suit pending before the trial court is at the final stage of the arguments, therefore, the said suit is directed to be disposed of as expeditiously as possible and in any event within three months from the date of the communication of the order.

59. We make it abundantly clear that the trial court should not be influenced by any observation or finding arrived at by us in dealing with these appeals as we have not decided the matter on merits of the case.

60. Before parting with this case we would like to record our deep appreciation for extremely valuable assistance provided

by the learned amicus curiae. Dr. Arun Mohan did not only provide valuable assistance on the questions of law but inspected the entire record of the trial court and for the convenience of the court filed the entire court proceedings, other relevant documents, such as the plaint, written statement and relevant judgments. It is extremely rare that such good assistance is provided by the amicus curiae. In our considered view, learned amicus curiae has discharged his obligation towards the profession in an exemplary manner.

61. These appeals are accordingly disposed of in terms of the aforementioned directions.

.....J.
(Dalveer Bhandari)

.....J.
(Deepak Verma)

New Delhi
July 4, 2011