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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.108 OF 2023**

1. **Romell Housing LLP,**  
A Limited Liability Partnership, duly registered partnership firm under Limited Liability Partnership Act, 2008 having its office at Gharkul Cooperative Housing Society, B-Wing, Vile Parle (East), Mumbai 400 057 through it's Designated Partner Mr. Jude Romell
2. **Jude Romell,**  
Age 65 years, Occupation Business, R/at: 18, Dalhoff, St. Roque Road, Bandra (West), Mumbai 400 050

... Applicants

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KULKARNI

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V/s.

1. **Sameer Salim Shaikh,**  
Age Major, Occupation – Not known, residing at Amit Housing Plot-125, Behind Nandanvan Building, L.T. Road, Borivali (West), Mumbai – 400 092.
2. **The State of Maharashtra,**  
through Dahisar Police Station, Mumbai.
3. **Asiya Salim Shaikh,** Age 60 years,
4. **Asad Salim Shaikh,** Age 38 years, Respondent Nos.3 & 4, both residing at Amir House, Plot No.25, Behind Nandanvan Building, L.T. Road, Borivali (West), Mumbai 400 092

... Respondents

Mr. Girish Godbole, Senior Advocate with Mr. Drupad Patil i/by Mr. Dheeraj D. Patil for the applicant.

Mr. Chaitanya Pendse with Mr. Atharva S. Jagtap for respondent No.1.

Mrs. Rajashree V. Newton, for respondent No.2-State.

Mr. Rohan Sawant i/by Mr. Laxman Jain for respondent Nos.3 and 4.

Mr. Dinesh Purandare, Senior Advocate with Ms. Vinodini Srinivasan, Mr. Parag Shah, and Ms. Shraddha Prajapati for the interveners in IA/4719/2024.

Mr. N.C. Pawar, Court Receiver, is present.

**CORAM** : **AMIT BORKAR, J.**

**RESERVED ON** : **SEPTEMBER 11, 2025**

**PRONOUNCED ON** : **SEPTEMBER 16, 2025**

**JUDGMENT:**

1. The revision applicants assail the order dated 4th August 2022 passed by the learned Additional Sessions Judge in Criminal Revision Application No. 340 of 2019. By the said order, the learned Judge set aside the order passed by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai, in exercise of powers under section 145 of the Code of Criminal Procedure. The Magistrate had held that the applicants were in possession of the disputed property and were entitled to obtain possession from the Court Receiver.

2. The facts as narrated by the applicants are that the land in dispute comprises several survey numbers bearing CTS Nos.

3071/B, 3072/A, 3072/B/1, 3072/B/2, 3072/B/3, 3072/B, 3074, 3075, 3077, 3094/B, 3095, 3104, 3105, 3106, 3107/A, 3107/B, 3108, 3109/A/B/C, 3111A/B, 3112/A/B, 3112/C, 3113/A to F, and 3115 to 3118, aggregating to 68,339.30 square meters (6 hectares 83 ares), i.e., 17 acres 3 gunthas, situated at Village Dahisar, Taluka Borivali, Mumbai Suburban District (hereinafter referred to as “the said land”). A portion admeasuring 1371.34 square meters including the structure of Viking Garage admeasuring 457 square meters was in possession of Viking Motors Private Limited and M/s. Schumi India through one Manpreet Bajaj. The remaining portion admeasuring 67,886.87 square meters (16 acres 38 gunthas) was in possession of late K.N. Shaikh.

3. On 6th June 2016, Manpreet Bajaj executed a Deed of Surrender along with a possession letter in favour of M/s. Valentine Properties, the owner of the land. In July 2016, late K.N. Shaikh also agreed to surrender possession of the land for a consideration of Rs. 40 lakhs. The owners of the land, namely, Pooja Land and Premises Pvt. Ltd. and Valentine Properties Pvt. Ltd., thereafter approved drafts of Sale Deeds. These approved drafts were submitted before the competent authority for adjudication of stamp duty under File Nos. (a) ADJ/1100902/2003/2016, (b) ADJ/1100902/2617/2016, and (c) ADJ/1100902/2616/2016.

4. On 28th November 2016, Officers from the Office of the Inspector General of Registration, Pune, along with the Assistant Town Planner (Stamp and Valuation), Borivali, and the Deputy

Director, Town Planning (Valuation), Pune, visited the site for adjudication of stamp duty. Thereafter, on 10th December 2016, K.N. Shaikh executed a Deed of Assignment-cum-Surrender of possessory title and physical possession, a Power of Attorney, and a Possession Letter. On the very same day, in the presence of witnesses, he handed over actual and physical possession of the land to the applicants. The presence of independent witnesses, namely PW5, PW6, PW14, and PW15, lends strong corroboration to the claim of the applicants. The applicants also demonstrated consideration paid to Shaikh, namely, Rs. 15 lakhs on 25th July 2016, Rs. 25 lakhs on 6th December 2016, and Rs. 20 lakhs on 6th December 2016, with proper deduction of TDS at 1 percent. Bank statements substantiating such payments were produced on record. Further, on 31st December 2016, Sultana, the Power of Attorney holder of Shaikh, executed four Deeds of Assignments.

5. On 23rd January 2017, K.N. Shaikh passed away. On 31st March 2017, the land owners, Valentine Properties Pvt. Ltd. and Pooja Land and Premises Pvt. Ltd., executed registered Sale Deeds in favour of the applicants covering an area of 64,339 square meters from out of the said land. The applicants duly paid the requisite stamp duty, and the registration of the Sale Deeds was completed on 10th April 2017. On 11th April 2017, a letter of possession was executed by Valentine Properties in favour of Romell Housing LLP in respect of 1371.34 square meters including the Viking Garage structure. Thereafter, in April 2017, the applicants placed three portable cabins on the property. They also engaged security arrangements through the Maharashtra State

Security Guards Board, which provided 13 male and 6 female security guards for maintaining the property. To further secure the property, the applicants erected a tin sheet compound wall and displayed iron boards.

6. On 22nd April 2017, one Sameer Shaikh approached Dahisar Police Station at about 2.30 p.m. and orally informed the police about an alleged incident of dacoity, criminal intimidation, and criminal trespass. On the basis of his statement, an FIR was registered at 3.30 p.m. being Crime Register No.174 of 2017 under Sections 397, 447, 323, 504, 506(1), 34, 143, 144, and 148 of the Indian Penal Code. In his FIR, Sameer Shaikh alleged that on receiving a call at about 7.00 a.m. from his site watchman, Shakeel Ansari, he was informed that Applicant No.2 along with Baldev Singh Mankoo and about 50 unknown persons armed with sticks and iron rods had entered the disputed property. They were alleged to have assaulted the Site Supervisor, Parag Patel, and committed robbery of a gold chain weighing 2 tolas and cash of Rs.15,000 from him. Further, theft of a Honda electric generator worth Rs.30,000 was also alleged. Sameer Shaikh claimed that when he reached the site at about 10.30 a.m., he was prevented from entering the property and was threatened with dire consequences, resulting in his forceful dispossession. He further stated that he thereafter searched for his title documents and handed over the same to the police. The FIR records the incident time as between 6.30 to 8.30 a.m., while the information was given to the police station only at 2.30 p.m., though the distance from the site to the police station was merely 2 km. The FIR also

records theft of gold chain valued at Rs.40,000, cash Rs.15,000, and generator Rs.30,000, aggregating to Rs.85,000.

7. On the same day, 22nd April 2017, at about 3.45 p.m., API Smt. Rekha Saikar, along with API Prashant Marde, Senior PI Subhash Sawant, PSI Anand Jadhav, and API Kakasaheb Shinde, reached the disputed site with a large police force of 35 personnel. They took Applicant No.2 and others into custody. Panchanama was started at 3.50 p.m. and completed at 6.10 p.m. During this exercise, labels bearing signatures of police officers and panch witnesses were affixed on three cabins and ten boards. At 11.30 p.m. on the same day, an arrest notice under Section 41 of the Code of Criminal Procedure was served on Applicant No.2. The applicants point out that the panch witnesses were not independent but were servants and employees of the complainant. The photographs annexed to the charge sheet show that the cabins, boards, gate, and tin sheets were firmly embedded in the earth, indicating settled possession of the applicants. On the next day, i.e., 23rd April 2017, API Kakasaheb Shinde, with the aid of a gas cutter, hydraulic crane, truck trailer, and JCB machine, removed the entire tin sheet compound wall and all boards of the applicants' firm from the site. Thus, the applicants were forcibly deprived of possession. Thereafter, a charge sheet was filed by Dahisar Police Station.

8. On 14th June 2017, this Court allowed Bail Application No.1209 of 2017 filed by Applicant No.2. In August 2017, the applicants approached this Court by filing Criminal Writ Petition No.3214 of 2017, essentially seeking action against the concerned

police officers for their role in the incident. On 14th February 2018, this Court directed transfer of investigation to the Central Bureau of Investigation and further directed the police to submit a report under Section 145 of the Code of Criminal Procedure. On 9th March 2018, the Supreme Court dismissed the Special Leave Petition filed by Salim Shaikh. Thereafter, on 14th December 2018, this Court directed the Magistrate to forthwith appoint a Receiver. On 30th July 2019, the Supreme Court dismissed another Special Leave Petition filed by Salim Shaikh and confirmed the appointment of the Receiver of this Court.

9. During proceedings before the Magistrate, respondent Nos.1 and 2 filed their written statement and examined five witnesses. The applicants also filed written statement and examined 15 witnesses to establish their possession. On 23rd September 2019, the applicants produced original documents along with an evidence affidavit. On the same day, they filed application (Exhibit-35) seeking permission to take photocopies of original documents after verification. The application was allowed, and the Judicial Clerk was directed to verify. During such verification, it was noticed that one copy of the possession letter dated 10th December 2016 bore a notary seal, whereas the original did not.

10. The applicants thereafter filed another application (Exhibit-62) seeking production of the original letter of possession dated 10th December 2016. Along with the application, they produced a copy and requested verification. The application was allowed without opposition and after due verification, the document was marked and exhibited as Exhibit-63.

**11.** On 13th November 2019, in Writ Petition No.3214 of 2017, this Court directed the Court Receiver to take physical possession of the property. On 29th November 2019, the Supreme Court dismissed SLP Diary No.41124 of 2019 and directed that possession be taken by the Receiver. In pursuance of these directions, on 18th December 2019, the Court Receiver took physical possession of the disputed property.

**12.** On 21st December 2019, the learned Metropolitan Magistrate, 26th Court, Borivali, delivered the final judgment and order. By the said order, the Magistrate recorded a clear finding that the applicants were in possession of the said land. The Magistrate, therefore, directed the Court Receiver to hand over possession of the property to the applicants. Being dissatisfied with this order, respondent No.1 along with late Salim Shaikh preferred Criminal Revision Application No.340 of 2019 before the Sessions Court at Dindoshi.

**13.** On 4th August 2022, the learned Additional Sessions Judge allowed the said Criminal Revision Application No.340 of 2019 and set aside the order of the learned Magistrate. The applicants, being aggrieved, filed Writ Petition No.2934 of 2022 before this Court on 10th August 2022. Thereafter, on 29th March 2023, the applicants filed the present Revision Application. On 12th April 2023, Writ Petition No.2934 of 2022 came to be disposed of by this Court, granting liberty to the applicants to prosecute the present revision.



14. On 23rd October 2023, Writ Petition No.3214 of 2017, which was filed earlier by the applicants, also came to be disposed of. Interim Application No.1712 of 2019 filed by Rajesh Tiwari (Intervener) on 16th December 2019 also stood disposed. On 27th February 2024, the Special Leave Petition filed by Rajesh Tiwari was disposed of by the Supreme Court, with liberty to seek review of the order passed by this Court. Pursuant thereto, Rajesh Tiwari filed Review Petition No.1 of 2024. On 6th April 2024, Rajesh Tiwari also filed Intervention Application No.9091 of 2024 in the present revision proceedings. Ultimately, on 29th November 2024, the said review petition was disposed of as withdrawn.

15. It is also relevant to note that on 18th February 2020, pursuant to directions issued by this Court on 14th February 2018, the investigation into the incident was formally transferred to the Central Bureau of Investigation. After conducting a detailed inquiry, the CBI completed its investigation and filed a supplementary charge sheet.

16. Mr. Godbole, learned Senior Advocate appearing for the applicants, submitted that the disputed property was lawfully purchased by the applicants through several Deeds of Conveyance. A portion of the land was purchased from Pooja Land and Premises Pvt. Ltd., and another portion was purchased from Valentine Properties Pvt. Ltd. He pointed out that the Conveyance Deeds themselves contained a recital that one Mr. K.N. Shaikh was in actual possession of the property. A Deed of Surrender of possessory rights dated 6th June 2016, a Deed of Assignment-cum-Surrender of possessory title and delivery of possession dated 10th

December 2016, and a letter of physical possession dated 11th April 2017 were executed, all acknowledging that possession was delivered to the applicants by late K.N. Shaikh. The applicants thereafter took all steps that any person in settled possession would take, such as paying electricity bills and property assessment tax of the structure standing thereon. He further submitted that the General Power of Attorney executed by K.N. Shaikh on 10th December 2016 also contains a recital specifically acknowledging possession of the applicants. The Deed of Assignment executed by K.N. Shaikh records that consideration of Rs. 47 lakh was paid by cheque for delivery of possession. To fortify the authenticity of these documents, Mr. Godbole pointed out that the original Deed of Assignment and Surrender of Possession was duly verified by the Judicial Clerk of the Metropolitan Magistrate on 19th September 2017. Learned Senior Counsel then submitted that despite the applicants being in actual and lawful possession, on 22nd April 2017, respondent No.1, Sameer Shaikh lodged FIR being C.R. No.174 of 2017 under Sections 397, 447, 323, 504, 506, 34, 143, 144 and 148 of the Indian Penal Code, pursuant to which the applicants were dispossessed from the property. The applicants, being aggrieved, approached this Court by filing Writ Petition No.3214 of 2017. In the said petition, the Division Bench directed that an inquiry under Section 145 of the Code of Criminal Procedure be conducted to determine who was in possession of the property on 22nd April 2017. The Division Bench further directed that the inquiry should also determine whether any party was forcibly dispossessed within

two months preceding 22nd April 2017. Mr. Godbole emphasized that this direction of the Division Bench was carried to the Supreme Court and was confirmed. The Supreme Court clarified that the proceedings under Section 145 should be decided on their own merits, uninfluenced by any observations of the Division Bench made in its order dated 14th February 2018.

**17.** Mr. Godbole submitted that on 22nd April 2017 itself, police personnel came to the site and arrested applicant No.2. A panchnama was drawn at 3.50 p.m. In furtherance of the order of the Division Bench, proceedings under Section 145 were initiated before the Metropolitan Magistrate. The applicants filed a written statement and examined as many as 15 witnesses to establish their possession. The respondents, on the other hand, filed a written statement and examined 5 witnesses. After considering the entire evidence, the Magistrate recorded a finding that possession was with the applicants and directed the Court Receiver to hand over the property to them. However, the revisional Court, instead of examining the matter within the scope of Section 145, wrongly applied strict rules of the Evidence Act regarding admissibility of documents. The revisional Court discarded documents relied on by the applicants either on the ground that they were inadmissible for want of registration or by recording factually incorrect findings, such as alleging manipulation of the possession letter dated 10th December 2016.

**18.** Mr. Godbole submitted that the Magistrate never recorded any such finding of manipulation, and in fact, had accepted other contemporaneous documents supporting delivery of possession. He

further submitted that the revisional Court completely ignored crucial documents like Exhibits 36 and 37, which substantiated the claim of possession. According to him, once ownership of the entire property had already been transferred to the applicants, the document dated 10th December 2016 (Exhibit 155) should have been construed only as an acknowledgment of delivery of possession and not as a conveyance requiring registration. He further submitted that the disputed property is an open plot of land. In such cases, possession is not proved by physical construction or structures alone but by documents and acts indicating control and ownership. In this context, the Deeds of Conveyance, surrender documents, electricity bills, tax receipts, and security arrangements establish that the applicants were in lawful possession of the property.

19. Mr. Godbole lastly submitted that while exercising power under Section 145 of the Code of Criminal Procedure, the Magistrate is not required to go into the question of title. The sole inquiry is as to possession on the date of dispute, having regard to the urgency and possibility of breach of peace. Since the Division Bench of this Court had itself directed the Magistrate to conduct an inquiry, the requirement of passing a preliminary order under Section 145 was not necessary. In support of his submissions, reliance was placed on the judgments of the Supreme Court in *Shanti Kumar Panda vs. Shakuntala Devi* (2004) 1 SCC 438 and *M. Siddique vs. Mahant Suresh Das* (2020) 1 SCC 1, wherein it has been held that in proceedings under Section 145, the question of possession is to be decided independently of title and on the basis

of materials available on record.

**20.** Per contra, Mr. Rohan Sawant, learned Advocate appearing for respondent Nos.3 and 4, submitted that it is not in dispute that late Mr. K.N. Shaikh was in actual possession of the said land on the date when the Conveyance was executed in favour of the applicants. He invited attention to the oral evidence of the applicants' witnesses and pointed out that one of the witnesses admitted that the document dated 10th December 2016 was executed in the office of an Advocate. The said document does not contain a clear recital as to who delivered possession and in whose favour. According to him, the oral evidence on record does not indicate that after execution of the said document, parties thereafter went to the site and only then possession was attempted to be taken. Relying upon the evidence of a witness, who had visited the property for the purpose of proceedings under the Bombay Stamp Act, he submitted that the said witness had categorically stated that late K.N. Shaikh was in possession of the property on the date of his site visit. He further pointed out that K.N. Shaikh was admitted in hospital from 1st December 2016 to 6th December 2016 and again from 4th January 2017 to 26th January 2017. In view of such medical evidence, the genuineness of the alleged execution of documents on 10th December 2016 showing delivery of possession in favour of the applicants is highly doubtful. He further submitted that even the oral evidence of the Advocate in whose office the document dated 10th December 2016 was executed does not indicate that thereafter parties went to the site and actual possession was delivered. Inviting my attention to

paragraph 19 of the impugned order, he submitted that the learned Sessions Judge has rightly recorded a finding that Exhibit-63 shows that possession was stated to be delivered in favour of Romell Housing LLP and Romell Real Estate Pvt. Ltd., but it does not indicate that exclusive possession was conferred upon Romell Housing LLP alone. According to him, the oral evidence led by the respondents clearly shows that the applicants were not in actual possession of the disputed property on the relevant date. In support of his submissions, Mr. Sawant placed reliance on the judgment of the Supreme Court in *M/s. Bareilly Electricity Supply Co. Ltd. v. The Workmen & Ors.*, (1971) 2 SCC 617, to contend that mere production of a document does not amount to its proof, and the Court or Tribunal cannot rely upon hearsay evidence. He also relied upon *Rampat & Ors. v. State of Haryana*, (2009) 7 SCC 614, and *Amresh Tiwari v. Lalta Prasad Dubey & Anr.*, (2000) 4 SCC 440, to urge that once the applicants had already filed a substantive civil suit during the pendency of the Section 145 proceedings, the present proceedings could not have been decided on merits. He submitted that in such a situation, the proper remedy was only to await adjudication of the civil suit.

**21.** Mr. Pendse, learned Advocate appearing on behalf of respondent No.1, also submitted that the record clearly shows that K.N. Shaikh was in possession of the property in dispute. He contended that in the absence of a preliminary order passed by the Magistrate under Section 145 of the Code, the subsequent findings regarding possession could not have been recorded, and hence, the very initiation of proceedings was bad in law. He further submitted

that the applicants had failed to establish, either by cogent documentary or reliable oral evidence, that they were in actual possession of the said land.

**22.** I have heard learned counsel. I have gone through the record. I have considered the evidence and the orders of the Courts below. I will state my conclusions and reasons.

**23.** The central question which falls for determination is limited and precise. It is whether on 22nd April 2017 who were in possession of the said land, or whether any party was forcibly dispossessed within two months prior to that date. This is the scope of inquiry directed by the Division Bench of this Court and confirmed by the Supreme Court.

**24.** Section 145 of the Code is part of the preventive powers given to a Magistrate. These powers can be used when the Magistrate is satisfied that there is a dispute likely to cause breach of the peace. This section applies only to disputes about actual possession of land, water, or their boundaries. Its object is not to decide who is the owner or who has permanent rights, but only to deal with an urgent situation by identifying and protecting the party in possession so that peace is not disturbed. The procedure is simple. Once the Magistrate records his satisfaction, he calls upon both parties to file written statements showing their claim of actual possession. This order is served like a summons. The Magistrate then considers those statements, hears the parties, and looks at the material placed before him to find out who was in possession on the relevant date. If possible, he must decide only

the fact of possession without going into ownership or title. The words “without reference to the merits of the claim of any of such parties” clearly mean that the Magistrate is not to decide the right to possess or ownership, but only actual possession. The law also covers cases of forcible dispossession. In cases where the proviso to sub-clause (4) becomes applicable, namely, where it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed either within two months immediately preceding the date on which the report of a police officer or other information was received by the Magistrate, or subsequent thereto but prior to the date of his order under sub-section (1), the Magistrate is empowered to deem such party to have been in possession on the date of his order under sub-section (1). In case of emergency, Section 146 allows the Magistrate to attach the property till the inquiry is over. All these actions are temporary and preventive. They continue only till a civil court finally decides the rights of the parties. This is also clear from Section 146(6), which says that the party declared in possession by the Magistrate will remain so “until evicted therefrom in due course of law.” Thus, the object of Section 145 is to prevent law and order problems arising out of property disputes. The law takes the property out of the immediate control of disputing parties and protects it through lawful authority till the civil court decides. No party can misuse Section 145 as a shortcut to gain advantage in civil disputes or to avoid civil remedies. The powers of the civil court remain unaffected. Therefore, proceedings under Section 145 are limited in scope, preventive in nature, and provisional in effect. They protect possession for



maintaining peace, but they do not decide ownership or affect any party's right to approach the civil court.

25. The inquiry under Section 145 is summary. The Magistrate must act quickly, on the basis of material available, and reach a practical conclusion. He is not bound by strict technical rules of the Indian Evidence Act. What he has to see is whether, on balance of probabilities, the evidence shows who was actually in possession and in control of the property. This is what the Supreme Court has repeatedly laid down. The Magistrate's determination is therefore limited to deciding who was in possession on the date of the preliminary order, or within two months preceding that date. The emphasis is always on "actual physical possession" and not on legal or constructive possession arising out of ownership documents. The distinction is important. A person may have ownership papers, but if another person is in settled physical possession, the Magistrate has to record possession in favour of the latter. The rule of law is that even a trespasser in settled possession cannot be dispossessed except through due process. The object of Section 145 is preventive, not punitive. The inquiry is not meant to finally decide rights but only to maintain peace and law and order in the locality until the parties take their dispute to the civil court. The technical rules of evidence should not stop the Magistrate from considering documents or materials which have probative value. The Magistrate must make a practical assessment of possession based on all available sources such as documents, affidavits, oral statements, and surrounding circumstances. Acts like putting up construction, cultivation, hiring security guards,

paying property tax, electricity bills, or controlling entry and exit are strong signs of possession. The scheme of Section 145, therefore, ensures that disputes relating to land do not turn into law and order problems. The Magistrate is expected to decide swiftly, using a practical and common-sense approach, and not get entangled in technicalities meant for civil trials.

**26.** In *Shanti Kumar Panda*, the Supreme Court made the law very clear. It held that in proceedings under Section 145, the Magistrate must confine himself only to the question of possession. He is not to start an inquiry into ownership or title. The Court further explained that possession can be proved not only by ownership papers or title documents but also by overt acts showing control over the property.

**27.** In *M. Siddique*, the Supreme Court again explained the scope and purpose of Section 145 of the Code of Criminal Procedure. It held that the Magistrate's power comes into play only when there is a dispute about immovable property which is likely to cause breach of peace. The very basis of this jurisdiction is the danger to public tranquility. The Supreme Court made it clear that the Magistrate cannot decide complicated questions of ownership or title, as these are matters for the civil court alone. The Magistrate's duty is narrow but urgent. His role is to take immediate steps to prevent breach of peace and to protect whichever party is shown to be in actual possession at the relevant time.

**28.** Applying these principles to the present case, it is plain that the Magistrate's task was not to decide whether the applicants had acquired ownership under the conveyances or whether the respondents had a better title. That is a matter for the civil court. The limited task before the Magistrate was to decide whether the applicants were in possession on 22nd April 2017, and if not, whether they had been forcibly dispossessed within the two months preceding that date.

**29.** In this background, the issue of possession has to be judged on the basis of contemporaneous materials, the conduct of both sides, and the sequence of events placed on record. These are the touchstones laid down by law. With this framework, I now turn to examine the interference made by the Sessions Court and test it against the legal principles explained above.

**30.** The material placed on record, when seen together, clearly shows that the applicants followed a consistent pattern of steps which prove their possession over the said land. These are not stray or casual acts but form a continuous chain pointing towards their settled control of the land. The beginning point is the registered Deeds of Conveyance executed in their favour by Pooja Land and Premises Pvt. Ltd. and Valentine Properties Pvt. Ltd. The respondents themselves do not dispute the execution of these conveyances. Along with these conveyances, there is also the Deed of Assignment-cum-Surrender of possessory rights dated 10th December 2016 executed by late K.N. Shaikh. This document was produced in original, was verified by the Judicial Clerk of the Metropolitan Magistrate, and was exhibited as Exhibit-63. Its

authenticity therefore stands tested for the purpose of present proceeding.

**31.** Another supporting piece of evidence is the letter of physical possession dated 11th April 2017, which records delivery of the property into the hands of the applicants. These documents do not stand in isolation. They are corroborated by proof of payment. The applicants placed on record cheques and bank statements showing that Rs.47 lakhs were paid to late K.N. Shaikh towards surrender of possession. The fact that TDS was deducted on such payments further supports their genuineness. In addition, the applicants paid stamp duty and completed registration of the conveyances on 10th April 2017. These are not the actions of someone dealing in paper transactions; they reflect deliberate steps to secure both ownership and control.

**32.** Equally important are the physical acts of control performed by the applicants on the ground. They placed portable cabins on the land. They fenced the property with tin sheets. They fixed iron boards showing their name and interest in the land. They engaged the Maharashtra State Security Guards Board, which deployed 19 guards, male and female, for protection of the land. They also paid electricity bills and assessment tax for the structure standing on the property. Each of these actions amounts to an assertion of possession. When looked at together, they prove that the applicants were not only owners on paper but were in actual enjoyment and control of the land.

**33.** The law itself recognizes that in case of open plots, possession is proved not by building permanent structures but by visible and continuous acts of control. Fencing, cabins, security guards, signboards, and payment of statutory dues are all accepted signs of possession. The applicants have consistently demonstrated these signs. It is settled that possession is not proved merely by showing title documents. It is established by acts of dominion over the property.

**34.** When the evidence produced by the applicants is placed side by side with the evidence of the respondents, the weakness in the respondents' case becomes obvious. The applicants showed a consistent chain of possession supported by documents, payments, and physical acts of control. The respondents, however, could not show any such acts. They mainly relied upon oral statements alleging that late K.N. Shaikh remained in possession even after the documents were executed. They further relied upon the deposition of an officer who had visited the land for the limited purpose of stamp adjudication. But that visit was not for deciding possession, and any observation made at that time was incidental. Such evidence cannot outweigh clear documents like deeds of surrender, letters of possession, and registered conveyances backed by payment of consideration. In law, oral assertions without supporting physical acts cannot displace settled possession proved by continuous conduct. What is more significant is that when the panchnama was prepared on 22nd April 2017, it was the cabins, boards, and fencing of the applicants which were found at the site. This fact itself speaks louder than oral denials and supports the

applicants' case of actual control.

**35.** Therefore, when the totality of evidence on both sides is balanced, the scale clearly tilts in favour of the applicants. Their case is supported by registered conveyances, surrender deeds, possession letters, proof of consideration, tax and electricity bills, erection of cabins, fencing, display of boards, and engagement of security personnel. The respondents, on the other hand, rest their case on oral statements and incidental testimony, with no corresponding acts of control. The Magistrate rightly appreciated this contrast and recorded a finding that possession was with the applicants. The Sessions Court, however, failed to notice these vital distinctions and chose to accept the respondents' version without applying the same level of scrutiny. This failure makes the revisional order legally unsustainable.

**36.** The Magistrate, on the other hand, carefully examined the material placed before him. He considered the oral evidence of witnesses, the contemporaneous documents, and the overt acts of possession. On that basis, he recorded a finding that the applicants were in settled possession as on the relevant date. This finding was not arbitrary. It was supported by evidence and in line with the principles laid down by the Supreme Court that possession can be inferred not only from documents but also from conduct, such as erection of structures, payment of dues, and security arrangements. The learned Metropolitan Magistrate had before him sufficient material, both documentary and oral. After appreciating it, he recorded detailed findings that the applicants were in possession of the said land as on the date of the dispute

and that they were dispossessed by police intervention following the complaint of respondent No.1. Accordingly, he directed the Court Receiver to restore possession to the applicants.

**37.** The Sessions Court, however, chose to set aside this order. It did so by applying strict rules of proof under the Indian Evidence Act, 1872, as if it were dealing with a civil trial. It discarded important documents relied upon by the applicants on technical grounds like want of registration or alleged defects in execution. It also doubted the possession letter dated 10th December 2016 and treated it as unreliable. In adopting this approach, the Sessions Court overlooked the true nature and purpose of proceedings under Section 145 Cr.P.C. These proceedings are summary and preventive. They are intended to ensure peace and order, not to adjudicate title. The Magistrate is not expected to apply rigid technicalities of the Evidence Act. The Magistrate is not required to apply the technical standards of admissibility or proof which are necessary in a regular civil or criminal trial. What the law requires is that he should act on material having reasonable probative value, whether documentary or oral, and reach a practical conclusion about who was in settled possession. The Sessions Court, by insisting on technical proof and ignoring the broader factual picture, committed a legal error.

**38.** The Supreme Court in *Shanti Kumar Panda* and *M. Siddique* has clearly cautioned that in proceedings under Section 145, the question of ownership or title is not relevant. The Magistrate's duty is limited to finding out who was in actual possession on the date of the dispute. The standard of proof in such matters is also

different from a civil trial. What is required is a practical and common-sense approach based on available material, not strict insistence on technical rules of evidence.

**39.** In the present case, the Sessions Court ignored this well-settled principle. It insisted on applying strict rules of admissibility as if it was dealing with a regular civil suit. It discarded documents which had been verified by the Judicial Clerk and exhibited during the Magistrate's proceedings. It treated them as inadmissible on technical grounds, instead of considering their probative value in showing possession. By doing so, the Sessions Court substituted its own narrow view of technical admissibility in place of the Magistrate's pragmatic assessment of possession.

**40.** Such an approach undermines the very object of Section 145. The purpose of the provision is to maintain peace and public order by securing possession in favour of the party found in actual control of the property, irrespective of disputes about title. If technicalities are allowed to overshadow this object, the law would fail to prevent breach of peace and public disorder.

**41.** The order of the Magistrate, on the other hand, was based on a correct appreciation of documentary and oral evidence as well as contemporaneous acts of possession such as erection of cabins, payment of taxes, and engagement of security. His finding was supported by evidence and in line with the law declared by the Supreme Court. The Sessions Court's interference, therefore, was not only unnecessary but also contrary to the settled principles governing Section 145 proceedings.



**42.** On the question of registration, the approach of the Sessions Court cannot be accepted. The Sessions Court assumed that certain documents relied on by the applicants were conveyances of immovable property and, therefore, required registration under the Registration Act. Proceeding on this basis, it discarded them as inadmissible. This reasoning overlooks the real nature of the documents in question. A closer reading shows that many of these instruments are not conveyances at all. They are deeds of surrender of possessory rights, letters of physical possession, or acknowledgments showing delivery of possession by late K.N. Shaikh to the applicants. The law is well settled that such documents, which only record the fact of possession, do not create or transfer ownership and hence do not require compulsory registration. Their relevance lies in showing who was in possession at a given point of time.

**43.** Even if, for argument's sake, one or more of these documents required registration for some other purpose, that would not mean that possession was never handed over. There are several contemporaneous acts which show delivery and exercise of possession. These include payment of large sums of money by cheques, deduction of TDS, payment of stamp duty, execution of registered conveyances by the original owners, erection of compound wall and cabins, engaging of security guards, and payment of assessment tax. Such overt acts are clear indicators of possession and cannot be ignored simply because one or two documents may not be registered.

44. The Sessions Court failed to keep in mind that proceedings under Section 145 Cr.P.C. are not about deciding ownership or validity of conveyances. The inquiry is only into actual possession. For that limited purpose, even unregistered documents can be looked into as evidence of conduct and possession. Courts have consistently applied this principle. To hold otherwise would frustrate the very object of Section 145, which is to prevent breach of peace by protecting the person in settled possession, regardless of technical questions about title or registration. Therefore, the Sessions Court's finding that the applicants' documents could not be considered because they were unregistered is legally unsound. The Magistrate rightly treated them as evidence of possession and evaluated them along with other supporting circumstances.

45. Mr. Sawant relied on the deposition of a witness who had visited the property for proceedings under the Bombay Stamp Act. That witness stated that late K.N. Shaikh was in possession of the property on the date of his visit. The respondents argued that this supported their case that possession never passed to the applicants. However, the weight to be given to this evidence has to be judged carefully. The officer visited the land only to assess its value for stamp duty purposes. He was not called upon to determine possession under Section 145 Cr.P.C. His observation, therefore, was incidental and cannot be treated as a conclusive finding of possession.

46. Further, this statement cannot override the series of contemporaneous documents executed by K.N. Shaikh himself, such as the Deed of Assignment-cum-Surrender dated 10th

December 2016 and the General Power of Attorney, which specifically acknowledged delivery of possession to the applicants. These documents are further supported by actual payment of consideration through cheques, registration of conveyances, erection of cabins, hiring of security guards, and payment of taxes. These consistent and visible acts are far more reliable indicators of possession than a stray remark made by an officer during a site inspection for valuation.

47. In law, incidental or casual statements of a witness not directly connected with the dispute cannot outweigh direct documentary evidence supported by contemporaneous acts of dominion. The Magistrate rightly treated this piece of evidence as insufficient to undo the strong chain of proof showing possession with the applicants. The Sessions Court, by giving undue weight to such incidental testimony and ignoring the larger body of evidence, misapplied the law and reached a conclusion which cannot be sustained.

48. The respondents also argued that late K.N. Shaikh was admitted in hospital during two spells, first from 1st December 2016 to 6th December 2016 and then again from 4th January 2017 to 26th January 2017. On this basis, they contended that the execution of documents on 10th December 2016, which record delivery of possession in favour of the applicants, was doubtful. This submission, however, does not carry weight. To begin with, the hospitalisation periods do not cover the exact date of 10th December 2016. The medical records clearly show that Mr. Shaikh was discharged on 6th December 2016 and was only readmitted

on 4th January 2017. This means that on 10th December 2016, when the Deed of Assignment-cum-Surrender and other documents were signed, he was not in hospital. The suggestion that execution was impossible on that date is therefore factually incorrect.

49. Further, the execution of these documents is supported by the attesting witnesses and the Advocate in whose office they were signed. The documents also bear signatures and are corroborated by later events such as payment of consideration through cheques, deduction of TDS, and execution of registered conveyances by the landowners. This consistent chain of evidence cannot be brushed aside only because Mr. Shaikh was unwell before and after that date. Even assuming he was weak in health, illness or hospitalisation does not by itself make a transaction invalid. What matters is whether he was legally incapable of executing documents, which has not been proved. On the contrary, the conduct of the parties shows that Mr. Shaikh knowingly executed the documents and also received payment. For this reason, reliance on hospitalisation to discard the possession documents is misplaced. The Magistrate considered this aspect carefully and rightly held that possession was delivered to the applicants. The Sessions Court, by treating hospitalisation alone as a ground to doubt the entire transaction, ignored overwhelming evidence of possession and thus misdirected itself.

50. Mr. Sawant relied on the Supreme Court's decision in *M/s. Bareilly Electricity Supply Co. Ltd.* In that case, the Supreme Court held that merely producing a document does not prove its contents

and that a Court or Tribunal cannot act upon hearsay evidence. This principle is well settled and there is no dispute about it. Documents must ordinarily be proved in the manner known to law when they are used to decide substantive rights or obligations. However, the context of that decision must be remembered. *Bareilly Electricity* arose from proceedings before an Industrial Tribunal where questions of rights between employer and workmen had to be finally adjudicated. In such proceedings, strict rules of proof applied.

51. The present case, however, is of a different nature. An inquiry under Section 145 of the Code of Criminal Procedure is not a civil trial. It does not decide ownership or title. Its purpose is only to find out who was in possession on a given date so that law and order can be maintained. Because of this limited scope, the Magistrate is not bound by the strict technicalities of the Evidence Act. He can rely on documents, affidavits, oral testimony, and surrounding circumstances that have probative value. Even if a document is not proved in the technical manner required in a civil trial, it can still be looked at as corroborative material to support possession.

52. Therefore, while the principle in *Bareilly Electricity* is binding in its field, it cannot be applied rigidly to proceedings under Section 145 Cr.P.C. If a Magistrate were to insist on strict formal proof of every document, the very purpose of Section 145, quick prevention of breach of peace, would be frustrated. In the present case, the Magistrate rightly treated possession letters, assignment deeds, electricity bills, and tax receipts as evidence of

possession, supported by contemporaneous acts of control such as fencing, security, and payment of dues. The Sessions Court, by applying the principle of *Bareilly Electricity* without regard to the preventive and summary nature of Section 145 proceedings, misapplied the law and reached an incorrect conclusion.

53. Mr. Pendse, learned Advocate for respondent No.1, argued that because no preliminary order was issued by the Magistrate under Section 145 of the Code of Criminal Procedure, the entire proceedings were invalid. According to him, without such a preliminary order, the Magistrate had no authority to record findings on possession, and therefore the inquiry itself was bad in law.

54. At first glance, this argument may appear convincing, but on closer scrutiny it does not stand. It is correct that normally Section 145(1) requires the Magistrate to issue a preliminary order. That order sets out the grounds of his satisfaction that a dispute exists which is likely to cause breach of peace. It also serves as the formal beginning of the inquiry. But this requirement cannot be looked at in isolation or applied rigidly in every situation, regardless of the background in which the proceedings are initiated.

55. In the present case, the inquiry was not started by the Magistrate on his own motion. It was specifically directed by the Division Bench of this Court through its order dated 14th February 2018. The Division Bench instructed the Magistrate to hold an inquiry under Section 145 Cr.P.C. and determine who was in possession on 22nd April 2017, and also whether any party was

forcibly dispossessed within the two months before that date. The Supreme Court later confirmed this direction and further clarified that the Magistrate must decide the issue of possession on its own merits, without being influenced by earlier observations.

56. Once the High Court and the Supreme Court themselves directed the Magistrate to conduct an inquiry under Section 145, the absence of a separate preliminary order by the Magistrate cannot make the proceedings invalid. The purpose of a preliminary order is only to show that the Magistrate is satisfied that there is a dispute requiring inquiry. Here, that satisfaction was already recorded by the High Court and confirmed by the Supreme Court. The Magistrate was therefore right in proceeding with the inquiry without issuing a separate formal order.

57. It is a settled principle that procedural requirements are meant to serve the cause of justice. They are not meant to defeat substantive directions of superior courts. To hold that the Magistrate's inquiry is void merely because a preliminary order was not separately drawn would be adopting an overly technical view. What matters is the substance. The Magistrate heard both sides, considered their evidence, and recorded findings on possession as required by law.

58. Therefore, the contention that the proceedings are bad in law for want of a preliminary order has no merit. The Magistrate's inquiry was validly held under binding judicial directions, and the findings recorded therein cannot be faulted on this ground.

59. The scope of revisional jurisdiction is clearly laid down in law. A revisional Court is not to act like an appellate Court. It cannot re-examine the entire evidence as if it were deciding the case on merits afresh. Its powers are limited. It can interfere only to correct jurisdictional errors, errors that are apparent on the face of the record, or findings which are perverse because they ignore important evidence or are based on a wrong principle of law. The idea is that a revisional Court does not sit in appeal but only ensures that the subordinate Court has acted within its bounds and has not committed glaring errors.

60. In this case, the Sessions Court crossed those limits. Instead of checking whether the Magistrate's order suffered from any legal infirmity, it reassessed the evidence in detail and replaced the Magistrate's findings with its own view. In doing so, it overlooked the very object of Section 145 proceedings. The purpose of Section 145 is not to decide ownership or to apply strict rules of evidence but to quickly determine who was in possession so that breach of peace is avoided. The Sessions Court, however, applied rigid standards of admissibility, discarded documents that had already been verified and exhibited, and ignored the preventive nature of the inquiry.

61. The error committed by the Sessions Court is two-fold. First, it applied an incorrect legal test by insisting on proof of documents in the strict manner required in civil trials, when the inquiry under Section 145 Cr.P.C. is meant to be summary and preventive. Second, it disregarded crucial contemporaneous facts that strongly supported the applicants' possession. These facts were significant



because they directly pointed to the applicants' possession. By ignoring them, the Sessions Court reached conclusions which the record does not justify. Such findings are legally unsustainable because they go against the weight of evidence and overlook material facts. Once the Magistrate had already considered the documents, oral testimony, and surrounding circumstances and drawn a reasonable conclusion, there was no valid ground for the Sessions Court to interfere. Its interference was, therefore, clearly unwarranted.

**62.** For all these reasons, I allow the revision application. The order dated 4th August 2022 passed by the Additional Sessions Judge in Criminal Revision Application No.340 of 2019 is set aside. The order dated 21st December 2019 passed by the Metropolitan Magistrate, 26th Court, Borivali, which directed the Court Receiver to hand over possession of the said land to the applicants is restored.

**63.** I further direct the Court Receiver to hand over physical possession of the said land to the applicants strictly in accordance with the order of the learned Metropolitan Magistrate. The applicants shall first pay the charges of the Court Receiver as assessed by that office. Once such payment is made, the Court Receiver shall complete the process of handing over possession without any delay.

**64.** The Court Receiver shall also take police assistance, if needed, to ensure peaceful execution of this order and to prevent any obstruction. The respondents are directed to extend full

cooperation to the Receiver and not to interfere in the process of handing over possession.

65. Lastly, it is clarified that the investigation by the CBI and any criminal trial shall go on unaffected by this order. This judgment is confined only to deciding the question of possession under Section 145 Cr.P.C. It does not affect or prejudge the rights of any party in civil proceedings, which will be decided by the competent civil court in due course of law.

66. Parties shall bear their own costs.

67. At this stage, learned Advocate for the respondents seeks stay of the order. However, for the reasons stated in the order, the request for stay is rejected.

(AMIT BORKAR, J.)