
(1990) 08 KAR CK 0088
In the Karnataka High Court
Case No : M.F.A. No. 1883 of 1989

IIM Employees Association

APPELLANT

Vs

Indian Institute of Management

RESPONDENT

Date of Decision : 14-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1R, 151

Citation : (1990) ILR (Kar) 3148 : (1990) 2 KarLJ 226

Hon'ble Judges : Ramachandriah, J

Bench : Single Bench

Advocate : N. Kumar, for the Appellant; S.G. Sundaraswamy, for the Respondent

Final Decision : Partly Allowed

Judgement

Ramachandriah, J

1. This appeal is filed under Order 43 Rule 1(r) C.P.C. by the plaintiff in O.S.No. 2544/89 on the file of the X Additional City Civil Judge, Bangalore City (for short "the trial Judge") against the order dated 15-9-1989 passed on I.As.II and HI by the learned trial Judge dismissing I.A.II filed by the plaintiff under Order 39 Rules 1 and 2 C.P.C. for an order of temporary injunction restraining the respondent-defendant, their men etc., from interfering with the peaceful possession and enjoyment of their office room described in the plaint schedule pending disposal of the suit filed by them for perpetual injunction and "allowing I.A.III filed by the respondent-defendant under Order 39 Rules 1 and 2 C.P.C. read with Section 151 C.P.C. for an order of temporary injunction against the plaintiff in respect of the same room restraining them, their Office-bearers, members, agents etc., from functioning and ceasing to occupy the said room either in groups or in single pending disposal of the suit.

2. For the sake of convenience, reference will hereinafter be made to the parties to this Appeal with reference to the positions they occupy in the suit in the trial

Court.

3. Plaintiff is an Association called Indian Institute of Management Employees' Association (for short "the Association"). Defendant is a Premier National Institute of higher education in management studies established at Bangalore, by the Government of India in 1972 and it is wholly financed by the Government of India. The administration of the Institute is vested in a Society registered under the Karnataka Societies Registration Act. The plaintiff-Association is registered under the Trade Union Act 1926 and it is carrying on its Trade Union activities. The Association represented by its Secretary, filed a suit in O.S.2544/89 in the trial Court for a Judgment and decree against the defendant-Institute for a perpetual injunction restraining the defendant, their men, their agents, their servants or any other person, from interfering with the peaceful possession and enjoyment of the plaint schedule property which is a room situate in the ground-floor of the Faculty "A" Block measuring East to West 15 feet, North to South 25 feet with two ceiling fans, one pedestal fan, one typewriter, two Godrej steel almirahs, three filing cabinets, five tables and about 30 steel folding chairs, eight steel chairs, telephone instrument (disconnected), files, papers, correspondence and records of the Association worth about Rs. 30,000/- (hereinafter referred to as "the office room" for the sake of brevity). Along with the filing of the suit on 5-5-1989, the Association also filed I.A.II under Order 39 Rules 1 and 2 C.P.C. for an order of temporary injunction against the defendant-Institute in the above terms pending disposal of the suit. On that application, an order of status-quo was passed by the learned trial Judge. Defendant-Institute entered appearance and filed its objections to I.A.II and also a detailed written statement opposing the main prayer as well as the interim prayer made by the plaintiff-Association. It also filed I.A.III under Order 39 Rule 1 read with Section 151 C.P.C. for an order of injunction against the Association in respect of the office room in the terms mentioned above. Both parties also produced certain documents in support of their respective contentions.

4. The case put forward by the Association was that on a consideration of Charter of demands placed by it before the Management of the Institute, their demand No. 46 regarding facilities provided for the Association in the Campus of the Institute was conceded and an office room was placed at the disposal of the Association for carrying on its activities and the required furniture and other amenities like phone were also provided at the cost of the Institute and the Association was carrying on its activities in the office room right from 1983. But, the present Director of the Institute began to give pin-pricks to the Association when the Officer-bearers of the Association brought to light certain glaring irregularities committed by him and, therefore, the Director of the Institute has been openly proclaiming from 1st May 1989, which is observed as "International Workers Day"; that the Association would be dispossessed from the office room. As a matter of fact, he did not grant permission to the Association to celebrate "May Day" in the office room premises on 1-5-1989. The Association had come to know that the Director is bent upon physically throwing out the entire

furniture, records etc., kept by the Association in the office room by hiring about 20 rowdy elements from Kerala and they suspect that the same would be carried out on 6-5-1989. Therefore, they were obliged to file the suit and also to seek the relief of interim injunction against the defendant-Institute.

5. The defence taken by the defendant-Institute was that the plaintiff-Association had illegally and by use of force occupied the office room although it was not allotted to the Association and the Association is carrying on its unauthorised activities in the office room although the members of the Association have no right to continue in possession of the same and they are trespassers.

6. On a consideration of the pleadings of the parties, affidavits filed in support of I.As.II and III and documents produced by them, the learned trial Judge by order dated 15-9-1989 came to the conclusion that the plaintiff-Association had not made out a prima facie case for granting an order of injunction against the defendant in respect of the office room; that the Association had no legal right to continue in occupation of the office room as its possession of the office room was akin to that of licensee under the defendant-Institute and, therefore, it was not entitled to an order of temporary injunction against the Institute. The learned trial Judge further came to the conclusion that the Institute being the rightful owner of the office room which had been unauthorisedly and forcibly occupied by the Association was entitled to the relief of temporary injunction sought in I.A.III. He, therefore, dismissed I.As.II and III inter alia observing in paragraph-11 of his order that the ends of justice could be met if a direction is given to the defendant to provide facilities as stated in the Charter of demands for the functioning of the plaintiff-Association by providing suitable place within the Campus.

7. Feeling aggrieved by the said order, the plaintiff-Association has filed this appeal with an application-I.A.I for stay and I.A.II for an order of temporary injunction. The Association has also alleged that taking advantage of the impugned order the Institute had in a high-handed manner taken possession of the office room along with its contents on 16-9-1989, and, therefore, it is entitled to be put back in possession of the office room. No order is passed on I.As.I and II as the respondent-Institute entered appearance through their Counsel Sri S.G. Sundarawamy and filed objections to I.As.I and II.

8. Sri N. Kumar and Sri S.G. Suridaswamy have addressed lengthy arguments on the merits of the appeal itself. At the part-heard stage of the appeal, the Institute has filed I.A.III u/s 151 and Order 41 Rule 27(1) read with Order 43 Rule 2 C.P.C. on 20-7-1989 praying that four documents mentioned in I.A.III be treated and read as evidence in the appeal in the interest of justice. The Association has stoutly opposed the said prayer of the Institute by filing written objection statement to which certain photostat copies of paper cuttings and also the written statement filed by the Association in O.S.10524/1986 which is filed by the Institute against the Association and still pending in the City Civil Court are produced.

9. The points that arise for determination in this appeal in the light of the submissions made by the learned Counsel on both sides are as under:

- (1) Whether the prayer made by the Institute in I.A.III deserves to be granted?
- (2) Whether the trial Court was justified in dismissing I.A.II filed by the plaintiff-Association? and
- (3) Whether the trial Court was justified in allowing I.A.III filed by the defendant-Institute?

10. POINT No. (1): Sri N. Kumar, learned Counsel for the plaintiff-Association, contended, at the outset, that I.A.III is liable to be dismissed in limine without going into the merits of the prayer made therein as no additional evidence can be entertained in a Miscellaneous Appeal filed under Order 43 Rule 1(r) C.P.C. In support of the said contention, he placed reliance on two decisions of this Court in SANGAPPA v. NAGARAJIAH 1969 Mys.L.J 117 Short Notes of Recent Decisions Item No. 265, at page 117 and AJJAPPA AND SHADAKSHRAPPA 1981(1) KarLC 118, in which it is held that no question of any additional evidence being adduced at the appellate stage arises in an appeal filed against the order of the trial Court either granting or refusing to grant interim injunction. But, Sri S.G. Sundaraswamy, learned Senior Counsel for the Institute, argued that as it is clearly provided in Order 43 Rule 2 C.P.C. that "the Rules of Order 41 shall apply, so far as may be, to appeals from orders," the view expressed in the above two decisions cannot be regarded as sound proposition of law and, even otherwise, this Court can entertain and rely upon the four documents mentioned in I.A.III u/s 151 C.P.C. as they are necessary for an effective adjudication of the matter in dispute between the parties and those documents are undisputed documents inasmuch as, the first document is a copy of the Report dated 13-6-1985 of the Secretary of the Association circulated to its Members at the proceedings of the Annual General Body Meeting for the year 1984; that the second document is a copy of the plaint in O.S.10524/1986 filed by the Institute against the Association and its Office-bearers; that the third document is a letter dated 16-9-1989 addressed by the Institute to the plaintiff-Association offering an alternative accommodation and the fourth document is a copy of another letter of the Institute dated 6-10-1989 addressed to the plaintiff-Association offering alternative accommodation.

11. After giving my anxious consideration to the said contentions of the learned Counsel, I am of the opinion that I.A.III deserves to be allowed as the four documents produced with I.A.III are undisputed documents and the contents of documents 1 and 2 would throw considerable light regarding the manner and circumstances under which the Association had occupied the office room in 1983 and the background in which the suit out of which this Appeal has arisen is filed by the Association and documents 3 and 4 would throw light about the attitude of the Association towards the Institute.

12. Regarding the legal position enunciated in the above mentioned two

decisions, no reference is made in both the decisions to the provisions of Order 43 Rule 2 C.P.C. Rule 2 of Order 43 C.P.C. as amended by Karnataka Amendment, reads thus:

Order 43 Rule 2: The Rules contained in Order XLI and XLI-A shall apply, so far as may be, to appeals from the orders specified in Rule 1 and other orders of any Subordinate Court from which an appeal to the High Court is allowed under the provisions of any law."

Note: Proviso is omitted as unnecessary.

The decision in Sangappa v. Nagarajiah is only a Short-Note decision rendered by his Lordship Narayana Pal, J (as his Lordship then was). It reads as under:

"Order 39 Rules 1 and 2 and Order 41 Rule 27-Grant of interim injunction - principles - question of adducing additional evidence at the appellate stage does not arise.

In interlocutory proceedings for interim injunctions, the legal position is that the trial Court on the material placed before it must be in a position to entertain a tentative opinion that the plaintiff has shown prima facie that he was in possession of the suit property on the date of the suit and that the Appellate Court in such cases should examine only two questions (1) whether the opinion of the Munsiff is fairly possible on the material placed before him and (2) whether on that finding the Munsiff may be said to have exercised his discretion properly in all the circumstances of the case in granting or refusing to grant the injunction. Hence, no question of any additional evidence being adduced at the appellate stage arises."

It is thus seen that no reference is made to the provisions of Rule 2 of Order 43 C.P.C. which clearly provides that the Rules of Order 41 also apply so far as may be necessary to appeals filed under Order 43. In Ajjappa v. Shadaksharappa's case reliance is placed on the observations made in Sangappa's case and it is observed that:

"Apparently the learned Counsels for the parties had not brought the ruling of this Court in Sangappa's case to the notice of the learned Civil Judge. I have no doubt that if that ruling had been brought to the notice of the learned Civil Judge, he would not have admitted the additional documents produced by defendant-1 and considered them in deciding the correctness of the order that was challenged before him. In relying on the additional documents and reversing the order of the trial Court, the learned Civil Judge committed material irregularity affecting his jurisdiction."

His Lordship Puttaswamy, J, who has rendered this decision has also not referred to the provisions of Order 43 Rule 2 C.P.C. Therefore, respectfully disagreeing with the observations made in the said two decisions, I am of the view that additional evidence under Order 41 Rule 27 C.P.C. can be entertained in appeals filed under Order 43 Rule 1 C.P.C. in deserving cases.

13. In the light of the above discussion, I.A.III filed by the Institute in the instant appeal is allowed and the four documents mentioned in I.A.III are treated as additional evidence in the ends of justice.

14. POINT No. 2: The scope of an appeal filed under Order 43 Rule 1 C.P.C. has been considered in several decisions of this Court. But, I need not refer to all those decisions as after referring to all the earlier decisions of this Court and the Supreme Court, his Lordship G.N. Sabhahit, J. has observed in *LALITHAKSHI ANNADANAGOWDA v. SADASHIVAPPA BASAPPA AND ANR* 1983(2) KarLJ 239. in paragraph-9 at page 292 as under:

"Thus it is well established that while dealing with a discretionary order passed by the trial Court like the one in question, vacating the temporary injunction order, the first Appellate Court can interfere with such an order, only when it finds that the order passed is opposed to the well established principles in the exercise of judicial discretion or when it finds that the order passed by the trial Court is arbitrary, capricious or perverse and not when the first Appellate Court finds that on the facts on record it can come to a different conclusion than the one arrived at by the trial Court. The Appellate Court cannot substitute its own discretion when the discretion exercised by the trial Court is legal and proper. The first Appellate Court exceeds its jurisdiction and acts with material irregularity in the exercise of its jurisdiction, if it does so....."

His Lordship has further observed in paragraph-10 as under:

"....that an appeal against a discretionary order passed by the trial Court is more in the nature of a revision, and the Appellate Court should not lightly interfere with an order passed by the trial Court in its judicial discretion....."

It is in the light of the said observations that this appeal has to be decided.

15. Sri N. Kumar, learned Counsel for the plaintiff, vehemently argued that the learned trial Judge has wrongly observed that the plaintiff-Association is a trespasser although the documents produced by the plaintiff would unflinchingly establish that the Association was in uninterrupted occupation of the office room for six years and nine months prior to the filing of the suit on 5-5-1989 and the trial Court has further erred in observing that the appellant-Association is a licensee although the defence, of the Institute was that the Association is a trespasser and neither a lessee nor a licensee. He further submitted that the trial Court has acted erroneously in refusing the relief of temporary injunction to the Association although it was in actual physical possession of the office room on the date of filing of the suit and it has granted injunction in favour of the Institute which was not at all in possession of the office room on the date of suit as could be gathered from the stand taken by the Institute in its objection statement filed to I.As.I and II in this appeal that it entered possession of the office room on 16-9-1989 i.e., on the following day of the pronouncement of the impugned order allowing I.A.III filed by the Institute and, therefore, the impugned order has to be regarded as a capricious and a perverse order. He also

submitted that the order of the trial Judge is vitiated as it has gone beyond the pleadings of the parties in arriving at the wrong conclusion reached by it by ignoring the observations made by the Supreme Court in Siddu Venkappa Devadiga Vs. Smt. Rangu S. Devadiga and Others, ,. that a decision cannot be based on the grounds outside the plea of the parties and the case pleaded has to be found and also the recent decision of the Supreme Court in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , that:

"A lessor, with the best of title, has no right to resume possession extra judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression "re-entry" in the lease-deed does not authorise extrajudicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the instant case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a "legal pedigree". Therefore, there is no question in the instant case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law."

16. I should have mentioned earlier that the Institute started functioning at Bangalore in 1972 in a rented premises in Andres Road, Shanthi nagar, Bangalore-27 and it continued in the rented premises till it was shifted to its new Campus on Bannerghatta Road in 1983, Demand No. 46 in the Charter of demands put forward by the Association before the Management of the Institute related to facilities to be provided by the Institute for the Association. The Institute conceded demand No. 46 of the Association in the following manner:

"Demand 46: Facilities for Association. All facilities should be provided to the Association including an office room, use of Institute facilities and recreational facilities.

On the clear understanding that the professional and academic activities would have overriding priority, subject to availability, a recognised Association could be given the following facilities:

- (a) Pay roll deduction of membership subscription;
- (b) Office room and furniture: Rent free;
- (c) Provision of a telephone from PA3X only for internal calls. All STD calls and trunk calls should be paid by the Association.
- (d) Display of Association's notices and bulletins in a few selected Notice Boards

of the Institute, provided they do not concern any objectionable matter. The decision of the Administrative Officer as to what constitutes "objectionable matter" is final;

(e) Holding meetings, with prior intimation, within the premises, outside office hours.

Pending recognition of the Association, the Institute will be agreeable to provide the above mentioned facilities to an Association, with which it is dealing at present."

Pursuant to that demand, the Institute placed at the disposal of the Association a room having floor area of 100 sq.feet at its rented premises bearing No. 3, Andres Road, Shanthi nagar and the Association was functioning in that room. The trouble started when the Institute decided to shift its activities to its new campus on Bannerghatta Road. Even when the Association was functioning in a room in the rented premises at Andres Road, the Institute had made it clear in the letter dated 10-8-1978 that a room provided to it in the portion adjoining the State Bank of Mysore extension counter was allotted only as a temporary measure and until further instructions and the Association must vacate the same at short notice should the professional and academic needs warrant. It has further mentioned in the letter dated 10-8-1978 addressed to the Joint Secretary of the Association that the permission granted for occupying the room was on the clear understanding that the premises should not be used during working hours for the Association activities except with the previous permission of the Chief Administrative Officer or an Officer authorised by him and that room should not be used beyond 8 p.m. in the night. The Joint Secretary of the Association in his letter dated 12-8-1978 addressed to the CAO of the Institute conveyed that the Association was very happy to have its accommodation at No. 3, Andres Road, Annexure-2, State Bank of Mysore and further requested the Institute to provide one telephone, one Almirah, one T-9 table, fifteen Chairs, one filing Cabinet of four drawers at an earlier date as the Association was contemplating to have the opening function of the Association in that room shortly. On 10-12-1982, one of the Office-bearers of the Association by name Muralidhara addressed a letter to the Director of the Institute requesting the Director to allot a spacious accommodation to the Association immediately in the Campus as the process of shifting Administrative office, Library etc., of the Institute was under way and it was expected that by January, 1983 a majority of the officials would be working in the Campus. In that letter, a request was also made to provide a big notice board measuring 3" x 2" to the Association for pleading the notices of the Association. But, sometime prior to 17-1-1983, the Association had unlawfully occupied the office room in question although it was not allotted to the Association by the Institute. This circumstances can be gathered from the letter dated 17-1-1983 addressed by the CAO of the Institute to the Secretary of the Association wherein it is mentioned that the Association had occupied a room in the Faculty Block-"A" without having been allotted to the Association by the

Administration and that the Institute could not make available a room for the Association as no room was readily available and even when the Institute was looking for some alternative arrangement and a reply could be sent to the letter of the Association, the Association had Wrongly occupied the office room and, therefore, the Association was requested to vacate that room immediately and arrangements were being made to offer an alternative accommodation to the Association. It is stated in the letter dated 2-2-1983 addressed by the Administrative Officer (G) of the Institute to the Secretary of the Association that a room in the site office near the front gate had been allotted to the Association for housing the office and the Association is requested kindly to occupy the same immediately and vacate the premises in Faculty Block "A" now occupied by them. It is also made clear in that letter that the site office premises now allotted to the Association was only provisional; that the Institute shall endeavour to get a more suitable office room as soon as they settle down and re-arrangement facilities in the new office and they shall identify the location in consultation with the Secretary of the Association. It is further mentioned in that letter that the site office now provided to the Association would be rendered more convenient to the Association by making any alterations the Association may suggest. In the letter dated 10-6-1983, the Secretary of the Association has brought to the notice of the Institute that the site office proposed by the Institute for occupation of the Association was not convenient and they are sorry to note that no concrete alternative proposal had been intimated to them inspite of the request made in their letter dated 4-2-1983 and, therefore, the Institute is once again requested to make immediate arrangements for provision of a suitable accommodation for the Association in the main building of the Campus very soon so that they may have no room for complaining that the Association is not co-operating with the Management of the Institute. Senior Finance Officer and in-charge CAO of the Institute has stated in his letter dated 11-8-1986 addressed to Sri Michael B. Fernandes, President of the Association that the Association had forcibly and illegally occupied one of the important office rooms of the Institute in which it has been carrying on its activities in an objectionable manner; that the said room was meant to be the office of the Director and, therefore, the Association may be advised to vacate the office room without any further delay. It is again mentioned in the letter dated 24-4-1987 addressed by the CAO of the Institute to Sri Michael Fernandes that the Institute had been able to locate three alternative accommodation to house the Association office at the Campus which can be seen by him and the Office-bearers at any time convenient to both of them at the earliest so that a decision could be taken to shift the Union Office from its present location at the Campus as it was badly needed to house the Faculty Members who were to join the institute shortly. The same reason is repeated in the subsequent letter dated 21-5-1987 addressed by the CAO of the Institute to Sri Michael Fernandes. Sri Michael Fernandes has addressed a lengthy letter dated 23-7-1987 to Prof. Philip, Director of the Institute. Relevant portion of that letter reads as under:

"As for the shifting of the Association office, I do not wish to add anything more to the word of honour that I have already given in this regard, except saying that repeated letters from your end on this subject will only have the effect of adding undue pressure which any Union, is bound to resist."

The Director has sent 9 reply dated 8-8-1987 to the letter of Sri Michael Fernandes dated 23-7-1987. It is stated in the concluding portion of that 4 page letter as under:

"Your repeated assurance that you would come and visit the alternate accommodation for your Union Office, which you could occupy and thus vacate the forcibly occupied former Director's office in the main block of the Institute. This issue must be settled without further delay. I would like to conclude by saying that if we could develop certain basic understanding about the relative roles and interests of each party and adopt a policy of non-interference we could solve most of the Union Management issues in a spirit of cordiality and mutual respect. I would like to assure you that we are willing to play our part in this process, I hope you and your colleagues will reciprocate the sentiments, hope and efforts in this direction."

Sri S.G. Sundaraswamy submitted that the above referred correspondence between the Association and the Institute would clearly go to show that the Association had illegally occupied the office room and it had failed to vacate the same inspite of the Institute repeatedly requesting the Association to vacate the office room which was badly needed for accommodating the Faculty Members and the Association has filed the suit on 5-5-1989 indulging in baseless attack on the Director of the Institute. In my opinion, there is considerable force in the said argument of Sri Sundaraswamy.

17. Four documents in respect of which I.A.I II referred to above is filed by the Institute were actually produced by the Institute with its Statement of Objections filed to I.As.I and II as long back as 15-11-1989. First of those document is a photostat copy of the Annual General Body Meeting of the Association for the year 1984. The relevant para in that Report reads as under:

"The Management was cold and unresponsive to various issues raised by the representatives of the Association through letters. It was a calculated silence indeed. The representatives tried to have negotiations with the then Director but to no avail. The Management had taken unilateral decision to shift the Institute to the new Campus in January 1983 without caring to provide even the basic facilities like canteen, transport etc. The Association had requested the Management to provide an office room in the campus as per an agreement signed in this behalf. The Management had neither provided an office room to the Association nor did it reply the letters of the Association. In the circumstances, the representatives had no other option but to take position of a room in the campus to start their office. In fact, it was a new milestone in the history of the Union Government in the Institute for the members defended the

occupation of the room and manifested their unity once again to the Management. Perhaps, we could not have retaliated to the hypocritical and calculated silence of the Management in any better way than this. We could only say the Management got what it deserved."

It is clear from the above extracted passage in the report of the Secretary of the Association that it had occupied the office room in question in a highhanded manner although it was not allotted to the Association by the Management of the Institute. Therefore, the possession of the office room by the Association was clearly that of a trespasser from the very beginning. What constitutes trespass is described as under in RAMNATH IYER'S "THE LAW LEXICON" at page 1987;

"A forcible entry on the land of another with strong hand and against the will of the owner constitutes a trespass."

18. Sri N. Kumar, learned Counsel for the plaintiff-Association was not in a position to state under what authority the Association had occupied the office room. He urged that the very fact that the Management of the Institute had provided telephone, furniture etc., to the office room of the Association in question would show that the Management had condoned their act of trespass, if any, and the very fact that the Association was in possession of the office room for over six years and 9 months by the time the suit was filed would make the possession of the office room by the Association as a "settled possession" and, therefore, it was entitled to the relief of temporary injunction sought for in I.A.II against the Institute. I find it difficult to accept the said argument of Sri N, Kumar, inasmuch as, the Institute has repeatedly brought to the notice of the Secretary and later, the President of the Association, that the Association was in illegal occupation of the office room and it was requested-time and again to vacate the office room by occupying the alternative accommodation mentioned in the above referred letters of correspondence. Therefore, it cannot be said that the Institute has condoned the act of trespass committed by the Association. It is held by this Court in RAGHAVENDRA RAO v. DODDA RAMALINGAPPA ILR 1933 Kar 215 that:

"A trespasser is not entitled to an order of temporary injunction as against a true owner. A person having possessory title can maintain a suit for possession against another person who has no better title than himself. Such a possessory title will not be available as against true owner of the property."

Reference is made in the said decision to several decisions including an earlier Division Bench decision of this Court in Patil Exhibitors (Pvt.) Ltd. Vs. The Corporation of the City of Bangalore, on which strong reliance was placed by Sri, N. Kumar. In view of the said decision, which is directly on the point, I do not consider it necessary to refer to the other decisions cited by the learned Counsel on both sides. Consequently, I hold on Point No. (2) that the trial Court was justified in denying the relief of temporary injunction to the plaintiff-Association by dismissing I.A.II filed by it.

19. POINT No. 3: It is held by a learned Single Judge of this Court in Suganda Bai Vs. Sulu Bai and Others, that:

"It is only in cases where the defendant's claim to relief arises out of the plaintiff's cause of action or is incidental to it that he can ask for a temporary injunction against the plaintiff."

Later, a Division Bench of this Court has held in RAMIAH AND ORS. v. GODAPPA AND ORS 1989(1) KarLJ 210. that the defendants can file an application seeking temporary injunction against the plaintiffs in a suit filed by the plaintiffs and that the view taken in Suganda Bai's case does not militate against the view taken by the Supreme Court in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, regarding the inherent jurisdiction of a Court to grant temporary injunction in appropriate cases.

20. It is clear from the ratio of the above mentioned two decisions that a defendant can in appropriate cases claim interim injunction against the defendant in the same suit provided the defendant's claim to relief of injunction arises out of the plaintiff's cause of action or is incidental to it. In Suganda Bai's case, the cause of action for the plaintiff's suit arose in the year 1970 whereas the cause of action for the defendant's arose in 1973. Therefore, it is held that the two causes of action are different and, as such, the Courts below were wholly in error in granting temporary injunction prayed for by defendant-1. In that view of the matter, his Lordship has allowed the Revision Petition, reversed the orders of the Courts below and dismissed first defendant's application for temporary injunction against the plaintiff.

21. In my opinion, I.A.III filed by the defendant in the instant case deserves the same fate and the learned trial Judge was clearly in error in allowing I.A.III, The Association has stated in paragraph-14 of the plaint that the cause of action for the suit arose on 1-5-1989 when it was prevented from observing the "May Day" and subsequently, when threats were issued to the Members of the Association stating that they would be thrown out of the office room on 6-5-1989 and subsequent to that date. Defendant has filed I.A.III on 11-7-1989 under Order 39 Rule 1 read with Section 151 C.P.C. requesting the Court to restrain the plaintiff-Association, its Office-bearers, Members, Agents etc., from functioning and ceasing to occupy the schedule room and its Office-bearers and Members from entering or using or meeting in the suit schedule room either singly or in a group pending disposal of the suit, it is not made clear in the affidavit of the Chief Administrative Officer of the Institute filed in support of the prayer made in I.A.III as to when the cause of action for the relief of temporary injunction sought in I.A.III arose for seeking the said reliefs against the plaintiff-Association. The material averments made in the affidavit are that the plaintiff is not a tenant in respect of the suit schedule room nor do they have any licence to occupy the same and when such is the position, the plaintiff is duty bound to cease to make use of the office room when called upon to do so by the defendant. It is further stated that the plaintiff has no legal right to commit acts

of trespass and continue to use the office room illegally and no inconvenience would be caused to the plaintiff if the order is passed restraining the plaintiff from ceasing to occupy the office room as defendant has agreed to provide an alternative accommodation to the plaintiff pending disposal of the suit. The learned Civil Judge has considered the prayer made in I.A.III in paragraph-9 of his order wherein he has held on the basis of the ruling in the case of Ramiah's case that:

"The defendant can file an application seeking temporary injunction against the plaintiffs in a suit filed by the plaintiff."

and has then observed as under:

"Here is a case where the plaintiff has filed the suit for decree of permanent injunction against the defendant stating that the accommodation was provided by the defendant for the Union activities of the plaintiff and now the defendant is interfering with its possession and enjoyment of the said premises. However, according to the case of plaintiff itself, plaintiff is not in possession either as a lessee or under any right except a provision made for the plaintiff by the defendant in providing such accommodation by virtue of the agreement and now the same is requested by the defendant not to use the premises. Therefore I do not see that the plaintiff's possession as either lawful possession or juridical possession. Therefore, the application of defendant is maintainable and the defendant has made out a prima facie case for an order of injunction.."

That apart, the learned trial Judge has not considered whether the cause of action for the defendant for seeking an order of injunction against the plaintiff stemmed from the same cause of action alleged in the suit filed by the plaintiff and whether it would be just and proper to grant an injunction against the Association which was admittedly in the possession of the office room for about six years and nine months prior to the filing of the suit. In this connection, Sri N. Kumar, placed strong reliance on a recent decision of the Supreme Court in KRISHNA RAM MAHALE (dead) BY HIS LRS v. MRS. SHOBHA VENKAT RAO (1889) 4 SCC 131 wherein it is held that:

"Where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law."

What is "settled possession" is considered by the Supreme Court in the case of Ram Rattan and Others Vs. State of Uttar Pradesh, Some of the four attributes of "settled possession" enumerated towards the end of paragraph-4 of the decision are that:

"The trespasser must be in actual physical possession of the property over a sufficiently long period and that possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possidendi."

In the instant case, the Association was in possession of the office room to the knowledge of the Institute for about six years and nine months. Therefore, it can be regarded as sufficiently a long period. It is no doubt true that the possession of the office room by the plaintiff was that of a trespasser from the very inception inasmuch as it was not legally inducted into the office room by the Institute. Even then, the Institute cannot oust the "Association from the office room by indirect method of securing an order of injunction against it. In this connection, I may usefully refer to the observations made by their Lordships of the Supreme Court in the above mentioned case of Krishna Ram Mahale, in paragraphs 3 and 9 at page 136 as under:

"It is a well settled law in this Country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in Lallu Yeshwant Singh Vs. Rao Jagdish Singh and Others, . This Court in that Judgment cited with approval the well known passage from the leading Privy Council case of AIR 1924 144 (Privy Council) where it has been observed (page 208):

"In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court."

9. The proposition was also accepted by a Division Bench of this Court in Ram Rattan and Others Vs. State of Uttar Pradesh, ; The Division Bench comprising of three learned Judges held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law....."

In view of the said observations, I am of the opinion that the proper course the Institute should have adopted to secure possession of the office room from the plaintiff- Association was by way of a separate suit and not by seeking relief of injunction of the nature mentioned in I.A.III. Therefore, I hold that the impugned order of the learned trial Judge in so far as it relates to allowing I.A.III deserves to be set aside as it is manifestly an arbitrary and unreasonable order. Point No. (3) is answered accordingly.

22. The next aspect to be considered is whether this Court can direct the defendant-Institute to put the plaintiff-Association in possession of the Office room of which it has admittedly taken possession on 16-9-1989. In my opinion, it would not be just and proper for this Court to give any direction to the defendant and it is open to the plaintiff-Association to seek appropriate relief against the defendant-Institute by filing an application in the suit in the trial Court or by filing a separate application for restitution if so advised.

23. Before concluding, I consider it necessary to observe that several opportunities were given to both parties in the course of hearing of this appeal which commenced on 9-2-1990 to arrive at an amicable settlement by providing suitable alternative accommodation to the Association in the Campus of the Institute. But, the learned Counsel on both sides pleaded that they were not able to bring about an amicable settlement inspite of their best efforts. But, I still hope that better sense will prevail on the part of the Office-bearers of the Association which will do well to take advantage of the offer made by the Management of the Institute to provide suitable accommodation elsewhere within the Campus to the Association instead of adopting a defiant attitude as if it has a vested right to claim accommodation of its choice in any particular building in the Campus. In my opinion, if both sides adopt a give and take policy having regard to the relationship of Employer and Employee existing between them, it would be possible for them to locate some convenient portion of the building for housing the Association in a comfortable manner.

24. In the result, the appeal is allowed in part and the impugned order of the trial Court in so -far as it relates to allowing I.A.III is set aside and I.A.III is dismissed and the order dismissing I.A.II is confirmed. In the circumstances of the case, parties are directed to bear their own costs.