
(2002) 01 DEL CK 0007

In the Delhi High Court

Case No : IA 4970-71 of 2000 and 268 of 2001 in Suit No. 1103 of 2000

Mrs. Sukerma Rani Kapoor

APPELLANT

Vs

Om Prakash Kapoor and Others

RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 151
Evidence Act, 1872 — Section 8
Registration Act, 1908 — Section 17
Specific Relief Act, 1963 — Section 6

Citation : (2002) 2 AD 860

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Rakesh Prasad and Amit Mahajan, for the Appellant; H.L. Raina, for the Respondent

Judgement

A.K. Sikri, J.—The plaintiff herein is the mother of the defendant no.1. The defendant no.2 is the wife and the defendants 3 and 4 are children of the defendant no.1. This Suit is filed by the plaintiff for permanent and mandatory injunction and consequential relief u/s 6 of the Specific Relief Act. It is the allegation of the plaintiff that she is the owner of the Suit premises namely, B-8, Anand Niketan, New Delhi (hereinafter referred to as Suit property, for short) which is a 2-1/2 storeyed house and that the defendant-1 have usurped and possessed the first floor of the Suit property. Prayer made in the Suit which is filed u/s 6 of the Specific Relief Act as mentioned above, is for passing a decree of mandatory injunction, removing/evicting the defendants from the Suit premises and restoring the vacant possession thereof to the plaintiff. The decree for permanent injunction is also prayed for restraining the defendants, their servants, agents, employees, etc. from interfering with the possession of the property in the ground floor and second floor of the said house.

2. IA.268/2001 is filed by the plaintiff seeking ad interim relief to the effect that

the plaintiff be permitted to repair/rectify the leakage and water seepage coming from the bathroom of the first floor of the Suit premises with the assistance of labour forthwith and the defendants be restrained from creating any obstruction/hindrance from carrying out these repairs.

3. IA.4970/2000 is an application under Order XXXIX Rules 1 and 2 read with Section 151 of the CPC (hereinafter referred to as CPC, for short) praying as under:-

- a. That the defendants be directed to vacate the first floor premises the suit premises of the suit property - B-8, Anand Niketan, New Delhi, forthwith;
- b. Pass an ad interim exparte temporary injunction restrain the defendants their agents, servants, employees, assignees or their family members or anyone else acting on their behalf from entering and/or interfering with the peaceful use and possession of the plaintiff in the suit property - B-8, Anand Niketan, New Delhi;
- c. For constructing/alteration/renovation/ white washing/ the first floor of the B-8, Anand Niketan, New Delhi.
- d. Restrain the defendants/agent/etc to part with possession to any third party.
- e. Pass such order/orders that this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

4. IA.4971/2000 is an application under Order XLIII Rule 1 read with Section 151, CPC for appointment of Receiver. All these IAs were heard together and I propose to dispose them by this common Order.

5. Before proceeding to deal with these applications, it would be appropriate to notice some more facts. As already mentioned above, the plaintiff claims herself to be the exclusive owner of the entire Suit premises and also claims that the superstructure was erected thereon by her own funds. She states that for this purpose she had raised loans. She was working as Manager in United Bank of India. It is also alleged in the plaint that the defendants 1-4 were living separately from the plaintiff at 8740, Block-XI, Vasant Kunj, New Delhi. Apart from the defendants the plaintiff has two more children. One is the younger son who lives in Munirka, New Delhi and is an officer in a Bank. The third child is her daughter who lives in U.S.A. The plaintiff frequently goes to U.S.A. and spends six months in a year with her daughter. When she comes back to India she stays at a flat in Gurgaon which belongs to her daughter. Incidentally the defendant no.1 is also working in United Bank of India where the plaintiff served.

6. The entire Suit premises were let out to Embassy of Zimbabwe since 1989 and the plaintiff was appropriating the entire rent as exclusive owner of the Suit property. The Embassy ultimately vacated the Suit premises on 15th April, 2000 but kept the possession till 17th April, 2000. The plaintiff went to the Suit premises to take possession thereof on 17th April, 2000. On reaching there, she found that the defendants had reached the site at about 3.00 p.m., the time

fixed by the Embassy for handing over of the keys of the premises. The keys of the entire house of all the floors were kept on the table. The plaintiff asked the defendant no.1 to climb up and inspect the rooms of the first floor/ground floor and the second floor as she is unable to claim due to her age. The keys were given to the defendant no.1 for this purpose. The defendant no.1 took all the keys of the house and went to the floors to inspect and sort out the keys and came after a little while and left the keys on the said table. The plaintiff failed to realize that the defendant no.1 surreptitiously removed the keys to the first floor of the house from the said bunch of keys given by the Embassy of Zimbabwe. The defendant no.1 left in the evening. The plaintiff had decided to stay in the house for renovating the house which need repairs before the said premises could be let out to some other embassies as tenants. The plaintiff stayed at the house alone for this purpose. The plaintiff was resting in the ground floor at night. To her utter surprise, when she woke up in the morning, she learned that the defendant no.1 in a clandestine manner, without her permission/consent, had illegally trespassed and forcibly occupied the first floor premises by bringing a bed and other household items at night. The plaintiff learnt that these things were brought in a tempo. The defendant no.1 along with his family (i.e. the defendants 2-4) occupied the first floor of the Suit premises which comprises of four bed rooms, drawing, dining and toilet, etc.

7. Thereafter, the plaintiff narrates as to how the defendant no.1 inspire of resistance on the part of the plaintiff occupied the first floor of the Suit premises and that the plaintiff did not call the police as she always thought that the matter would be amicably settled, keeping in view the relationship between the parties and the hope that the son would withdraw. It is not necessary to mention these facts in detail at this stage. Suffice is to state that it is the case of the plaintiff that as the defendant did not vacate the first floor of the Suit premises the plaintiff was forced to file the present Suit.

8. In the written statement filed on behalf of the defendants various allegations made in the plaint are denied. Certain preliminary objections are also taken. It is inter alias stated that the plaintiff has not approached this Court with clean hands and is guilty of suppression of material facts. It is further stated that the Suit premises were allotted by the Delhi Development Authority on 8th February, 1968 to the father of the defendant no.1/husband of the plaintiff. At that time since the defendant no.1 was minor, his father had nominated the plaintiff herein as his nominee. The property was purchased by the father of the defendant no.1. He passed away on 16th January, 1970 leaving behind the plaintiff and three children who, by law, inherited the property in equal share. Therefore, the plaintiff has 1/4th share in the property so has the defendant no.1. It is also stated that the plaintiff got the mutation done in her name, committing fraud and depriving other co-owners and the defendant no.1 is separately challenging the same. It is further claimed that the loans which were raised by the defendant no.1, the defendant no.1 along with his younger brother stood surety for the same. Even the repayment schedule was made from the salary of the plaintiff as

well as the defendant no.1 and his younger brother who were working in the same Bank. It is also stated that the defendant no.1 along with his family resided in the Suit premises from 1969 to 14th March, 1989 when the premises were given on rent to the Embassy of Zimbabwe. It was also agreed that the rent of the said premises be given to the plaintiff as she insisted upon the same to enable her to repay the debts. It is in these circumstances, the defendant no.1 and his younger brother let out the Suit premises and started staying independently and when the Embassy of Zimbabwe vacated the premises the plaintiff asked the defendant no.1 to come and take possession of the said premises from the Embassy officials. At that time the plaintiff and the defendant no.1 arrived at mutual understanding that the defendant no.1 with his family would reside in the first floor of the Suit premises and the plaintiff and younger brother of the defendant no.1 chose to stay on the ground floor and the second floor of the premises on rent since they did not chose to reside there. Therefore, there is no dispossession of the plaintiff or fraud committed by the defendant no.1 as alleged in the plaint. It is also stated that although the plaintiff had received the rent from the Embassy, she in turn gave the defendant no.1 a sum of Rs.2,40,000/- in the year 1993 and Rs.1,50,000/- to the defendant no.2 in December, 1999 as an understanding from the share of rental receipts and similar payments were also made to younger brother of the defendant no.1.

9. These allegations made by the defendants in the written statement are forcefully denied by the plaintiff in her replication. In addition to reiterating what is stated in the plaint, it is mentioned that the allegation now made in the written statement are after-thought and that on the death of the plaintiff's husband the property was mutated in favor of the plaintiff way back in the year 1970 that too after the defendant no.1 as well as his younger brother had given no objection and executed documents to this effect. The plaintiff was enrolled as a full member of the cooperative society and fresh sub-lease for the plot in question was executed in her name. On the basis of this ownership, she raised loans in her name. The fact that the defendant no.1 stood surety shows that the defendant no.1 knew fully well that it was the plaintiff who became owner of the property and Therefore it was not open for him to challenge the said mutation or ownership of the property in the name of the plaintiff after a lapse of 30 years. It is also stated by the plaintiff that admittedly for over 10 years there is no document to show that the defendants 1-4 were living in the Suit premises. They lived in their own flats which has been purchased, with the financial help of the plaintiff, at Vasant Kunj, New Delhi.

10. From the pleadings on record, the following admitted factual position emerges:-

| 1. The husband of the plaintiff and father of the defendant no.1 was the Member of the Society who had been allotted the plot in question. He had made the plaintiff his nominee. He died in the year 1970.

2. The plaintiff, as per the said nomination, became Member of the Society. At

that time the Suit property was in the form of plot only and no construction had been raised. The perpetual lease deed was executed by the Government in favor of the plaintiff. As per this perpetual lease deed the plaintiff is the exclusive owner of the Suit property.

3. At the time of the mutation and execution of the lease deed in the year 1970, the defendant no.1 had become major. He executed necessary documents along with his brother to enable the plaintiff to get the mutation in her name. The share certificate issued by the Cooperative Society is also in the exclusive name of the plaintiff.

4. The construction was raised thereafter. Admittedly the plaintiff had raised loan for this purpose. This loan was granted in favor of the plaintiff who had mortgaged the title deeds of the property to the Bank. The defendant no.1 had the knowledge about this transaction as he even stood surety/guarantor for such a loan.

5. In the written statement, although the defendant no.1 has alleged that the mutation is done by fraud, he does not deny that his knowledge of all the aforesaid facts since 1970 and also of the subsequent events as and when when occurred i.e. when the loan was raised and when the permission for mortgaging the property was sought from the Delhi Development Authority which was granted on 8th January, 1998. Further, although the defendant nos.1-4 has stated in their written statement that they are separately challenging the mutation, no such proceedings are taken out by the defendant no.1 till date.

6. Admittedly in the year 1989, when the Suit premises were let out to the Embassy of Zimbabwe, the letting was by the plaintiff as owner and land-lady/ Lesser of the Suit premises. It is she who received the rent of the premises from the tenant throughout i.e. till 17th April, 2000.

7. The defendant no.1 did not till filing of his written statement, claim himself to be the co-owner of the said Suit property in any proceedings or even before any authorities i.e. his employer, his Income Tax returns, etc.

11. The prayers made in this application are to be examined on the basis of aforesaid admitted position. Of course, it may be stated at this stage, that there is a dispute as to how the possession was taken from the Embassy of Zimbabwe on 17th April, 2000. Whereas the plaintiff claims that it is she who has taken the possession and the defendants fraudulently trespassed into the first floor of the Suit premises, it is the case of the defendants that this was done by the parties pursuant to mutual understanding between them as per which the defendant no.1 and his family were allowed to stay in the premises. The present Suit is one u/s 6 of the Specific Relief Act. For the maintainability of such a Suit what is to be seen is as to whether the plaintiff has been dispossessed without her consent or in a manner otherwise than in due course of law. Once these two ingredients are established, the Court can put back the plaintiff and restore the possession from where the plaintiff had been dispossessed without her consent or in a

manner otherwise than in due course of law.

12. Even if it may be treated that there was some family arrangement, the family arrangement was to the effect that the plaintiff would be owner of the property and would receive the rent thereof as is clear from the long course of dealing. Therefore, the manner in which the parties acted over a period of time is the reflection of the arrangement of a family settlement which the parties had arrived at. One may lawfully refer to the case of Taraknath and Another Vs. Sushil Chandra Dey by Lrs. and Others, and the following observation made by the Apex Court in this regard:-

"As regards the family settlement of the brothers, it would be open to the brothers to resolve the prospective dispute by way of family settlement. The brothers having agreed for the settlement, though they have been impleaded as party respondents to the suit, they have not challenged the family settlement nor have they contested the validity thereof. It is not necessary, in the circumstances, that all the brothers be present at the settlement. One of the brothers living in London can authorise his other brothers to settle the dispute and he was a consenting party to it. Under those circumstances, we are of the view that the brothers obviously had a settlement pursuant to which the demised property has been allotted to the share of Syed Baitul Alam who had sold the property to the appellant under the sale deed dated 6-8-1979. The sale deed is a registered conveyance for valid consideration. Under those circumstances, by operation of Section 17 of the Registration Act, 1908, the appellant gets valid title to the property. The pre-existing right, title and interest in the property of Syed Baitul Alam and his brothers stood extinguished by operation of the law. Thereby, the appellants get valid title to the property."

13. It would also be apposite to refer to another judgment of the Supreme Court in the case of Sahu Madho Das and others versus Pandit Mukand Ram and another reported in 1995 (2) SCR 22 in support of the aforesaid proposition.

14. Even if the contention regarding the arrangement arrived at in the year 1970 is accepted, it would be difficult for the defendant no.1 to resile from that position as it may amount to unqualified relinquishment, surrender and disclaimer.

15. Moreover in the present case the admitted facts, as highlighted above, would amply demonstrate that the plaintiff is the registered owner of the Suit property. In such circumstances it would not be open to the defendants even to plea co-ownership for two reasons :-

(1) Firstly, because no such claim has been made for the last more than 30 years even after knowing fully well that the property was mutated and lease deed registered in the name of the plaintiff. The defendant no.1 Therefore acquiesced into this position allowing the plaintiff to continue as the owner of the Suit property for such a long period.

(2) Such a defense is legally impermissible having regard to the provisions of Benami Transaction Act.

16. Therefore, from whatever angle the matter is to be looked into as of today while deciding these applications the Court has to proceed, prima facie on the basis that the plaintiff is the exclusive owner of the Suit property.

17. In so far as the possession of the Suit premises before 17th April, 2000 is concerned, actual physical possession remained with Embassy of Zimbabwe. However, it can safely be inferred that constructive possession thereof was with the plaintiff as she entered into lease agreement with the Embassy as owner/land-lady of the Suit premises and it is she who had admittedly received the rent for the entire period i.e. from 1989 till 17th April, 2000 from the said Embassy. Therefore, it is almost for 12 years prior to 17th April, 2000 that the plaintiff had been receiving the rent.

18. Having stated the aforesaid admitted factual and legal position let us we proceed further. As mentioned above, there is a dispute as to how the defendants came to possess the first floor of the Suit premises. One very relevant factor which will have to be borne in mind in this connection is the date on which the present Suit was filed. This Suit was filed on 23rd May, 2000 i.e. after about a month from the date when possession of the premises was handed over by the Embassy. This factor militates against the story put forth by the defendants regarding permissive possession on the alleged understanding arrived at between the parties. As per Section 8 of the Indian Evidence Act contemporaneous conduct of the parties is relevant. Had there been an understanding of this nature between the parties as per which the plaintiff had allegedly with her consent given possession of the first floor of the premises to the defendant no.1, she would not have filed the Suit within one month. Therefore, while taking prima facie view, a further premise on which the Court is proceeding is by believing the version of the plaintiff at this stage, namely, the defendant no.1 forcefully entered into and took possession of the first floor of the Suit premises.

19. This brings us to the question as to whether the plaintiff can, by way of interim Order, be given the relief prayed for in IA. 4970/2000. The contention of the defendants here is that giving of such a relief at an interim stage would amount to decreeing the Suit itself and final order cannot be passed in the IA.4970/2000 under Order XXXIX Rules 1 and 2, CPC. In support of this proposition, the defendants have relied upon the case of M/s. Magnum Films and another versus Golcha Properties Pvt. Letx. reported in AIR 1983 Del 392, Boku Mahton and others versus Most. name not known widow of Boku Mahton and Others Vs. Most. name not known widow of Anathi Thakur and Others, , Yashwant Singh versus Jagdish Singh reported in AIR 1968 SC 620. On the other hand, learned counsel for the plaintiff submitted that mandatory injunction at interlocutory stage so as to restore status quo ante can be granted by the Courts and while doing so it is the balance of convenience and irreparable injury which

are considerations that would govern the exercise of jurisdiction. In support of this proposition learned counsel for the plaintiff relied upon the case of Baban Narayan Landge Vs. Mahadu Bhikaji Tonchar and Others, , Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, and Baluev Raj Vs. Tub Delhi Development Authority and Others, .

20. There is no dispute about the general proposition of law namely, such a mandatory injunction at interlocutory stage should not normally be granted which has the effect of granting the final relief. That is what is the law laid down in catena of cases including the judgment relied upon by the defendants and referred to above. However, it is not an absolute principle of law. There is no such mandate by any law that in all circumstances such a relief at an interlocutory stage had to be refused. Of course, normally such a relief is not to be granted. However in exceptional circumstances mandatory injunction at interlocutory stage, particularly to restore the status quo ante, can be granted by the Courts. This is what is propounded by the judgments referred to by the learned counsel for the plaintiff. In Baban Narayan Landge (supra) the Bombay High Court observed as under:-

"Has a Civil Court jurisdiction to issue at an interlocutory stage a mandatory injunction so as to restore the status quo anterior to the date of institution of a suit, is a point that falls for determination in this civil revision application.

In my view, answer to this question has to be recorded in the affirmative. Here are my reasons : The subject of temporary injunction is mainly covered by O.39, Rr.1 and 2, CPC. In cases not covered by those provisions, an appropriate temporary injunction can be granted also in exercise of inherent power of a Court under S.151, CPC. After all O.39, Rr.1 and 2 are not exhaustive of the circumstances under which interim injunction can be granted. The controversy on that aspect of the matter is set at rest by a majority decision of the Supreme court in the leading case of Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, . But that apart the language employed in those two Rules is clearly wide enough to include an order in the form of a mandatory injunction and admits of no exception with reference to a point of time to which it can be made. Injunctions are a form of equitable relief and they have to be adjusted or moulded in aid of equity and justice to the facts and circumstances of each particular case. Jurisdiction is thus undoubted even under O.39, Rr.1 and 2. Even if it cannot be granted under the said Rules, S.151 is the source of such jurisdiction. I see no reason to lay down an absolute proposition and forge unnecessary and unjustified fetters on the power of the equity Courts to grant appropriate relief even in a well deserving case and reduce its position only to a willing but helpless spectator - a situation not warranted by our equity jurisprudence.

Undoubtedly, power to issue mandatory injunction at an interlocutory stage is not to be exercised lightly or commonly. Ordering maintenance of status quo as on the date of the suit as an interim measure is rare and rarer still is the order of

maintenance of status quo as on the date anterior to the institution of suit. But existence of jurisdiction and its proper exercise are two distinct topics."

21. Similarly in *Dorab Cawasji Warden* (supra) after referring to various judgments the Court laid down the principle in para 14 and 15 thereof in the following terms:-

14. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favor of the one seeking such relief.

15. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as pre-requisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

22. To the same effect is the judgment of this Court in the case of *Baldev Raj* (supra).;

Therefore keeping the aforesaid principles of law in mind, as pressed into service by the plaintiff as well as the defendants, we have to examine as to whether the plaintiff has made out a case for grant of such an Order at interlocutory stage. As already mentioned above, the plaintiff was in constructive possession of the Suit premises till 17th April, 2000. This possession was with her for almost 12 years as the defendants had shifted to their Vasant Kunj house, way back in the year 1989. For these 12 years the plaintiff was receiving rent from the Embassy and also maintaining the Suit premises. She has strong prima facie case to the effect that she is the exclusive owner of the property. Prima facie this Court is also convinced that she has been dispossessed from the first floor of the Suit

premises without her consent or in a manner otherwise than in due course of law. The plaintiff being the exclusive owner of the property, the defendants have otherwise no right in laws to stay in these premises. Therefore, the plaintiff has a strong prima facie case. Admittedly the plaintiff is a widow and at the time of filing of this Suit she was 76 years old. From that reckoning she would be more than 77 years of age as of today. Therefore it cannot be disputed that she is an infirm old widow. She has also alleged that the defendants have not looked after her and at this age she needs proper care and attention. She has to survive on the rental income after letting out the Suit property. Earlier the entire Suit property was let out and her case is that she would not get a good tenant and reasonably good rent by letting out portion of the property with the defendant no.1 in possession of the first floor of the Suit property. It is hard reality that it takes long time to decide the main suits. In such circumstances, when balance of convenience is also in favor of the plaintiff and the plaintiff may suffer irreparable injury in case the interim relief at this stage is not granted, whether she should be denied this mandatory injunction at an interlocutory stage - the answer would be NO and the conclusion would be to hold that there are exceptional circumstances in favor of the plaintiff warranting such a relief at this stage. What would be the use if the Suit is not decided in the lifetime of the plaintiff and ultimately the decree for possession is passed against the defendants at a time when the plaintiff is no more. The plaintiff needs the premise now. She has to let out the same in order to receive rent and enable her to maintain herself. On the other hand, the defendants are having their own property at Vasant Kunj, where they were living for 12 years before they shifted to the first floor of the Suit premises. The defense raised by the defendants in the present Suit does not inspire much confidence and gives the impression that these grounds are taken for the sake of raising defense, just to delay the proceedings and remain in possession of the first floor of the Suit premises unauthorisedly.

23. It may be observed at this stage that principle of comparative strength of the case while deciding such applications is also getting momentum. This Court highlighted/stated this principle way back in the year 1985 Penguin Books Ltd. Vs. India Book Distributors and Others, . Now even English Courts have started propounding this theory. Viewed from this angle also the case of the plaintiff outweighs the defense of the defendants. Being exclusive owner of the property she has right to seek possession of the first floor. There is likelihood of her to succeed in the Suit. In such circumstances while examining the case from the angle of comparative strength and the peculiar circumstances in which old and feeble widow is placed, it would be in the interest of justice that the possession of the Suit premises is restored to her at this stage itself. It would be only restoring the status quo ante. After all she being the land lady of the Suit property had every right to take the complete possession thereof from the tenant. On the other hand, the interest of the defendants can be safeguarded, even if it is presumed that ultimately they are likely to succeed, by giving a direction to the effect that out of the rent which the plaintiff would receive, she would deposit 1/4th thereof

in this Court representing the share of the defendants. In view of the foregoing discussion IAs.4970-71/2000 is allowed. Mandatory injunction is issued in favor of the plaintiff and against the defendants by directing the defendants to vacate the first floor of the premises of Suit property namely, B-8, Anand Niketan, New Delhi within four weeks from the date of this Order. The plaintiff is appointed as Receiver with regard to the first floor of the said premises. She will have right to let out the entire Suit premises. However, she shall file in this Court the copy Lease Deed that may be arrived at with the intending lessee and also deposit every month 3/4th of the rent received from such a letting. The said amount shall be kept in Fixed Deposit by the Registry to be taken in the name of the Registrar General, High Court of Delhi.

24. Consequently, IA.268/2001 also stands allowed and the plaintiff can carry out the repair/rectify the leakage of water as stated in this application.

25. All these IAs stand disposed of in aforesaid terms.