



CRIMINAL

REAL ESTATE

# When Owners Become Trespassers: Reaffirming the Primacy of Possession in Criminal Law

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**PUBLISHED** 1 April 2026

The intersection of property law and criminal law often presents complex scenarios where ownership rights collide with possessory rights, particularly in landlord-tenant relationships. The Kerala High Court's recent judgment in CrI.R.P. No. 212 of 2016, *Damodaran K. v. State of Kerala* (2026:KER:26753), delivered on March 26, 2026, provides significant jurisprudential clarity on this interface. This case addresses fundamental questions regarding the scope of revisional jurisdiction under the Code of Criminal Procedure, the nature of criminal trespass as an offence against possession rather than ownership, and the principles governing sentencing discretion in cases arising from civil disputes. The judgment emerges from a protracted litigation history spanning over seventeen years, offering valuable insights into how appellate and revisional courts balance the imperative of upholding convictions with the need for proportionate sentencing.

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## Factual Background and Procedural History

The revision petitioner, Damodaran K., aged fifty-five years and son of Kunhiraman Nair, residing at Karamanthody, Karaduka Village, Kasaragod, found himself embroiled in criminal proceedings stemming from an incident dated May 11, 2009. The prosecution alleged that at approximately 12:00 p.m., the accused committed house trespass by entering Room No. KP III/773 of Karadka Panchayat at Mulleriya, which had been lawfully taken on rent by PW1 from the accused himself. The charge was that the landlord, in an apparent display of proprietary assertion, entered the tenanted premises without authorization and committed mischief by forcibly throwing out the tenant's household articles, causing damage estimated at ₹10,000. The prosecution marshaled evidence through nine witnesses, with PW3, PW4, PW5, and PW9 comprising independent eyewitnesses who testified to having observed the accused entering the room and committing the alleged acts of vandalism.

The litigation trajectory commenced before the Judicial First Class Magistrate Court-I, Kasaragod, in C.C. No. 657 of 2009. By judgment dated February 20, 2015, the learned Magistrate convicted the accused under Sections 454 and 427 of the Indian Penal Code, imposing substantive sentences of one year and six months simple imprisonment respectively, along with monetary fines. The accused thereupon preferred an appeal before the Additional Sessions Court-III, Kasaragod, in CrI. Appeal No. 62 of 2015. By judgment dated January 19, 2016, the appellate court, while affirming the conviction, exercised its sentencing discretion to reduce the imprisonment terms to three months for each offence, additionally directing compensation of ₹15,000 to the victim under Section 357(3) of the Cr.P.C. Dissatisfied with the affirmation of guilt, the accused invoked the revisional jurisdiction of the High Court under Section 397 read with Section 401 of the Code of Criminal Procedure.

## Rival Contentions and Issues Framed

Before the High Court, the revision petitioner, challenged the sustainability of the conviction and the proportionality of the sentence. The core issues crystallized around three principal questions: whether the concurrent findings of guilt recorded by the Magistrate and Sessions Judge could withstand scrutiny in revisional jurisdiction; whether the sentence imposed, even as modified by the appellate court, remained disproportionately harsh given the contextual circumstances; and whether a landlord could, in law, commit house trespass in premises of which he was the true owner. The State of Kerala, defended the impugned judgments, emphasizing the consistency and credibility of the eyewitness testimonies and the absence of any perversity in the lower courts' appreciation of evidence.

## Analysis of Revisional Jurisdiction

The High Court's analysis commenced with a careful delineation of the scope of revisional jurisdiction. Citing the Supreme Court's authoritative pronouncement in *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* (AIR 1999 SC 981), the Learned Court emphasized that revisional power constitutes supervisory jurisdiction exercised for correcting miscarriage of justice, which cannot be equated with appellate jurisdiction or treated as a second appeal. The Court reiterated the well-settled principle that interference with findings of fact is warranted only when they suffer from illegality, impropriety, or perversity, or when non-consideration of relevant material or misreading of evidence is demonstrated. The revisional court is precluded from reappreciating evidence and substituting its own view merely because another view is possible, unless glaring features amounting to gross miscarriage of justice are brought to its notice.

Applying these principles, the Court found no ground to disturb the concurrent findings of guilt. The testimonies of PW3, PW4, PW5, and PW9 were scrutinized and found to be consistent, free from material contradictions, and devoid of any apparent motive to falsely implicate the accused. The Court noted that these independent witnesses, being neighbours, had no animus against the landlord and their corroborative evidence established the occurrence beyond reasonable doubt.

## The Possession-Ownership Dichotomy

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The judgment's most significant contribution lies in its elucidation of the legal principle that criminal trespass and house trespass are offences against possession, not ownership. The Court unequivocally held that even a true owner cannot, under the guise of ownership, unlawfully enter premises in the lawful possession of another with intent to commit an offence. In the instant case, although the accused was the owner of the room, the evidence clearly established that the premises had been let out to PW1 and were in the tenant's lawful possession at the time of the incident. The Court rejected the notion that ownership ipso facto absolves the owner of criminal liability, affirming that unauthorized entry with requisite criminal intent squarely attracts the offence of house trespass under Section 454 IPC, and the consequent act of causing damage constitutes mischief under Section 427 IPC.

## Sentencing Discretion and Mitigating Factors

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While upholding the conviction, the High Court found merit in interfering with the sentence. The Court took judicial notice of the fact that the genesis and origin of the occurrence lay in a bona fide dispute between landlord and tenant regarding the tenanted premises. The absence of criminal antecedents against the accused, coupled with the specific motive rooted in property conflict rather than general criminal propensity, led the Court to conclude that the imprisonment terms imposed by the lower courts, though already reduced by the appellate court, remained somewhat harsh and warranted further modification.

## Final Decision and Directions

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The High Court allowed the revision petition in part, affirming the conviction while substantially modifying the sentence. For the offence under Section 454 IPC, the sentence was reduced to imprisonment till the rising of the Court. Similarly, for the offence under Section 427 IPC, the sentence was modified to imprisonment till the rising of the Court, with a direction to pay compensation of ₹15,000 to PW1 under Section 357(3) of the Cr.P.C., in default whereof simple imprisonment for one month would follow. The substantive sentences were directed to run concurrently. The accused was directed to appear before the Trial Court on June 1, 2026, to undergo the modified sentence, with a caution that failure to appear would empower the Trial Court to execute the sentence in accordance with law.

## Conclusion

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The judgment in *Damodaran K. v. State of Kerala* (2026:KER:26753) shows the judiciary's capacity to balance competing interests. It reaffirms that the criminal law's protection of possession operates independently of title, ensuring that tenants enjoy security against forcible dispossession even by their landlords. Simultaneously, it demonstrates how revisional courts can temper justice with mercy, recognizing that not all offences warrant carceral punishment, particularly when they emerge from civil disputes involving parties with established legal relationships. The decision is a salutary reminder that ownership rights must be asserted through lawful means, and that the criminal law remains a shield for the possessory rights of lawful occupants, regardless of their lack of title. For legal practitioners and property owners alike, this judgment highlights the imperative of respecting possessory rights and pursuing disputes through appropriate civil remedies rather than self-help measures that transmute civil conflicts into criminal liability.

## Related Practice Areas

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- Criminal Litigation
- Property Dispute