

R-86

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 18.11.2010
Judgment Delivered on: 22.11.2010

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RSA No.46/2001

SHRI ASHOK BABU Appellant
Through: Mr.B.B.Gupta and Mr.Mohit R. Nagar
& Mr. Harsh Hari Haran, Advocates.

Versus

SHRI PURAN MAL Respondent
Through: Ms.Sonia Arora, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. This appeal has impugned the judgment and decree dated 19.10.2000 which had reserved the finding of the Trial Judge dated 21.9.1999. By judgment and decree dated 21.9.1999 the suit of the plaintiff Ashok Babu seeking possession of one room on the ground floor bearing municipal no.9351, Gali Dorwali, Mohalla Tokriwalan, Pull Mithai, Delhi (hereinafter referred to as the "suit property") had been decreed in his favour. The impugned judgment had set aside this finding; suit of the plaintiff was dismissed.

2. The factul matrix of the case is as follows:

- i. Plaintiff Ashok Babu claimed himself to the absolute owner of the property bearing No.9349 to 9352, Gali Dorwali, Mohalla Tokriwalan, Pull Mithai, Delhi. He had purchased it from Smt.Memwati vide sale deed dated 02.02.1982.

ii. The defendant was stated to be in unauthorized possession of one room in ground floor i.e. suit property as described hereinabove for the last eight years. In spite of requests, the defendant failed to deliver the possession of the suit property. Accordingly the suit was filed.

iii. In the written statement, defendant took a preliminary objection that the plaintiff has no locus standi to file the present suit; sale deed was forged and fabricated. Memwati has no title or interest in the suit property. Plaintiff had acquired no title; defendant was in continuous physical and hostile possession of the aforementioned property for the last 31 years. He had become owner by adverse possession.

iv. Trial Judge had framed six issues on 04.8.1993, which read as follows:

- i. Whether plaintiff is the owner of the property in suit? OPP
- ii. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
- iii. Whether the suit is bad for non-joinder of necessary parties? OPD
- iv. Whether the defendant has become owner of the property in suit by way of adverse possession? OPD
- v. Whether plaintiff is entitled to the relief of possession as prayed for? OPP
- vi. Relief.

v. On 24.7.1985, an additional issue was framed, which is as follows

“Whether this Court has no pecuniary jurisdiction to try the present suit? OPD

vi. On the basis of the oral and documentary evidence which included five witnesses examined on behalf of the plaintiff and two witnesses examined on behalf of the defendant, suit for possession in favour of the plaintiff was decreed. It was held that plaintiff Ashok Babu had acquired title to the suit property in terms of the sale deed Ex.PW-1/1 dated 5.2.1982

executed in his favour by Memwati. Contention of the defendant that Memwati had not acquired title of the suit land in terms of the sale deed executed by the erstwhile owner Smt.Nihalo in favour of Memwati was negated. It was further held that the defendant who had set up the plea of ownership by adverse possession was unsubstantiated; even assuming that the defendant was living in the suit property since 1975, he had not perfected his title in 1982 when the suit was filed; mandatory period of 12 years for an adverse possession was not made out. Suit by the plaintiff for possession was accordingly decreed.

vii. Impugned judgment dated 19.10.2000 had set aside this finding. The first Appellate court had re-appreciated both the oral and documentary evidence. It was held that the defendant was in possession of the suit property since 25.9.1968; he had perfected his title in the intervening period of 12 years i.e. up to 25.9.1980; suit was filed on 31.10.1982 was barred by limitation. Article 65 of the Limitation Act had been adverted to. The relevant extract of the finding in the impugned judgment read as follows:

“It is true that the burden of proving adverse possession lay on the defendant/appellant. It was for him to establish that he had been in open, peaceful, actual, continuous and hostile possession of the property for more than 12 years. He examined himself as DW2 and stated that the room in dispute had been constructed by his father before the partition of the country. He stated that his father shifted to Delhi from Ambala and raised the structure as the land was lying vacant. On cross-examination, he stated as follows:-

“I never claimed that this property belonged to

somebody else and that I was in adverse possession of the property. My father also never claimed being in adverse possession of this property. Vol. he himself has constructed the property. I don't know whether my father took this land on lease or purchased the same. I never made any attempt to enquire from the Patwari regarding ownership of the land.

Q. I put it to you that neither you nor your father ever claimed to be in adverse possession of the property in question which belonged to some third person?

A. This property did not belong to anyone else except my father.

Vol. my father as well as I told to everybody regarding this fact.

10. On further cross-examination, DW2 Puran Mal stated that he had said in 1975 for the first time that he was the owner of the property. However, when he was cross-examined again on 10.02.98, he said that he and his father had claimed ownership of the property for about 45 years. Relying on the above statement of DW2, Puran Mal, learned counsel for the plaintiff/respondent had contended that Puran Mal may have been in possession of the property for more than 12 years, but his possession was never adverse to the rightful owner and, therefore, such possession could not ripen into ownership on the expiry of 12 years. Learned counsel has placed reliance on the observations made by the Hon'ble High Court in 1999 III AD (Delhi) 32 Rama Kanta Jain Vs. M. S. Jain. The trial court has also quoted extensively from this judgment to arrive at the conclusion that mere length of possession cannot help the defendant in his assertion of adverse title. It was observed in the judgment that a party claiming title of adverse possession, must establish the following facts:-

1. He has been in occupation of the disputed property for more than 12 years without interruption.
2. His possession was to the exclusion of all the persons.
3. The said possession must be open, hostile to

the true owner.

4.The possession must be adequate in continuity, in publicity and extent.

11. In Rama Kanta's case, the Hon'ble High Court observed further as follows:-

"Adverse possession means a hostile assertion, i.e., a possession which is expressly or impliedly in denial of the title of the true owner. Under Article 65, burden is on the defendant to prove affirmatively. A person who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts alleged by a person constituted adverse possession, regard must be to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case."

12. The following observations of the Hon'ble High court in Rama Kanta's case were also relied upon by the trial court:-

"The mere fact that the defendants have come forward with a plea of adverse possession, means that they admit the plaintiff to be the true owner. For a plea of ownership on the basis of adverse possession, the first and foremost condition is that the property must belong to someone else other than the person pleading his title on the basis of adverse possession.

13. The trial court presumed that by raising the plea of adverse possession the defendant had impliedly admitted the plaintiff to be the true owner. On this assumption, the trial court held that the pleas of the defendant were contradictory and mutually destructive inasmuch as he could not deny the ownership of the plaintiff after making an implied admission of the same by raising the plea of adverse possession. In my opinion, the approach of the trial court was erroneous and the facts of Rama Kanta's case were not properly appreciated by the trial court. In the case of Rama Kant, the defendant was the elder brother of the plaintiff's husband and his possession was permissive to begin with. In that case, the defendant admitted that the apparent title was in the name of the plaintiff but he contended that the transaction was benami and that he had also contributed towards the purchase of the property. It was on these facts

that the Hon'ble High court observed that the defendant had impliedly admitted the plaintiff to be the true owner. A presumption of admission of ownership can be raised only in those cases where the person claiming adverse possession, enters the property with the permission of the true owner and starts claiming hostile title subsequently. In other cases, the only requirement is that the person claiming adverse possession should know that the property belonged to someone else and not to him. He need not acknowledge any particular person as true owner. If he occupies the property with the knowledge that it does not belong to him and openly remains in continuous possession of the property for more than 12 years, he can validly claim title. In the present case, DW2, Puran Mal stated in the examination-in-chief as well as on cross-examination that the land was lying vacant when his father constructed the room on it. From this statement, it is clear that the construction was raised with the knowledge that the land belonged to someone else. The defendant/appellant has made no attempt whatsoever to trace the title to a lawful origin and, therefore, the element of hostility must have been there from the very beginning.

14. Learned counsel for the plaintiff/respondent has drawn my attention to the language of Article 65 of Limitation Act. He points out that the period of limitation starts running against the true owner only when he comes to know that the possession of the defendant has become adverse to him. Unless such knowledge is there, limitation cannot start running under Article 65 of Limitation Act. This position of law cannot be disputed. In the present case, however, I find that the defendant/appellant had given sufficient notice of his adverse possession to Memwati. As a matter of fact, he filed written statement in suit No.179/72 on 04.11.70 and categorically stated in para No.1 that he was owner of the property by adverse possession. The trial court has held that even if 04-11-70 be taken as the starting point of adverse possession, the period of 12 years had not yet expired on 29.10.82 when the present suit was filed. In my opinion, the trial court did not properly appreciate the significance of the judgment of Shri O.P.Dwivedi in suit No.179/72. Shri Dwivedi has returned definite finding that the relationship of landlord and tenant had never existed

between Memwati and Puran Mal. From this, it is clear that Puran Mal must have acted in a manner hostile to Memwati from the date she purchased the property from Nihalo. Memwati purchased the property from Nihalo. Memwati purchased the property from Nihalo on 25-09-68 vide Ex-PW-1/2 and, therefore, the adverse possession of Puran Mal can be easily traced to 25-09-68. If we compute limitation from 25-09-68, the period of 12 years expired on 25-09-80. Therefore, when Memwati transferred the property to the plaintiff/respondent on 02-02-82, her title had already become extinct by reason of adverse possession of the defendant/appellant and the Sale Deed executed by her conferred no good title on the plaintiff/respondent.

15. In view of the above discussion, I find it difficult to agree with the conclusion of the trial court on the question of adverse possession. I am of the considered opinion that the hostile assertion of title by the appellant started as early as on 25-09-68 and he acquired title by adverse possession before the plaintiff/respondent purchased the property from Memwati. Therefore, a decree of possession could not have been passed in favour of the plaintiff/respondent. The impugned judgment and decree are, therefore, set aside and the suit of the plaintiff/respondent is hereby dismissed.”

3. On behalf of the appellant, it has been urged that this finding in the impugned judgment is perverse. It calls for an interference. It is submitted that to establish the plea of adverse possession, the defendant had to set up that this plea against the true and the original owner; in the written statement defendant has merely stated that he has become the owner by adverse possession but at the same time he has rebutted the claim of the plaintiff; he is not claiming hostile and uninterrupted possession of the suit property qua the plaintiff; adverse possession necessarily encompasses that there must be an open, peaceful, continuous and uninterrupted possession against the true owner since last 12 years. This onus

has not been discharged. Learned counsel for the appellant has placed reliance upon a judgment of the Apex Court reported in (1995) 2 SCC 543 Annasaheb Bapusaheb Patil & Ors. Vs. Balwant to support this submission. It is pointed out that the person who bases his title on adverse possession must show by clear and unequivocal evidence that the possession was hostile to the real owner and amounted to a denial of his title to the property claimed. It is pointed out that in the instant case, the defendant till date does not even know who is the real owner; he is contesting the ownership of the plaintiff; neither Nihalo Devi nor Memwati were the owners of the suit property as such they could not pass a better title to the plaintiff than what they themselves had.

4. For the same proposition reliance has also been placed upon AIR 2007 SC 1753 P.T. Munichikkanna Reddy & Ors. Vs. Revamma & Ors. It is pointed out that the real owner of the property must be specified in an adverse possession claim which is missing in the instant case. For the same proposition reliance has been placed upon a judgment reported in (2009) 13 SCC 229 L.N.Aswathama & Anr. Vs. P. Prakash as also a judgment of the Single Bench of this Court reported in 162(2009) DLT 248 D.M.H.P. Sales Ltd. Vs. New Howrah Transport Company & Ors. It is pointed out that the plea of the defendant that the plaintiff is not true owner of the suit property would result in holding that the defendant no.1 has failed to prove perfection of title to the suit property by adverse possession; it is pointed out that in this case also the defendant has set up a plea that the plaintiff is not the true owner of the suit property; claim of adverse therefore cannot hold any water. Reliance has been placed upon 1999 III AD (Delhi) 32

Rama Kanta Jain Vs. M.S.Jain & Ors. It is pointed out that the necessary ingredients for adverse possession include the following; uninterrupted occupation for more than 12 years, possession to the exclusion of all other, possession open and hostile to the true owner; the said ingredients have not been met. Reliance has been placed on (2000) 5 SCC 652 State of Rajasthan Vs. Harphool Singh to substantiate the same submission. It is pointed out that a finding which is based on legally unacceptable evidence and which is patently contrary to the law is a perverse finding which is liable to be set aside under the provisions of Section 100 of the Code of Civil Procedure. It is submitted that in (2006) 7 SCC 570 T. Anjanappa & Ors. Vs. Somalingappa & Anr. this position has been reiterated.

5. Arguments have been countered by the learned counsel for the respondent. It is pointed out that the defendant has set up his plea of adverse possession in the written statement dated 4.11.1970, which had been filed by him in Suit No.179/72 which was a suit between Memwati and the present defendant, wherein he has stated that he is in possession of the suit property since the year 1950-51; applying the doctrine of relating back it is clear that the defendant has perfected his title by adverse possession. As way back in November 1970 the plaintiff was aware that the defendant is claiming his title by adverse possession. The suit filed on 31.10.1982 is hopelessly barred by time. It is pointed out that there is no relationship of landlord and tenant between the parties. Attention has drawn to the plaint filed in the present suit. It is pointed out that this suit is a suit for possession wherein it has been alleged that the defendant is in unauthorized occupation;

arrears of rent have not been claimed for the reason that there was no such relationship between the parties. It is submitted that even as per the case of the plaintiff as is evident in the suit proceedings of Suit No.179/72 Memwati had filed a suit for arrears of rent w.e.f. 01.9.1968 to 31.12.1969 meaning thereby that after 01.9.1968 rent has not been paid. Admittedly after the date not a single paisa had been paid by the defendant and no such amount has also been claimed by the plaintiff. The defendant is in openly hostile and uninterrupted possession since 1.9.1968 and as such the suit filed on 31.10.1982 is barred by time. Learned counsel for the non-applicant has also placed reliance upon the judgment of the Supreme Court in the case of T. Anjanappa (supra); it is pointed out that this judgment categorically recites that the evidence of adverse possession must not be necessarily against the real owner; it is not necessary to disclose the name of the real owner. For the same proposition, reliance has also been placed upon a subsequent judgment of a Bench of this Court reported in 2007 (97) DRJ 83 Mohan Singh Kohli & Anr. Vs. Brij Bhushan Anand & Ors. wherein it has been held that the observation of adverse title although should be clear and unequivocal, need not necessarily be addressed to the real owner.

6. This is the second Appellate Court. The appeal had been admitted on 10.9.2009 and the following substantial question of law was formulated:

Whether the Appellate Court rightly construed the principles governing the adverse possession while allowing the appeal."

7. Record shows that Memwati had purchased this suit property

on 25.9.1968 vide a sale deed from its erstwhile owner Nihalo. On 15.12.1969 she filed a suit i.e. suit bearing No. 179/1972 against Puran Mal. In this suit she had claimed arrears of rent from 1.9.1968 to 31.12.1969. Written statement in this suit was filed on 4.11.1970. In this written statement Puran Mal had categorically set up the plea of adverse possession. The judgment in this case Ex.DW-2/3 was delivered on 31.3.1975. Para 1 of Ex.DW-2/3, recites as follows:

“The suit was filed before the Judge Small Causes Court but the plaint was returned for presentation to proper court because the defendant had taken the plea that he has become owner by adverse possession.”

Para 2 of the judgment recites that the defendant had pleaded that he is in continuous and peaceful possession of this property for the last 22 years without any interference whatsoever from either the plaintiff or her predecessor-in-interest; he had not paid rent to the plaintiff or anybody else as he does not recognize his ownership of the said property.

8. Issue no.2 in the said suit i.e. Suit No.179/1972 reads as follows:

“Whether the defendant has become the owner of the premises in dispute as alleged? OPD

This judgment had returned a finding that there is no relationship of landlord and tenant between the parties; the question of payment of arrears of rent did not arise.

9. This judgment Ex.DW-2/3 as noted above was rendered on 31.3.1975. It had noted that the defence of the defendant in his written statement which had been filed by him on 04.11.1970 that he was in continuous possession of the suit property since the last

22 years; meaning thereby the defendant had set up a plea of adverse possession from the year 1950. He had also not recognized the plaintiff as the owner.

10. What is the adverse possession has been detailed and laid down by the Courts time and again. It has been reiterated in the various judgments cited in the impugned judgment as well. To establish a claim of adverse possession there must be open continuous, uninterrupted, peaceful and hostile possession of the defendant qua the property in dispute and this hostility must be clear and transparent. However, in some cases as in this case, the defendant being unaware of who the true owner was, yet knowing fully well that he is not the owner was not paying any rent to any person. He had set up his claim on a land which belonged to someone else; who that someone was, was not within his knowledge.

11. The vehement contention of the learned counsel for the appellant that unless adverse possession is set up against the true owner, the requirement of adverse possession cannot be met is not a correct proposition of law. The Supreme Court in T. Anjanappa (supra) had held:

“..... The possession must be open and hostile enough to be capable of being known by the parties interest in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former’s hostile action.”

12. In a subsequent judgment of a Bench of this Court in the case of Mohan Singh Kohli (supra) while relying upon the proposition laid down in the case of T. Anjanappa (supra), the following broad principles of adverse possession culled out. They read as:

“(1) Onus to prove the question of title by adverse possession is on the party who make such a claim.

(2) Mere long possession of the land is not enough. What is important is whether the possessor had the animus possidendi to hold the land adverse to the title of the true owner.

(3) The period of limitation starts running from the date both actual possession and assertion of title are shown to exist.

(4) The assertion of title adverse to the true owner must be clear and unequivocal, though not necessarily addressed to the real owner.

(5) The party claiming adverse possession must prove that his possession is “nec vi, nec clam nec precario.”

(6) The party claiming title by adverse possession must make clear averments to that effect and explain as to when he entered into the possession of the property and when the possession became adverse.”

It is clear from the above that the assertion of title adverse to the true owner must be clear and unequivocal although it must not be necessarily addressed to the real owner.

13. This answers this vehement argument of the learned counsel for the appellant. It is not always necessary for the person claiming adverse possession to know who the real owner is. It may not be within his knowledge; however what is within his knowledge is that he is occupying land which is of another and upon which he has set up his title adversely.

14. In the instant case, it is clear from the pleadings in the Suit No.179/1972 (a suit between Memwati and Puram Mal) that the defendant had set up his plea of adverse possession wherein the Court had returned a clear finding that there was no relationship of landlord and tenant between the parties; the defendant Puran Mal was hostile to Memwati from right the date when she had allegedly

purchased this property from Nihalo i.e. on 25.9.1968. In his written statement, he had stated that he is occupying this property uninterruptedly for the last 22 years. Be that at it may; the period of limitation of 12 years even if computed from 25.9.1968 which was the date when Memwati had purchased this property from Nihalo and the hostility of Puran Mal was open and clear this period of 12 years expired on 25.9.1980.

15. Memwati had thereafter on 02.02.1980 sold this property to the present plaintiff i.e. Ashok Babu. By this date i.e. by 02.02.1982, the defendant Puran Mal had perfected his title by adverse possession. This has been held in the impugned finding which calls for no interference. The impugned judgment had correctly appreciated the aforementioned dates.

16. It is also relevant to state that the Suit No.179/72 had been filed by Memwati for arrears of rent w.e.f. 01.9.1968 up to 31.12.1969. Her contention was that from 01.9.1968 no rent has been paid by defendant Puran Mal. Rent was thereafter not claimed. The present suit is a suit for possession and based on the plea that the defendant is an unauthorized occupant. No claim of any damages or rent has been made. The hostile attitude of the defendant qua the possession of the suit property was known to Memwati on 01.9.1968 when he stopped paying rent and she had been constrained to file a suit. Article 65 of the Limitation Act prescribes a period of limitation of 12 years to file a suit where the defendant had set up a plea of adverse possession. This period has to commence from the time when the true owner comes to know that the possession of the defendant had become adverse to him. In this second alternative, it was known to Memwati as early as

01.9.1968 that the defendant has not paid any rent and he is openly hostile and claimed title to the suit property by adverse possession. This period of 12 years if computed from 01.9.1968, title by adverse possession ripens in favour of the defendant on 01.9.1980. Present suit had been filed on 31.10.1982. It was barred by time. The defendant had already perfected his title by adverse possession.

17. Defendant had come into witness box as DW-2. He has stated that the land was lying vacant when his father constructed a room on it. He was fully aware that the land belonged to someone else. He admits no knowledge of the real owner. Hostility was writ large. The High Court in the case of Ramakant Jain (supra) had laid down the essentials of adverse possession. Defendant was admittedly in occupation of the suit property for more than 12 years to the exclusion of all others. He was publicly and openly hostile w.e.f. 01.9.1968 when Memwati was constrained to file a suit for recovery of rent. The present suit being barred by limitation was rightly dismissed as landlord-tenant relationship was not established.

18. Suit filed more than 12 years after the defendant perfected his title by adverse possession i.e. on 31.10.1982 being barred by limitation was rightly dismissed. The impugned judgment calls for no interference. There is no merit in the appeal. Dismissed.

(INDERMEET KAUR)
JUDGE

NOVEMBER 22, 2010
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