

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

% *Judgment Reserved on: 08.11.2010*
Judgment Delivered on: 12.11.2010

+ **RSA No.96/2001**

JAGDISH PRASAD (SINCE DECEASED)

Through L.Rs.

.....Appellant
Through: Mr. Vijay K.Gupta, Mr.Amit
Kumar, Advocates.

Versus

NAND RAM (SINCE DECEASED)

Through L.Rs. & Ors.

.....Respondent
Through: Mr.Chetan Sharma, Sr.Adv.
with Mr.Vivek Sharma,
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 28.5.2001 which had endorsed the finding of the trial judge dated 31.1.1997 whereby the suit of the plaintiff Nand Ram had been decreed in his favour.

2. Plaintiffs (eight in number) Nand Ram and others had filed a suit for possession. The defendant Jagdish Prasad Gupta was stated to be a lessee of 2 bighas and 15 biswas of land comprised in Khasra No.9/19 and 9/20/2 in terms of a lease deed dated 22.9.1954 which was for a period of 20 years i.e. upto 22.9.1974. It was a registered lease deed. Defendant had agreed to pay rent at the rate of Rs.235/- per year as rental. Contention of the plaintiff was that part of this land i.e. 16 biswas comprised in

Khasra No.9/20/2 was acquired by the Government by Award no.1005 dated 23.4.1960. The remaining land i.e. 1 bigha 19 biswas comprised in Khasra no.9/19 remained in occupation of the defendant. Lease had expired by efflux of time on 22.9.1974.

3. Defence of the defendant was that land had not been properly identified; defendant has been in possession of the property since 1954; he has acquired title by adverse possession; lease had expired more than 22 years back.

4. The trial judge had framed the following issues:

ISSUE NO.1:

Whether the suit is bad for misjoinder and non-joinder of necessary parties?

ISSUE NO.2:

Whether the suit is not properly valued for the purposed of Court fees and jurisdiction? If so what is the proper value?

OPD

ISSUE NO.3:

Whether the land in dispute shown as red in the site plan forms part of Khasra no.9/19, Village Tatarpur, Delhi and the plaintiffs are the owners of the same? OPP

ISSUE NO.4:

Whether the Khasra No.9/19, Village Tatarpur, Delhi has been acquired by the Government and the plaintiffs have no legal right in respect of the same? OPD

ISSUE NO.5:

Whether the defendant is occupying of the land in suit in his own right and has become the owner by adverse possession? OPD

ISSUE NO.6:

Whether the land in suit falls under Slum Area and the suit is not maintainable under the Slum Area Act? OPD

ISSUE NO.7:

Whether the Civil Court has not Civil Jurisdiction to try the suit? OPD

ISSUE NO.7 (A):

Whether the suit is not maintainable in the present form? OPD

ISSUE NO.8:

Relief

5. On the oral and documentary evidence led before court, the court decided all the issues in favour of the plaintiffs and against the defendant; it was held that suit land has been correctly identified in the site plan Ex.PW2/1 of which a portion had been

acquired; the plaintiff is entitled to a decree of possession i.e. of the land situated in Khasra No.9/19 comprised of 1 bigha and 19 biswas which was in possession of the defendant and where he had now attained the status of an unauthorized occupant.

6. Vide the impugned judgment dated 28.5.2001 the finding of the trial judge was endorsed. The contention of the defendant that the suit of the plaintiff is barred by limitation under Article 66 of the Limitation Act was repelled.

7. On behalf of the appellant; it has been vehemently urged that the judgment of the Land Acquisition Collector/ADJ dated 21.8.1961 Ex.PW1/12 operates as resjudicata between the parties against which no appeal has been filed by either party. It has since attained a finality. In terms of Ex.PW1/12 the Land Acquisition Collector/ADJ had categorically returned a finding that the tenancy of the defendant stood expired in terms of the notice which had been issued by the plaintiffs upon the defendant. It is pointed out that this notice is dated 13.9.1960 terminating the tenancy of the defendant/appellant with effect from the said date. After recording this categorical finding Ex.PW1/12 had thereafter apportioned compensation in favour of the plaintiff and the defendant accordingly. Ex.PW1/12 had placed reliance upon Clause 9 of the lease deed Ex.A/15 executed between the parties which recited that in case rent is not paid for 12 months the lease would come to an end. Accordingly, after framing of issues and parties having adduced evidence Ex.PW1/12 had decided Issue no.1 in favour of the plaintiff Nand Ram holding that in terms of the registered lease deed Ex.A/15 Jagdish Prasad i.e. the appellant/defendant not

having paid rent for 12 months the lease had stood terminated. It is submitted that this was a categorical finding of fact arrived at by the Land Acquisition Court/ADJ and this finding that the lease stood determined on 13.9.1960 has since become final. This finding was given by a competent court; it operates as resjudicata in all subsequent proceedings. The present suit filed on 13.3.1981 was barred by limitation. Counsel for the appellant has placed reliance upon a judgment of the Apex Court reported in SCR (1953) 154 Raj Lakshmi Dasi & Ors. vs. Banamali Sen & Ors. to substantiate his submission that the rule of resjudicata is applicable on findings arrived at in land acquisition proceedings; for the same proposition reliance has been placed upon AIR 1939 PC 133 Mt.Bhagwati vs. Mt.Ram Kali as also another judgment of the Privy Council reported in AIR 1922 PC 80 T.B.Ramchandra Rao & Anr. vs. A.N.S. Ramchandra Rao & Ors. It is pointed out that in AIR 1974 Patna 262 Dhanusdhari Rai & Ors. vs. Man Mohan Rai & Ors. a bench of Patna High Court had held that a finding given by the Land Acquisition Court/ADJ involving determination of title could not be tried in a subsequent suit. It would be barred under the principle of resjudicata as contained under Section 11 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

8. Arguments have been countered by learned counsel for the respondents. It has been pointed out that for the applicability of the doctrine of res judicata the matter in issue must be substantially the same which is clearly not so in the instant case. Attention has been drawn to Ex.PW1/12 i.e. the judgment rendered by the Land Acquisition Court/ADJ on 21.8.1961. It is pointed out that these proceedings were compensatory proceedings which had

been adjudicated upon by the Land Acquisition Court under the provisions of Section 30 and 31 of the Land Acquisition Act. The issues framed by the court did not in any manner delve into the question of the title of the appellant/defendant; if at all any observations were made they were obiter and incidental only. For this proposition reliance has been placed upon AIR 1978 Himachal Pradesh 51 Purshotam Dass vs. Jaishi Ram. It is pointed out that in this case a bench of the Himachal Pradesh High Court had held that where a court decides a reference under Section 30 of the Land Acquisition Act, it does give any declaration; its functions are limited and confined only to the fixation of the quantum of compensation and to the apportionment of the same against the rival claimants. A decision even if given on an incidental question about the legal status of the contesting parties would not be a final determination of the character or legal status of the parties. It is pointed out that this Land Acquisition Court/ADJ was not a court of competent jurisdiction to decide this question; it could not go into the legality of the status of the parties. The contention raised by the defendant/appellant at this stage seeking ownership by adverse possession is in complete contrast to the pleadings in the subsequent suit filed by him wherein in terms of Ex.PW1/13 the court had noted that the plaintiff Jagdish Prasad Gupta in his cross-examination had stated that he does not know as to who is the owner of the suit property nor does he have any knowledge regarding the capacity in which he is in possession. It is pointed out that till this date i.e. 1975 when he had filed the aforementioned suit he had never claimed ownership by adverse possession. He

cannot now take a somersault and turn turtle. Attention has been drawn to the substantial questions of law which have been formulated by this court on 14.10.2004. They inter alia read as follows:

1. Whether the judgment rendered by the Land Acquisition Court on 21st August, 1961 (Ex.PW-1/12) operates as res judicata between the parties as regards the title of the suit property?
2. If the first question is answered in the negative, whether the suit filed by the Respondent for possession is barred by time?

9. Learned counsel for the respondent has urged that these questions are both questions of fact which this court cannot delve into. Even presuming that these matters can be examined it would be relevant to state that the land in question has since been denotified on 13.6.1961; the judgment rendered thereafter by the Land Acquisition Court/ADJ on 21.8.1961 qua the same property would even otherwise be non est. It is pointed out that the question of limitation now raised is a mixed question of law and fact and cannot be adjudicated upon in a second appeal.

10. This is a second appellate court and substantial questions of law as formulated on 14.10.2004 have to be answered. The judgment dated 21.8.1961 Ex.PW1/12 has been perused. In this judgment four issues were framed. They inter alia read as follows:

1. Whether Jagdish and Ram Chand mentioned at items No.27 and 28 are entitled to any share out of the compensation awarded for land measuring 2 bighas and 15 biswas which was on lease with them and if so to how much?
2. Whether Nand Ram and Bhagwana have any lien on Rs.2263/20 nP for the structure belonging to Jagdish and Ram Chand. If so, in what manner and to what extent?
3. Whether the jhugis on the land measuring 2 bighas and 15 biswas leased out in favour of Jagdish were built by Dharam Chand etc. at their own expense and they are entitled to receive the compensation in respect of those jhugis?

4. Relief.

11. The proceedings before the Land Acquisition Court/ADJ were on a reference under Section 31 of the Land Acquisition Act. Ex.PW1/12 had inter alia recorded:

"... As there were disputes in regard to the ownership of the land as also the superstructures the Land Acquisition Collector has forwarded this amount to this court for payment to the persons interested after verification under Section 31 of the Land Acquisition Act."

The finding returned read as follows:

"8. Jagdish Chand as RW4 has admitted that he did not pay any rent to Nand Ram and Bhagwana after the receipt of the notice for acquisition of the land. Nand Ram as AW2 has stated that rent has not been paid to him for two years and that he served a notice also on the lessee. Under clause 9 of the lease deed Ex.A/15 the lease is to come to an end in case rent is not paid for 12 months. From the evidence on the record it is proved that Ram Chand and Jagdish have not paid rent for more than 12 months and thus in accordance with clause 9 of the lease deed their lease had come to an end and therefore they have no right to claim a share in the compensation payable for the land leased out to them. I decide this issue against Jagdish Pershad and Ram Chand."

12. The Land Acquisition Court/ADJ had examined the registered lease deed Ex.A/15 which is an admitted document. This document is dated 22.9.1954. It was initially for a period of 20 years commencing from 23.9.1954 up to 22.9.1974. Under clause 9 which was the clause relied upon in Ex.PW1/12, if rent remained unpaid for one year the first party would have a right to eject the lessee i.e. the second party and he would be liable to deliver vacant possession of the property to the first party after removing his Malba.

13. Ex.PW1/12 had returned an unambiguous and clear finding in terms of clause 9 of this lease deed Ex.A/15; rent not had been paid by the appellant/defendant i.e. Jagdish Chand and Ram Chand since the last 12 months and as such in terms of clause 9 the lease

had come to an end. Admittedly, neither party had challenged this finding. This finding has since attained a finality.

14. The next question which arises is as to whether finding by the Land Acquisition Court/ADJ was given by a court of competent jurisdiction and would operate as res judicata in subsequent proceedings between the same parties. In the judgment of Raj Lakshmi Dasi (supra) relied upon by the learned counsel for the appellant the Supreme Court had appreciated this contention and relying upon the decision of Mt. Bhagwati (supra) had held that where the District Judge in compensation proceedings filed by the parties had decided the question of ownership, this decision was binding upon the parties being res judicata. Applying the same principle the Supreme Court had held that this doctrine is dictated by a wisdom which is for all times. It had inter alia held as follows:

"... Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnaneswara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person, though defeated at law, sue again, he should be answered, "you were defeated formerly". This is called the plea of former judgment.' And so the application of the rule by the courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law."

15. It had further held that the binding force of a judgment delivered in the Land Acquisition Act depending upon the general principle of law if it was not binding there would be no end to litigation. It was held:

"... When a plea of res judicata is founded on general principles of law, all that is necessary to establish is that the court that heard and decided the former case was a court of competent jurisdiction."

16. The court further held that plea of res judicata can be successfully taken in respect of judgments by courts of exclusive jurisdiction including revenue courts and land acquisition courts.

17. Ex.PW1/12 having been rendered by a court of competent jurisdiction had returned a finding that the lease between the parties stood determined as rent since the last 12 months had not been paid by the appellant/defendant. Reference to the notice dated 13.9.1960 terminating the lease had also been made. There is no dispute to this factual submission which is even otherwise a part of the record. In these circumstances, it cannot be said that this finding Ex.PW1/12 was only an incidental or obiter observation made by the Land Acquisition Court/ADJ which is not binding on the parties. Ex.PW1/12 had while adverting to the notice dated 13.9.1960 categorically held that lease between the parties stood determined in terms of clause 9.

18. The judgment of Purshotam Dass (supra) is inapplicable to the facts of the instant case.

19. Before the first appellate court the appellant/defendant had preferred an application under Order 6 Rule 17 of the CPC which was disposed of vide order dated 20.3.2001. The relevant extract of the said order reads as follows:

"I have heard both parties at length. Learned counsel for appellants submits that the seeds of the proposed amendment are already there in the record. He states that if the amendment is eventually allowed, the appellants will not ask for any opportunity to lead additional evidence and, therefore, the amendment will not result in delay.

Shri S.S.Vats states that a formal amendment may not be allowed but the plea sought to be incorporated by amendment, being a legal plea, may be considered at the time of deciding the appeal. He states further that the

respondents have already said in reply to the application what they would have liked to say in a rejoinder. He states that the respondents neither want to file a rejoinder nor lead any additional evidence on the aspect of limitation.

Since learned counsel for the respondents has been fair enough to agree that the question of limitation may be considered on the basis of material available on the record, I do not think it necessary to make any formal order for amendment of pleadings."

20. The impugned judgment had noted the contentions now raised before this court. It had noted that under Section 3 of the Limitation Act a duty is cast upon the court to see that all disputes are brought within time. It had however misunderstood and misread that the findings in Ex.PW1/12 would not operate as res judicata. This finding is illegal. Impugned judgment has noted that the amendment sought by the appellant/defendant was to press the plea of forfeiture of the lease coupled with the ground of limitation; impugned judgment had also noted that this plea of forfeiture had been taken in para 10 of the preliminary objection of the earlier written statement. In these circumstances, these findings:

"... Forfeiture of tenancy is not something which the court can assume unless it is pleaded. Therefore, it was for the defendant to take a specific plea that a forfeiture of tenancy had taken place more than 12 years before the institution of the suit. Since such plea was not taken by the defendant/appellant in the original Written Statement, it cannot possibly be agitated for the first time at the stage of appeal. Moreso when such plea would go against the very substance of the original Written Statement."

are clearly liable to be set aside.

21. The first appellate court has fallen in error and has illegally returned this finding. Clause 9 of Ex.PW1/12 is categorical. It clearly states if rent is not paid in the last 12 months the forfeiture clause would operate. Further the notice (which again was an undisputed document) had been adverted to in Ex.PW1/12. This notice is dated 13.9.1960. It was thereafter that the compensation

had been apportioned in favour of the plaintiff and the defendant who were the contesting parties before the Land Acquisition Court/ADJ.

22. The Supreme Court in Raj Lakshmi Dasi (supra) has clearly stated that once a finding has been returned by a court of competent jurisdiction would operate as res judicata in subsequent proceedings the land acquisition proceedings are courts whose finding between the same parties if these findings were not binding there would be no end to litigation.

23. Under Article 66 a suit for possession of immovable property has to be filed within 12 years from the date of forfeiture or breach of condition. Under Article 67 the period of limitation is again 12 years which is to commence from the date when the tenancy is determined. It was determined on 13.9.1960. The present suit was filed on 13.3.1981 which was beyond the limitation as envisaged under either Article 66 of Article 67 of the Limitation Act.

24. Relevant would it be to state that the appellant has not raised the plea of limitation for the first time before this court. It was advanced before the first appellate court and had been accepted. The impugned judgment has returned an incorrect proposition on this score. The findings in Ex.PW1/12 were binding and operated as res judicata in all subsequent proceedings between the same parties as it dealt with the same issues; parties were same; the judgment rendered in the former suit i.e. Ex.PW1/12 was a judgment by a competent court; such a finding had attained finality; it was binding in the later proceedings. Ex.PW1/12 had returned a finding that the tenancy of the appellant/defendant

stood terminated on 13.9.60. The present suit seeking possession of the property could have been filed within 12 years. It was filed much later i.e. on 13.3.1981. It was barred by limitation.

25. The substantial questions of law as framed on 14.10.2004 are accordingly answered as follows:

26. The judgment rendered by the Land Acquisition Court/ADJ on 21.8.1961 Ex.PW1/12 operated as res judicata as regards the legal status of the parties qua the suit property. Tenancy of the defendant/appellant stood terminated on 13.9.1960. Present suit filed by the plaintiff on 13.3.1981 was barred by limitation; appeal is accordingly allowed; suit is dismissed. No orders as to costs.

INDERMEET KAUR, J.

NOVEMBER 12, 2010

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