

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

+ RSA NO. 37/2010 & CM Nos.3472-74/2010

Date of Decision: February 23, 2010

NARINDER SINGH Appellant
Through: Mr. A.S. Dateer, Advocate.

versus

SHRI P.K. GUPTA & ORS. Respondents
Through: None.

%

CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

Caveat No.51/2010

Since advance notice has been served upon the caveator, caveat stands disposed of.

CM No.3473/2010 (for condonation of delay)

For reasons stated in the application, it is allowed.
Delay of 14 days in filing the appeal is hereby condoned.

CM No.3474/2010 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RSA No. 37/2010

1. Appellant (plaintiff) filed a suit for permanent injunction as well as for declaration in respect of premises No.21, Shastri Bazar, Outram Lines, Kingsway Camp, Delhi, on the grounds that he is in use and occupation of the said premises for the last more than 45 years. He occupied this property after he migrated from Pakistan as a refugee. As per his case, property was lying vacant and he started residing therein and also started a factory of manufacturing electric goods in 1963. He got his shop registered under the Shops and Establishment Act. His firm was also registered with Director of Industries and he was assessed to income tax and sales tax.

2. Case of the appellant is that in February 1998, one Bajaj Property Dealer visited the suit shop for purchasing the same but, when appellant refused to sell, he threatened to dispossess him from the suit premises. On 10th February 1998, Bajaj Property Dealer again visited the suit shop along with Gurbux Singh and few others who claimed themselves to be legal heirs of late Shri Laxman Singh; owner of the suit shop and threatened him of dispossession.

3. Appellant had earlier filed a suit on 11th February, 1998 against Gurbux Singh and others including DDA. During pendency of the said suit, Smt. Shiv Rani Tandon, one of the respondents in the case, was made a party, being owner having purchased the suit shop from legal heirs of late Shri Laxman Singh. After Smt. Shiv Rani Tandon purchased the property, she applied for mutation and the property stood mutated in her name. DDA could not give her physical possession of the property because of chain of litigations *inter se* the parties. Smt. Shiv Rani Tandon filed an eviction petition in the court of Additional Rent Controller. Since 1961, property in suit is assessed to house tax in the name of Dayal Singh. In the month of July 1999, Smt. Shiv Rani Tandon filed a counter-claim for permanent injunction claiming herself to be allottee of the back portion of the said shop and sought restraint order against the appellants from interfering in her possession. Said suit was pending adjudication when the instant suit was filed. DDA demolished the entire shop on 10th May, 2002 whereas only front portion of the said shop was to be demolished. On 31st May 2002, Smt. Shiv Rani Tandon along with officials of DDA came to the suit property and claimed its vacant possession from the appellant; this resulted into filing of the present suit by the appellant.

4

4. Having lost his suit in the Trial Court as well as in the First Appellate Court, appellant has filed the present appeal.

5. Learned counsel for the appellant has submitted that a substantial question of law need formulation in this case as the Trial Court as well as the First Appellate Court failed to appreciate the fact, the documents on record and also that appellant is in settled and unchallenged physical possession of the suit property for last more than 45 years and has become owner by adverse possession. He further submitted that mutation of the suit property in the name of late Shri Laxman Singh was without any basis and since late Shri Laxman Singh had no legal right in the property, it could not devolve upon his legal heirs. It is further submitted that late Shri Laxman Singh was a class-II heir as per Hindu Succession Act and acquired the right to get mutation in his name after death of original allottee Shri Dayal Singh and his wife Smt. Goma Wanti. It is alleged that respondent No. 2 in her counter-claim for mandatory and permanent injunction claimed relief of possession, which could not have been awarded by the Trial Court.

6. Admitted facts of the case are that property in suit was allotted to Sh. Dayal Singh and his brother Laxman Singh. Sh. Dayal Singh left behind his widow Smt. Goma Wanti as his only legal heir.

After the death of Smt. Goma Wanti Laxman Singh, being legal heir succeeded to the share of Dayal Singh. Appellant is alleged to have taken possession of the property after he migrated to Delhi and claimed himself to be in continuous and settled possession for the last more than 45 years to the knowledge of Smt. Shiv Rani Tandon, purchaser of the suit property from Laxman Singh. In the eviction petition filed by Smt. Shiv Rani Tandon, Additional Rent Controller was pleased to pass an order under Section 15(1) of the Delhi Rent Control Act directing the appellant to pay rent @ Rs.25 per month to her. The said order was never challenged by the appellant. Property in suit was allotted to Dayal Singh and Laxman Singh by DDA. Undisputedly, DDA demolished the said structure raised on the suit property, being unauthorized construction.

7. Trial Court, while assessing evidence of the parties on claim of the appellant as owner by adverse possession of the suit property observed as follows:-

“ In the present suit under consideration, the edifice of the entire relief claimed by the plaintiff is based upon the principal of adverse possession. Adverse possession means possession by a person holding a land on his own behalf or on behalf of some person other than the true owner having a right to immediate possession, provided the true owner is not under disability or is capable of suing. The person

6

who claims adverse possession should show:-

- a) On what date he came into possession,
- b) What was the nature of his possession,
- c) Whether the factum of possession was known to the other party,
- d) How long his possession has continued,
- e) His possession was open and undisturbed,

In the light of the above-said legal provisions, I hold that Plaintiff is not entitled to the any relief of because of following reasons;

Firstly, plaintiff is not able to prove exact date when he came into possession of suit shop. He is claiming to be in possession of suit shop since 1958 however admittedly he is not able to show his possession over the same since 1958-1962. From 1962, plaintiff shows his possession over the same by virtue of Sales-tax Certificate dated 01.04.65, Registration Certificate dated 25.09.87 application for telephone connection dated 08.09.64, electricity bill receipt dated 07.07.67, electricity bill dated 03.06.75, registration of telephone dated 08.06.67, telephone bill dated 20.11.99, house-tax dated 02.09.99. The stand is entirely controverted by his own statement that he came into possession of shop no.21, Outrem Lines, Kingsway Camp in the year 1988. Nowhere in the entire plaint and evidence he has stated since when he is in possession of suit shop. Moreover, at the time of filing the present suit, he was not in possession of the same.

Secondly, plaintiff himself has admitted

that he is in unauthorized possession over the suit shop. Admittedly the property belongs to DDA. He is encroacher over the Govt. land in his own words 'Kabja Kar Liya'. Nowhere he has shown himself to be the owner of the suit shop.

Thirdly, DDA is the owner of land in question of which only leasehold rights were transferred to lessee. DDA remain its principal owner as lessor and lessee is bound by lease covenants. For the plea of adverse possession, knowledge qua the true owner is necessary. Plaintiff has nowhere stated that he has brought into the knowledge of DDA that he is in possession of suit shop since 1958 hence knowledge qua DDA cannot be assumed. Moreover knowledge of even original allottee cannot be attributed as admittedly plaintiff has never tried to contact him after coming to know that Dyal Singh is original allottee as according to him it was useless. This shows that plaintiff has ill designs to encroach over the land since very beginning.

Fourthly, the documents sought to be relied on by the plaintiff to show his possession over the suit shop does not show continuity in his possession. Moreover it is settled law that the documents such as electricity bill, telephone bill and registration certification does not create any right, title or interest in his favour.

Fifthly, plaintiff is not able to show that his possession was open and undisturbed. Plaintiff himself had filed two civil suits and defended one suit and eviction petition filed by defendant no. 2 which shows that possession of plaintiff is not uninterrupted.

In view of the aforesaid I hold that

plaintiff is not able to prove that he has become owner by virtue of adverse possession. Further more, there is inherent contradictions in the statement of plaintiff. At one stage he stated that the measurement of shop is 23.8 sq yards whereas at other place he states that he is in occupation of area of around 40 Feet X 10 Feet which clearly shows that he has encroached over the govt. land and encroachers are not entitled to any relief. Furthermore, at one place he submits that only 'A and B' portion mark in site plan have been demolished whereas at another place he stated that the whole of property has been demolished which clearly shows that plaintiff is stating lie. This makes the testimony of plaintiff unbelievable. He is a mere encroacher over the Govt. land and encroacher over govt. land cannot show his possession as adverse to true owner. Accordingly, Issue no. 1A and 1E are decided against plaintiff."

8. These findings on facts of the Trial Court were affirmed by the Appellate Court vide impugned judgment and decree dated 28th October, 2009. It is a common case of the parties that mutation of the shop in favour of Dayal Singh or in favour of Laxman Singh or his legal heirs was never challenged by the appellant.

9. Under these circumstances when entire case of the appellant was fact based and the facts and other evidence adduced on record by the parties has been properly assessed by the Trial Court

9

and affirmed by the Appellate Court, to my mind no substantial question of law needs formulation in this appeal as there is none. This Court has no power to reassess the evidence of the parties on facts in this appeal.

10. Hence, I find no merits in the appeal. The same is dismissed accordingly.

CM No.3472/2010 (for stay)

11. With dismissal of appeal, this application has become infructuous and the same is accordingly dismissed.


ARUNA SURESH, J.

FEBRUARY 23, 2010
sb