

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

+ **RFA No.638/2000**

% 28th January, 2011

SMT KAMLA DEVI & ORS Appellants
Through: Mr. Vikram Nandrajog, Advocate

VERSUS

SMT LAXMI DEVE & ORS. Respondents
Through: Mr. S.K.Rungta, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 29th September, 2000 of the Trial Court, whereby, the suit of the respondents/plaintiff was decreed for possession of a plot of land admeasuring 1000 sq. yds approximately situated in village Lampur, Delhi.

2. The common case of the parties is that late Sh. Pat Ram owned various properties being agricultural land and the subject Lal Dora plot situated in village Lampur. Sh. Pat Ram had three sons

namely Sh.Mangloo, Sh.Amir Singh and Sh. Umrao Singh. The respondent/plaintiff was the daughter of Mangloo and hence claims the properties of Mangloo through her step-mother Smt. Manbhari widow of Mangloo. To this aspect, I may add that Mangloo married twice and the respondent/plaintiff was the daughter of the second wife Smt. Parvati Devi who was adopted by Mangloo's first wife Smt. Manbhari Devi.

3. The dispute between the parties pertains to the subject plot which is bounded as under:-

"North	:	Johar (Pond)
South	:	House of Kannu Ram.
East	:	Pucca Gali of Corporation.
West	:	Houses and plot of Mithan, Bani Singh Gurdayal and Atar Singh etc."

4. The case of the respondent/plaintiff was that the subject plot came to the share of Mangloo on partition between the branches of the three brothers namely Sh.Mangloo, Sh. Amir Singh and Sh.Umrao Singh. The respondent/plaintiff further claimed that Mangloo was in possession of this plot throughout his lifetime and after the death of Mangloo, the property fell to the share of Smt. Manbhari Devi, his widow and who was thus the owner and in possession of the same. It is then claimed that the respondent/plaintiff had a Will in her favour from Smt. Manbhari and hence she was the owner of the subject plot. I may note, in any case, the respondent/plaintiff was the daughter of Sh. Mangloo and therefore in any case was the owner by succession of the subject plot.

5. The case of the appellant/defendant (now represented by his legal heirs) while defending the suit was in separate tiers, meaning thereby, there is no one positive/ complete/categorical defence. While on the one hand it is claimed that the subject plot in fact fell to the share of Sh. Amir Singh, predecessor in interest of the appellants and the son of Sh. Pat Ram, in another part of the written statement, right to possession is claimed on the basis of continuous possession for over 40-45 years. Though the specific plea of adverse possession is not taken, in fact, such a claim is implied to be made out. The predecessor in interest of the appellant namely Balbir Singh who was the original defendant in the suit filed, in his written statement had quite clearly pleaded that the suit was barred by time that is the plea of ownership by adverse possession. The implied acceptance of ownership of Sh. Mangloo and Smt. Manbhari Devi also becomes clear from the preliminary objection no. 4 of the written statement wherein the right of the respondent/plaintiff was denied on account of her estoppel, conduct and acquiescence. Possibly this plea was taken because late Sh. Balbir Singh claimed to have made some construction of one room with the boundary wall on the plot in question and which is **plea under Section 115 of the Evidence Act of standing by of the owner while a third person constructs on his plot.** Yet again, in the written statement there is another stand that, in any case, Smt. Manbhari and her husband were not in possession of the subject plot because she transferred all her properties in village Lampur to one Sh. Jai Singh.

6. I must admit that a case such as the present does indeed present certain difficulties for a Court which decides the same because the plot is situated in a rural area with no municipal number and which plot is not situated in a planned colony. Further, parties in question and their predecessors in interest, the sons of late Sh. Pat Ram were also uneducated villagers. One has, in fact, to decide the case such as the present stepping into the atmosphere of a village and various facets pertaining to a village and rural living, including the strong feelings of respect towards elders in the village and also certain aspects not being done in legalistic manner which would be otherwise done where urban properties, urban population, educated and well-informed persons are concerned. With this preface, let me give my reasons for agreeing with the impugned judgment and decree.

7 (i) The first and foremost aspect is that once there are no municipal numbers and there are rural plots of land in an unplanned manner situated in Laldora area, it is very necessary that independent persons from the village stand up in support of the respective parties. This stand of the neighbours and respected residents of a village thus assumes a great significance in a case such as the present. When we apply this to the contextual scenario, we find that on the balance of probabilities, respondent/plaintiff has rightly succeeded. This is because on behalf of the defendant/ Sh. Balbir Singh (son of Amir Singh who was the son of Pat Ram), no independent person of the village whether a respected elder or a neighbour deposed on behalf of Sh. Balbir Singh.

The only evidence led was of Sh.Balbir Singh himself and of his son. Even Babir Singh who stepped into the witness box as DW1 with respect to all the diverse stands given above only deposed to the following in the examination-in-chief:-

“The property in suit belongs to Mangloo, Umrao Singh and Amir Singh. Mangloo died. This property came into my possession after the death of Mangloo and since then the same is in my possession. The mother of Laxmi was Smt. Parvati. She never resided in the suit property. Laxmi resides at Timarpur. This property was never in possession of Smt. Laxmi. I have never taken any forcible possession of the suit property. I had constructed the boundary wall, room and had installed Gandasa and I was pattering my buffaloes in the suit property. Manubhari used to reside in the Haveli built of small bricks (Lakhori bricks) I am residing in this property right from the beginning. There was no dispute between me and Smt.Laxmi.”

(ii) The above deposition of the defendant, Balbir Singh has also to be read in the light of the fact that Balbir Singh was an ordinary resident of the village for over 4 to 5 decades and naturally if he had constructed on the plot and was in possession thereof, he would have therefore definitely had at least some sort of documentary proof such as electricity connection or water connection or property tax or ration card or various other documentary proofs which could show that he was in fact in actual physical possession for 4 to 5 decades and which could not be expected of a non-resident of the village being first Smt.Manbhari Devi and thereafter Smt. Laxmi Devi/respondent/plaintiff. While Mangloo died before 1945, Smt. Manbhari Devi and Smt. Laxmi Devi/respondent/plaintiff did not live in village Lampur for at least about

30-40 odd years. Persons therefore who are not residents in the village, would have difficulty to show their possession of a plot, however, it would not be so difficult for a person such as the defendant/Balbir Singh who is actually claiming to be in possession of the plot for over 4 to 5 decades.

iii) On the other hand, on behalf of the respondent/plaintiff two respected elders of the village came and deposed categorically and strongly in favour of the respondent/plaintiff. These witnesses are one Sh.Sunder Lal who deposed as PW3 and one Sh. Ram Lal who deposed as PW5. Sh. Sunder Lal was aged 75 years when he gave his testimony. Sh.Sunder Lal is not in any manner related to the parties and therefore can safely be considered to be a complete independent witness. Sh. Ram Lal, whose age is unfortunately not mentioned, is also an independent witness and not in any manner related to the parties. Also, both PW3 Sh. Sunder Lal and PW5, Sh. Ram Lal have no reason to depose falsely on oath on account of any alleged animosity with Sh.Balbir Singh and his family.

iv.) Sh. Sunder Lal PW3 has deposed that he has seen the disputed site and deposed that Manbhari Devi was the owner of the same. He deposed that there was partition between Bhagat Singh, Balraj Singh and Manbhari Devi and whereby the disputed site came to the share of Manbhari Devi by partition. He also deposed that Smt. Manbhari was in possession of the disputed site and after her it was the

respondent/plaintiff was in possession. He also deposed that the construction on the site was raised by Smt. Manbhari. He further stated that the defendant Balbir Singh was in possession of the disputed property since about 8 or 9 years. The witness reiterated that it was respondent/plaintiff who was the owner of the suit property and that Balbir Singh had sold his property. In fact, this witness said that Balbir Singh also sold some portion of the property which was owned by the respondent/plaintiff. Of course, this witness admitted in cross-examination that there was no written document of the partition, however, in my opinion, nothing much can turn on this aspect because the event is about 30 to 40 years old and it is thus apparently so that the same has not come on record. Further, this witness PW3 has been residing in the village Lampur since about no less than 55 years before the deposition and being an aged person and a respected elder of the village, his testimony would be entitled to be of the highest weight moreso in the facts and circumstances of the present case.

v) PW5, Sh.Ram Lal, another independent witness in the village has also deposed in favour of the respondent/plaintiff and this witness has stated that Mangloo was in possession of the subject plot till his lifetime and thereafter the plot came into possession of Smt.Manbhari and after the death of Smt. Manbhari it was the respondents/plaintiff who came into possession. This witness deposed that Balbir Singh took illegal possession in 1986 and before which Balbir Singh was never in possession. This witness also deposed that on

account of illegal action of trespass on the subject land by Sh. Balbir Singh it was the *Panchayat* which sought to get case registered against Balbir Singh and thereafter the case was referred to the Court and Balbir Singh was prosecuted. At this stage, I may note that though Balbir Singh and his accomplice Jai Singh were acquitted in the criminal case, as per the judgment of the Additional Sessions Judge Sh. S.C. Chaturvedi, however, reference to the said judgment shows that Balbir Singh and Jai Singh were acquitted without reference to the issue of title of the subject plot and the Additional Sessions Judge has specifically said that he was not required to return a finding as to the title to the subject plot. In any case, decision in the criminal case cannot bind the Civil Court especially when the issue of title was not dealt with in the criminal case.

8. The conspectus of the above is that plaintiff and her mother were ladies living far away from village Lampur whereas Balbir Singh/defendant was living in the village for about 4 to 5 decades. It is therefore natural to expect that the defendant ought to have led detailed evidence, including documentary evidence, if he really was an owner in possession of the disputed plot. Onus on the respondent/plaintiff in a case such as the present is a light one, and further assuming the same to be a heavy onus, I am of the opinion that the same stands discharged by deposition of two independent witnesses, PW3 and PW5. Further, in a rural scenario where there is no proper lay out of colonies, evidence of residents of village and

neighbours was indeed important and not a single person has stood in support of the defendant/predecessor in interest of the appellants. Also, the case of the defendant was wishy washy in that there was no one categorical defence but various defences of ownership, suit being barred by time (impliedly on account of adverse possession) and of estoppel/acquiescence against Smt. Manbhari Devi/Laxmi Devi/respondent/plaintiff. Balbir Singh/defendant also filed no credible documentary evidence in the form of electricity connection or water connection or property tax or ration card or any other proof with respect to possession of the disputed plot considering that he was living in the same village just a little distance away from the subject plot.

9. Before me, learned counsel for the appellant firstly argued that the respondent/plaintiff had failed to discharge her onus of showing ownership to the subject plot. This argument is misconceived because the issue of onus of proof besides having been discharged by the respondent/plaintiff as stated by the above, the same pales into insignificance once evidence is led by both the parties. After evidence is led, a civil case is thereafter decided on balance of probabilities. As per the balance of probabilities, the Trial Court has rightly held (and also because of additional reasons given by me above) that the respondent/plaintiff was the owner of the property. The second argument of the learned counsel for the appellant is that the judgment of S.C.Chaturvedi, Additional Sessions Judge should be read in favour of Balbir Singh because he was acquitted by the Court, in my opinion, and

as already stated above, the decision in criminal case would not bind the Civil Court more so because the Additional Sessions Judge has clearly stated in the judgment that his decision does not proceed on the title of the subject property. The third argument of the learned counsel for the appellant is that if there was a partition deed, the respondent/plaintiff ought to have filed the same. I have already discussed above that the partition took place over 30-40 odd years before the suit was filed, and if the same is not filed, it would not mean that it itself is enough to demolish the case of the plaintiff, inasmuch as, two independent witnesses one of whom was a very respected elder of the village of 75 years in age, stepped into the witness box and firmly supported the case of the respondent/plaintiff. The next argument of counsel for the appellant was that the suit on account of adverse possession was barred by time. I refuse to accept this argument. Adverse possession is not a plea which ought to be looked upon by a court in favour of Balbir Singh until and unless the same is established quite clearly and categorically. I have already narrated that except the statement of Balbir Singh and his son, nothing has come on record with respect to the stand of Balbir Singh that he was in possession for such a period for him to get ownership of the land by adverse possession.

10. In the present case, on account of the peculiar facts and circumstances related to the case, I have gone through in detail the testimonies of the witnesses, their cross-examinations and the respective pleadings of the parties. I have done so as a court of regular

first appeal and which is a court which is entitled to re-appraise both findings of fact and law. This is all the more so when the parties unfortunately are uneducated villagers and the plot is situated in an unplanned rural area without specific municipal numbering. I may also add that this Court is entitled to interfere with the findings of the Trial Court only if the said findings are wholly perverse or illegal or cause grave injustice. I do not find that the findings and conclusions of the Trial Court can be said to be illegal or perverse or cause grave injustice. Grave injustice would be caused to the respondent/plaintiff if the arguments on behalf of the appellants are accepted.

11. In view of the above, the appeal is dismissed leaving the parties to bear their own costs. Interim orders are vacated. Trial Court record be sent back.

JANUARY 28, 2011
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VALMIKI J. MEHTA, J.