

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.157/2003

Judgment delivered on: 25.01.2011

SH.JAGDISH MITER BHOLA & ORS. Appellants
Through: Mr.Pushkar Sood, Advocate.

Versus

SH.HAMIDUDDIN & ORS. Respondents
Through: Mr.M.Salim, Advocate.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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

KAILASH GAMBHIR, J. Oral:

1. By this appeal filed under section 96 of the Code of Civil Procedure, 1908, the appellants seek to set aside the judgment and decree dated 18.1.2003 whereby the suit for

possession and recovery of damages filed by the respondents was decreed in favour of the respondents and against the appellants.

2. Brief facts of the case relevant for filing the present appeal are that the respondents are the successor in interest of the property bearing no.2331-2337 , Haji Nathu Building, Raj Guru Road, Chuna Mandi, Pahar Ganj, New Delhi from their late grandfather Shri Sheikh Nathu who had taken the two plots of land admeasuring 417 sq. yards and 208 sq. yards total being 625 sq yards out of khasra number. 490 and 491/1 situated at Chuna Mandi , Pahar Ganj, New Delhi vide lease deed dated 17.7.1919 from Delhi Improvement Trust. A suit for possession and recovery of damages was filed by the respondents No.1 to 3 against the appellants in respect of the said property and in defense the appellants claimed the title of the said property in themselves by adverse possession. Vide judgment and decree dated 18.1.2003 the said suit was decreed in favour of the respondents and against the appellants. Feeling aggrieved

with the same, the appellants have preferred the present appeal.

3. Assailing the judgment and decree passed by the learned trial court, Mr. Pushkar Sood, learned counsel appearing for the appellants submits that the respondents failed to prove on record their ownership in respect of the subject property as they did not prove on record either the death certificate of late Shri Sheikh Nathu or that they were the legal heirs of late Shri Nathu. Counsel also submits that by the Jama Bandi/Khatauni and the property tax receipts which were proved on record, the respondents cannot prove their title on the property in question. Counsel also submits that the learned trial court misconstrued the judgment of this Court in the case of ***Rama Kant Jain Vs. M.S. Jain, AIR 1999 Delhi 281***. The contention of the counsel is that in the facts of the said case the plaintiffs/respondents had claimed the ownership based on the sale deed and the appellants/defendants being the relatives of the plaintiffs had claimed that they had contributed towards the purchase of

the property in question. Counsel thus submits that in those peculiar facts the learned Trial Court took a view that setting up an adverse possession in such facts would amount to admission by the defendants to the title of the plaintiffs. Distinguishing the facts of the present case, counsel submits that in the present case the appellants had throughout been disputing the title of the respondents and nowhere in the written statement the appellants had admitted the title of the respondents. Counsel also submits that in fact late Shri Sheikh Nathu was the owner of the said property who left for Pakistan in the year 1947 and ultimately died in the year 1951 and the present respondents who have claimed themselves to be the legal heirs of late Shri Nathu have failed to prove on record as to how they claim themselves to be the legal heirs of late Shri Nathu. Counsel also submits that in Para-29 of the impugned judgment, the learned trial court has observed that as per the documents i.e. Khatauni and Jamabandi placed on record by the respondents pertaining to the year 1967-68, it was Nathu son of Rahim Baksh who was the owner in respect

of Khasra No.490-491/1. Counsel also submits that so far the house tax receipts and the receipts of the lease money proved on record by the respondents are concerned, the same as per the settled legal position cannot confer any title on the respondents. In support of his arguments, counsel for the appellants placed reliance on the judgment in ***Rajinder Singh Vs. State of J & K and Ors. (2008) 9 SCC 368***, wherein the Hon'ble Apex Court took a view that the revenue records cannot confer title of the property on a party and entries in the revenue records are relevant only for fiscal purpose and substantive rights of the title and ownership of the claimants can be decided only by a competent civil court in appropriate proceedings. Based on the said judgment, counsel submits that the learned trial court has wrongly taken into consideration the jamabandi/khatauni, notice of demand issued by the MCD, house tax receipts and receipt of lease money etc. to confer ownership of the property in question on the respondents.

4. Refuting the said submissions of counsel for the appellants, Mr.M.Salim, counsel for the respondents submits that so far the ownership of late Shri Sheikh Nathu is concerned, the appellants themselves have admitted in their written statement that he was the owner of the property in question. Counsel also submits that the respondents in their pleadings as well as in the evidence have proved on record that late Shri Nathu was survived by three sons namely Gulam Farid, Mohd. Hanif and Hazi Mohd. and after their demise the respondents succeeded to the said properties left by their grandfather late Shri Sheikh Nathu. Counsel further submits that the respondents had also produced a Patwari Sh. Rajbeer Singh (PW-2) from the office of the DDA, who in his evidence duly proved on record that the said properties forming part of Khasra No.490-491/1, Chuna Mandi, Paharganj, New Delhi measuring 417 sq.yards and 208 sq.yards stood in the name of late Shri Nathu who was the lessee of the said properties. Counsel also submits that the said witness also proved on record that on 11.08.1999

mutation of the said properties was sanctioned in favour of various legal heirs who succeeded to the said properties as per their respective shares. Referring to para-11 of the impugned judgment, counsel submits that the testimony of PW-2 remained unchallenged and unassailed and, therefore, based on the said testimonies of PW 1 and PW-2 the respondents could successfully prove on record that late Shri Nathu was the recorded lessee of the said properties and after his demise the said properties were duly mutated in the relevant revenue records in the names of the respondents. Counsel for the respondents also submits that DW-2 in his evidence duly admitted the certified copies of jamabandi/khatauni proved on record by the respondents through the testimony of PW-1 as Ex.P-1 and P-2 and Ex. P-5 and Ex.P-6.

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. During the course of the arguments, counsel for the appellant assailed the findings of the learned trial court

only on issues No. 2 and 3 while on rest of the issues the findings of the learned trial court have not been challenged by the counsel for the appellants. The prime argument of the learned counsel for the appellants is that no documentary evidence was placed on record by the respondents (plaintiffs in the suit), which could have established the clear title of these respondents over the property in question. Counsel for the appellants has also taken a strong exception to the interpretation given by the learned trial court to the judgment in ***Ramakant Jain vs. M.S. Jain (Supra)*** to the facts of the present case. Learned counsel also assailed the judgment of the learned Trial court on the ground that khatauni/jamabandi proved on record by the respondent as Exs. P-5 & P-6 cannot be accepted as title documents, while Exhibits P3, P4, P7, P8, P10 and P11 being the house tax receipts, notices of demand issued by the MCD and receipts of the lease money etc. deposited by the respondents with the DDA cannot prove the title or ownership of the respondents.

7. Before dealing with the said submissions of counsel for the rival parties, it would be appropriate to reproduce issues No. 2 and 3, on which the arguments were addressed by both the counsel. The same are as under:-

"2. Whether the plaintiffs are owners of the suit property? OPP.

3. Whether the plaintiffs are entitled to possession of the suit property? OPP."

8. It is not in dispute between the parties that late Shri Sheikh Nathu S/o Shri Rahim Baksh Sheikh was the owner of the property in question. As per the case of the respondents, late Shri Sheikh Nathu was the lessee of the said property vide lease deed dated 17.7.1919 duly executed in his favour by the Delhi Improvement Trust, predecessor-in-interest of Delhi Development Authority. As per the respondents/plaintiffs, Sheikh Nathu died in the year 1951 and he left behind three sons Gulam Farid, Mohd. Hanif and Hazi Mohd. All these three sons of Sheikh Nathu had also died and all the three respondents, who were plaintiffs before the learned trial court and respondents nos.4 to 12 who were

performa defendants No. 6 to 15 before the learned trial court are granddaughters and grandsons of late Shri Sheikh Nathu. PW1 in his testimony has duly deposed in his evidence that the respondents are successors-in-interest of late Shri Sheikh Nathu and, therefore, they succeeded to the title of late Shri Sheikh Nathu in respect of the property in question. The testimony of PW1 in this regard remained unchallenged and unrebutted. The respondents have also proved on record that in the municipal records the said properties were duly mutated in the name of Gulam Farid and other predecessors-in-interest of the respondents and thereafter in the year 1999 the same were mutated in the name of the respondents and other legal heirs. PW2 Rajbeer Singh, Patwari was summoned from the office of the DDA, who duly proved on record that the property forming part of Khasra No. 490 and 491/1, Chuna Mandi, Pahar Ganj measuring 417 sq.yards and 208 sq.yards stood in the name of late Shri Sheikh Nathu son of Shri Rahim Baksh caste Sheikh resident of Hanuman Road as lessee and on 11.8.1999 the mutation (share) of the said

property was sanctioned in the name of Hamiddudin, Ahteshamuddin, Kadiruddin, Shujauddin, Iftikaruddin, Imtiazuddin, all sons of Gulam Farid (1/3rd share), Smt. Fatima Begum Mohd. Hayat and Mohd. Yusuf, all sons of Hazi Mohd. Hanif (1/3rd share), Khurshid Ahmed, Nisar Ahmed, Salim Ahmed, Salahuddin, Shamim Ahmed all sons of Hazi Mohammad (1/3rd share) vide entry at serial No. 2661. The testimony of the said witness, as per the findings of the learned Trial court, remained unassailed and unchallenged and based on the testimony of both PW1 and PW2, it cannot be said that the respondents did not place enough material on record to show as to how they succeeded to the title of the said properties as respective co-owners. The Khataunis/jamabandies of Khasra No. 490 and 491/1 of the revenue estate of Pahar Ganj, Chuna Mandi for the year 1967-68 were also proved on record by the respondents as Exhibit P5 and P6. As per these documents, late Shri Sheikh Nathu has been shown as the owner of the said khasra numbers. The appellants have also not challenged the authenticity and

correctness of the said documents, and correctly so, since the appellants have not disputed the ownership of late Shri Sheikh Nathu in respect of the said properties. Exhibit P3 and P4 were proved by the respondents, which were notices of demand issued by the MCD and the said notices show that the property in question stood in the name of Gulam Farid and Ors. Exhibit P7 and P8 are the receipts of lease money deposited by these respondents with the DDA. Exhibit P10 and P11 are the receipts of house tax deposited by these respondents with the MCD in respect of property bearing No. 2231/37 Pahar Ganj, which is a new municipal number of the said property bearing khasra No. 490 and 491/1, Pahar Ganj, Chuna Mandi. The correctness and authenticity of these documents also was not challenged by the appellants. The learned Trial court has also observed that the appellants have been merely disputing the ownership of these respondents. The Trial court in para 31 of the impugned judgment has observed that DW1 in his entire testimony did not answer any question directly and when any question was put to him in

order to clarify some facts then his simple reply had been that he does not know. The learned trial court also observed that the defense of the appellants in the written statement has been that they became owner by adverse possession but they failed to name any person against whom they claimed their hostile title. The appellants did not succeed to prove their title by adverse possession and very fairly the counsel for the appellants has also not challenged the correctness of the findings of the learned Trial court so far the findings on issue No. 1 are concerned. To claim title by adverse possession, it is not only the continuous and uninterrupted possession for a period of 12 years or more but such a possession set up by the defendant must be hostile to the real owner whose title the defendant intends to deny by setting up such title in himself. It is not, therefore, mere physical or continuous possession, which would result in establishing the title in the defendant but such continuous and uninterrupted possession necessarily has to be adverse and hostile to the real owner. The person claiming adverse title in himself thus requires to establish two

essential ingredients (i) Corpus possession (*Physical Possession*), (ii) Animus Possidendi (*Intention to exclude the adversary from possession*). Explaining the concept of adverse possession, the Hon'ble Apex Court in the case of ***Karnataka Board of Wakf vs. Government of India & Ors. (2004) 10 SCC 779*** observed as under:-

"Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : *S M Karim v. Bibi Sakinal* : [1964]6SCR780 , *Parsinni v. Sukhi* : (1993)4SCC375 and *D N Venkatarayappa v. State of Karnataka* : AIR1997SC2930). Physical fact of exclusive possession and the animus posited to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person 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, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (*Dr. Mahesh Chand Sharma v. Raj Kumari Sharma* : AIR1996SC869).

12. Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: *S M Karim v. Bibi Sakinal* : [1964]6SCR780). In *P Periasami v. P Periathambi* : (1995)6SCC523 this Court ruled

that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."

9. In the facts of the present case, the respondents have set up an adverse and hostile possession but without disclosing the fact that against whose title or ownership they are claiming such hostile or adverse possession. The appellants, although have denied the title of the respondents but at the same time have not denied the fact that the grandfather of these respondents, late Shri Sheikh Nathu was the owner being lessee under the Delhi Improvement Trust. Once having admitted this position, the only question left to be determined by the trial court was to see that whether the respondents could successfully prove on record that they are the rightful legal heirs deriving their right over the property tracing their title to late Shri Sheikh Nathu. PW1 in his evidence clearly deposed that his grandfather Shri Sheikh Nathu was the owner of the said property, who died in the year 1951. He also deposed that late Shri Nathu was survived

by his three sons namely Gulam Farid, Mohd. Hanif and Hazi Mohd and that all three sons of late Shri Sheikh Nathu had expired. He also testified that he is the son of Gulam Farid besides five other sons. Similarly he also disclosed the name of other legal heirs left by Mohd. Hanif and Hazi Mohd. There is no challenge to the said testimony of the plaintiff as the said deposition of the respondent PW1 remained unchallenged and unrebutted. PW2 Rajbeer Singh, Patwari from the DDA proved mutation of the said properties in the name of the respondents and other legal heirs and he clearly stated in his evidence that the said mutation was done by the DDA based on inheritance. The testimony of PW2 also remained unchallenged. This mutation of the said property in the record of DDA also clearly establishes the fact that these respondents were alone the inheritors of late Shri Sheikh Nathu, who succeeded to the ownership and title of the said property in question. The ownership of the respondents also gets strengthened from the fact that they alone had been paying the house tax to the MCD and the lease money to the

DDA. The two jamabandis proved on record as Exs. P-5 and P-6 clearly show that late Shri Sheikh Nathu was the recorded owner in the revenue records in respect of khasra No. 490 and 491/1. Taking a cumulative effect of all these documentary evidence proved on record by the respondents and the unchallenged and unrebutted testimonies of PW1 and PW2, there is no reason to disbelieve the claim of the respondents with regard to their ownership in respect of property now bearing No. 2331-2337, Haji Nathu Building , Raju Guru Road, Chunna Mandi, Paharganj, New Delhi. Therefore, I do not find any infirmity or illegality in the finding given by the learned Trial court on the issues No. 2 and 3.

10. So far the reliance placed by the learned Trial court on the judgment of the Apex Court in ***Rajinder Singh (Supra)*** wherein it is held that the revenue record confer no title on the property and such entries are relevant only for fiscal purpose, would be of no help to the case of the appellants. The respondents in the present case have not claimed

ownership merely based on revenue record i.e. jamabandi proved on record as Exs. P-5 and P-6 but also based on the admitted fact that late Shri Sheikh Nathu was the owner of the said properties and the respondents being the grandchildren, succeeded to the ownership of the said properties and, therefore, it is quite evident that the respondents claimed ownership in themselves being the successors-in-interest of late Shri Sheikh Nathu and not merely because of the fact that the said properties were mutated in their name in the records of the MCD or merely because they were paying the lease money to the DDA. The jamabandies proved on record as Exs. P-5 and P-6 of course clearly proves that in the revenue records also late Shri Sheikh Nathu was the recorded owner, whose ownership has also not been disputed by the appellants. Based on these facts and the documents proved on record by the respondent and with the unrebutted and unchallenged testimonies of PW 1 and PW2 and the fact that the appellants could not produce any material either through documentary or oral evidence to

refute or challenge the said title of the respondents, this Court finds itself in agreement with the conclusions arrived at by the learned trial court accepting the ownership of the respondents on the subject property.

11. In the light of the above discussion, the judgment and decree passed by the learned trial court is upheld and consequently the present appeal filed by the appellants is dismissed with no order as to costs.

January 25, 2011
dc/rkr

KAILASH GAMBHIR, J