

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

% *Judgment reserved on : 11.02.2011*  
*Judgment delivered on : 18.02.2011*

+ **R.S.A.No.225/2003& CM No.783/2003**

SHRI NATHU RAM & OTHERS .....Appellants

Through: Mr.Ravi Gupta, Sr. Advocate  
with Mr.Mohit Gupta &  
Mr.Swastik Singh, Advocates.

Versus

SHRI UTTAM CHAND THROUGH L.Rs. & OTHERS  
.....Respondents  
Through: Mr.Atul Bhuchar, 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 05.07.2003 which had reversed the findings of the trial Judge. The trial Judge vide the judgment and decree dated 14.07.1998 had dismissed the suit of the plaintiff Uttam Chand. The impugned judgment had reversed this finding. The suit stood decreed.

2. The plaintiff had filed a suit against the four defendants alleging that he is the owner of the suit property by virtue of a Certificate of Sale dated 04.01.1965 (Ex.PW-4/1). Contention was that Tara Chand deceased father of the defendants was in unauthorized occupation of the suit property since 1975 when he

had taken forcible possession of the suit land. Since they had failed to vacate the property, the present suit was filed.

3. A preliminary objection about the maintainability of the suit, being barred by limitation was raised. The defence of the defendants was that their grandfather was living in this suit property since the last more than two decades as an owner and thereafter their father; the defendants were in possession as owners; house tax was being assessed in the name of their father; they had become owners by adverse possession; suit was liable to be dismissed.

4. On the pleadings of the parties six issues were framed. Oral and documentary evidence had been led which included the testimony of five witnesses on behalf of the plaintiff and two witnesses on behalf of the defendants. The plaintiff had proved his ownership by way of a Certificate of Sale dated 21.03.1964 (Ex. PW-4/1). Per contra, the defendants had produced the electricity and house tax bills showing their possession in the suit property from November, 1963. These documents had been proved collectively as Ex. DW-2/1 to Ex. DW-2/8. On scrutiny of this oral and documentary evidence, suit of the plaintiff stood dismissed. The Court had recorded a finding that the defendants have become owners by adverse possession.

5. The impugned judgment had reversed this finding. The impugned judgment had returned a finding that the suit filed by the plaintiff was based on title; the plea of adverse possession set up by the defendants had not matured over a period of 12 years; their claim of adverse possession not being satisfied, this contention of the defendants had been rejected.

6. This is a second appeal. After its admission on 27.08.2010, the following substantial question of law was formulated. It reads as under:-

*“Whether the findings in the impugned judgment dated 05.07.2003 (on issue Nos. 4 & 5 as framed by the trial Judge) are perverse? If so, its effect?”*

Issues No. 4 & 5 are relevant for the controversy before this Court. They read as under:-

*“Issue No. 4:- Whether defendants have become owners by adverse possession of the property*

*Issue No. 5:- Whether defendants are in unauthorized occupation of the property in dispute? OPP”*

7. On behalf of the appellants, it has been urged that the appellants/defendants have been in possession over the suit property since November, 1963 and this is evident from the fact that the house tax had been in the name of their deceased father; electricity bills also evidenced the fact that the appellants had been in continuous and uninterrupted possession since that period. Their adverse possession had matured within 12 years thereafter i.e. by November, 1975. Suit filed on 17.02.1979 was barred by limitation. Attention has been drawn to the version of the witnesses of the plaintiff; emphasis has been laid on the cross-examination of PW-1 who has, in various parts of his deposition, admitted that he had no knowledge where the suit property was located; even after purchase, he had not visited the village; he did not know as to whether the property was assessed to house tax or whether any house tax was in fact paid on the suit property. Learned counsel for the appellants had submitted that the open, hostile and uninterrupted possession of the appellants was evident and this open, hostility does not necessarily have to be towards the true

owner. In support of his submission, learned counsel for the appellants has placed reliance upon a judgment of the Apex Court reported in (2006) 7 SCC 570 T. Anjanappa & Ors VS. Somalingappa & Anr. as also another judgment of this Court reported in MANU/DE/3441/2010 in RSA No. 46/2001 titled Ashok Babu Vs. Puran Lal.

8. Arguments have been countered. It is submitted that finding in the impugned judgment calls for no interference. It is pointed out that a notice had been served by the plaintiff to the defendants which was dated 11.10.1976 to which reply has admittedly been given by the appellants which is dated 24.10.1976. It was in this reply for the first time the defendants had set up their claim for adverse possession. The period of 12 years has to be counted from this period; suit filed on 17.02.1979 was well within limitation. It is pointed out that the adverse possession of the defendant had not been established as this 12 years period had not matured. To support his submission, learned counsel for the respondent has placed reliance upon a judgment of the Apex Court reported in AIR 2002 VII AD (Delhi) 333 Rakesh Sharma Vs. Lakshmi Sharma as also another judgment of the Apex Court reported in AIR 2007 SC 1753 P.T. Munichikkanna Reddy & Ors Vs. Revamma & Ors.

9. Record has been perused. The findings on issues No. 4 & 5 have been questioned. The ownership of the suit property in terms of the Certificate of Sale issued in favour of the plaintiff Ex. PW-1/4 dated 21.03.1964 is not in dispute. Admittedly vide the aforementioned document, the petitioner had become the owner of the suit property. However the defence of the defendant all along has been that he had become owner by adverse possession; this adverse

possession which was hostile, uninterrupted and peaceful qua not only the plaintiff but the entire world and it having matured over a period of 12 years since 1958-59, the suit filed by the petitioner on 17.02.1979 was time barred.

10. A second appeal Court is not a fact finding Court. However, where a party is able to pinpoint perversity in the impugned judgment, interference is called for and to arrive at a conclusion as to whether the finding in the impugned judgment amounts to a perversity qua a finding on adverse possession or not, it would be necessary to examine the evidence which has been led in the court below.

11. Admittedly the present suit proceedings are governed by Article 65 of the First Schedule of the Limitation Act, 1963. Article 65 reads as under:-

| <i>Description of suit</i>                                                   | <i>Period of limitation</i> | <i>Time from which period begins to run</i>                            |
|------------------------------------------------------------------------------|-----------------------------|------------------------------------------------------------------------|
| For possession of immovable property or any interest therein based on title. | Twelve years                | When the possession of the defendant becomes adverse to the plaintiff. |

This statutory provision provides for a limitation of 12 years for a suit for possession of immovable property based on title; time would begin to run from the date when the possession of the defendant becomes adverse to the plaintiff.

12. The crux of the issue before this Court is as to if and when the possession of the appellant/defendant had become adverse to the plaintiff.

13. PW-1 had as per his version purchased this property in 1964. His contention was that Tara Chand, the predecessor of the defendant had taken illegal possession of this property in 1975. In

his cross-examination, he had admitted that this property is

assessed to house tax but no one had paid house tax of this property; he did not know if there was any water connection in the property. As per his deposition at the time of his purchase, there was only one kachha room of mud at the site. In his cross-examination, he stated that he did not know when the unauthorized construction was made in this property; whether it was made by Tara Chand prior to 1958 or later; no police complaint was lodged. The witness could not remember as to when he has last visited Village Masjid Moth (where the suit property is located); on specific repeated questions put to him about the location of the property and how it is to be accessed, whether from South Extension or from Niti Bagh or from Gautam Cinema, he had no answer. He could not say whether he visited this Village 10-12 years back or thereafter; he did not know the municipal number of the adjacent houses. He denied the suggestion that Tara Chand was in possession of the suit property since last 60-70 years. PW-2 had also deposed that at the time of its purchase, there was a small kachhi jhuggi made at the site. In his cross-examination, he has stated that he had gone to the site about five years back; at that time also one mud hut was there; an old man was living there since 8-9 years when he visited this village; the same old man was living in the mud hut when the auction of the property took place. He further stated that he cannot say if this old man was Tara Chand (deceased father of the defendants).

14. Admittedly in March, 1964, this old man was found at the site. A specific suggestion had been given to PW-2 that this old man was Tara Chand to which he had replied that he was not sure. Presence of Tara Chand in the suit premises since March, 1964

thus stands admitted. Testimony of PW-1 on this score is relevant. On a specific query put to him as to whether Tara Chand had made the admitted illegal construction in the suit premises prior to 1958, PW-1 was only evasive; there was no denial. PW-1 had further admitted that his property was assessed to house tax but who was paying this house tax was not known to him. Per contra, the evidence adduced by the defendant which included payment of house tax and water charges from November, 1963 (Ex. DW-2/8) right up to 1976 evidenced his possession and occupation in the suit property. DW-2/7 is a notice dated 27.12.1962 issued to Tara Chand seeking payment of property tax. This document is prior to purchase of the property by the plaintiff. Ex. DW-2/1 dated 23.10.1974 was the payment of electricity charges in favour of Tara Chand. It has also come on record that the electricity communication was in the name of deceased Tara Chand; water connection had also been installed in his name in 1976. This documentary evidence coupled with the oral version of DW-1 & DW-2 all speak volumes of the fact that it was Tara Chand, the deceased father of the defendant, who was in occupation of the suit property even prior to the purchase of this property by the plaintiff in 1964. In (2006) 7 SCC 570 T. Anjanappa and others VS. Somalingappa & another, the Supreme Court on the concept of adverse possession had noted as under:-

“The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other’s rights but denies them. The principle of law is firmly established that 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 denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing

those acts is the most crucial factor. Adverse possession is commenced in wrong and is claimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property"

Para 20 had recorded as follows:-

"It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested 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."

15. A Bench of this Court in MANU/DE/3441/2010 Shri Ashok Babu Vs. Shri Puran Lal had noted that 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; in some cases, the defendant is unaware of who the true owner is, yet knows fully well that he is not the owner ; defendant sets up a claim on a land which belonged to someone else; that someone else may not be within his knowledge.

16. In 2007 (97) DRJ 83 Mohan Singh Kohli & Anr Vs. Brij Bhushan Anand & ors relying upon the proposition in T. Anjanappa (Supra), the following broad principals of adverse possession were culled out:-

*"(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"*

17. Applying the ratio of the aforementioned cases, it is clear that in this case the possession of the defendant stood established and proved even as per version of PW-1 as way back as 1958. Defendant no. 1 had purchased this land in March 1964. The documentary evidence adduced by the defendants i.e. payment of house tax, electricity and water charges continuously from November 1963 up to 1976 qua this property show that the defendants had, in fact, perfected their title by adverse possession qua this suit land in 1975. This possession was open, hostile, uninterrupted and peaceful. These are by and large admissions made by PW-1 himself and facts elicited in the cross-examination of PW-2. Suit filed on 17.02.1979 was thus time barred.

18. Learned counsel for the respondent has relied upon AIR 2002 VII AD (Delhi) 333 Rakesh Sharma Vs. Lakshmi Sharma which recites the principal that the period of limitation has to be

computed from the date when the defendant is claiming his ownership of adverse possession. This proposition is not in dispute. The second judgment relied upon by the learned counsel for the respondent AIR 2007 SC 1753 P.T. Munichikkanna Reddy & Ors Vs. Revamma & Ors. also lays down a legal proposition ( as emphasized by learned counsel for the respondent) that the intention to possess cannot be substituted from the intention of dispossess. Again there is no dispute to this proposition. The defendant has been able to establish his positive intent to dispossess which had culminated into his title by way of adverse possession.

19. Under Article 65 of the Schedule of the Limitation Act as aforementioned, the limitation commences from the date when the defendant's possession had become adverse. Physical fact of exclusive possession and the animus possidendi 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 question of law but it is a blend of fact and law. Such a defence has no equity in his favour; by claiming adverse possession the defendant is trying to defeat the rights of true owner; he must clearly plead and establish all such facts to establish his adverse possession. The question of intention to be known becomes important. The possession of adverse possessor must be hostile enough to given rise to a reasonable notice and opportunity to the paper owner.

20. Applying these tests, it is clear that even prior to the purchase of this property by the plaintiff (which was in March, 1964) the defendant was openly, uninterruptedly, peacefully and in

open hostility enjoying the suit property. It was in his possession and occupation. This fact was known to the plaintiff. The plaintiff had knowledge that this land was in possession and occupation of the defendant and presuming, even at best that this knowledge came to him only at the time of the purchase of the property in 1964, yet even if the period of 12 years is counted from March, 1964, 12 years stood complete in March, 1976. The plaintiff did not take any steps to dispossess the defendant right up to the February, 1979 when he chose to file the present suit. Suit was time barred.

Appeal is allowed. Suit is dismissed.

INDERMEET KAUR, J.

FEBRUARY 18, 2011

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