

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

% *Judgment Reserved on: 18.02.2011*
Judgment Delivered on: 24.02.2011

+ **RSA No. 157/2004 & CM Nos. 8437/2004 & 8438/2004**

SMT. SHANTI DEVI**Appellant**

Through: Mr. J.C. Mahindro, Advocate.

Versus

SH. HIRA LAL & ORS.**Respondent**

Through: Mr. H.D. Birdi, 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. The present appeal has impugned the judgment and decree dated 03.11.2003 which had endorsed the finding of the trial judge dated 21.04.2001 whereby the suit filed by the plaintiff, Sh. Hira Lal, seeking possession and recovery of mesne profits from the defendant qua the suit premises bearing no. 10/8020, Multani Dhanda, Pahar Ganj, New Delhi had been decreed.

2. The case of the plaintiff is that the mother-in-law of the defendant was a licensee in the suit property in respect of one room and a piao on the ground floor. After her death, the defendant unauthorisedly occupied the suit premises. In spite of legal notice dated 31.07.1989 served upon the husband of the defendant, the suit property was not vacated. The husband of the

defendant expired on 09.09.1991. Legal notice dated 12.09.1995 was served upon the defendant calling upon her to vacate the suit property which she had failed to do. The present suit was accordingly filed.

3. The defendant contested the suit. It was denied that the plaintiff is the owner of the suit property. Contention was that the father-in-law of the defendant namely Onkar Nath had occupied this suit property since 1957 and he had become the owner by adverse possession; the adverse possession had matured in 1969. After the death of Onkar Nath, the suit property was inherited by his legal heir. It was denied that the mother-in-law of the defendant was a licensee in the suit property; question of the revocation of the licence did not arise.

4. On the pleadings of the parties, following six issues were framed:-

1. Whether plaintiffs have no locus standi to file the present suit? OPP
2. Whether the suit has been valued properly for the purpose of court fee and jurisdiction? OPD
3. Whether suit is bad for non-joinder of necessary parties? If so, its effect? OPD
4. Whether the plaintiff is entitled to decree for recovery of Rs. 36,000/- on account of mesne profits, against the defendant? OPP
5. Whether plaintiff is entitled to decree for possession of the suit property against the defendant as prayed for? OPP
6. Relief.

5. Oral and documentary evidence was led. Four witnesses were examined on behalf of the plaintiff and three witnesses were examined on behalf of the defendant. The plaintiff had herself come to the witness box as PW-4. He had relied upon the sale deed exhibit PW-3/1 to PW-3/3 to establish his ownership to the suit property. This sale deed had also been proved through the testimony of PW-3 who was the Record Clerk summoned from the

office of the Sub-Registrar. PW-4 had also produced the site plan of the suit property as exhibit PW-4/1. Defendants' claim of adverse possession had been rejected. The trial court was of the view that apart from the bald statement of the defendant, there was no other evidence to establish the claim of adverse possession. The suit of the plaintiff was decreed.

6. The First Appellate Court had endorsed this finding. Issue no. 1 and Issue no. 5 are relevant qua this controversy and the finding returned reads as follows:-

“ Both the issues are inter-connected and are being decided together. The plaintiffs had claimed that they were the owners of the suit property having inherited the same from Shankar Dass, their father. In order to prove the ownership in favour of Shankar Dass they have placed on record certified copies of the sale deeds Ex. PW 3/1 to 3/3. The certified copies were duly proved by PW-3 who had come from the office of Sub-Registrar, Kashmeri Gate, Delhi. These sale deeds prove on record that the suit property was owned by Shankar Dass. PW 4 Hira Lal, Plaintiff No. 1, had made a statement on oath that the plaintiffs had inherited the suit property from Sh. Shankar Dass, their father. This fact has been corroborated by DW 3, a witness of the defendant. DW 3 Chuni Lal is residing in the neighborhood of the suit property and is known to both the parties. In his examination-in-chief, he has stated that the suit premises belonged to Shankar Dass and that the plaintiffs had become owners thereof after his death. In his cross-examination, he conceded that Shankar Dass had purchased the suit property from Shyam Lal and Deep Chand, sons of Kanhiya Lal. He had further stated that the defendant was residing in the property belonging to the plaintiffs.

As against this, the case set up by the defendant was that her father-in-law had occupied the suit property in the year 1957 and had become owner by adverse possession. The defendants, however, had failed to prove the aforementioned defence. In order to prove the defence of adverse possession, it has to be established that the possession was continuous, open and hostile as against the actual owner. The defendant has not led any evidence to prove ownership by adverse possession. A person does not become owner of a particular premise by continuous residence alone. There is, therefore, no substance in the arguments advanced by the ld. defence counsel that Onkar Nath, the father-in-law of the defendant had become owner by adverse possession in 1969 having continuously considered in the suit property since 1957. Even otherwise, apart from a bald statement by the defendant, there is no proof of the fact that Onkar Nath was residing in the suit premises continuously since 1957. The defendant had, therefore, failed to prove its defence that she had become owner of the suit properly having inherited it from her father-in-law.

It was the case of the plaintiffs that the mother-in-law of the defendant had been granted a license to live in the suit premises. The plaintiffs have placed on record notice Ex. PW 4/2. This notice dated 21.04.1975 was addressed to the mother-in-law of the defendant. The notice was sent at the address of the suit premises vide postal receipts Ex. PW 4/B and was duly received by the

addresses vide registered AD Card Ex. PW 4/4. Ex. PW 4/2 makes a specific movement that the mother-in-law of the defendant had been granted a license on account of being a relation of the plaintiffs. The notice calls upon her to vacate the room in question by the end of May, 1975. The defendant has not placed on record any reply to the notice which might have been given by her mother-in-law. It has, therefore, been proved that the notice Ex. PW 4/2 had gone unrefuted. The plaintiffs have further proved on record notice Ex. PW 4/5 which was sent upon the defendant vide AD Card Ex. PW 4/6. Even though the defendant had denied service of the said notice, her signatures appear on the AD Card Ex. PW 4/6 as has been rightly concluded by the ld. lower court. No reply to this notice was sent to the plaintiffs. The allegations made in this notice had also not been refuted by the defendant by means of a reply notice. It was, therefore, rightly concluded by the ld. lower court that the mother-in-law of the defendant was a licensee in the room in question and after her death the defendant was in unauthorized occupation of the suit premises. The findings of the lower court on issue nos. 1 and 5 are, therefore, upheld."

7. This is a second Appellate Court. The appeal had been admitted and on 03.08.2007, the following substantial question of law was formulated:-

"Whether the appellant has become owner of the case property by adverse possession?"

8. On behalf of the appellant, it has been urged that the claim of the defendant claiming adverse possession had been validly proved. Where the permissive possession is disbelieved, it necessarily follows that the adverse possessory right has been proved. For this proposition, reliance has been placed upon AIR 2004 Karnataka 433 Venkataramana Vs. Ganpathi & Ors. as also AIR 2004 Calcutta 188 Jatindra Nath Mondal and Ors. Vs. Smt. Harimoti Dassi and Anr. Reliance has also been placed upon AIR 2003 Bombay High Court Gangaram Rambhau Zite and Ors. Vs. Chindhu Degadu Tikone to substantiate the submission that where there are discrepancies in the sale deed, the same cannot be taken to be a proved document. It is submitted that in this case, PW-3 who had brought the summoned record had admitted in his cross-examination that sale deed was a document in Urdu and he could not say whether the translated and the original copy were one and

the same.

9. Arguments have been countered.

10. The plaintiff is admittedly the owner of the suit property. This has been established by the sale deed exhibit PW 3/1 to PW 3/3. The contention of the defendant that the sale deed has not been duly proved in view of the admission of PW 3 that the document is in urdu and he cannot tell which property it pertains to, is of little relevance. Testimony of a witness has to be read as a whole; no single sentence can be segregated from the remaining version. PW-3 was an official witness. He had proved the certified copies of the sale deed which had been brought from the summoned record of the office of the Sub Registrar, Kashmere Gate. There is no dispute to it. The details of the registered number in the record brought by him tallied with the documents. This version had been corroborated by PW-4 who had purchased this suit property. The ownership of the plaintiff stood adequately proved and this finding calls for no interference.

11. This court has even otherwise only to answer the substantial question of law which related to the plea of adverse possession which had been set up by the defendant. The case of the defendant was that his father-in-law, Onkar Nath, was in continuous possession of this suit property since 1957 and his adverse possession had matured after 12 years i.e. in 1969. Impugned judgment had noted that no evidence had been led by the defendant to establish his continuous, open and hostile possession in this property. Mere possession is by itself not sufficient to substantiate the claim of adverse possession. Apart from the version of the DW-1, there was no other evidence, oral or

documentary, to substantiate this submission. If the defendant had been living in this property, continuously for the aforementioned period i.e. from 1957 to 1969, he could have produced some electricity or water connection bill to substantiate his possession over the suit land. Even otherwise this possession had to be necessarily a hostile possession which again was not forthcoming. Per contra, the plaintiff had been able to establish by cogent evidence that the suit premises had been licenced to the mother-in-law of the defendant. Legal notice dated 21.04.1975 (exhibit PW 4/2), which had been sent by registered AD (receipt is exhibit PW-4/3 and AD Card is exhibit PW-4/4) was duly served upon her terminating her licence during her lifetime. Thereafter, the defendant, Smt. Shanti Devi was also served with a legal notice dated 12.9.1995 (Ex.PW-4/5); she had accepted the notice vide Ex.PW-4/6 (AD Card) duly signed by her. She, however, refused to vacate the suit property. Ex.PW-4/5 expressly stated that she is unauthorisedly occupying the suit premises; she was liable to pay damages at the rate of ₹1000/- per month. It was in these circumstances that the suit of the plaintiff was decreed.

12. The second appellate court is not a third fact finding court. The plea of adverse possession as set up by the defendant had been dismissed on a detailed scrutiny of both the oral and documentary evidence which fact findings call for no interference.

13. The judgment relied upon by the learned counsel for the appellant reported in AIR 2004 Karnataka 433 Venkataramana Vs. Ganpati and Ors has no application. In that case, the claim of permissive possession set up by plaintiff had been dis-believed; conversely the plea of adverse possession set up by the defendant

had stood proved. This is not so in the instant case.

14. Plaintiff has proved that he is the owner of the suit property. He had granted permissive possession to the mother-in-law of the defendant to occupy the suit property whose permissive user had been validly terminated vide legal notice dated 21.04.1975. Thereafter, the defendant was living in the suit property only as an unauthorized occupant. She was also duly served with legal notice dated 12.9.1995. These facts findings call for no interference. There is no merit in the appeal. Appeal as also the pending applications are dismissed.

INDERMEET KAUR, J.

FEBRUARY 18, 2011

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