

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

% *Date of Judgment: 25.04.2011*

+ **R.S.A.No. 23/2007 & CM No. 1059/2007**

DLF UNIVERSAL LIMITED Appellant
Through: Mr.Arvind Nigam, Sr. Advocate
with Ms. Mandeep Kaur, Advocate.

Versus

SHRI SOHAN LAL & OTHERS Respondents
Through: None.

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. (Oral)

1 Present appeal has impugned the judgment and decree dated 18.09.2006 which had endorsed the findings of the trial Judge dated 25.04.2005 whereby the suit filed by the plaintiff i.e.DLF Universal Limited seeking possession of land measuring 8 biswas in khasra No.165 Min in Village Kotla Mubarakpur, New Delhi as depicted in the site plan (hereinafter referred as to the

'suit property') had been dismissed.

2 The plaintiff claimed himself to be the owner of the aforementioned suit property. It was stated that the defendant is an illegal and unauthorized occupant; inspite of notice, the defendant had failed to vacate the suit property; suit was accordingly filed.

3 In the written statement, the defence raised was that the plaintiff was in the adverse possession of the suit property since 1975, he had perfected his title; alternate plea of purchase of this property from one Mohinder Singh had also been set up.

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

1. Whether the suit has been instituted by a competent person? OPP
2. Whether the defendants have become owners of the land by adverse possession or in the alternative by having purchase it from Chaudhary Mohinder Singh? OPP
3. Whether the suit has been or has not been valued properly for purpose of court fee and jurisdiction? OP Parties
4. Whether the suit is barred by limitation? OPD
5. Whether the plaintiff is entitled to decree of possession as prayed for? OPP
6. Relief.

5 Issues No 2 & 4 are relevant for the controversy before this Court. Oral and documentary evidence was led. The onus to discharge this issue i.e. the plea of adverse possession as set up by the defendant was upon the defendant. Six witnesses had been

examined on his behalf. DW-2 was a witness from Delhi Jal Board; he had proved Ex. DW-2/1 which was a water connection applied for by the defendant in the year 1977; it had been regularized in his name in 1978. DW-3 was an official witness from Delhi Vidyut Board; as per his deposition, the defendant had applied for an electricity connection in 1978 which had been sanctioned in favour of defendant No. 4. The defendant had examined himself as DW-6. He had proved his ration card Ex. DW-6/3 and Ex. DW-6/4. Challan receipts Ex. DW-6/5 to Ex. DE-6/8 were initiated during the year 1975. The demand notice by the House Tax Department Ex. DW-6/9 was of the year 1976-1977. Defendant had also proved the plaint filed by him against All India Institute of Medical Sciences seeking perpetual injunction against them not to interfere with his suit property; the said plaint had been proved as Ex. DW-6/P1 wherein in para 4 the plaintiff had averred that the said suit property does not belong to him but it is recorded in the ownership of DLF i.e. in the jamabandi. The defendant had also proved on record his gas connection, electricity connection, driving license and passport which were all obtained from the aforementioned suit address; the security deposit for the electricity connection was made in the year 1979; khasra girdawari Ex. DW-4/A to Ex. DW-4/C relating to the years 1972 up to 1998

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(documents of possession) also evidenced the possession of the defendant. On this oral and documentary evidence, the trial Judge had held that the claim of the defendant of adverse possession had been proved. The trial Judge had further noted that the plea of adverse possession and the plea of ownership by lawful title cannot go hand in hand. However, since the possession of the defendant was open, continuous and hostile qua the plaintiff; plea of adverse possession set up by the defendant since 1975 was established; suit filed in the year 1989 was held to be time barred.

6 This finding was affirmed in the first appeal.

7 On behalf of the appellant, it has been urged that the plea of adverse possession and possession by lawful ownership cannot be set up simultaneously. Further Ex. DW-6/P1 has been highlighted vehemently by learned counsel for the appellant to submit that in the year 1982 when this plaint (Ex. DW-6/P1) was filed, the plaintiff had admitted the legal title of the appellant herein; he had not set up the defence of adverse possession which he now cannot urge. For the aforesaid reasons, the impugned judgment is a perversity and calls for an interference.

8 This is a second appeal. It had been admitted and on 29.04.2009, the following four substantial questions of law were

formulated:-
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1. Whether a person whose primary claim before the Court is of having acquired immovable property by lawful title can in the alternative set up the plea of adverse possession?
2. Whether the finding of both the courts below with regard to adverse possession is perverse finding?
3. Whether on the face of the evidence on record, case of the respondents acquiring title through adverse possession and which is a mixed question of law and fact, is made out?
4. Whether the learned Additional District Judge has erroneously applied the law laid down by the Hon'ble Apex Court in AIR 1995 SC 895?

9 None has appeared for the respondent inspite of service.

10 Both the fact finding courts had examined the evidence both oral and documentary and after a detailed scrutiny, had held that the claim of adverse possession had been established by the defendant. He had set up this claim since 1975; he had proved it through adequate documentary evidence which coupled with the oral version of the witnesses examined on his behalf had proved issue No. 2 in his favour. This finding does not in any manner call for any interference. It can in no manner said to be perverse. The claim of the defendant of adverse possession stood established in 1975; suit filed in the year 1989 which was much after the prescribed period of 12 years was time barred. Issue No. 4 was also decided in favour of the defendant. This finding in the impugned judgment reads as follows:-

“11. The polemical point involved in the present appeal is as to whether the respondents are owners by adverse possession or whether the suit is barred by limitation.

I concur with the findings rendered by the learned trial court. I have gone through the evidence led by the parties before the trial court which goes to show that the respondent occupied the suit land prior to 1975. The relevant documents have been placed and proved by the respondents before the trial court. The appellant categorically admitted in the plaint that cause of action arose against the respondents in the year 1989, whereas, documents filed by the respondents clearly indicated that they have constructed pucca houses on the suit land almost two decades ago. The fact that the respondent had entered into an agreement to sell with one Chaudhry Mohinder Singh is of no consequence because under Section 53 A of the T.P. Act such agreement does not confer any right on the transferee and the transferee has a right to protect his possession against the transferor. Therefore, I feel that the decision of the learned trial court is based on material available on record, and does not suffer from any infirmity or perversity.

12 So far as, cross objections under Order 41 Rule 22 CPC filed on behalf of respondent is concerned, the respondents have alleged that the learned trial court did not frame any issue of locus standi despite the fact that respondents had taken the specific plea in the written statement. In this regard it needs to be clarified that the respondents had not clarified in the written statement as to how the appellant had no locus standi to file the suit. Merely, by raising an objection that a party has no locus standi to file the suit is not proper, the party concerned has to explain fully the fact which disentitled the appellant from filing the suit. Even otherwise, the right of respondents shall be deemed to have been waived or acquiesced because respondent did not agitate this same at the time of issues. The respondent should have filed an application under Order 14 Rule 5 CPC for framing of additional issue on locus standi, but that was not done by them before the trial court. Regarding issue pertaining to valuation of the suit the trial court has dealt with the issue after recording the evidence led by the parties. It needs to be clarified that defendant did not lead any evidence to controvert the court fee affixed by the appellant. Therefore, I do not see any reason to differ with the findings of the learned trial court. Accordingly, both

the counter objections raised by the respondents are also dismissed.”

11 There is no doubt that the plea of adverse possession and claim of ownership by lawful title cannot go hand in hand; such pleas are contrary to one other and amount to blowing hot and cold in the same breath. The courts below had noted this argument; impugned judgment had thereafter returned findings on the factual averment and evidence led by the respective parties which finding do not in manner calls for any interference. The second argument of the appellant has also to be noted only to be rejected. In the written statement, defendant had set up a plea of adverse possession; his claim was that he was in continuous and hostile possession since 1975; he had perfected his title by way of adverse possession; Ex. DW-6/P1 was filed in the year 1982; the claim of adverse possession had not matured till then and that is why he had not set up a title on this count.

12 Reliance upon the judgment of the Apex Court reported in AIR 1995 SC 895 Annasaheb Bapusaheb Patil and others Vs. Balwant alias Balasaheb Babusaheb Patil is misplaced. The court in this case had laid down the principles of adverse possession; there is no dispute to this proposition that a person who is claiming possession of lawful title, by setting up a plea of adverse

possession is setting up contrary pleas. However in the instant case as aforementioned, the claim of adverse possession had been established by the defendant, his alternative plea of title through one Mohinder Singh had been rejected. Moreover in the written statement, the plea of adverse possession was the primary defence set up by the defendant; in para 9 of the written statement, it had additionally been averred that vide agreement to sell dated 28.01.1975 entered into between the defendant and one Mohinder Singh, the defendant had purchased this property which was already in his physical possession; on the basis of this document he was claiming protection under Section 53 A of the Transfer of Property Act.

13 In view of the aforementioned discussion, all the substantial questions of law are answered in favour of the respondents and against the appellant. There is no merit in this appeal. Appeal as also pending application are dismissed.

INDERMEET KAUR, J.

APRIL 25, 2011

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