

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

% *Date of Judgment: 12.05.2011*

+ **R.S.A.No. 85/2008 & CM No. 5183/2008**

SHRI HOSHIAR SINGH NEGI Appellant

Through: Mr. J.S. Bakshi with
Mr. Amitesh Singh Bakshi,
Advocates.

Versus

SHRI DURGA DASS BEDI (DECEASED)
THROUGH HIS LEGAL HEIR SHRI BALDEV BEDI

.....Respondent
Through: Mr.Manbir Singh & Mr.
Dilpreet Singh, Advocates.

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 This appeal has impugned the judgment and decree dated 15.3.2008 which had reserved the finding of the trial judge dated 20.7.2005. Vide judgment and decree dated 20.7.2005 the suit filed by the plaintiff Durga Dass Bedi seeking possession and damages qua the suit property i.e. the property bearing no.T-

5133, Pusa Lane, New Delhi had been dismissed. The impugned judgment had decreed the suit.

2 The case of the plaintiff is that the plaintiff had migrated from Lahore Cantt in 1948; he occupied the aforementioned piece of land where he constructed a portion for his residential commercial use. This was at his own cost. The area which was for commercial user was given number T-5133, Pusa Lane, New Delhi. Plaintiff had in fact been called upon by the government to pay damages for use and occupation of the government land w.e.f. 1952 which he has since paid. The Municipal Corporation of Delhi (MCD) has also assessed property tax qua the suit property and the bills were raised in the name of the plaintiff. Plaintiff has been paying property tax. In October 1970 defendant approached the plaintiff and sought permission from him for user of the shop on a licence basis. This was reduced into writing vide a letter dated 31.10.1970. On 31.7.1974 the defendant reaffirmed his occupation as a licensee for this part of the property. Licence fee was being paid regularly at the rate of ₹250/- per month to the plaintiff; this was paid up to 1980. In March 1981 defendant wanted to make some alteration in the demised premises which was objected by the plaintiff. On 25.5.1981 vide a notice he

terminated the licence of the defendant. Defendant had thereafter become an unauthorized occupant. In spite of requests he has failed to vacate the sit property. He has also not paid any damages. Present suit was filed.

3 Defendant contested the suit. It was stated that the land in occupation of the defendant is a “public premises”; it was denied that a superstructure was constructed by the plaintiff; contention was that the walls around a kiosk were raised by the plaintiff up to a height of 8 feet. Plaintiff may have been in unauthorized occupation of the suit land at one time but since 1974 the defendant has been shown in occupation and possession of the suit land. Delhi Development Authority had called upon the defendant to pay damages for the period 01.4.1971 to 31.3.1980 which was to the tune of ₹1263.60 which has since been paid. The land being “public premises” suit was not maintainable.

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

1. Whether the plaintiff has locus standi to file the present suit?
OPP
2. Whether the plaintiff is entitled to the decree of possession as prayed for?
3. Whether the plaintiff is entitled to damages? If so at what rate?

4.Relief.

5 The following additional issue was also framed on 06.4.2005:

“Whether the order of Estate Officer , DDA dated 19.09.2003 has any bearing on the suit of the plaintiff filed in the year 1983. If so to what effect?”

6 Oral and documentary was led. Trial judge was of the view that the case of both the parties is that the land in question is government land; possessory title was in dispute. Possession of the plaintiff was prior in time to that of the defendant but since the defendant has since been assessed by the DDA for damages he is regularly paying damages; plaintiff has no locus standi left to file present suit; suit was dismissed.

7 The impugned judgment had reversed this finding. Court was of the view that the letters executed by the defendant had been admitted by him i.e. the letters Ex.PW-4/4 and Ex.PW-4/5 evidencing the fact that the defendant was a licensee of the plaintiff; plaintiff was entitled to possession of the suit land; suit was decreed.

8 This is a second appeal. It has been admitted and on 04.4.2008 the following substantial question of law was formulated:

(a) Whether Ex.PW-4/4 and Ex.PW-4/5 could be relied upon to order ejectment of the appellant in the teeth of DDA directly assessing appellant to damages under DDA and the respondent having lost the right to the suit property under DDA?

(b) Whether the learned First Appellate Court was justified in reversing the decree passed by the learned Trial Judge in the teeth of the fact that respondent claimed interest in the suit property under DDA alleging that the respondent was assessed to damages by DDA which right was lost when DDA stopped assessing respondent to damages and directly started levying damages on the appellant.

9 On behalf of the appellant, it has been urged that the judgment of the trial court is illegal; it had arbitrarily and without any cogent reason reversed the finding of the trial Judge. Admittedly, the appellant is now in occupation of the suit land since 1971; he has been assessed to damages and the order of the Estate Officer dated 19.09.2003 evidenced this fact; this order of the Estate Officer has also attained a finality. It is submitted that the rights of the appellant cannot now be disturbed. The counsel for the appellant has placed reliance upon the judgment reported in IR 1961 Punjab 98 *Hari Kishan Dass & Another Vs. Union of India* to support his submission that the disputed land is a public premises and proceedings under the Public Premises Act would

alone lie. Reliance has also been placed upon AIR 1987 SC 2192 D. Satyanarayana Vs P. Jagdish as also another judgment of the Apex Court reported in AIR 1987 SC 1656 Mangat Ram & another Vs. Sardar Meharban Singh & Others to substantiate his submission on the premise of Section 116 of the Evidence Act i.e. doctrine of estoppel; it is pointed that the plaintiff is now estopped from claiming back the premises from the defendant who is now in the rightful occupation of the same and in his own independent status.

10 Arguments have been countered. It is pointed out that the judgment of the trial court suffers from no perversity. The possessory title of the plaintiff had been recognized; he was admittedly in possession of the suit land prior in time to the defendant. The impugned judgment had also appreciated the legal position in its correct perspective by placing reliance upon the judgment of the High Court AIR 1973 Delhi 186 Phiraya Lal Kapur Vs. Jia Rani & another as also another judgment of the Apex Court reported in (1985) 2 SCC 332 Sant Lal Jain Vs. Avtar Singh.

11 Record has been perused. This was a suit for possession. Admittedly even as per case of the defendant, the plaintiff was in possession of the suit land prior in time to the defendant. The

plaintiff was in possession of the suit land since 1952; in 1971 he

had permitted the defendant to use the suit land as a licensee. It is also not in dispute that since 1971 damages qua the suit land are being paid by the defendant. Documents Ex. PW-4/4 and Ex. PW-4/5 are also admitted documents. They are dated 31.10.1970 & 31.07.1974 respectively. These are documents of license created by the plaintiff in favour of the defendant whereby the defendant has admitted that he is a licensee of the plaintiff; he has agreed to pay license fee of ₹250/- per month with a further understanding that his license may be terminated by a 24 hour notice. Both these documents are admitted documents.

12 It is in this factual scenario and background that the contentions of the appellant have to be appreciated.

13 Record shows that this was a possessory suit. The plaintiff was a prior possessor of the suit land. The defendant was claiming only through the plaintiff; his claim that he has an independent status is incorrect as Ex.PW-4/4 & Ex. PW-4/5 clearly show that the earlier possessor of the land i.e. plaintiff had granted a license to the defendant. There is no doubt that this was a no man's land; neither was it owned by the plaintiff; nor was it claimed to be owned by the defendant. Both were in unauthorized occupation the Government land. The concept of possessory title is a

recognized concept of law. It is not alien. In the case of Phiraya Lal Kapur a bench of this had in this context noted as follows:-

7. What was the nature of their possession ? They clearly had no legal title such as of ownership or of lessees to the land. But in the English common law, possession has always been regarded as a good title of right against any one who cannot show a better. As observed by Salmond in his "Jurisprudence", Ninth Edition, page 408, "a wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself". This theory was adopted in Indian law and embodied in section 8 of the Specific Relief Act, 1877 now succeeded by section [5](#) of the Specific Relief Act, 1963. As distinguished from section 9 of the old Specific Relief Act and section [6](#) of the new one, suits under section 8 of the old Act and section [5](#) of the new Act could be filed on the basis of title by owners as well as non-owners. In respect of owners, this remedy could be said to be proprietary while in respect of non-owners the remedy could be viewed as possessory. In the European civil law following the Roman law this distinction is well known and is expressed by the contrasted terms petitorium (a proprietary suit) and possessorium (a possessory suit). This duplication of remedies was, however, avoided in the English and the Indian law by the operation of the following three rules:-

(1) Prior possession is prima facie proof of title. In a suit for possession based on title, the plaintiff need do nothing more than prove that he had an older possession than that of the defendant. The law will then presume from this prior possession a better title in the plaintiff according to the maxim *Old prior est tempore potior est jure*, (compare section [110](#) of the Evidence Act.)

(2) A defendant is always at liberty to rebut this presumption by proving that the better title is in himself. (3) A defendant is not allowed to set up the defense of *jus tertii*, as it is called; that is to say, he will not be heard to allege, as against the plaintiff's claim, that neither the plaintiff nor the defendant, but some third person, is the true owner. The principle is

"Let every man come and defend his own title. As between A and B the right of C is irrelevant".

8 In this analysis of the legal position, we are supported by the decision of the Supreme Court in *Nair Service Society Ltd. v. K. C. Alexander* Air 1968 SC 1165"

14 Present suit was based purely on prior possession; it was based on possessory title. The possession of the plaintiff was admittedly prior in time to that of the defendant; such a right is also inheritable and can be transferred. They had also been noted in para 10 of the judgment of *Phiraya Lal Kapur* (Supra). The submission of learned counsel for the appellant is that the plaintiff is claiming through his father Durga Dass who himself had no right in the land and the plaintiff could not inherit this possessory title is thus an argument which must fail. Reliance upon the order passed by this Court in W.P.(C) No. 6125/2001 R.L.Kapur Vs. DDA on 05.10.2001 was in a different context. In this case, the DDA had sought to dispossess the petitioner; petitioner had claimed allotment under the Gadgil Assurance Scheme; no land had in fact allotted to the father of the petitioner under Gadgil Assurance Scheme; question of the petitioner deriving title through his father did not arise. Ratio of this order is nowhere applicable to the present scenario.

15 Contention of learned counsel for the appellant that he is being paying damages to the DDA and this has been recognized by the Estate Officer in his order dated 19.09.2003; as such the appellant has become the recorded owner in the record of the DDA; further contention is that the plaintiff cannot seek his eviction is an argument which is again misplaced. In this context, in the judgment of Phiraya Lal Kapur it has been noted herein as under:-

“13. In practice, the working out of the rights of possession of the true owner and of the prior possessor as against the subsequent. possessor may, however, lead to some difficulty. For instance, a subsequent possessor may be faced simultaneously with separate claims not only for possession but also for damages for use and occupation by the true owner as well as the prior possessor. Two alternative solutions of this difficulty may be envisaged. The possession from the subsequent possessor may be recovered either by the prior possessor or by the true owner whoever manages to get it first by the legal process. The liability of the trespasser to hand over possession or to pay mesne profits to the holder of the possessory title or to the true owner is only one and indivisible. Once either of them recovers possession, the other will not be able to get it from the subsequent possessor (that is the trespasser). Alternatively, the subsequent possessor (that is the trespasser) may persuade the Court for the consolidation of the separate claims of possession by the prior possessor and the true owner or he may persuade the Court to join the prior possessor as well as the true owner as parties in one suit so that the Court may decide both the claims against the trespasser in the same suit. The same will be true of separate claims by the prior possessor and the true owner against the trespasser for damages for use and occupation. The trespasser will not have to pay damages for use and occupation to both the prior possessor and the true owner. Payment to either of them will be a sufficient defense to such a claim

against him by the other. For, as against him both of them were entitled to make a claim. He cannot choose between them but is answerable to satisfy either of them who manages to make good his claim against the trespasser before the rival claimant does so.”

16 In the present case plaintiff/respondent under instructions from his client states that he is not pressing his claim license fee. Even if the appellant/defendant has made payment of damages qua the suit property, the submission of the plaintiff that he is claiming no such charges from the appellant is answered in the aforementioned extract noted hereinabove.

17 The Apex Court in the case of Sant Lal Jain had noted that a licensee who is admittedly a licensee would always remain licensee; his status cannot be changed. In this context, it is noted herein as under:-

“The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from some one else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of property to the appellant even after the termination of the licence and the institution of the suit.”

18 The appellant was a licensor in the suit land. This is evident from Ex.PW4/4 & Ex. PW-4/5. This position is also not in dispute.

Present case was a case of possessory title; the plaintiff having prior possession was entitled to recover it back from his licensee; license admittedly stood validly revoked. The impugned judgment on no count suffers from any perversity.

19 Substantial questions of law are accordingly answered in favour of the respondent and against the appellant. There is no merit in the appeal. Appeal as also pending application are dismissed.

INDERMEET KAUR, J.

MAY 12, 2011

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