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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.170/2009

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20th October, 2011

SHRI DAULAT RAM & ANR.

..... Appellants

Through: Mr. Manjit Singh, Chauhan,
Advocate.

versus

KESHAV SMARAK SAMITHI & ANR.

..... Respondents

Through: Mr. Alok Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 17.2.2009. By the impugned judgment dated 17.2.2009, the suit of the respondents/plaintiffs for recovery of possession and mesne profits was decreed. The suit for possession was decreed with respect to the suit property which is part

of the property No. 10196, Jhandewala Estate, Desh Bhandhu Gupta Marg, New Delhi as shown in the site plan Ex.PW1/4.

2. The subject suit was filed by the respondents/plaintiffs on the assertion that the entire property bearing No.10196 Jhandewala Estate was owned by plaintiff No.2 and a portion of which the plaintiff No.2 leased out to the plaintiff No.1 vide lease deed dated 5.10.1970 registered with the sub-Registrar, Delhi. The lease deed executed by the plaintiff No.2 in favour of plaintiff No.1 is not disputed inter se the plaintiffs/respondents and this lease deed has been proved before the trial Court as Ex.PW1/3. Both the plaintiffs are societies registered under the Societies Registration Act, 1860. In support of the ownership of the plaintiff No.2, reliance was placed upon judgment passed by this Court in Civil Suit No.1679 of 1982 between the plaintiffs and Delhi Development Authority (DDA). The judgment of the High Court dated 22.1.1990 was exhibited as Ex.PW1/5. This judgment was passed in a litigation between the plaintiffs and the DDA pertaining to ownership of the complete property No.10196, Jhandewala Estate. The ownership of the plaintiff No.2 has been recognized as per the said judgment. The disputes decided in the suit were as to whether the DDA was the owner of the property or was the plaintiff No.2 in the present suit the owner of the property. After holding the plaintiff No.2 as the owner of the

property, the relief of injunction as prayed for in the suit was granted.

Some of the relevant observations in the judgment of this Court dated

22.1.1990 read as under:-

“In the field map (nakha Kishatwar) of 1908, certified copy of which is Ext.P.4, the entire area is shown as Jhandewala Temple. Thus, I am of the view that Jhandewala temple has been in existence, much prior to the year 1903, and plaintiffs have been able to prove that same was setup by Shri Badri Dass.

It is established that after the year 1880, Shri Badri Dass came in possession of the entire suit property, which was earlier owned by Shri Jiya Ram and Shri Chhajju Ram. Defendant has failed to explain as to how, the Government became the owner of the land when admittedly, the aforesaid 2 brothers were the owners, and thereafter, Shri Badri Dass was in exclusive possession of the entire land.

No doubt, later on, in the revenue record, Crown was shown as the Owner of the property. But, there is no mutation of the purchase of any part of the land, in favour of the Government. It is worth-while to mention, that the entry, thereby showing the ownership of the Crown, was itself commented upon, as wrong (in para 64) in the report of Shri R.B. White, Head Assistant Commissioner on the Administration of Delhi Crown Land, dated November 1, 1909, which had been accepted as correct, even by publishing it in 1933. True copy of the extract of para 64 has been proved as Ext.P.8.

In 1913, certain lands were to be acquired for capital of India. However, the land in question, was exempted from the notification, by the then Collector, stating that it being a Jhandewala Temple and estate, as such, could not be acquired. The certified true copy of the award dated July 2, 1913 is Ext.P.9.

Plaintiffs have also proved that Shri Badri Dass and his successors, namely, Shri Ramji Dass and Shri Sham Sunder, have been dealing with the land, as owners. From 1944, when the society was set up by Shri Sham Sunder, plaintiff No.1 has been dealing with the land as its owner, and has been in complete control and management of the same.

Out of the suit property, land measuring 14,300 sq yds. was given on perpetual lease, for a period of 99 years, by plaintiff No.1 to Shri M.S. Gowalkar, Chief of R.S.S., vide registered lease deed dated 19th August, 1947. Shri M.S. Gowalkar, subsequently vested the lease property, in favour of plaintiff No.3. Plaintiff No.3 has raised construction, over the land, from time to time, after obtaining necessary sanctions from the appropriate authorities, including the defendant and, has been enjoying the portion, as the lessee under plaintiff No.1. Copy of the lease-deed is Ext.P.7.

To further show, that plaintiff No.1 has been dealing with the land as owner, another lease-deed was executed by it, in favour of M/s Baij Nath Brothers, for an area of 1700 sq. yds., for a period of 50 years. This document was also registered on January 19, 1948. Plaintiff No.1 also leased the other portion of the suit property, in favour of plaintiff No.2, vide lease deeds dated October 5, 1970 measuring 733 sq. metres and 4620 sq. metres.

For raising construction, lessees have been obtaining the sanction of the building plans, from appropriate authorities. The various letters, thereby granting such sanctions, are Exts. P.12, P.13, P.14, P.17, P.18 and P.28. Certificate of occupancy, issued by Municipal Corporation of Delhi, is Ext. P.29 and P.36.

After coming into force the Urban Land (Ceiling and Regulations) Act, proceedings were taken against plaintiff No.3, under this Act, and plaintiff No.3 was granted exemption by the appropriate authorities and such exemption has been duly proved. Copy of the order is Ext.P.43.

Apart from the aforesaid lease-deeds, executed by plaintiff No.1, plaintiff No.1 society has also been letting out various portions of the suit property to various tenants and has been collecting rent from them.

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For the reasons stated above, there is no material to hold that defendant is the licensor in respect of property in suit. This notice is contrary to the facts and revenue records. Moreover, plaintiff No.1 society and its predecessors, right from Shri Badri Dass, raised structures of permanent nature, on the suit land, and have further granted perpetual leases to various persons, who, after

obtaining the necessary sanctions, have raised buildings.
Thus, in my view, the notice is invalid.” (underlining added)

3. The trial Court relied upon this judgment of the High Court Ex.PW1/5, and a subsequent order Ex.PW1/6 dated 2.5.2003 passed dismissing the application of the DDA under Order 9 Rule 13 CPC, to hold that the plaintiff No.2 was the owner of the suit property in view of the decision of the Supreme Court in the case of ***Tirumala Tirupati Devasthanams V. K.M. Krishnaiah AIR 1998 SC 1132***. In the decision in the case of ***Tirumala Tirupati (supra)***, the Supreme Court relied upon two earlier judgments of the Supreme Court, one of three Judges and one of four Judges, to hold that a judgment which may not be inter parties would still be relevant to determine the controversy as to ownership of the property by virtue of Section 13 of the Evidence Act, 1872. The relevant observations of the Supreme Court, in this regard, read as under:-

“7. In view of the above contentions, the following three points arise for consideration:

Whether the judgment in OS 51 of 1937, Sub-Court, Chittoor dated 15-6-1942 declaring the title of the TTD, was admissible and could be relied upon by the TTD as evidence in the present case, even though present plaintiff was not a party to OS 51 of 1937?”

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9. In our view, this contention is clearly contrary to the rulings of this Court as well as those of the Privy Council. In Srinivas Krishna Rao Kango v. Narayan Devji Kango, AIR 1954

SC 379, speaking on behalf of a Bench of three learned judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter parties is admissible in evidence under Section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgments other than those falling under Sections 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B.K. Mukherjea, J. (as he then was) speaking on behalf of a Bench of four learned Judges in Sital Das V. Sant Ram, AIR 1954 SC 606 held that a previous judgment not inter parties, was admissible in evidence under Section 13 of the Evidence Act as a 'transaction' in which a right to property was 'asserted' and 'recognised'. In fact, much earlier, Lord Lindley held in the Privy Council in Dinamoni v. Brajmohini, (1992) ILR 29 Cal 190 (198) (PC) that a previous judgment, not inter partes was admissible in evidence under Section 13 to show who the parties were, what the lands in dispute were and who was declared entitled to retain them. The criticism of the judgment in Dinamoni v. Brajmohini and Ram Ranjan Chakerbati v. Ram Narain Singh, (1895) ILR 22 Cal 533 (PC) by Sir John Woodroffe in his commentary on the Evidence Act (1931, p.181) was not accepted by Lord Blanesburgh in Collector of Gorakhpur v. Ram Sunder, AIR 1934 PC 157 : 61 IA 286.

10. For the aforesaid reasons, we reject the contention of the learned counsel for the respondent-plaintiff and hold that the TTD could rely on the judgment in OS 51/37 as evidence to prove its title in regard to the suit property, even though the present plaintiff was not a party to that suit. Point No.1 is held accordingly against the respondent." (underlining added)

4. In my opinion, therefore, no fault can be found with the impugned judgment when it relies upon the judgment of the High Court Ex.PW1/5, and the subsequent order Ex.PW1/6, to decide the issue of ownership in favour of plaintiff No.2. I may further add that if a person claims possession on the basis of ownership and which is

claimed by the appellants/defendants in these proceedings, then, such person will have to first allege as to who was the owner of the property and against whom adverse possession is claimed for a period of around 50 years. This assertion of a particular owner is necessary because the claim of title of such an owner can be established from a judgment in a litigation which may have arisen between the said owner and any other person. In this case, the owner was plaintiff No.2 and “any other person” was the DDA. In the case pleaded by the appellants/defendants in the trial Court there is conspicuous silence of any assertion as to who was actually the owner of the property and against whom adverse possession was claimed. I may only add that though there was an assertion of ownership, in addition to the owner by adverse possession, but admittedly no document was filed at all to establish the so called alleged ownership of the appellants/defendants. Obviously, by a simple assertion of ownership, no one can become an owner of a property.

5. Learned counsel for the appellant has sought to place reliance upon a judgment of the Supreme Court in the case of ***State of Bihar & Others Vs. Sri Radha Krishna Singh and Others AIR 1983 SC 684*** to contend that a judgment inter parties is not admissible to show title under Section 13 of the Evidence Act, 1872.

Reliance is placed upon para 121 of this judgment. A reference to this judgment in the case of ***State of Bihar (supra)*** relied upon by the appellants show that in the said judgment no reference is made to the earlier Division Bench judgment of the Supreme Court of three Judges and four Judges in the cases of ***Srinivas Krishna Rao Kango v. Narayan Devji Kango, AIR 1954 SC 379 (division bench of three Judges)*** and ***Sital Das V. Sant Ram, AIR 1954 SC 606 (division bench of four Judges)***. It is settled law that a decision of a Division Bench of a larger number of Judges prevails over the decision of a Division Bench of smaller number of Judges vide ***Union of India Vs. Raghubir Singh AIR 1989 SC 1933***. In fact, a Division Bench of equal number of Judges cannot disagree with an earlier decision of an equal number of Division Bench. If a Division Bench of the same number of Judges disagrees with a decision of a Division Bench of same number of Judges, then, the matter has to be referred to for decision to a larger Bench of Supreme Court. Recently, the Supreme Court has re-affirmed this position in the judgment reported as ***Union of India and Others Vs. S.K. Kapoor (2011) 4 SCC 589*** wherein the Supreme Court observed that even if a later decision is given without referring to the earlier decision, yet it is the earlier decision which will hold the field. I therefore hold that the judgment relied upon

on behalf of the appellants in the case of ***State of Bihar (supra)*** will not bind this Court in view of the earlier judgment of the Supreme Court of bench of equal and larger number of Judges in the judgments of ***Srinivas Krishna Rao (supra)*** and ***Sital Das (supra)***.

6. No further issue is urged or pressed before this Court.

7. In view of the above, I do not find any merit in the appeal which is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA,J

OCTOBER 20, 2011

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