

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

+ **RFA No.202 /2008**

% **1st December, 2011**

SH. ASHOK KUMAR Appellant
Through: Mr. Virender Pratap Singh Charak,
Advocate.

VERSUS

SMT. SURJEET KAUR & ORS. Respondents
Through: Mr. M.K. Dua, Advocate for respondent
Nos.1 to 6.
Mr. Rakesh Mittal, Advocate for the
respondent No.7.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 8.4.2008. By the impugned judgment, the trial Court decreed the suit for mandatory and permanent injunction filed by the respondents who were the successors-in-interest of late Sh. Karam Singh. The disputes pertain to ownership, entitlement and possession of the property bearing No.XVI/257, Joshi Road, Karol Bagh, New Delhi.

2. The facts as pleaded by the respondents/plaintiffs were that the suit property was allotted to their predecessor-in-interest, Sh. Karam Singh. This property was stated to have been acquired by the Central Government under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and whereupon Sh. Karam Singh had made a claim before the Settlement Commissioner, Department of Rehabilitation. After protracting the litigation, and a Civil Writ Petition No. 89/79 filed by Sh. Karam Singh in the High Court of Delhi, Sh. Karam Singh was found entitled to the transfer of the suit property in his favour as per the judgment dated 6.8.1992 passed by learned single Judge of this Court in Civil Writ No. 89/79 titled as ***Karam Singh vs. Union of India & Ors.*** By the impugned judgment dated 6.8.1992, Sh. Karam Singh was directed to be allotted the suit property on payment of ₹ 10,000/- and this payment of ₹ 10,000/- was made by Sh. Karam Singh with the Department of Rehabilitation vide pay order no. 2380/92 dated 4.9.92. The said pay order was encashed on 18.12.92 and a letter was sent by the Assistant Settlement Commissioner dated 14.12.92 that once the pay order was encashed, the necessary conveyance deed will be executed in favour of Sh. Karam Singh. However, before the conveyance deed could be issued, Sh. Karam Singh expired on 19.1.1994 leaving behind the respondents/plaintiffs as his legal

representatives. The subject suit came to be filed against the appellant/defendants and who are the legal heirs of Smt. Sheela Wanti, sister of the deceased/Sh. Karam Singh. Smt. Sheela Wanti was stated to have been permitted to occupy a portion in the said property consisting of three small rooms plus kitchen and common use of toilet and bathroom till she was in a position to acquire her own house or by her family members. It was pleaded that Smt. Sheela Wanti betrayed the confidence of late Sh. Karam Singh and made a rival claim before the Rehabilitation Authority seeking transfer of suit property in her favour. She could not succeed in this design and a Civil Writ was filed by her in this Court being CWP 1563/79 which was ultimately dismissed in default after 21 years on 29.3.2001. There is no restoration of this Writ Petition dismissed in default on 29.3.2001. The appellant/defendants were therefore stated to be licensees being legal representatives of Smt. Sheela Wanti who herself was a gratuitous licensee, and after revoking the license/permission, the subject suit was filed after notices dated 21.6.2005 and 5.8.2005 were served upon them.

3. The appellant/defendants contested the suit and prayed for its dismissal on the ground that there was no cause of action and that the respondents/plaintiffs have not acquired any legal right, title and interest in the suit property. It was pleaded that the defendants were born in the suit property

because their mother was in possession of the property. The appellant/defendants claimed to be residing since 1948 and having independent rights in the suit property.

4. After completion of pleadings, the trial Court framed the following issues:-

“1. Whether the suit of the plaintiff in its present form is not maintainable as alleged in preliminary objection of the written statement? OPD

2. Whether there is no cause of action in favour of the Plaintiff to institute the present suit as alleged in preliminary objection no.4 of the written statement? OPD

3. Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD

4. Whether the defendant no.1 is the owner of the suit property on the basis of Will dated 16/8/1985 executed by Smt. Prakashwati as alleged in preliminary objection no.11 of the written statement, if so, its effect? OPD

5. Whether the Plaintiff is entitled to the relief of mandatory injunction as claimed for? OPP

6. Whether the Plaintiff is entitled to the relief of permanent injunction as claimed for? OPP

7. Relief.”

5. The main issue was the issue as to whether the respondents/plaintiffs were owners of the property and therefore entitled to the reliefs claimed. With regard to this aspect of the entitlement of the

respondents/plaintiffs for the reliefs in the suit, the Trial Court has given the following findings and conclusions:-

“17. The letter Ex.PW3/2 dated 14/12/92 issued by Shri D.P. Maithani in favour of Shri Karam Singh clearly states with reference to your application dated 9/9/92 sending there with a Pay order no.2380/92 dated 4/9/92 in compliance with the order dated 6/8/92 passed by the Hon’ble High Court of Delhi in civil writ no.89/79 towards the payment of the cost of the property mentioned in the subject cited above. This is to inform you that the Pay order has been sent for encashment. As soon as the same is encashed and managing officer is appointed, a necessary conveyance deed will be issued in your favour. Bank Certificate Ex.PW-1/5 has proved encashment of the said pay order by the Rehabilitation Department.

18. The Hon’ble High Court in its judgment dated 6/8/92 Ex.PW1/1 has categorically stated the respondents (Union of India & Ors) are directed to allot and transfer the property in dispute to the petitioner on payment of assessed value of the property i.e. ₹ 10,000/-. the Hon’ble High Court in the above judgment at page 9 held that in this case the Revisional authority has determined that Smt. Sheela Devi, sister of petitioner Shri Karam Singh is occupying a portion as unauthorized occupant and that the petitioner Karam Singh is the sole occupant. In these circumstances, although the word “May” has been used, the petitioner only has right to be allotted the Evacuee property in dispute. In the beginning of the judgment, it is stated that the petitioner is in occupation of the property no.XVI/257 and one Smt. Prakashwati is in occupation of property no.256 above mentioned. In the second last para of the judgment Hon’ble High Court has clearly stated that as already discussed above, the petitioner is in sole occupation of the property is in sole occupation of the property in dispute and fulfills all the condition of Rule 26 read with rule 22 and is entitled to be allotted the property. The PW1 in her affidavit in para 7 deposed that Sh. Karam Singh completed all the formalities required for issuance of Conveyance deed in his favour. But before the Conveyance deed could be issued in his favour Sh. Karam Singh expired on 19/1/1994 leaving behind the Plaintiff as his legal heirs and successor in interest to his

rights in the suit property. She has proved the death certificate of Sh. Karam Singh as Ex.PW-1/6. She has further proved her application dated 22/11/1994 as Ex.PW-1/7. In para. no. 18 of PW1 it is deposed that the Plaintiffs have already revoked/withdrawn and cancelled the licence/permission allowing Smt. Sheela Devi now represented by her Legal heirs i.e. defendants who are occupying the premise in question, through service on the defendants a legal notice dated 21/6/2005 and 5/8/2005 by registered and UPC post. The said notices are proved as Ex.PW-1/12 and Ex.PW-1/13, the postal receipt is proved as Ex.PW1/14 and Ex.PW-1/15 and UPC receipt are proved as Ex.PW-1/16 and Ex.PW-1/17 and the AD card is proved as Ex.PW-1/18. It is further deposed that after the service of above legal notice the defendants are under obligation to vacate the said premise i.e. three small room plus kitchen in property no.XVI/257 Joshi Road, Karol Bagh, New Delhi. There is nothing in the cross-examination of PW1 with regard to above deposition claiming ownership in the suit property and also terminating the licence of the defendants or occupation of the portion of the suit property. The deposition of PW1 is almost unchallenged. The deposition of DW1 and DW2 is of no help to the defendants because whatever they have deposed is contrary to the judgment of Hon'ble High Court of Delhi by which Sh. Karam Singh predecessor in interest of the plaintiffs was found entitled to the allotment and transfer of the suit property in his name. The defendants have not disputed that the Plaintiffs are the only legal heirs of late Sh. Karam Singh. The defendants have not disputed the documents executed by Plaintiff no.2 to 6 in favour of Plaintiff no.1 for getting the suit property in her name by issuance of conveyance deed which was promised to be issued in the name of Sh. Karam Singh by Rehabilitation Department after the encashment of pay order of ₹ 10,000/-. The Plaintiffs have succeeded in proving that they are entitled to recover the possession of the portion shown in red colour in the site plan Ex.PW1/11 from the defendants on the ground that they are the legal heirs of late Shri Karam Singh. The Plaintiffs have also succeeded in proving that the permission/licence of the defendants to occupy the said portion of the suit property has been terminated. It is further proved that despite termination of licence, the defendant have not vacated the portion of the suit property in which their predecessor in interest Smt. Sheela Devi was held to be unauthorized occupant. The

Plaintiffs have therefore succeeded in proving that they are entitled to the mandate of this court directing and compelling the defendants to vacate the suit property shown in red colour in the site plan. The issue no.1 and 5 are accordingly decided in favour of Plaintiffs and against the defendants.” (underlining added)

6. I completely agree with the aforesaid findings and conclusions because the Union of India itself has admitted that the amount of ₹ 10,000/- was received from Sh. Karam Singh for the suit property and Sh. Karam Singh was entitled to ownership of the property. As already stated above, Sh. Karam Singh died before the conveyance deed could be executed in his favour.

7. Learned counsel for the appellant/defendant No.1 argues that there is no title deed in favour of the respondents/plaintiffs making them owners of the suit property inasmuch as no conveyance deed has been executed in favour of the respondents/plaintiffs by the Union of India through Ministry of Rehabilitation and it was therefore pleaded that the respondents/plaintiffs were not entitled to the reliefs claimed inasmuch as the suit was pre-mature. In my opinion, this argument is an argument without any substance whatsoever because the Writ Petition No. 89/79 was decided in favour of Sh. Karam Singh and it was held that Sh. Karam Singh was entitled to be allotted the suit property. No challenge was laid by Union of India to this judgment and on the contrary, witnesses on behalf of the Union of India had deposed in favour of the respondents/plaintiffs

that they are entitled to ownership and the conveyance deed for the suit property, though which is not presently executed. Counsel for the respondents/plaintiffs informs that at the time of issuing of the notice in this appeal on 21.5.2008 parties were directed to maintain the status quo with regard to title and possession and therefore the conveyance deed could not be executed because of this order. This aspect is also confirmed by Sh. Rakesh Bhatnagar, Assistant, Land and Building Department, Vikas Bhawan, Delhi 110002, who is present in the Court. In any case, the issue is as to who has the better title because non-execution of a formal conveyance deed cannot make any difference in view of the fact that the appellant/defendants have no title to the property and the title to the property of the respondents/plaintiffs is confirmed by the Government against whom directions were passed in Civil Writ No.89/79 on 6.8.1992. I therefore hold that the mere fact that there is no conveyance deed in favour of the respondents/plaintiffs, cannot mean that the respondents/plaintiffs were not entitled to the reliefs as prayed.

8. Learned counsel for the appellant/defendant No.1 sought to argue that appellant/defendants had become owners by adverse possession because they had independent rights, though they were the legal heirs of Smt. Sheela Wanti. However, a reference to the issues framed in the suit shows that there is

no issue which is framed as to the ownership of the defendants of the suit property on account of their having become owners by adverse possession. An issue of adverse possession is a factual issue and it is necessary that before arguments are permitted to be raised on this aspect, an issue has to be framed and it has to be proved that the person claiming ownership by adverse possession has been in open and continuous possession of the property and which ownership is claimed by adverse possession and the respondents/plaintiffs would have had an opportunity to lead their own evidence to disprove the alleged adverse possession. Since no issue has been framed with respect to adverse possession, I do not permit the counsel for the appellant/defendant No.1 to argue on the aspect of ownership of the appellant/defendants allegedly on account of adverse possession.

9. No other plea or issue was urged before me.

10. In view of the above, there is no merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

DECEMBER 01, 2011

Ne