

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

% C.R.P. No. 65/2007

+ Date of Decision: 26th April, 2012

HARINDER PAL SINGH CHAWLA Petitioner
! Through: Mr. H.P. Sharma, Advocate

Versus

\$ VINEET TIWARI & ANR. ...Respondents
Through: Mr. Ajay Goswami, Advocate
for respondent no.1

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J

The revisionist is the unsuccessful plaintiff in a suit under Section 6 of the Specific Relief Act, 1963 (in short 'the Act of 1963') filed by him against his sister, respondent no.2 herein who was impleaded in the suit as defendant no.2 and shall hereinafter be referred to as 'defendant no.2', and one total stranger to their family, respondent no.1 herein who was impleaded in the suit as defendant no.1 and reference to him

in this judgment also shall be made as ‘defendant no.1’. As normally happens that outsiders only benefit from the fight between family members particularly over some immovable property, in this case also this stranger has become the beneficiary of the fight between the brother and sister by managing to get a sale deed executed in his favour from the sister in respect of a portion of a property in a prime area of Greater Kailash, Part-I, New Delhi over which brother and sister are litigating since the year 1991 in civil as well as criminal courts. The legal battle between these three persons centres around a part of the ground floor portion of house no.N-258, Greater Kailash-I, (which had been described in the plaint as ‘two room garage block with front and rear lawns’ and shall hereinafter be referred to as ‘the suit property’ as has been referred to by the trial Court also in the impugned judgment).

2. The revisionist-plaintiff (hereinafter to be referred as ‘the plaintiff’) had filed the suit under Section 6 of the Act of 1963 on 27th June, 1994, inter alia, on the averments that house no. N-258, Greater Kailash-I, New Delhi was owned by his deceased, Mrs. Raj Chawla Sahni, and after her death on 05.06.1984 the ground floor of this property came to be

owned by defendant no.2 while the first floor came to his under the Will of their deceased sister Smt. Raj Chawla Sahni. The plaintiff further claimed in the plaint that he had been in possession of the entire house no. N-258 since 1988/89 onwards. The ground floor portion, which belonged to defendant no.2 and who was permanently settled in U.S.A., was permitted by her to be occupied by the plaintiff and that is how he claimed in para no. 4(d) of the plaint to be in possession of the ground floor which included the suit property also. The plaintiff pleaded that he was dispossessed illegally from the ground floor dwelling Unit of house no. N-258 by his sister on 29.05.1991 but she could not succeed in her attempt to evict him from the suit property on that day but subsequently on 24th December, 1993 he had been illegally dispossessed from the suit property also by his sister, defendant no.2 and defendant no.1, who was alleged to be a builder and dealer of illegal and unauthorized constructions in connivance the police and municipal officials and with whom defendant no.2 had already entered into some deal for sale of the ground floor of house no.N-458 belonging to her.

3. Both the defendants had filed their separate written statements refuting the plaintiff's claim that he had been

dispossessed from the suit property by them on 24th December,1993. The defendant no.1 claimed that he had purchased the entire ground floor including the suit property from defendant no. 2 vide a registered sale deed dated 27.12.1993 and he had been put into possession also by her on 27.12.1993 and further that he was not aware of any incident of dispossession of the plaintiff from the suit property on 24.12.93.

4. The reply of defendant no. 2 to para no. 4(d) of the plaint, wherein the plaintiff had pleaded as to how he came in possession of the ground floor portion also in or around 1988/89, was as under:-

“4.(d) to (g) that the contents, contentions and the assertions contained in sub-paras (d) to (g) of paragraph no.4 of the plaint are mischievous, wrong and denied. It is vehemently denied that the plaintiff and the answering defendant ever agreed much less orally agreed that plaintiff would pay on behalf of the answering defendant her share of the estate duty, legal fee and expenses and Municipal Taxes and outgoings in relation to the estate of Mrs. Raj Chawla Sahni as falsely alleged or otherwise or at all. The answering defendant has herself defrayed all the expenses accountable as to her share and paid estate duty, legal fee and expenses including Municipal taxes and outgoings. It is further denied that defendant ever agreed much less orally agreed with the plaintiff that the plaintiff would spend all amounts required to be spent to repair, paint, renovate and bring to and maintain the suit property in a habitable condition as falsely alleged or otherwise or at all. The answering defendant has

from time to time spent amounts for maintaining her portion of the property. It is vehemently denied that the answering defendant ever agreed to reimburse to the plaintiff any amounts as falsely being claimed by the plaintiff. As stated here to before, the answering defendant has herself defrayed all expenses and discharged her part of the obligations arising in respect of the estate and in particular in respect of her portion of the property. It is denied that there was any alleged agreement as trotted out by the plaintiff that in consideration of the plaintiff allegedly having to spend the amounts would be entitled to exclusive use and occupy the answering defendant's portion of the property as falsely alleged or otherwise or at all. It is denied that there was any agreement and/or it was ever agreed between the plaintiff and the answering defendant that in the event of the answering defendant being desirous to sell her portion of the property, she will first offer the same to the plaintiff and/or that the plaintiff would have the first option and right to purchase the same as falsely alleged. It is vehemently denied that answering defendant agreed to the manner of adjustment of costs, fee and expenses alleged to have been spent by the plaintiff from the sale consideration. It is vehemently denied that there was any agreement of any kind as alleged or otherwise or at all. It is respectfully submitted that the relation between the plaintiff and the answering defendant have never been cordial and have been litigating over the years, consequently, there was no occasion for the answering defendant to agree to the alleged agreement as trotted out by the plaintiff. It is further submitted that plaintiff took possession of his portion of the property immediately after passing of the order dated August 18, 1988 passed by the Hon'ble Mr. Justice B.N. Kripal from his brother Dr. N.P.S. Chawla and has been living thereafter in the upper half portion of the suit property.

It is further submitted that the plaintiff took full advantage of the answering defendant's absence and started representing to be the owner of the whole of the property no. N-258, Greater Kailash Part-I, New Delhi. Consequently, the

answering defendant arrived in India on February 27, 1991 and desired to carry out renovations and other necessary repairs on the ground floor premises of the suit property, and engaged the services of carpenters and masons etc. who carried out the part of the renovation. The plaintiff there and then started harassing the answering defendant as also the workers and drove them away causing serious prejudice and loss to the answering defendant, who was left with no option and filed a civil suit being suit no. 1664 of 1991 titled as Nirmal Chawla Danire Vs. H.P.S. Chawla before the Hon'ble High Court of Delhi for permanent injunction against the plaintiff and the Hon'ble High Court by an order dated May 27, 1991 was pleased to restrain the plaintiff from interfering in the peaceful enjoyment, user and possession of the property by the answering defendant. That the said suit was thereafter transferred to the District Courts and is pending in the Court of Shri R.K. Tiwari, Additional District Judge, Delhi. Each and every singular assertion and the allegation contained in the paragraph under reply contrary to what has been stated above, is denied. It is denied that the plaintiff is entitled to any sum much less an alleged sum of `6,42,952/- or any part thereof from the answering defendant.”

5. The trial Court had framed the following issues for trial and its decision:-

“i) Whether the plaintiff has been dispossessed by the defendants from the suit property without due process of law? OPP

ii) Whether the suit of the plaintiff is barred by limitation? OPD

iii) Whether the plaintiff is entitled to the possession of the suit property as claimed? OPP

iv) Relief.”

6. After having examined the evidence by the plaintiff and defendant no. 1 (defendant no. 2 did not lead any evidence) the trial Court dismissed the suit even though it accepted the plaintiff's case that he was in possession of the suit property on 24/12/93 and was dispossessed by the defendants illegally on that date and further that the suit under Section 6 of the Act of 1963 having been filed on 27/6/94 was not time barred. These conclusions have not been challenged by the defendants

7. The reasons given by the trial Court dismissing the suit are contained in paras no. 11 & 12 of the impugned judgment and the relevant portions are re-produced below:

“11.....Ld. Counsel for the plaintiff has vehemently relied upon the plaint bearing suit no.1106 of 1992 filed by the plaintiff against the defendant no.1 & 2 and against Dr.N.P.S. Chawla for permanent injunction and recovery of ₹6,42,952/- and future interest. In the said suit, plaintiff has described the dwelling house as ground floor and first floor, a barsati floor and a separate garage-cum-servant quarter block consisting of two garages on the ground floor and four servant quarters on the floors above the ground floor. At page 14 of the said plaint it is alleged by the plaintiff that in his absence, defendant no.1 alongwith her muscle men entered into the said dwelling house and removed and threw out from the ground floor of the building

comprised therein. It is further alleged that defendant no.1 had entered and occupied the ground floor of the building comprised with the said dwelling house after obtaining the ex-parte order from the Court. It is pertinent to mention here that in that case, plaintiff nowhere alleged that defendant no.1 could not succeed to evict him from the two garages situated on the ground floor. Nor he sought any relief in respect of the said garages. According to the plaintiff defendant no.1 had evicted him from the ground floor portion. Assuming for the sake of arguments that plaintiff was not dispossessed from the two garages as alleged in the present suit, in that situation plaintiff would certainly pray for the relief to protect his possession in respect of the said two garages but he had not made any such prayer. Admittedly, plaintiff has not mentioned in the said suit that defendant no.1 could not dispossess him from the garage portion and no reasonable explanation has been given for the same. Moreover, from the plain reading of the contents of that plaint, it appears that plaintiff was dispossessed from the entire ground floor portion, which includes garage portion also. On the contrary, in the present suit, it is averred by the plaintiff that defendant no.1 could not succeed to dispossess him on 29.05.1991 from the garage portion, when he was dispossessed from the remaining portion of the ground floor. In my opinion there is inconsistency in the plea taken by the plaintiff in the earlier plaint Ex.PW5/1 and the present plaint. In my opinion, the said contradiction is material in nature and there is no reasonable explanation on behalf of plaintiff to clear the said adverse plea.

12.Next contentious issue for adjudication is as to whether his possession over the suit premises was settled possession or not? The question arises in which capacity, plaintiff was occupying the suit premises? Admittedly, plaintiff was neither the tenant nor was not a trespasser in the suit premises because, as per averments of the plaint, his sister permitted him to occupy the suit premises. Thus, even from the averments of the plaint, it emerges that plaintiff was neither tenant, licensee nor trespasser in the suit premises. As per

plaint, plaintiff had occupied the suit premises in pursuance of an oral agreement executed between him and his sister, wherein inter-alia it was agreed that plaintiff would maintain the property and keep it fit for habitation. As per plaintiff, plaintiff was not supposed to pay any charges to the defendant no.2 for the occupation of the suit premises. On the contrary, as per plaintiff, it was agreed that defendant no.2 would reimburse all the amount spent by the plaintiff on the suit premises. Thus, according to the plaintiff, he was permitted to occupy the suit premises without any charges. It is admitted fact that plaintiff and defendant no.2 are real brother and sister and defendant no.2 was residing in the USA, for the last more than 37 years. In other words, as per plaintiff, defendant no.2 had permitted him to occupy the suit premises on her behalf. It means that he occupied the suit premises being an agent of defendant no.2.....”

8. From the afore-said portions extracted from the impugned judgment it becomes clear that the learned trial Court had rejected the suit of the plaintiff on the ground that even though he had been found to be in possession of the suit property on 24th December, 1993 but he had failed to establish that his possession was settled and uninterrupted one and further that even if that was so, his possession could only be that of the agent of his sister, defendant no. 2 and, therefore, possession of the suit property was that of defendant no. 2 only and consequently his dispossession could not be said to be falling within the ambit of Section 6 of the Act of 1963. These findings of the learned trial Court

were adopted by the learned counsel for the defendant no. 1 before this Court while defending the impugned judgment. As far as defendant no. 2 is concerned, she had not appeared in the matter despite service of notice of this revision petition.

9. Learned counsel for the plaintiff had, however, submitted that the reasoning of the learned trial Court to the effect that plaintiff had failed to establish that he was in settled and uninterrupted possession for the reason that in his earlier suit for injunction, which had been filed against his sister and his brother Dr. N.P.S. Chawla for restraining them from alienating the ground floor portion of house no. N-458 after he had been, as per his own case pleaded in that suit, dispossessed from the dwelling unit on the ground floor of this house, he had not claimed that he could not be dispossessed by his sister on 29th May, 1991 from the suit property when possession of the remaining part of the ground floor was illegally taken by her was a perverse finding inasmuch as he had categorically pleaded in the plaint of that suit that he had been dispossessed only from the dwelling unit which was different from the garage block.

10. I am in full agreement with the afore-said submission of the learned counsel for the plaintiff. Admittedly, house no.

N-458 comprises of a dwelling unit and a separate garage-cum-servant quarter block and, therefore, it could not be inferred from the plaint of the earlier suit for injunction filed by the plaintiff that he had been dispossessed from the entire ground floor including the suit property just because he had not specifically pleaded in that plaint that he could not be dispossessed from the garage-cum-servant quarter block (the suit property in this suit). He had categorically pleaded that he had been dispossessed from the dwelling unit only. Garage block could not be considered to be the dwelling unit of which the plaintiff was talking about in his earlier suit. This inference drawn by the learned trial Court, in my view, was totally unjustified and unsustainable. It may also be mentioned here that defendant no. 2 had also at one time filed an injunction suit against the plaintiff in the year 19991 on the ground that she was in possession of the ground floor and she was wanting to make some renovations there but the plaintiff was not allowing her to do so. That suit was however not pursued by her and was got dismissed in default. That circumstance also supports the plaintiff's case that at that time he was in possession of the entire house but subsequently he was dispossessed from the dwelling unit on

the ground floor while from the garage block he could not be thrown out by his sister.

11. I am also of the view that the finding of the learned trial Court that the plaintiff had failed to establish that his possession of the suit property was settled one also cannot be sustained at all. The plaintiff had categorically pleaded in his plaint of the present suit that he had been living in the entire ground floor from 1988-89 onwards. I have already reproduced the reply of defendant no. 2 to para no. 4(d) of the plaint wherein he had claimed so. A perusal of that reply of defendant no. 2 shows that she had not categorically denied the plaintiff's claim about his being in possession of the entire house No. N-458. All that she had claimed was that taking advantage of the fact that she was settled in USA the plaintiff had been claiming himself to be the owner of the entire house no. N-458. That plea could not be said to be a denial of the plaintiff's claim that he was in actual physical possession also of the entire house no. N-458. Therefore, it is clear that plaintiff's claim that he was in possession of the entire house No. N-458 till 29th May, 1991, when he was dispossessed from the dwelling unit, stood established. Since the learned trial Court itself had come to the conclusion

that on 24th December, 1993 he was in possession of the suit property it also becomes clear that as far as the possession of the suit property is concerned, the plaintiff was in possession thereof from 1988-89 till 24th December, 1993 and so on that basis he could maintain the suit under Section 6 of the Act of 1963.

12. The third reason given by the learned trial Court for rejecting the suit of the plaintiff also cannot be sustained at all. The learned trial Court had come to the conclusion that the possession of the plaintiff in respect of the suit property was that of an agent of his sister. That was not even the case of defendant no. 2 in her written statement nor had she entered into the witness box to depose to that effect and, therefore, no such finding could have been given by the learned trial Court and in the impugned judgment a new case, which was not even set up by the defendant no. 2 herself, has been made out by the learned trial Court which is not permissible in law.

13. I am, therefore, of the view that the impugned judgment cannot be sustained at all. This revision petition is, therefore, allowed and the impugned judgment and decree of the trial Court are set aside. There shall now be a decree for

possession in respect of the suit property in favour of the plaintiff and against the defendants. That would, however, not debar defendant no. 1, who now claims to be the owner of the suit property, from getting possession of the suit property in an independent legal proceeding based on his own title.

P.K. BHASIN,J

April 26, 2012