

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

+ **RFA NO. 74 OF 2005**

Date of Decision: 21st September, 2010

POONAM SHARMA Appellant
Through: Mr. Vinod Malhotra, Advocate

Versus

\$ DAULAT RAM PUBLIC TRUST & ANR. Respondents
^ Through: Mr. Harish Malhotra, Sr. Advocate
with Mr. R.K. Modi, Advocate

CORAM:

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

1. Whether Reporters of local papers may be allowed to see the Judgment? (No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest? (No)

JUDGMENT

P.K.BHASIN, J:(ORAL)

This appeal is at the instance of one of the two unsuccessful defendants in a suit for possession and damages/mesne profits for unauthorized use and occupation of a portion of property no. 16/849, Joshi

Road, Karol Bagh, New Delhi (in short 'suit property').

2. The suit was filed by Daulat Ram Public Trust (hereinafter referred to as 'the plaintiff'), a public charitable trust. Mr. Krishan Mohan during the relevant period was its President and Managing Trustee. He had allowed the husband of the appellant herein, who was employed in a Company of Mr. Krishan Mohan and had been transferred to Delhi, to occupy the suit property on compassionate ground till he could get accommodation elsewhere in Delhi. He was inducted in the suit property sometime in the year 1977 as a licensee and nothing was agreed to be charged from him. Appellant's husband did not, however, vacate the suit property thereafter despite having been asked to vacate the same many times by the plaintiff and not only that he did not vacate the property but he also got a suit filed against the plaintiff by his mother, respondent no. 2 herein (who was defendant no. 1 in the suit) on the allegations that she was a tenant in the suit property. However, that suit was dismissed. Appellant's husband had died in the year 1990 leaving behind the appellant herein and his children who continued to live in the suit property. As per the averments in the plaint, appellant's mother-in-law in fact had never occupied the suit property but had only been staying there with her son for short periods. The appellant was also asked many times to vacate the suit property after the death of her husband but she also did not vacate the

same and so continued to remain in unauthorized occupation thereof like her deceased husband. So, the plaintiff filed the suit.

3. The respondent no. 2, Mrs. Chandrika Sharma, did not contest the suit while the appellant had filed her written statement and contested the suit.

4. Learned trial Court framed the following issues for trial:-

“1. Whether the suit of the plaintiff is bad for misjoinder of parties? OPD

2. Whether the suit of the plaintiff is barred by limitation? OPD

3. Whether the plaintiff is entitled to possession as claimed? OPP

4. Whether the plaintiff is entitled to damages/mesne profit @ Rs. 10,000/- p.m. as claimed? OPP

5. Whether the defendant no. 2 has perfected her title by virtue of adverse possession? OPD-2

6. Relief.”

5. The plaintiff and defendant no. 2, (the appellant herein) adduced evidence in support of their respective stands.

6. The learned Additional District Judge after examining the evidence adduced by the parties gave his judgment on 26th October, 2004 rejecting the plea of adverse possession taken by the appellant herein and passed a decree of possession in favour of the plaintiff as also for damages at the rate of ₹ 3,000 per month. Feeling aggrieved, the appellant only preferred

the present appeal.

7. During the pendency of the appeal the plaintiff-Trust sold property no. 16/849 to two Companies and thereafter those two Companies moved an application under Order 22 Rule 10 CPC and they were substituted in place of the Trust. Arguments were then advanced by the counsel for the appellant and the two purchasers of the suit property.

8. The arguments from the side of the plaintiff mainly centered around the plea of appellant that she had become the owner of the suit property by way of adverse possession while the counsel for the appellant made his submissions on many aspects including the validity of the sale of the suit property by the Trust to the two Companies without obtaining prior permission of the Court as provided under Section 92 of the Code of Civil Procedure.

9. From the impugned judgment I find that the learned trial Judge had only dealt with the appellant's plea of adverse possession. Nothing was however said in respect of the plea of limitation taken by the appellant-defendant.

10. In my view, the learned trial Court should have given its finding in respect of the issue of limitation also. Even if the learned trial Judge was of the view that the appellant-defendant had failed to establish that she had

become owner of the suit property by way of adverse possession the question of suit being time barred under any of the provisions of the Limitation Act was still required to be considered and decided, one way or the other. Order XIV Rule 2 clearly mandates that the Court has to pronounce judgment on all the issues framed in a suit. The plaintiff had filed the suit on the allegations that the husband of the appellant was a licensee who had refused to vacate the premises despite termination of his licence during his life time and after his death even his wife also did not vacate despite having being called upon to do so.

11. This Court is thus of the view that the matter needs to be sent back to the trial Court but only for returning its finding on the plea of limitation covered under issue no. 2 framed by it. Learned senior counsel for the purchasers of the suit property while not disputing that the trial Court should have given its decision on the issue of limitation had submitted that there is no period of limitation for a licensor for filing of a suit for possession against the licensee after termination of his licence and in any case this Court also can decide that issue as no evidence is to be adduced on this aspect. This Court need not decide at this stage whether there is any period of limitation prescribed for this kind of suits or not and it should be left to the trial Court to take a decision first after hearing the parties. However, in my view remand is considered to be the proper course to be

adopted despite the fact that the parties are not claiming any opportunity for adducing further evidence since that would give an opportunity to the aggrieved party to assail the decision of the trial Court on the issue of limitation.

12. This matter is accordingly sent back to the trial Court with a direction to give its finding on issue no. 2 within a period of two months from 18th October, 2010 on which date the case shall be taken up by the trial Court at 2.00 p.m. and thereafter to return back its findings to this Court alongwith the case record which is ordered to be sent back there before the said date.

13. After receipt of the decision from the trial Court, the registry shall put up the appeal once again before the Court.

September 21, 2010
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P.K. BHASIN,J