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

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+ W.P.(C) 1486/2012 & C.M. APPL. 3286/2012

BIJENDER KUMAR AND ANR Petitioners
Through Mr. N.S. Dalal, Advocate
versus

ATTAR SINGH AND ANR Respondents
Through Mr. Sunil Chauhan, Advocate
for R-1.
Mr. Mukesh Sharma, Advocate for
Mr. Jagdeep Sharma, Advocate for
R-2.

AND

9.

+ W.P.(C) 2027/2012 & C.M. APPL. 4363/2012

SANTOSHI DEVI Petitioner
Through Mr. N.S. Dalal, Advocate
versus

ATTAR SINGH & OTHERS Respondents
Through Mr. Sunil Chauhan, Advocate

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Date of Decision: 9th July, 2013

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present two writ petitions have been filed under Article 226 of the Constitution of India. While W.P.(C) 1486/2012 has been filed by the grandsons of the recorded bhumidar Mr. Chabilla Ram, W.P.(C) 2027/2012 has been filed by the wife of one of the sons of Mr. Chabilla Ram. It is pertinent to mention that petitioners have challenged the orders dated 31st October, 2012 passed by the Financial Commissioner, Delhi whereby revision petitions filed by the petitioners against the orders dated 21st April, 2006 passed by the Additional Collector (West), were dismissed.
2. The relevant facts of the present case are that in 1995 the petitioners filed two separate applications under Section 85 of the Delhi Land Reforms Act, 1954 (for short 'Act, 1954') for declaring themselves to be the bhumidars in respect of the land falling in Khasra Nos. 76/9 (4-0), 76/13 min(1-18), 76/12 (3-0) and 76/6 (1-05) min in the Revenue Estate Village Mundka, Delhi. The only material averment in both the applications/petitions was that petitioners are in adverse cultivatory possession of the land since June, 1990 and the defendant/Mr. Chabila Ram is the bhumidar of the land in dispute.
3. In the written statement, the bhumidar, Mr. Chabila Ram, father-in-law and the grand-father of the petitioners admitted that the petitioners were in continuous cultivatory possession of the suit land for more than three years. The Settlement Officer vide order dated 23rd May, 1996 declared the petitioners to be the bhumidar under Section 85 of the Act, 1954. The relevant portion of the order passed by the Settlement Officer in one of the petitions is reproduced hereinbelow:-

“Heard arguments. I have carefully considered the evidence led by the Petitioner. It is a admitted fact that the Petitioner is in continuous possession of the suit land for more than three years. The Respondent has confirmed this fact in his statement RW-1. The Respondent has not filed any suit or made any effort to eject the Petitioner from the suit land.

In view of the above discussion, the Petitioner is held to be entitled for the declaration of Bhoomidar.....”

4. Upon appeals being filed under Section 185 of the Act, 1954 by Mr. Attar Singh, another son of Mr. Chabila Ram, the Additional Collector (West) set aside the aforesaid orders passed by the Settlement Officer. The relevant portion of the order passed by the Additional Collector (West) in one of the appeals is reproduced hereinbelow:-

“In my opinion, as noticed in the lower court records that throughout the proceeding, Respondent No.1 has never disclosed the facts before the lower Court that she is a Daughter-in-law of Sh. Chhabila Ram, who was the recorded bhumidar at that time of the land in dispute. Witnesses produced before the lower court had admitted that the Respondent No.1 was in adverse possession of the land and continuously cultivating the land for the last 5-6 years. Further, written statement of Shri Makole Ram PW-2, Shri Om Parkash PW-3 and Shri Chhabila Ram RW-1 is having a thumb impression, which clearly shows that they were illiterate men and might not have understand the context of statements. Further, as stated by the appellant, at the age of 86 years, Sh. Chhabila Ram was not in position to move freely. If proceedings were initiated Under Section 85 before the Lower Court by Sh. Chhabila Ram’s Daughter-in-law, Sh. Chhabila Ram must have disclosed this fact to his sons. Sh. Chhabila Ram with his consent had given the land to Respondent for cultivating as she was her Daughter-in-law. A Daughter-in-law can never be declared a bhoomidar when she was cultivating the land with express consent of her Father-in-law. It was not a case of

adverse possession. It is also noticed from lower Court records that no summons/notice issued to Sh. Chhabila Ram/service report are available. This fact has also been recorded by Sh. Rajeev Verma, the then Additional Collector (West), while deciding the application filed by appellant Under Section 96 read with section 151 Code of Civil Procedure. However, while disposing application Under Section 5 of the Limitation Act, Sh. Sanjeev Khirwar, the then Additional Collector (West) perhaps the notice was severed upon Shri Chhabila Ram. Perhaps the word "NO" could not be written by mistake. And as held by my predecessor while deciding the application Under Section 96 read with Section 151 Code of Civil Procedure, cases of adverse possession where there is a family relationship between the parties require an extra careful consideration and stronger evidence than where no such relation exists, which was not considered by lower Court, while deciding the petition Under Section 85 of the Delhi Land Reforms Act, 1954 filed by the Respondent.

In view of the facts mentioned above, order passed by the lower Court vide Case No.30/SOC/95 is set aside and land comprising in Khasra No.76/12 (3-0) and 76/6 (1-05) Min. Bigha is reversed back in the name of Late sh. Chhabila Ram, Revenue Assistant SDM (Punjabi Bagh) is hereby directed to make necessary entries in the revenue records....."

5. Revision petitions filed by the petitioners were also dismissed by the Financial Commissioner. The relevant portion of the order passed by the Financial Commissioner in one of the revision petition is reproduced hereinbelow:-

"4. I have gone through the revision petition, the reply of the respondent and have also perused the impugned order. The question of limitation has been appropriately answered in the orders of Sh. Rajeev Verma and Sh. Sanjeev Khirwar, and I concur with the conclusions. Not granting leave to appeal would lead to a grievous miscarriage of justice and both the orders felt the same way. The Additional Collector West has expressed his

doubt whether the trial Court was at all aware of the relationship between Chabilla Ram and the petitioner. If it had been, the conclusions of the order may have been different, since the granting of Bhumidhar rights between relatives is not permitted. The respondent has clearly stated that Chabilla Ram was staying with the petitioner, and far from her having bad relations with her husband and her in laws, she is still living with her husband. What is more believable is that she had conjured up a myth of bad relations purely for the purposes of this Court, attempting to paint herself in the image of a wronged and neglected wife and daughter-in-law. And just as in the other case, the grandsons had exploited the old and infirm 86 year old Chabilla Ram, in this case as well, the daughter in law has resorted to the same stratagem. More importantly, there was no evidence that the three immediately preceding Khasra Girdawaries had been recorded in the name of the petitioner. The land in question was regularly being shown in the name of Chabilla Ram. The above discussion leads to the inevitable conclusion that the revision petition does not have a sound and sustainable basis, and therefore is liable to be dismissed.....”

6. Mr. N.S. Dalal, learned counsel for the petitioners submits that the Additional Collector (West) and the Financial Commissioner in their impugned orders have ignored the relevant consideration under Section 85 of the Act, 1985. According to him, petitioners were not obliged in law to disclose their relationship with Mr. Chabila Ram. He submits that to get benefit of Section 85 Act, 1954 petitioners had only to show that they were in actual continuous possession for more than three years without consent of the recorded bhumidar.

7. Mr. Dalal also submits that the Delhi Land Reforms Act, 1954 is a complete and a special code. According to him, the courts must liberally construe Section 85 as the said Section has been enacted for the benefit of an occupier.

8. In the alternative, Mr. Dalal prays that the matter should at least be remanded back so that the parties can lead evidence and the disputed questions of fact be decided by the authorities.

9. On the other hand, Mr. Sunil Chauhan, learned counsel for the respondents submits that there is no question of adverse possession in a case where the alleged occupier is closely related to the bhumidar. In support of his submission, he refers to and relies upon a judgment of the Supreme Court in ***P. Lakshmi Reddy vs. L. Lakshmi Reddy*, AIR 1957 SC 314**.

10. In rejoinder, Mr. Dalal submits that the aforesaid judgment is clearly inapplicable to the facts of the present case as it has been passed under civil law and not under Delhi Land Reforms Act.

11. Having heard learned counsel for the parties, this Court is of the view that though Section 85 is a part of a separate and comprehensive Statute, yet in essence it is based upon the general principle of adverse possession. It has been repeatedly held by the English, American and Indian Courts that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. (See: ***State of Haryana vs. Mukesh Kumar and Others*, (2011) 10 SCC 404**). Consequently, while interpreting Section 85, principles of adverse possession would have to be applied.

12. Undoubtedly, even a close relative of a recorded bhumidar can be in adverse possession of agricultural land. However, in cases of adverse possession between family members, stronger evidence and greater scrutiny would be required than in those cases where no such relationship exists. The rationale behind this logic is that there is a presumption in law that possession of one co-heir or closely related individual is permissive and joint in nature. In ***P. Lakshmi Reddy vs. L. Lakshmi Reddy*** (Supra), the

Supreme Court has held as under:-

“(4) Now, the ordinary classical requirement of adverse possession is that it should be nec vi nec clam nec precario. (See Secretary of State for India v. Debendra Lal Khan, 61 Ind App 78 at p 82: (AIR 1934 PC 23 at p. 25) (A). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (See Radhamoni Debi v. Collector of Khulna, 27 Ind App 136 at p. 140 (PC) (B). But it is well-settled that in order. to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession, who claims his possession to be. adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The coheir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. (See Corea v. Appuhamy, 1912 AC 230 (C). It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. This does not necessarily mean that there must be an express demand by one and denial by the other. There are cases which have held that adverse possession and ouster can be inferred when one co-heir takes and maintains notorious exclusive possession in assertion of hostile title and continues in such possession for a very considerable time and the excluded heir' takes no steps to vindicate his title. Whether that line of cases is right or wrong we need not pause to consider. It is sufficient to notice that the Privy Council in N. Varada Pillai v. Jeevarathnammal, AIR 1919 PC 44 at p. 47 (D) quotes, apparently with approval, a passage from Culley v. Deod Taylerson, (1840) 3 P & D 539 : 52 RR 566 (E) which indicates that such a situation may Tell lead to an inference of ouster "if other circumstances concur". (See also Govindrao v. Rajabai, AIR 1931 PC 48 (F). It may be further mentioned that it is well-

settled that the burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession.”

13. Consequently, as standards of proof of adverse possession is higher in the cases where the bhumidar and the occupier are closely related, it was incumbent upon the applicant/petitioner at the outset to have honestly and fully disclosed his relationship between the parties--which he failed to do.

14. Since in the present case neither relevant material facts had been placed before Settlement Officer nor was the possession shown to be open or hostile, this Court is of the view that impugned orders called for no interference. This Court also finds that there is no illegality or material irregularity in the impugned orders. Consequently, present writ petitions and pending applications are dismissed but with no order as to costs.

MANMOHAN, J

JULY 09, 2013

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