* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **RSA 151/2012 & C.M. No.15501/2012**

Decided on : 12th September, 2013

GIRI RAJ (SINCE DECEASED) THROUGH LRs. …… Appellant
Through: Mr. Kapil Lalwani, Advocate.

Versus

DEEPAK GUPTA & ORS. …… Respondents
Through: Mr. B.B. Gupta, Advocate.

\+ **RSA 152/2012 & C.M. No.15514/2012**

DALIP CHAND (SINCE DECEASED) THR LRS. …… Appellant
Through: Mr. Kapil Lalwani, Advocate.

Versus

DEEPAK GUPTA & ORS. …… Respondents
Through: Mr. B.B. Gupta, Advocate.

\+ **RSA 164/2012 & C.M. No.17076/2012**

SWATANTER PAL & ANR …… Appellant
Through: Mr. Vivek B. Saharya, Advocate.

Versus

GAURI SHANKAR GUPTA DECD THR LRS & ORS …Respondents
Through: Mr. B.B. Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (*ORAL*)

1. These are three regular appeals arising out of three intertwined suits which were instituted way back in the month of April, 1970 and in which there is a concurrent finding against the appellants.

2. Before dealing with the submissions of the learned counsel for the appellants with regard to formulation of the so-called substantial questions of law, it may be pertinent to mention that the respondents who were the plaintiffs in the trial court had filed a suit for recovery and possession along with mesne profits in respect of an open vacant land measuring in the range of 60-75 square yards approximately in all the three cases of appellants alleging them to be the tenants in respect of these three respective parcels of land. The land was situated in the locality of Patti Jahanunuma, Delhi.

3. The appellants/tenants had allegedly raised construction without any municipal sanction. It was the case of the respondents that the provisions of the Delhi Rent Control Act, were not applicable as the open plots of land did not constitute 'premises' within the definition of the Delhi Rent Control Act.

4. The appellants/defendants filed their separate written statement and admitted that the respondents were co-owners of the open parcel of land yet they denied not only the tile of the respondents, but also the locus to institute the suit for possession on the basis of their title. The appellants pleaded estoppel against the respondents and denied their title. In the alternative, they denied that the respondents were entitled to any damages/mesne profits and also claimed to have become the owner in respective parcels of land on the basis of adverse possession and, therefore, took the plea that the suits were barred under Article 66 of the Limitation Act, 1963.

5. On 14.10.1970, the trial court in RSA No.151/2012 framed an issue with regard to the adverse possession which reads as under:

> "Have the defendants become owners by way of adverse possession."

6. Similar issues were framed in other cases also. The appellants never objected to the framing of the issue nor did they pray on any subsequent date that it was merely an alternative plea. Issues in all the three cases were almost identical.

7. The learned trial court on 09.11.2009 and the first appellate court on 26.05.2012 in all the three cases have decreed the suits out of which the present second appeals have been filed. The first appellate court has held in the impugned judgments as under:

> "a) the pleas of 'tenancy' and 'adverse possession' were mutually destructive, and both of them could not be urged at the same time (in one go) and therefore the 'tenancy' rights stood 'determined/renounced' as soon as the appellants propounded to be in 'adverse possession' of the open land(s) in reference:
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> b) the tenancy having 'determined, no 'notice to quit; was required to be served at all upon the defendants/appellants. Even otherwise, the 'tenancy' being one prior in date to the date on which the relevant sections of the Transfer of Property Act, 1882 were extended to Delhi, no notice was required to be served on the appellants, before the institution of the suit/s;
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> c) the appellants having propounded that are/were in 'hostile/adverse possession' of the open land(s) in suit, they – on their own allegations – had ceased to be 'tenants' and consequently permission of the Competent Authority (Slums) was NOT all a prerequisite to the maintainability of these suit/s for possession."

8. It may be pertinent to mention here that at the stage of final hearing of the case, the trial judge had sought a clarification from the learned counsel appearing for the appellants as to whether the appellants were claiming themselves to be the tenants or they were claiming to be the

owners by way of adverse possession. The order sheet of the trial court on 25.02.2009 reads as under:

> "Present: The plaintiff in person.
> Counsel for defendant
> Part arguments heard. Counsel for the defendants during the course of arguments submits that defendant has given up the plea of adverse possession and is limiting his arguments on the point of defendant being a lawful tenant in the suit property. Counsel for defendant is directed to place on record the contention of abandonment of plea of adverse possession in writing……"

9. On 31.10.2009, the counsel for the appellant in reply submitted as that the appellants withdrew their statements made by their counsels that the issue of adverse possession is not pressed, but the same is very much pressed and the appellants want the said issue to be decided by this court. It is in this background that the concurrent finding returned by the two courts below has been assailed by the appellants in these three regular second appeals. The learned counsel for the appellants has essentially raised three pleas to contend that all these three pleas raise an important substantial question of law and, therefore, they deserve to be dealt with in the present regular second appeals. The first question which was raised by the learned counsel for the appellant was that there is no dispute about

the fact that the land in question wherefrom eviction of the appellants is sought is situated in a slum area and accordingly under Section 19 of the Slum Areas (Clearance and Improvement) Act, 1956, the suits for possession could not have been instituted without obtaining the permission of the competent authority. It was contended by the learned counsel for the appellants that such a permission has to be obtained not only in the case of a tenant but also in the case of an occupier and the appellants even if they are assumed to be occupiers on account of having taken a contradictory plea with regard to the tenancy and ownership by way of adverse possession, still they were to be dis-possessed only after complying with Section 19 of the aforesaid Act. The learned counsel for the appellants in order to substantiate his plea has sought to place reliance on the Division Bench judgment of this court in *Pushpa Singh Versus State Bank of India*; 185 (2011) DLT 407 wherein it has been stated that under Section 19 of the Slum Areas (Clearance and Improvement) Act, 1956, the protection is available not only to the tenant but also to the occupier.

10. The second submission made by the learned counsel for the appellant was that the plea of adverse possession and the plea of tenancy in respect of the land in question were not destructive of each other and therefore, the finding returned by the court below on this score was not sustainable in the eyes of law.

11. The third submission which was urged by the learned counsel for the appellant was that the tenancy of the appellant was not validly terminated and, therefore, the decree which was passed against the appellant was not executable.

12. Instead of dealing with these individual submissions, I feel that the appropriate course would be to deal with each of the points which has been raised by the learned counsel for the appellants under the various headings as under:

<u>Question (a) Whether the plea of adverse possession was a plea in the alternative? If so, the effect thereof?</u>

13. Admittedly, the appellants emphatically asserted that they had acquired 'title by being in adverse possession'. This plea in found in

all their seven affidavits (para 4, to be precise) by way of examination in chief. Please see para 4 of three of these affidavits (which are all identical) on pages 165, 171 and 179 in RSA No.164 of 2012. The relevant words (identical in all of them) in para 4 of all these seven affidavits are:-

> "2. That at no point of time the defendants / deponent ever acknowledge the plaintiff or his legal heirs / representatives to be his owners or landlord …. and at no point of time after his death, the defendants / deponent ever paid any rent to the plaintiff or to his legal representatives / heirs nor acknowledge to be the owners of the property and …… the deponent has paid the rent of the land in question to deceased Kishan Lal when he died in the year 1968 …….. and since the year 1968 onwards, the deponent never paid any rent or charges to either the LRs of late Lala Kishan Lal, the plaintiff Gauri Shankar or any of his LRs and suit of the plaintiff is not maintainable as the plaintiff has got no locus standi to file the suit as the plaintiff or his LRs have nothing to do with the ownership……
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> 4. The defendants / deponent is in legal occupation of suit property and had become owners by way of adverse possession and prior to 1968 deponent was tenant of the property / land in question and the super structure was raised by the deponent out of his own funds and …… because the defendants / deponent has become owners by way of adverse possession and the deponent never dealt with the plaintiff or his LRs in any manner whatsoever and the possession of the deponent /defendant is uninterrupted, peaceful and adverse and the plaintiff has got no right to

> sue defendants or the deponent and the plaintiff is not entitled for any compensation…."
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> (emphasis is added)

14. The appellant having repeatedly insisted even in all the instant memorandums of appeal that they have perfected their 'title by adverse possession', can they now, during the hearing, change their stance and plead that they have neither 'abandoned' nor 'renounced' nor even 'forfeited' their alleged tenancy rights (or even that they are still entitled to raise even now the plea of tenancy)? The law prohibits such a volte face, more so as these two pleas are mutually destructive The reliance in this regard is placed on the judgments passed in Abdul Rahman Thangal Sahib ; JT 2002 (Supple. 1) SC 297, Praveen Narang Vs. Dinesh Gulati; 2009 (112) DRJ 30 and Chitra Garg Vs. Surender Kumar Bansal; 2010 (1) AD (Delhi) 448.

15. Even if the court assumes that the two inconsistent pleas of 'tenancy' and 'adverse possession' as originally pronounced were initially pleas in the 'alternative' (and were not 'mutually destructive'; as is otherwise apparent), the same ceased to be 'alternative pleas' when the appellants themselves filed their seven affidavits (para No A-1, supra)

and thereafter 'elected' (on 31.03.2009; para 10 supra) before the leanred trial court to seek on merits an adjudication of their plea re: 'adverse possession' (which plea admittedly seeks to be specifically abandoned on 25.02.2009). In other words, it is submited that the appellants having re-asserted 'title by adverse possession' in their examination/s in chief (para A-1, supra) and then having 'elected' to propound this plea repeatedly not only before the learned first appellate court (pp 127-129; RSA 151/12 and pp 130-131; RSA 152/12 and pp 61 of RSA 164/12) but also in the instant memorandums of appeal (pp 23/ 27 / 30 / 31 / 32 in RSA No.151 of 2012; pp 24 /27/ 30/31/32 in RSA No.152/2012 and pp 14/23/29/31 in RSA No.164/2012), the said two pleas ceased to be pleas in the alternative, as now asserted. The appellants cannot blow hot and cold in one and the same breath.

16. Further, on the face of these pleas and background even if the court assumes for the sake of arguments that the appellants did not originally abandon their tenancy rights (as is now submitted by them), it is more than apparent that by repeatedly pleading acquisition of 'title by adverse possession', they knowingly and voluntarily renounced their defence of

their being tenants. They cannot now turn back the clock. Reliance in this regard is placed on Abdul Rahman Thangal Sahib ; JT 2002 (Supple. 1) SC 297, Mawasee (dead), 2010 (IV) AD (Delhi) 600, Shrimoni Gurdwara Vs Jaswant, 1996 (11) SCC 690, Smt Adarsh Kaur Gill Vs. Smt Surjit Kaur; (unreported judgment dated 15.01.2010 in FAO (OS) No.634/2009), Praveen Narang, 2009 (112) DRJ 30, Chitra Garg 2010 (1) AD (Delhi) 448, S.Pritam Singh, 1999 (1) AD (Delhi) 785 (DB) and Naeem Ahmed, 188 (2012) DLT 579 (DB).

Question (b) Abandonment of tenancy rights.

17. In addition to what has been submitted hereinabove, it must be added that even if the court assumes for the sake of arguments, that initially there was no abandonment of tenancy rights, the day the appellants propounded having acquired title by adverse possession, they automatically (by operation of law; and in any case voluntarily) renounced their purported tenancy rights (which was / is merely another form of abandonment of such tenancy rights).

18. In this context of the matter the law has also been crystallized by the Apex Court in the case of Majati Subba Rao Vs. PVK Krishna Rao

(Dead) 1989 (4) SCC 732 where the tenant had specifically denied the title of the landlord for the first time in the written statement on which the Hon'ble Apex Court held the plea (being a 'subsequent event') could always be looked into by the court to mould relief accordingly and thus avoid yet another round of litigation.

Question (c) <u>Permission under the Slum Areas Act, 1956</u>

19. In support of their first contention i.e. that permission under Section 19 of the Slum Areas Act 1956 has not been obtained by the respondents herein before instituting this action, the defendants / appellants have placed reliance upon a recent judgment of the Hon'ble Supreme Court in 'Laxmi Ram Pawar Vs. Sita Bai Balu Dhotre & Anr.' AIR 2011 SC 450. The appellants are manifestly camouflaging the fact that the aforesaid judgment of the Hon'ble Supreme Court has been rendered by the Apex Court in the case of the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act of 1971, (for short, the Maharashtra Act), and not under the Slum Areas (Improvement & Clearance)Act, 1956, (for short, the Delhi Slums Act 1956 - which applies to Delhi). The relevant provisions (that accord protection to

people) of the said Maharashtra Act are materially different from that of the Delhi Slums Act 1956. The Maharashtra Act, as is apparent, on a perusal of the aforesaid judgment of the Hon'ble Supreme Court, as also on the face of Section 22 of the Maharashtra Act (please see para 8 on page 452 of the report) extends protection even to an 'occupier' of any building or land in a slum area in Maharashtra. This is not the law under our Act i.e. the Slums Act, 1956. The Delhi Slums Act, 1956 does not extend any protection, in any form, to a mere 'occupier' (as is the case under the Maharashtra Act). The Delhi Slums Act 1956 extends protection under Section 19 of the said Act only to a tenant. (please see the preamble of the Act, as also Section 19 thereof). The legislature while enacting the Delhi Slum Act of 1956 did not embrace within the protective umbrella of Section 19 of this Act any trespasser or illegal / unauthorized occupant of land / building in a slum area. It accorded protection only to a tenant.

20. The answer is apparent on a bare reading of the relevant provisions themselves. Even otherwise, the court is of the view that the question sought to be urged is no more res integra. The issue has already been

raised and repeatedly settled by this Hon'ble Court. The cases direct in point on this issue are Punnu Ram and Others vs. Chiranji Lal Gupta and others; AIR 1982 Delhi 431 (Full Bench), Siri Kishan vs. Mahabir Singh; ILR (1975) 1 Delhi 575 (DB), and Devi Pershad Vs.Ghanshyam Das; 31 (1987) DLT 62.

21. The leading judgment on the issue is that of a Full Bench of this Hon'ble Court in the case of Punnu Ram's case supra. The relevant portion of this judgment, according to me, clarifies the plea now sought to be raised, beyond doubt. The relevant part of the same reads as follows:

> "27. This brings us to the consideration of a few other aspects agitated at the Bar. Sub-section (3) of Section 19 of the Act postulates grant or refusal of the permission to institute any suit or proceedings for obtaining a decree or order for eviction of a tenant or where any decree or order is obtained in any suit or proceedings instituted before the commencement of the Act for eviction of a tenant from any building or land in an area declared as a slum area. The question that arises for consideration is what is the meaning of the term tenant. As noticed earlier, this term is not defined by the Act. Mr.Narula submits that tenant contemplated by Section 19 is a person in occupation or a person likely to be evicted, if permission is granted to institute eviction proceedings or execute an order of eviction. We do not agree. The protection contemplated is for a tenant as recognized by law. A mere occupier cannot be equated to a tenant. An occupier may be trespasser or a licensee or a tenant. The concept of welfare State cannot extend to giving protection to the trespassers or persons who

have no right of occupation. Therefore, when the Legislature used the term 'tenant' in Section 19 as well as in the Preamble of the Act it meant tenant-in-law…..."

22. This issue, as mentioned hereinabove, has also been dealt with in an earlier judgment by a Division Bench of this Hon'ble Court in the case of Siri Kishan Vs. Mahabir Singh reported as ILR (1975) 1 Delhi 575. The relevant paragraphs of this judgment read as follows:-

> "18. The expression 'occupier' has been used in some of the provisions of the Act, and the same has been defined in Section 2(f) of the Act. The definition contemplates 'occupier' as owner, tenant, or as licensee, and according to the said definition the liability for the payment may arise either as rent from a tenant or as damages from a trespasser. In other words, the person in occupation of the premises in question may be either a lawful tenant or an unlawful trespasser. Thus, the definition of 'occupier' in the Act appears to include a lawful or unlawful sub-tenant. Yet even this extended or wide definition of the expression 'occupier' has been utilized only in the matter of recovery of expenses under Section 6 of the Act and now where in the Act. However, it has to be noted that the expression 'occupier' has been used in a Chapter other than Chapter VI which is the only Chapter which contains provision for protection from eviction. The said Chapter consists of only Section 19 and the expression 'tenant' alone has been used in it. The expression 'occupier' does not find a place in Section 19.
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> 19. Thus, the object, the scheme, and the provisions of the Act, show that the stature purports to grant protection from eviction only to tenants and an 'occupier' as such does not get any protection under the Act……"

Question No.(d) Notice to quit and its validity.

23. This plea is just not available to the appellants any more. They cannot be permitted to blow hot and cold in the same breath. They are estopped from doing so. In this regard, reliance is placed on 'Chitra Garg Vs. Surender Kumar Bansal', 2010 (1) AD (Delhi) 448 (paras 23 onwards) and also the various precedents referred to therein; besides 'Mumbai International Airport Pvt. Ltd. Vs. Golden Chariot Airport (2010) 10 Supreme Court Cases 416 (paras 43 onwards)

24. Even then, for the sake of arguments, the court must proceed on the assumption that the 'tenancy' has not been renounced / repudiated / forfeited / abandoned, as also that the appellants are entitled in equity to raise this plea at this stage (of second appeal).

25. It is now very well-settled that in those cases where the 'tenancy' commenced prior to 01.12.1962 (i.e. the date on which the relevant provisions of the Transfer of Property Act, 1882 were extended to Delhi) a notice to quit, as contemplated under 106 of the Transfer of Property Act, is not required to be served on the tenant – before the institution of the suit for ejectment and that the mere institution of the suit is sufficient

notice to quit. Reference in this regard is made to Rattan Lal vs. Vardesh Chander, 1975 RCR 850 (DB-Delhi) and Somti Parkash vs Natha Bagga, AIR 1964 Punjab 449.

26. The Hon'ble Apex Court in the case of 'Rattan Lal vs. Vardesh Chander' reported as 1976 (2) SCC 103 has observed as under :-

> "… A statutory technicality, such as a notice in writing prescribed under S.111 (g) is not a rule of justice, equity, and good conscience and, as regards cases before the extension of the section to a particular area, the mere institution of a legal proceedings for eviction fulfills the requirement of law. 'The conscience of the court needs nothing more and nothing else…."

27. In any case, it is also well settled now by the judgment of this Hon'ble Court in the case of Jeevan Diesels and Electricals Ltd.Vs. Jasbir Singh Chadha (HUF) 2011 (182) DLT 402 that even if the tenant / defendant were to plead that the notice to quit has not been served upon him before the institution of the suit for ejectment, firstly the mere institution of the suit and secondly the service of summons / notices of the institution of the suit (in which necessarily a copy of the aforesaid notice is annexed) is / are by themselves sufficient service of the aforesaid notice to quit upon the addressee / defendant, and on the expiry

of the statutory period of 15 days, the plaintiff / landlord is ipso facto entitled to seek and obtain from the court an order of ejectment against the said erstwhile tenant. I am informed that the said judgment of this Hon'ble Court in the case of Jeevan Diesel supra was the subject matter of a petition under Article 136 of the Constitution of India being SLP (Civil) No.15740/2011 which has been dismissed in limini on 07.07.2011 by the Apex Court.

28. This Hon'ble Court in 'Shri Radhakrishan Temple Trust Maithan, Agra vs. Hindco Rotartron Pvt. Ltd . & Ors. 187 (2012) Delhi Law Times 548 has held as in Jeevan Diesel (supra) that the suit for possession cannot be defeated merely because there is no valid termination of tenancy prior to the institution of the suit, in as much as service of summons in the suit can be taken as notice terminating tenancy".

CONCLUSION

29. The appellants have voluntarily propounded that they had perfected their title by adverse possession of the land(s), subject matter of the suit (s), thus renouncing their purported rights as 'tenants' in the land(s) in reference. In other words, the appellants, jointly as well as severally,

having propounded that they were paying 'rentals' in respect of the land(s) to Lala Kishan Lal till 1968 and thereafter the appellants had started asserting that they were in adverse possession of the land(s), the tenancy rights, if any stood abandoned / renounced (by operation of law). According to them their possession became adverse in 1968. The present suit was instituted soon thereafter on 29th April, 1970. The suit cannot be said to be barred by limitation. The title of the plaintiff /respondents is admitted (and in any case is established by documentary evidence).

30. The appeals do not raise any substantial question of law and accordingly are dismissed.

V.K. SHALI, J.

SEPTEMBER 12, 2013/dm