

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

+ RSA No. 105/2008
% 11th February, 2014
SHRI BALDEV & ORS. Appellants
Through: Mr. Pravir K. Jain, Advocate.

VERSUS

SH. MANGE LAL (SINCE DECD.THR. L.RS) & ANR. Respondents.
Through: Mr. Manoj Lahot, Adv. for R-1A to
1F

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 7042/2008 (delay in refiling)

1. For the reasons stated in the application, delay of 34 days in filing of the appeal is condoned.

CM stands disposed of.

RSA 105/2008

2. This regular second appeal impugns the concurrent judgments of the courts below; of the trial court dated 14.9.2005 and the first appellate court

dated 26.11.2007; by which the suit of the appellants-plaintiffs claiming the reliefs of possession, mesne profits and injunction was dismissed.

3. The disputes in the present case pertain to the property bearing no. D-25(old no. RZ-D1/38) situated at Sitapuri, Dabri, Delhi. Appellants-plaintiffs claimed to have purchased the suit property from one Sh. Surat Singh by means of documentation dated 27.10.1986. The appellants-plaintiffs claimed that they were thereafter put in possession by Sh. Surat Singh till they were dispossessed by the defendant no.1/respondent no.1 in the year 1993. The subject suit was accordingly thereafter filed on 1.10.1999.

4. The case of the respondents-defendants was that the appellants-plaintiffs were not the owners but the suit property was purchased by the respondent no.1-defendant no.1 by means of documentation dated 29.4.1987. The suit property is stated to have been purchased by the defendant no.1-respondent no.1 from Sh. Subh Ram Singh and who is said to have purchased the property from Sh. Surat Singh. Respondent no.1-defendant no.1 also claimed to be in possession of the suit property from the year 1987.

5. Trial court by its judgment dated 14.9.2005 decided the issue no.2 (pertaining to limitation) and issues no. 6 and 7 (claim of ownership of the appellants-plaintiffs of the suit property) and the consequential entitlement to the reliefs against the appellants-plaintiffs and in favour of respondent no.1-defendant no.1. Issues 2,6 and 7 as framed read as under:-

- “(ii) Whether the suit is not maintainable in its present form as the same is barred by time as alleged in P.O. no.2 OPD
- (vi) Whether the plaintiff is owner/landlady of the suit property?
OPP
- (vii) Whether the plaintiff is entitled to a decree for possession/damages and mandatory/permanent injunction as claimed in the plaint?OPP”

6. Appellate court has reaffirmed these findings and conclusions of the trial court and held the suit to be barred by limitation as also that the appellants-plaintiffs failed to prove the ownership of the suit property.

7. Before I advert to the arguments urged on behalf of the appellants-plaintiffs, it would be relevant to note that the appellants-plaintiffs did not file the original documents dated 27.10.1986 on the basis of which property was claimed to have been purchased. This is because as per the complaint of the appellants-plaintiffs to the police marked ‘B’ dated 14.2.1993 showed that the appellants-plaintiffs had given away the title documents to one Sh.

Samunder on account of having taken a loan from Sh. Samunder. Though it

was claimed by Smt. Sheela, wife of appellant no.1/plaintiff no.1, that she had repaid the loan to Sh. Samunder but Sh. Samunder refused to return the documents, no evidence has been led before the trial court of either the loan having been taken from Sh. Samunder or of the loan amount being repaid to Sh. Samunder. In fact, this complaint marked 'B' dated 14.2.1993 has been relied upon by the courts below to hold the suit for possession of appellants-plaintiffs as barred by time inasmuch as this complaint showed that appellants-plaintiffs were dispossessed from the suit property in May, 1987 itself and the subject suit was filed in October, 1999 i.e after a period of 12 years.

8. Entitlement of the appellants-plaintiffs to the reliefs of possession and injunction can be either on the ground of ownership of the suit property or on the ground of prior possession qua defendant no.1-respondent no.1. On both these aspects the appellants have miserably failed inasmuch as no original documents were filed of their (ie of Smt. Sheela w/o appellant no.1/plaintiff no.1) ownership of the suit property but also the appellants-plaintiffs failed to show that they came into possession and continued in possession from 17.10.1986 till they were allegedly dispossessed in 1993 by the respondent no.1-defendant no.1. Respondent no.1 on the other hand

filed various documents which were exhibited in the trial court as Ex.DW1/1 to Ex.DW1/24 to show not only purchase of the suit property but also possession thereof since 1988. In these documents, the most material document is the property tax notice to the respondent no.1 for the suit property for the year 1988, Ex.DW1/15. The electricity receipts in favour of respondent no.1 have been proved and exhibited as Exs.DW1/16(dated 29.7.1992) and DW1/17(dated 21.8.1989).

9. Therefore, on the one hand, appellants-plaintiffs failed to prove the ownership of the suit property as also their possession of the same from 1986, on the other hand respondent no.1-defendant no.1 at least showed possession of the suit property from the year 1988 onwards.

10. Learned counsel for the appellant, very vehemently urged before this Court that the documents being the house tax assessment notice, which has been relied upon by the courts below Ex.DW1/15 and the electricity receipts Exs.DW1/16 and DW1/17 of the Delhi Electricity Supply Undertaking(Govt. of Delhi) could not have been relied upon by the courts below inasmuch as the documents were only photocopies and objection was taken to exhibiting of these documents on account of the said documents being photocopies and not the originals. The objection was thus raised to the mode

of proof of the documents and not to the authenticity of the documents. It is argued that if the property tax assessment receipt and the electricity receipts are taken away from the picture, there is no document to show possession of the respondent no.1 till 1993 and therefore, actually the appellants-plaintiffs should be held to have been dispossessed in 1993 for the suit to be within limitation when filed on 1.10.1999.

11. The argument urged on behalf of the appellants at the first blush seems convincing, although only a hyper-technical one, inasmuch as the documents of the Municipal Corporation of Delhi pertaining to house tax assessment and for the electricity bills were undoubtedly challenged on the ground of mode of proof though not on the ground of lack of authenticity. However, on a deeper examination, the argument urged on behalf of the appellants does not merit acceptance in view of Section 65(e) of the Evidence Act, 1872 which states that where original is a public document then secondary evidence of the same can be used. In my opinion, the house tax assessment notice Ex.DW1/15 and the receipts of payment to electricity authority dated 29.7.1992 and 27.7.1989 Exs. DW1/16 and DW1/17 can be looked into by the courts as the original thereof in my opinion would be public documents being of a public authority ie Delhi Electricity Supply

Undertaking. In any case, really appellants were the plaintiffs in the court below, and they were seeking reliefs with respect to the suit property, and therefore the onus of proof was upon them to show ownership and/or possession of the suit property. In this, the appellants have miserably failed, more so, on the basis of the complaint dated 14.2.1993, mark-B, and which clearly admits that the appellants-defendants were not in possession in May, 1987 and thus the suit filed on 1.10.1999 would clearly be barred by limitation.

12. A second appeal under Section 100 CPC arises not when there are issues of appreciation of evidence or that the two views are possible on the basis of appreciation of evidence and the conclusions which are arrived at by the courts below, but only if a substantial question of law arises. No substantial question of law arises in favour of the appellants for this second appeal to be entertained in terms of Section 100 CPC.

13. In view of the above, the appeal is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 11, 2014
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VALMIKI J. MEHTA, J.