

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

+ **RSA 54/2002**

% **Reserved on : 2nd July, 2014**
Decided on : 14th July, 2014

BHARAT BHUSHAN JAIN & ANR. Appellants
Through: Mr.Vinod Kumar Srivastava,
Advocate.

VERSUS

UOI & ORS. Respondents
Through: Mr.M.K. Singh, Advocate R-2.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908 (CPC) impugning the concurrent judgments of the courts below; of the trial court dated 15.01.2000 and the first appellate court dated 08.01.2002; whereby the suit of the appellants/plaintiffs for permanent injunction has been dismissed. Plaintiffs claimed rights in an open piece of land admeasuring approximately 628 sq. yards adjoining the property/house/Kothi no.1, Ansari Road, Darya Ganj, Delhi (hereinafter the subject/disputed/suit plot/property). Injunction was prayed as the plaintiffs

alleged that Municipal Corporation of Delhi (MCD) was wrongly unloading bricks on the subject plot. Injunction was prayed against interfering and disturbing the possession and ownership of the plaintiffs. Plaintiffs claim ownership of the subject plot on two basis. First basis was purchase of the suit plot under the registered sale deed dated 25.03.1946 from Begum Zohra Ansari. The second basis for claiming ownership was adverse possession.

2. It is required, at this stage, to be stated that suit was originally filed by the predecessor-in-interest of the plaintiffs namely, Sh. Raj Kishan Jain. The present plaintiffs on the death of Raj Kishan Jain have been substituted in place of the original plaintiff.

3. Both the courts below have held that the disputed plot of land is Government land and the plaintiffs have no ownership rights in the same.

4. A reading of the judgment of the first appellate court, *inter alia*, shows that the following conclusions have been arrived at:-

(i) The sale deed dated 25.03.1946 (Ex.P-3 by which the predecessor of the plaintiff purchased the suit property from Begum Zohra Ansari) showed that on the eastern side of the plot, there was Government land, i.e the eastern boundary of the plot was Government land and not the city wall as was being contended by the appellants/plaintiffs but was the subject plot of land. If the plaintiffs/appellants were the owners of the subject plot, the

boundaries on the eastern side of property no.1 Ansari Road purchased under the sale deed dated 25.03.1946 would be the city wall and not the Government land.

(ii) Reliance placed by the plaintiffs on the earlier judgment Ex.P-5 dated 30.01.1958 passed by Asa Singh, Sub-Judge, Delhi, in the suit filed by the Union of India against Raj Kishan Jain, and by which judgment the suit of the plaintiffs/Union of India/Delhi Improvement Trust was dismissed, cannot help the appellants/plaintiffs because the judgment Ex.P-5 no doubt found that an encroachment was made by Raj Kishan Jain of 61.55 sq.yds. on the North/North East side of the property no.1, Darya Ganj, however, that is not a reflection as to ownership rights claimed by the plaintiffs in the disputed plot of land 628 sq. yards falling to the east of the Kothi/Bungalow/House and which was not an issue which was being decided by the judgment Ex.P5. In sum and substance, what is held is that ownership of the disputed plot of 628 sq. yds., and which was an issue in this case, was not an issue in the judgment rendered (Ex.P-5), and therefore, the said judgment would not be *res judicata* as to the ownership claim of the appellants/plaintiffs as to the suit plot of 628 sq. yds. on the eastern side of property/House no.1, Ansari Road.

(iii) The suit plaint actually and basically made averments essentially against the MCD of unloading of the bricks on the suit plot and the plaint challenged the action of the MCD only. No cause of action was pleaded against the other two defendants, namely, the Union of India and Delhi Development Authority (DDA/Successor-in-interest of Delhi Improvement Trust). In the guise of the subject plot, the plaintiffs could not seek declaration of ownership of the disputed plot as against Union of India and DDA.

(iv) The claim of ownership of the disputed plot on the ground of ownership is negated by the fact that original plaintiff Shri Raj Kishan Jain while accepting the revised lay-out plan of the building which was given for sanction to the DDA stated that he had a right of way and easement in the land which was to the east of the Kothi/house and which has been shown as Government land, i.e the claim was of easementary rights and not ownership rights in the suit plot.

(v) The case of adverse possession cannot be said to be proved simply by the fact that during the Freedom Movement, certain tents were fixed on the disputed land as stated by the witness PW5/Shri Jaswant Rai.

5. The aforesaid conclusions are unimpeachable and this Court will hereinafter refer to the relevant portions of the impugned judgment of the
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first appellate court, however, it requires to be noted that actually the plea of ownership by purchase and the plea of ownership by adverse possession are not inconsistent stands but mutually destructive stands. In law, alternative and inconsistent stands can be raised but mutually destructive stands cannot be taken up in the pleadings. This is for the reason that pleadings have to be substantiated by evidence and once the appellants/plaintiffs take up plea of adverse possession and depose to the same, they are destroyed by their own evidence/deposition/testimonies of their case of ownership by purchase under the sale deed dated 25.03.1946. This aspect itself is, in my opinion, sufficient to dismiss the case of the plaintiffs on the ground of ownership by purchase because once a plea of adverse possession is pleaded and then sought to be proved, the depositions to substantiate the plea of adverse possession destroys and proves false the case of ownership by purchase of the suit plot.

6. So far as the claim of ownership of adverse possession is concerned, the courts below have rightly held that the appellants/plaintiffs have failed to substantiate the case of adverse possession. The tenants from whom rents were claimed are said to have come into certain portions of the plot only from around the year 1967. These tenants deposed for the appellants/plaintiffs as PW3/Kishan Lal and PW4/Khiyazuddin and the
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subject suit itself was filed just five years thereafter on 15.3.1972. There was no documentary evidence filed by plaintiffs of their or their predecessor-in-interest being in open hostile and continuous possession for thirty years prior to the suit, i.e. from 1942. Therefore, the appellants/plaintiffs cannot succeed in their case on facts with respect to adverse possession. The immediate predecessor of the appellants/plaintiffs Sh. Raj Kishan Jain admittedly claimed to have purchased the suit property only in 1946, and therefore by 1972, the period of thirty years to substantiate adverse possession had not been completed, and which aspect is without prejudice to the fact that there is even no evidence worth any credibility of open hostile and continuous possession of the suit land continuously even since 1946. Deposition of the pitching of tents in the freedom movement by PW-5/Jaswant Rai cannot show hostile possession and much less continuously from 1944 (when pitching of tents was there) till 1972 when the suit was filed inasmuch as there is proved no evidence from 1944 to 1967 on any actual physical hostile possession of the disputed plot by the appellants or their predecessor-in-interest. On the aspect of the appellants/plaintiffs having been failed to prove adverse possession, the first appellate court has rightly observed as under in para 20 of the impugned judgment:-

“20 The DDA as placed on record the documents of transfer of this land to it, for management and control. No doubt, a plaintiff is entitled to take contradictory places of ownership by adverse possession and ownership on the basis of document. But in the instant case the plaintiffs have failed to substantiate their case of ownership by adverse possession inasmuch as till 1946 the owners of Kothi no.1 did not assert any right against the government in respect of the disputed land and after 1946 the Union of India and the Delhi Improvement Trust asserted rights to prevent encroachment by the owner of Kothi no.1 and even during the proceedings for sanction of the lay out plan, the DDA had raised objections regarding the narrowing of the path/narrow lane towards the East side of the Kothi no. 1 to 8.5 inches and the deceased plaintiff had also given an undertaking that he would rectify the lay out plans to meet these objections. This was in the years 1955 as brought forth by Ex.P-7. The deceased plaintiff Sh. Raj Kishan Jain made mention while accepting the revised lay out plan that such acceptance of his, is without prejudice to claim “my right to way and easement on the existing roads on the South and East of the Kothi which the DIT has shown as government land.” Thus the deceased plaintiff mentioned in the undertaking that he would be asserting his rights of easement and passage on the East and South in respect of land that the DDA was claiming to be its by recourse to legal proceedings. But it appears that no such legal proceedings have been initiated by deceased Raj Kishan Jain except for this suit for injunction and that too alleging that the MCD had questioned his right to possession and ownership of the disputed land

by laying bricks thereupon. In any case he has conceded that what lay to the East of Kothi No. 1 was only a road and not his land up to the city wall. It may be emphasised that in this ex.P-7 which is a document in respect of proceedings for sanction of the lay out plan submitted by deceased Raj Kishan Jain incorporating the objections of the DDA and the undertaking/consent of the deceased Raj Kishan Jain to the modifications in the lay out Plan & which is dated 31.10.55. the deceased Raj Kishan Jain has claimed only easementary rights on the road on the East of Kothi No.1. In other words he admits the existence of a road belonging to somebody else towards the East of Kothi No.1 over which he has claimed easementary rights. For easementary rights. There is a dominant user and a sub servient user who are separate entities and the voluntary statement of Sh. Raj Kishan Jain reserved only the rights of easement in respect of the road to the East that was located between the Kothi no.1 and the city wall on the East and nor ownership or possessory rights. These facts all go to show that even subsequent to the purchase by the deceased Raj Kishan Jain, of the land in dispute, attempts of the owner of Kothi no. 1 to assert rights in respect of the disputed land or other government/Nazul land has been repelled by the government/DDA. Therefore, the claim of the open, hostile and uninterrupted possession against the true owner, is also untenable. Moreover, from the testimonies of PW3 and PW4, it appears that they have come in occupation only in 1967. The suit was filed in 1972. 30 years had not elapsed, in these circumstances for the plaintiffs to have claimed any right against the government on the basis

of adverse possession. Neither is long and settled possession proved in these circumstances.” (underlining added)

7. So far as the aspect of plaintiffs' predecessor-in-interest not having purchased the disputed plot of 628 sq. yds is concerned, the first appellate court has rightly observed in this regard that the sale deed dated 25.03.1946 refers to on the eastern side the boundary of the plot not as the city wall but Government land, i.e the city wall was at the eastern edge of the Government land. These observations are contained in paras 15 and 17 of the impugned judgment of the first appellate court which read as under:-

“15. There can be no two opinions that the purchaser of a property can only claim rights in respect of the portion and extent of property actually sold to him. In these circumstances, the boundaries set out in Ex.P-3, the sale deed executed by Smt. Zohar Begum wife of Dr. M.A. Ansari in favour of Sh. Raj Kishan Jain cannot be brushed aside or over looked. This sale deed sets out the boundaries of the area of approximately 12,000 sq. yds. Sold to the late Sh. Raj Kishan Jain as being bounded on the North, South and West by existing roads and on the East by Government land. Had the Kothi no.1 and the portion of 12,000 sq yds. sold by Smt. Zohra Begum extended up to the city wall on the East it would have been clearly mentioned because such a land mark would have been clearly mentioned because such a land mark would have been the best to describe the boundary of the property in question. The very fact that the vendor mentions the existence

of government land to the East is sufficient indication of the fact that vendor herself recognised the title of the government in the land between kothi no. 1 and the city wall to the East. PW5 makes mention of the fact that volunteers of the Indian National congress used to set up comes in the land between the main kothi and the city wall. He thus claims that the land in question was private land from the time of Dr. Ansari, husband of the vendor Smt. Zora Begum. But what is more significant is the fact that despite the use of the land by the volunteers of the Indian National congress who used to come to Dr. Ansari's house at Kothi no.1, Darya Ganj at the time of sale, Smt. Zohra Begum made no effort to assert any private right in respect of the land between Kothi no. 1 and the city wall on the East. The testimony of PW5 would, therefore, only show that the vendor Smt. Zohra Begum was very clear about the boundaries of her property which property was bounded on the East only by government land and not the city wall. In the light of this document i.e. sale deed. Ex.P-3 the testimony of late Sh. Raj Kishan Jain in the previous suit. Brought on record as Ex.P-9, that the kothi no.1 was bounded on the East by the city wall, is of no consequence. The documents has to prevail over the ocular testimony.

17. That there existed some land between the city wall and Kothi No.1, is apparent from the records relied upon by the plaintiffs. But before referring to those documents, reference to Ex. P-2 ought to be made. Ex.P-2 is the certified copy of the written statement filled by Sh. Raj Kishan Jain in suit no. 507/53. In this written statement while referring to the portion marked

ABCD in the site plan attached to the plaint, he also submitted that in "1946 the outer walls on the East. And south were in existence and this defendant demolished the same." If the city wall formed the boundary on the East of Kothi No.1, There seems to be no reason for Kothi no. 1 to have had any "outer walls" towards the East which were subsequently demolished by Sh. Raj Kishan Jain. In other words, the other walls of Kothi no.1 was distinct and separate from the city wall and there existed some land in between." (underlining added).

8. So far as the fact that the judgment Ex.P5 of Asa Singh, Sub-Judge, Delhi, cannot help the appellants/plaintiffs, the first appellate court in this regard has rightly concluded in para 16 as under:-

"16. The learned trial court, therefore, cannot be faulted for relaying on the sale deed Ex.P-3. No doubt, the learned trial court has fallen into error in observing that the judgment Ex.P-5 was not relevant between the parties of this suit because it related to some other portion of the property. But to my mind even Ex.P-5 does not come to the aid of the plaintiffs/appellants. No doubt, that suit being no. 507/53 had been filed by the Union of Indian and the Delhi Improvement Trust against Sh. Raj Kishan Jain, the original plaintiff in this case alleging that Kothi no.1, Darya Ganj was surrounded on all sides by Nazul land and that an extent of 918 sq. yds. on all sides had been encroached upon by Sh. Raj Kishan Jain and the other defendants, subsequently impleaded in that suit, as depicted in their sita plan by alphabet ABCD, EFGHIJ. No doubt, also, vide Ex.P-5,

the learned Judge found that there was no encroachment. On the West, East and South Kothi no.1 and also found that the encroachment of 61.55 sq. yds. on the North/North-East referred to as EFGH by the plaintiffs in that suit i.e. the Union of Indian and the DIT, and been subsequently purchased by Sh. Raj Kishan Jain after paying, by means of a cheque, Rs. 4, 377/- to the DIT, had been subsequently purchased by Sh. Raj Kishan Jain after paying, by means of the cheque, Rs. 4,377/- to the DIT. But the mere fact that no encroachment was found by the court, vide judgment Ex.P-5 on the East, West and South of Kothi no.1 cannot lead to the conclusion that the plaintiffs have a right in respect of the disputed land.”

(underlining added)

9. On the aspect of admission of the predecessor-in-interest of the plaintiffs of not claiming ownership rights but only easementary rights in the suit plot is concerned, the first appellate court has rightly concluded in this regard in para 20 of the impugned judgment, which has already been reproduced above.

10. In my opinion, in view of the above, really no substantial question of law arises, however, this appeal without framing any substantial question of law was admitted for hearing on 05.09.2003 by a Single Judge of this Court, and when status quo order was also granted. Since the appeal is admitted, in my opinion, though no substantial question of law arises, I as an abundant

caution frame the following substantial question of law:-

“(a) Whether the impugned judgments of the trial court and the first appellate court suffer from any perversity with regard to its findings and conclusions for their being set aside?”

11. Learned counsel for the appellants firstly argued that in the sale deed dated 25.03.1946 by which the property no.1, Ansari Road, Darya Ganj, Delhi, was sold to the predecessor of the plaintiffs, the area mentioned therein is 12,000 sq.yds. of which building was only of an area of 10,530 sq.yds. whereas the balance area of about 1870 sq. yds. was open land. This argument was sought to be buttressed by a statement made by the witness of the respondent/DDA D-2W1/Shri Iqbal Singh Maan and who stated that the area of khasra no.62 is 10,530 sq.yds. and the area of khasra no.63 is 1870 sq. yds.. What was argued was that once the sale deed dated 25.03.1946 stated the area purchased as 12,000 sq. yds. the area of the Kothi/House would be 10,530 sq.yds. falling in khasra no.62, and khasra no.63 was the disputed plot of 1870 sq.yds. (the total area of 12,000 sq. yds. purchased under the sale deed dated 25.03.1946) included in the sale deed.

12. The arguments urged on behalf of the appellants are totally misconceived for the following reasons:-

A. The sale deed dated 25.03.1946 itself does not say that area of the

house/Kothi is 10,530 sq. yds. and the rest of the area is open land of 1870 sq. yds. belonging to the Government.

B. In the sale deed, there is no mention of khasra nos.62 and 63, much less as to the area of 10,530 sq.yds. falls in khasra no.62 and the area of 1870 sq.yds. falls in khasra no.63 and as sought to be argued before this Court.

C. The witness D-2W1/Iqbal Singh Maan no doubt made a statement of khasra no.62 comprised of 10,530 sq.yds. and khasra no.63, comprised of 1870 sq.yds., however, that statement cannot help plaintiffs because that deposition pertained to contents of documents and it is a settled law that contents of the documents have to be proved by the document itself, i.e the primary evidence, and there cannot be oral deposition with respect to the contents of the document. At the cost of repetition, it has to be noted that the sale deed itself mentions that the eastern boundary of the property purchased as Government land and not the city wall which falls after the Government land/disputed land of 628 sq.yds.

13. It is also required at this stage to be noted that the appellants could well have proved that the property no.1 Ansari Road, Darya Ganj, Delhi, included the area of 628 sq.yds. of disputed open land, and which could have been done by summoning of the municipal record, however, no municipal
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record was summoned to show that the area of house no.1/and/or property No.1, Ansari Road, Darya Ganj, Delhi, included the area of the disputed plot 628 sq.yds. of the disputed plot as that in Municipal record, the appellants/plaintiffs are in control/possession of the disputed plot. On the contrary, as already been observed above, at the time of taking sanction of the revised lay-out plan, the predecessor-in-interest of the appellants/plaintiffs only claimed the right of easement in the disputed plot which falls between the house and the city wall. Accordingly, the argument urged on behalf of the appellants that the disputed plot of 628 sq. yds. falls in khasra no.63 of 1870 sq.yds. and which was said to be purchased under the sale deed dated 25.03.1946, is a totally baseless argument, and is accordingly rejected.

14. (i) Learned counsel for the appellants then sought to refer to a plan in the revenue record showing khasra nos.62 and 63 for claiming that Khasra no.63 pertaining to the disputed plot fall in the area of 12,000 sq.yds., however, a reference to this plan which exists at running page 233 of the appeal paper book shows that there are no calculations in this plan of area comprised in khasra no.62 or in khasra no.63. In any case, on the basis of this plan, it cannot be held that the open plot of land falling in khasra no.63 was purchased under the sale deed dated 25.03.1946 inasmuch as the sale

deed dated 25.03.1946, as already stated above, does not refer either to khasra no.62 or to khasra no.63 or both of them.

(ii) While on this aspect it is also relevant to mention that the appellants/plaintiffs have not filed the sale deed by which Begum Zohra Ansari is said to have been purchased the property no.1, Ansari Road, Darya Ganj, Delhi, from Lala Sultan Singh and Raghubir Singh and which is so mentioned in the sale deed dated 25.03.1946. Surely, if the case of the appellants/plaintiffs was correct that the area of the disputed plot of 628 sq. yds. was included in the area of 12,000 sq. yds. belonging to Begum Zohra Ansari, nothing would have been easier than to refer to the ownership document of the predecessor-in-interest of Begum Zohra Ansari, namely late Rai Bahadur Lala Sultan Singh and Raghubir Singh whose names were mentioned at internal page no.2 of the sale deed dated 25.03.1946 and who are said to have purchased the property no.1, Ansari Road, Darya Ganj, Delhi, earlier by a registered sale deed dated 04.04.1919 and details of which registration have also been given at internal page 2 of the sale deed dated 25.03.1946. The second argument urged on behalf of the appellants/plaintiffs is therefore also baseless and is accordingly rejected.

15.(i) The third argument which was urged on behalf of the appellants/plaintiffs was by referring to a private plan at page 234 of the

appeal paper book and which is said to be Ex.P-6. I may note that the courts below note that this document is not validly proved and therefore once the document is not proved, this Court cannot refer to the same. However, even if we refer to the same, the only argument urged by the appellants/plaintiffs on the basis of this document Ex.P-6 is that various doors of the house open on the disputed plot of land and which according to appellants/plaintiffs shows that consequently disputed plot of land is owned by the appellants/plaintiffs.

(ii) This argument urged by the appellants/plaintiffs is misconceived inasmuch as merely because the appellants/plaintiffs have chosen to open the doors of their house/kothi in Government land which lay between the house of the appellants/plaintiffs and the city wall, the same cannot mean that the open piece of land on the east between the house and the city wall would come under the ownership of the appellants/plaintiffs or their predecessor-in-interest. Claim of ownership has to be substantiated by means of a document of purchase which has not been done by the appellants/plaintiffs as has already been concluded above, and, the appellants/plaintiffs even have miserably failed to prove their case of adverse possession, which stand of adverse possession in any case is mutually destructive of the case pleaded of ownership by purchase.

16.(i) Learned counsel for the appellants then referred to another document Ex.P-18 to buttress their argument of ownership, and once again, it is noted that the courts below have held that this document is not proved and therefore cannot be relied upon. In any case, this document Ex.P-18 only shows that as per the Delhi Cantonment record of 1948, the property no.1, Ansari Road/Darya Ganj, contained city wall to the east, however, the same can at best only mean a reference to general direction to the east of the property being towards the city wall and this document cannot be interpreted to mean that the disputed plot of land of 628 sq.yds. would fall in the ownership of the appellants/plaintiffs. (ii) In my opinion, in fact, this document Ex.P-18 would in fact go against the case of the appellants/plaintiffs, because, the area of property no.1, Ansari Road is shown in this document Ex.P-18 not as 12,000 sq.yds. but only 11,165 sq.yds. and thereby making it clear that property no.1, Ansari Road, Darya Ganj, Delhi, was not of 12,000 sq.yds. but only 11,165 sq.yds. and consequently that the balance area of open land in fact did not form part and parcel of the property no.1, Ansari Road, Darya Ganj, Delhi. This argument of the appellants/plaintiffs is accordingly not only rejected but the document Ex.P-8 demolishes the case of the appellants/plaintiffs of ownership of the disputed plot as this document shows ownership of 11,165 sq.yds. and not

an addition area of 628 sq.yds./disputed plot.

17. In view of the above, the substantial question of law framed is answered against the appellants/plaintiffs and in favour of the respondent/DDA and it is held that there is no perversity or gross illegality in the impugned concurrent judgments of the courts below. Consequently, the present second appeal is dismissed, leaving parties to bear their own costs.

While dismissing the appeal, this Court would like to deprecate the conduct of the appellants in trying to grab Government land whose market value on a conservative estimate would be around 25 crores as stated by counsel for the respondent/DDA.

JULY 14, 2014
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VALMIKI J. MEHTA, J