

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

+ **RSA No.37/2003**

% **Reserved on: 19th February, 2014**
Pronounced on: 6th March, 2014

SH. CHHINDA Appellant
Through: Mr. S.C. Singhal, Advocate.

VERSUS

MS. SUNITA JAIN & ANR. Respondents
Through: Mr. B.P. Aggarwal, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal is filed by the appellant/defendant impugning the judgment of the first appellate court dated 26.11.2002 by which the first appellate court allowed the appeal of the respondents/plaintiffs and decreed their suit for possession by setting aside the judgment of the trial court dated 18.2.2002 which had dismissed the suit for possession.

2. The facts of the case are that the respondents/plaintiffs are the owners of plot no.M-6, Mehrauli Road, New Delhi and which was
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purchased by them vide registered conveyance deed dated 2.7.1969 from DLF Housing Construction Pvt. Ltd. The appellant/defendant was a way side scooter mechanic who started his work near the boundary wall of the adjoining land belonging to M/s. Purulator/Anand Automobiles and on the municipal land on which he had made encroachment. Appellant/defendant was prosecuted by the MCD several times and in order to save himself from the action of the MCD, the appellant/defendant trespassed into a portion of the plot M-6 owned by the respondents/plaintiffs which is shown in red in the site plan. Encroachment was made sometime in the year 1982 by making a door in the boundary wall. Since the appellant/defendant failed to vacate in spite of requests, the subject suit for possession came to be filed.

3. In the written statement the appellant/defendant claimed that he had not encroached upon any land of the respondents/plaintiffs but was sitting on the land belonging to the MCD. A mutual destructive defence was also taken by the appellant/defendant that no suit was maintainable against him because he had been sitting in the property of the respondents/plaintiffs for 1967 i.e 15 years prior to filing of the suit i.e a plea effectively of adverse possession.

4. The first appellate court while allowing the appeal has noted that the sale deed in favour of the respondents/plaintiffs dated 2.7.1969 was

proved and exhibited by two witnesses, namely PW-4 Sahib Singh who was an employee of DLF Limited and also by the attorney holder of the respondents/plaintiffs Sh. C.L. Bhasin who deposed as PW-2. Sale deed was exhibited as Ex.PW2/B and the site plan attached thereto was proved and exhibited as Ex.PW4/A and Ex.PW2/C. The portion on which the appellant/defendant was squatting in was shown in red in the site plan and which lies in the portion in between property no.M-6 belonging to the respondents/plaintiffs and the adjoining property belonging to Anand Automobiles. The first appellate court rightly notes that in between the property of the respondents/plaintiffs and the land of Anand Automobiles there is no municipal land and therefore the appellant/defendant is not in occupation of municipal land but in possession of part of the property no.M-6 belonging to the respondents/plaintiffs. The first appellate court also refers to and rightly relies upon the Local Commissioner's report dated 22.2.1984 prepared as per the visit of the Local Commissioner to the site on 19.2.1984 inasmuch as the report of Local Commissioner is evidence in terms of Order 26 Rule 10(2) CPC and also the fact that no objections were filed by the appellant/defendant to the report of the Local Commissioner. The report of the Local Commissioner shows that the front portion of the plot no.M-6 measures 83.6 feet from M-5 till the wall of Anand

Automobiles and therefore once the appellant/defendant is sitting in between the plot of M-6 and the land of Anand Automobiles the encroachment would be of the land of the respondents/plaintiffs and not of any municipal land. The first appellate court also rightly notes that no evidence was led by the appellant/defendant to show that he was squatting on municipal land. The appellate court finally notes that though the appellant/defendant claimed to be in possession from the year 1967, but the earliest document filed by him is a letter dated 4.10.1971, Ex.DW4/3, and since the suit was filed on 20.9.1982, the suit was within 12 years and the suit was not barred by limitation.

5. The relevant observations of the first appellate court on the basis of which the abovesaid conclusions have been drawn are paras 8,9, 11 and 12 of the impugned judgment and which reads as under:-

“8. This brings us to the finding on issues No. 1 to 4. The plaintiffs have examined PW. 4 Sahib Singh, Asstt. Revenue Officer, DLF Limited, who has proved the sale deed dated 22.7.69 executed by DLF Limited through its Secretary and General Attorney R.K. Jain in favour of the plaintiffs and it Ex. PW. 2/B. He has also proved the Site Plan Ex. PW4/A and has deposed that the same is correct according to the spot. The registered sale deed has also been proved by Shri C.L. Bhasin, PW.2, the Attorney of plaintiffs and is Ex.PW.2/B. PW.2 has also proved the site plan which is Ex.PW.2/C. The defendant has nowhere challenged the correctness or the authenticity of the registered sale deed in favour of the plaintiff. He has suggested to the plaintiffs’ witnesses

that the site plan produced is not correct, but has failed to specifically point out the portion which was incorrect in the site plan. The defendant has not produced any site plan of his own nor has he pointed out the incorrectness in the site plan filed and proved by the plaintiffs. The registered sale deed clearly proves that plaintiffs are the owners of the property bearing No. M-6, measuring 669 sq. yds. The property has been described to be bounded as under:-

East		S.Lane
West		Road
North	...	Plot No.M/5
South	...	Anand Automobile

The suit premises as shown in red in the site plan which are in possession of the defendant lies between M-6 and the adjoining property belonging to Anand Automobile. It is the claim of the defendant that the property in his possession in municipal land on which he has made an encroachment, but as per the registered sale deed, there exists no municipal land between the plot M-6 and Anand Automobile. The very fact that the suit premises is a portion of land lying between M-6 and Anand Automobile clearly shows that the suit premises is, in fact, part of premises No. M-6 which belongs to the plaintiff and is not municipal land as is claimed by the defendant. The registered sale deed along with the site plan sufficiently proved that the suit premises are a part of property belonging to plaintiffs and is not a part of municipal land.

9. It is significant to point out that a Local Commissioner was appointed by the Id. trial court, and had visited the premises on 19.2.84 and had submitted his report on 22.2.84. There are no objections filed to the said report of the Local Commissioner and as per Order 26 Rule 10 Sub-rule (2) CPC, the report of the Local Commissioner is evidence in the suit and forms part of the record. In the said inspection report, the Local Commissioner has clearly mentioned that the front portion of the plot M-6 measures 83'6'' from M-5 till the wall of Anand Automobile and this length includes the portion in possession of the defendant. It is, thus, further evident that the portion in possession of the defendant as

shown in red in the site plan Ex.PW.2/C is, in fact, part of property of the plaintiffs.

11. It is significant to refer to the documents relied upon by the defendant himself. The only documents which have been relied upon by the defendant to show that that he is in occupation of municipal land are the various challans which are Ex.DW4/1, DW4/2 and the summons from the Court which are Ex.DW.4/5 and DW.4/6. In the summons Ex.DW.4/5, the property in occupation of defendant has been described as opposite M-6 which clearly lends support to the case of the plaintiffs that, in fact, defendant was running his business adjoining to the property of the plaintiffs, but has subsequently encroached into the property of the plaintiffs. Furthermore, in the summons Ex.DW.4/6, the address of the defendant has been given as M-6, Haus Khas, Mehrauli Road which clearly shows that, in fact, the defendant is in occupation of the land which is part of the property bearing No.M-6. Likewise, in the letters dated 4.10.71 and 6.1.72 Ex.DW.4/3 and DW.4/4, letters dated 4.10.71 and 6.1.72 Ex.DW.4/3 and DW.4/4, the address of the defendant is mentioned as M-6, Haus Khas, Mehrauli Road, New Delhi which again shows that the portion in occupation of defendant is M-6 which is the property belonging to the plaintiffs. The defendant has failed to adduce any evidence or examined any witness from the Municipal Corporation of Delhi to corroborate his case that the portion in his possession belongs to M.C.D. On the other hand, the documents proved by the plaintiff sufficiently prove that the portion in possession of the defendant is a part of land of which the plaintiffs are the owners and that defendant has no right/title in the suit premises.

12. The defendant has claimed in his written statement filed on 17th November 82 that he is in possession of the suit property since last more than 15 years which implies that he is in possession of the suit land since about 1967. Similar is the deposition of the defendant who had deposed on 18.4.2001 that he is in occupation of the suit land since last more than 33 years. However, there is not a single document which has been produced by the defendant to prove his possession since 1967. The earliest document which has been filed by the defendant is dated 4.10.71. Even if the claim of the plaintiffs is not believed that till 1982 defendant was sitting on the municipal land adjoining to the property of the plaintiffs and he made encroachment only in around 1982, then too, the defendant has been able to show his possession in suit property only

since 1971. The suit for possession has been filed on 20.9.82 i.e. within the period of 12 years and thus, the suit of the plaintiff is maintainable.”
(underlining added)

6. I am of the opinion that the first appellate court has rightly set aside the findings of the trial court by which the trial court disbelieved the deposition of the attorney of the respondents/plaintiffs on the ground of lack of personal knowledge inasmuch as the ownership of the respondents/plaintiffs was proved by means of the documentary evidence being the sale deed and the site plan attached thereto, and which is taken with the fact that the appellant/defendant failed to lead any evidence to show that he was encroaching/squatting on municipal land. The first appellate court has also rightly held that though originally when the suit was filed it can be said that the trial court had no pecuniary jurisdiction, however, during pendency of the suit the pecuniary jurisdiction of the trial court was raised and therefore, on the date of decree the trial court had the necessary pecuniary jurisdiction and consequently it could not be held that decree was passed by a court which did not have pecuniary jurisdiction.

7. Before this Court, counsel for the appellant/defendant vehemently argued two aspects. The first aspect was that since the first appellate court arrived at a finding that the suit as originally filed was filed in a court not having pecuniary jurisdiction, the first appellate court

therefore should not have given any finding on any other issues and in fact should have returned the suit to the court of appropriate pecuniary jurisdiction. It is also argued on behalf of the appellant/plaintiff that the evidence which is led of the power of attorney holder of the respondents/plaintiffs cannot be looked into because he admitted in cross-examination that encroachment was not done in his presence besides the fact that an attorney holder who has no personal knowledge cannot depose.

8. In my opinion, both the arguments urged on behalf of the appellant-defendant are misconceived and this appeal is liable to be dismissed.

9. Firstly, even assuming that the witness PW-2 on behalf of the respondents/plaintiffs admitted that the value of the suit property was Rs.1.5 lacs, however, this admission is not an admission that the value of the suit property was Rs.1.5 lacs on the date of filing of the suit. The admission made in the cross-examination since it does not specify the valuation to be on which date, it can safely be held that the valuation of the suit property which was being deposed to by PW-2 was on the date of giving his evidence and not on the date of filing of the suit. Therefore, it cannot be held that the suit was filed in a court which did not have pecuniary jurisdiction as on the

date of filing of the suit the pecuniary jurisdiction of the civil court was only up to Rs.1 lac. Another reason for sustaining the conclusion of the first appellate court that the civil court had jurisdiction is because a court has to have pecuniary jurisdiction on the date of passing of the decree, and in the present case, it is not disputed that as on the date of decision by the trial court, the pecuniary jurisdiction of the trial court was enhanced to Rs. 5 lacs and therefore, even if the admission in the cross-examination is taken for the value of the property to be Rs. 1.5 lacs, on the date of filing of the suit, however, since on the date of passing of the decree, civil court had the necessary pecuniary jurisdiction, it cannot be said that the suit could not have been decided by the trial court.

10. So far as the issue of lack of entitlement of power of attorney to depose, all that need to be said is that once the sale deed is otherwise proved on record alongwith its site plan, the mere fact that the so called encroachment did not take place in the presence of PW-2 cannot mean that the suit for possession would not be maintainable inasmuch as what is material is not the knowledge of encroachment but the fact that there is an encroachment, and that encroached portion is in the possession of the appellant-defendant which is proved to be owned by respondents/plaintiffs

as per the sale deed. Once the appellant-defendant is found to be in encroachment of a part of plot no.M-6 which belongs to the respondents-plaintiffs, the suit for possession had to be decreed.

11. A second appeal is maintainable only if a substantial question of law arises under Section 100 CPC. In view of the above, no substantial question of law arises and therefore, there is no merit in the appeal and the same is therefore dismissed with costs of Rs.50,000/- inasmuch as encroachment on properties belonging to owners should not be allowed and that too by falsely continuing with the litigation. The Supreme Court in the case of *Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249* has held that it is high time that in frivolous litigation actual costs must be imposed. I am also entitled to impose actual costs as per *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi)* *Chapter VI Part I Rule 15*.

MARCH 06, 2014
ib/Ne

VALMIKI J. MEHTA, J.