

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

+ **RSA No.10/2014**

% **24th February, 2014**

MEHARBAN (DECEASED) Through LRs. Appellant
Through: Mr. Lalit Kumar Jha, Advocate.

VERSUS

GNCT OF DELHI & ORS. Respondents
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM 787/2014 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM 789/2014 (for condonation of delay in filing the appeal)

CM 790/2014 (for condonation of delay in re-filing the appeal)

For the reasons stated in the applications, the delay in filing and re-filing the appeal is condoned.

Applications are accordingly disposed of.

RSA No.10/2014

1. This regular second appeal impugns the judgment of the first appellate court dated 23.4.2013 by which the first appellate court set aside the judgment of trial court dated 20.9.2010. Trial court by its judgment dated 20.9.2010 had decreed the suit for possession filed by the appellant/plaintiff to the extent of holding that appellant will not be entitled to possession but he will have a right to claim damages/compensation on account of illegal dispossession by the respondent/Govt. of NCT of Delhi from the suit land.

2. The facts of the case are that suit land comprising of 6 bighas and 12 biswas (approx 6600 sq. yds) in village Saqdarpur, Delhi was owned by one Shamir who was the second husband of Mst. Jainab/Jenab. From the wedlock of Shamir and Mst. Jainab one son Kabir was born and who expired before Mst. Jainab. Mst. Jainab, therefore, became the non-occupancy tenant with life interest in place of her husband Shamir by virtue of Section 22 of the Agra Tenancy Act, 1901. Appellant/plaintiff is the son of Mst. Jainab, not through Shamir, but through her earlier husband Hakim Ali. Appellant/plaintiff on the death of Mst. Jainab got himself substituted as an occupancy tenant of the suit land on the basis of a Will dated 27.1.1949 of Mst. Jainab in his favour. In favour of the appellant/plaintiff a mutation order was passed and which is dated 22.10.1955 Ex. DW-1/2. This was followed by the judgment dated 9.2.1957

RSA No.10/2014 *Page 2 of 14*

passed by the court of competent officer Ex. DW-1/3 in favour of the appellant/plaintiff under the Evacuee Interest (Separation) Act, 1951. At a later point of time a report was made by an Assistant Custodian (New Delhi) in the year 1969 Ex. DW-1/4 for cancelling the rights of appellant/plaintiff, and in which it was stated that the appellant/plaintiff had made an application on 12.7.1968 to the Chief Settlement Commissioner claiming that the land in his possession was for more than 20 years and his rights be separated in the mutated land on account of the death of Mst. Jainab the earlier recorded occupancy tenant of the suit land, however the mutation was wrongly effected by mutation No. 609 as rights under Section 22 cannot be bequeathed by a Will. Thus mutation order in favour of appellant/plaintiff was hence set aside by the Assistant Collector First Grade vide order dated 9.3.1959 on finding that appellant Meharban was not a successor of Shamir in terms of Section 22 of the Agra Tenancy Act, 1901 because he was not the natural son of Shamir but was the son of Hakim Ali the first husband of Mst. Jainab. An order was passed by the Dy. Custodian, Delhi dated 16.3.1970 Ex. DW-1/5 holding that the appellant/plaintiff was not entitled to rights of an occupancy tenant because of the fact that he is not the natural son and, therefore, not the legal heir of Shamir, and had no entitlement under Section 22 of the Agra Tenancy Act, 1901 which is only for a natural son.

This order of Dy. Custodian dated 16.3.1970 became final and the appellant was dispossessed from the suit land. At this stage, the subject suit was filed claiming that appellant/plaintiff was in fact the son of Shamir and Mst. Jainab. As already stated above, trial court decreed the suit to the extent of granting compensation, but the appellate court reversed their judgment and held that the appellant/plaintiff has no right as an occupancy tenant of the suit land on both grounds that rights claimed by the appellant/plaintiff did not come within Section 22 or Section 11 of the Agra Tenancy Act.

3. Some of the relevant paras of the judgment of the first appellate court, and with which I completely agree, are paras 21, 34, 35, 36, 37, 38, 41, 42, 43, 44 and 45 and which are reproduced as under :

21. Before proceeding further, the provisions of law which are applicable to the case at hand ought to be noticed. By virtue of section 3 of the Delhi Laws Act, 1915, the provisions of the Agra Tenancy Act, 1901 were extended to Delhi with effect from 1.4.1915. Section 6 of the Agra Tenancy Act, 1901 lays down the classes of tenants for the purposes of the said Act. Section 11 provides that a tenant who has held the same land continuously for a period of twelve years shall have a right of occupancy in such land. Section 18 (a) of the Act provides that the right of occupancy shall be extinguished when the tenant dies leaving no heir entitled under the Act to inherit it. Section 19 of the Agra Tenancy Act provides that all tenants other than permanent tenure holders, fixed rate tenants, ex-proprietory tenants or occupancy tenants are non-occupancy tenants. Section 22 of the said Act provides for succession to tenancies. The same reads as under:

“22.Succession to tenancies – When an ex-property tenant, an occupancy tenant or a non-occupancy tenant (other than a thekadar) dies, his interest in the holding shall devolve as follows - (a) on his male lineal descendants in the male line of descent, and
(b) failing such descendants on his widow till her death or remarriage, and
(c) failing such descendants, and widow, on his brother being a son of the same father as the deceased,
(d) on his daughter's son, and
(e) failing such daughter's son, the nearest collateral male relatives in the male line of descent:

Provided that no such daughter's son or collateral relative shall be entitled to inherit who did not share in the cultivation of the holding at the time of the tenant's death.”

34. Coming to the record exhibited by DW-1 Sh.SS Parihar, Ex.DW-1/1 is the report dated 26.9.1955 of S.Kartar Singh, Naib Tehsildar (Composite Properties). His report was in respect of the suit land. In the same, it is stated that from the record it was disclosed that Mst Jainab - non evacuee occupancy tenant died issueless and as per law the property reverted to the owners i.e. the State. It was stated that vide mutation No.609, the occupancy rights were sanctioned in favour of Meharban Ali on the basis of registered Will dated 27.1.1949 by the Tehsildar, Delhi, on 30.3.1954. It was stated that the occupancy rights were created by Shamir who was the husband of Mst.Jainab and their son Kabir had died. It was stated that upon the death of Kabir and Shamir, the rights devolved on Mst.Jainab. Rights of Mst.Jainab could not be transferred to Meharban Ali as he was not the son of Shamir. It was stated that since the occupancy rights came to an end upon the death of Mst.Jainab, the mutation in favour of Meharban Ali was recommended to be cancelled.

35. Ex.DW-1/2 is an order dated 22.10.1955 of the Court of the Competent Authority in case No.146 by which it was directed that the suit land would be considered as “composite property” as Mst.Jainab had died issueless and upon her death the

occupancy tenancy rights came to an end. Ex.DW-1/3 is copy of a judgment dated 9.2.1957 passed by the Court of Competent Officer in the proceedings under the Evacuee Interest (Separation) Act, 1951. This judgment refers to an application dated 22.10.1955 of the Custodian regarding the matter of the land in question reverting to the owners on account of Mst.Jainab having died issueless. The said Court observed that the said matter was not relevant and directed the Custodian to file a fresh information application as provided for under section 6(1) of the Evacuee Interest (Separation) Act 1951.

36. Ex.DW-1/4 is a report of the Assistant Custodian (Rural) New Delhi dated 1969. The report states that Sh.Meharban had made an application on 12.7.1968 to the Chief Settlement Commissioner (CSC) claiming that the land were in his possession for twenty years and that his ancestors Mst Jainab was the occupancy tenant and after her death Sh.Meharban came into possession and himself acquired the rights of occupancy tenant under the Agra Tenancy Act as he remained in uninterrupted possession for more than twelve years. It was stated that on this basis, Sh.Meharban had requested that his rights be separated. As per the report, the matter was enquired and it was found that Mst.Jainab was the recorded occupancy tenant of the lands and after her death, her rights were mutated in favour of Meharban vide mutation No.609. Subsequently, the mutation was set aside by the Assistant Collector Ist Grade vide order dated 9.3.1959, as it was found that Meharban was not a successor described under Section 22 of the Agra Tenancy Act. It was reported that now Meharban had applied for declaration of his non-occupancy rights into occupancy rights on the basis of his occupation of twelve years. The report was sent to the office of the Chief Settlement Commissioner for orders on the same.

37. Ex.DW-1/5 is the order passed by the office of Deputy Custodian, Delhi dated 16.3.1970. The said order states that the application of Meharban dated 12.7.1968 for separation of his rights in the lands was forwarded by the Chief Settlement Commissioner vide letter dated 3.2.1970 for determination. By the said order, the Deputy Custodian held that Meharban was not

entitled to any rights in the lands as he was not an occupancy tenant. It was held that Mst.Jainab was earlier married and upon the death of her husband, she re-married and out of this wedlock Sh.Meharban was born. It was found that rights of Mst.Jainab stood determined upon her death. It was held that Meharban was in unauthorized occupation of the land and was liable to be evicted there from.

38. Ex.DW-1/6 and Ex.DW-1/8 are the statements of Meharban Ali recorded in the said matters. The same contain two statements of Sh.Meharban recorded on 26.2.1969 and 7.8.1969. The same are extremely vital and are therefore being reproduced:-

“Present Shri Meharban son of Hakim Ali aged 75 years resident of village Babarpur Delhi on SA

I am the son of Jenam w/o Hakim Ali. Hakim Ali died when I was three or four months old. My mother Jenam married to an other person Shamir when I was about 5 years old. Jenam expired about 4 or five years before the partition of the country. The land under dispute were owned by Shamir & after his death, this land came to my mother Jenam. Jenam gave birth to a son whose father was Shamir and he too expired when he was about 12 years old. My mother had no daughter from Shamir. I had a brother who was younger to me & he died in his childhood. Again said that I had no brother from my father Hakim Ali but I had one from Shamir when my mother got married second time. His name was Qabir & he died when he was 12 years old. The land under dispute is owned by Mst, Jamila Khatoon & this land was under occupancy rights of Shamir and his father and fore fathers. Before Mst.Jamila Khatoon became the owner of this land, its prior owners were Loni-walas. The land of which I am claiming for occupancy rights are kh. No.158, 746/650/100, 235, 236, 156, 159, 234, 243, 218, 219, 220, 246 & 172 total 3..... Village Saqdarapur. I have already produced copies of khasra girdawari already produced on different dates. I have already produce Fard Badar No.7 which was sanctioned on 2./1.1969 & I was declared occupancy tenant.

Thumb impression

Sd/- 26.2.1969”

“Statement of Meharban son of Hakim Ali aged 75 years r/o Babarpur On SA

My father died when I was a child. My mother remarried Samir Khan who died issueless about 50 years back. My mother Mst.Zainab left a will in my favour registered on 27.1.1949. I produce for the inspection of the court the original will & its attested copy Ex.A/1 (Original seen & returned). Before my mother's mother, I was cultivating the land as a tenant at will & I produce a certified copy of Jamabandi for the year 1944-45 Ex.A/2. I am now in possession of the land as occupancy tenant on the basis of the will & I have also become a Bhumidar of the land being a pre-partition tenant. As the land is in urban area now, I am not liable to be evicted. I close my case.

Sd/- 7.8.1969”

41. Thus while before the competent authorities Sh.Meharban Ali claimed that he was the son of Mst. Jainab from her second marriage with Shamir who was an occupancy tenant, before the Trial Court Sh.Meharban Ali claimed that he was the biological son out of the wedlock between Mst. Jainab and Shamir. The reason for changing his stand before the Trial Court is not far to seek. I have already referred to the provisions of Section 22 of the Agra Tenancy Act 1901. Section 22 (b) of the said Act provides that the rights of occupancy of a tenant devolves on his male lineal descendants in the male line of descent failing which upon his widow till her death or re-marriage. Further Section 18 (a) of the Agra Tenancy Act provides that the right of occupancy stand extinguished when the tenant dies leaving no heir under the said Act to inherit it. There is no provision for inheriting occupancy rights on the basis of a will. Thus where the occupancy tenant does not leave behind a biological male heir, the occupancy rights devolve upon the widow of the tenant and upon her death or remarriage, the same stands extinguished.

42. As per the statements of the plaintiff - Meharban Ali recorded before the authorities and proved as Ex.DW-1/6 and DW1/8, the occupancy rights were of Shamir, his step-father. The son of Shamir born from Mst.Jainab died when he was twelve years old. Shamir did not leave behind any male lineal descendant since Meharban was not his biological son. Upon the death of Shamir, the occupancy rights devolved upon his widow Mst.Jainab who had the rights of occupancy till her death. Upon the death of Mst.Jainab the occupancy rights in the lands came to an end. The plaintiff Sh.Meharban Ali could not claim to have inherited any occupancy rights in the suit lands either on the basis of the Will or being the son of Mst.Jainab.

43. In fact upon the death of Mst. Jainab, Sh.Meharban Ali had obtained mutation of the lands in question in his favour by the revenue authorities by virtue of the registered will of Mst. Jainab. The said mutation was cancelled by the Assistant Collector Ist Grade vide order dated 9.3.1959 for the reason that the occupancy rights of Jainab came to an end upon her death. At the same time Sh.Meharban Ali had also invoked the jurisdiction of the Competent Authorities under the provisions of the Administration of Evacuee Property Act, 1950 and the Evacuee Interest (Separation) Act 1951 to have himself declared as an occupancy tenant. These proceedings came to a naught when these very findings were recorded in the order passed by the office of Deputy Custodian, Delhi dated 16.3.1970 (Ex.DW-1/5). He was dispossessed from the lands in 1971 by the government where a school came to be set up. Faced with a situation that he was held to be an unauthorized occupant of the lands, he filed the present civil suit claiming that he himself acquired the status of occupancy tenant by virtue of his possession for more than twelve years and that he was the biological son of Shamir and Mst. Jainab.

44. The learned Trial Court has returned a finding that the plaintiff Meharban was the biological son of Shamir and Mst.Jainab. These findings were based on the evidence of the Plaintiff Meharban Ali, PW-1 Bakshi, PW-2 Abdul Wahid and PW-3 Aslam. Reliance was also placed on Ex.PW-1/5 which is a

receipt. However, the learned Trial Court has failed to consider Ex.DW-1/6 and Dw1/8 which are admitted statements of the plaintiff Meharban Ali recorded in the proceedings initiated by him before the Competent Authorities / Custodian. The plaintiff himself has stated that the occupancy rights were of Shamir and that he was not the biological son of Shamir. In view of the said statements of Meharban Ali, the findings of the learned Trial Court regarding his paternity can not be sustained and are set aside.

45. The plaintiff Meharban Ali had further contended that since he himself was in occupation of the suit lands for more than twelve years, he acquired the rights of an occupancy tenant in such lands. Reliance was placed on Section 11 of the Agra Tenancy Act for this purpose. I am afraid even this contention can not be upheld. The reason for the same is that Section 6 of the Act enumerated five classes of tenants and does not recognize possession under any other capacity. Section 11 of the Act provides that a “tenant” who has held the same land for continuous period of twelve years shall have a right of occupancy in such land. The plaintiff Meharban RCA 53/2011 18/22Ali claimed that he continued to occupy the lands in question after the death of his mother Mst.Jainab. I have already held that the occupancy rights of his step father Shamir in the lands came to an end after the death of his other Mst.Jainab and the plaintiff could not inherit any rights either by virtue of the will or his relationship as he was not the male lineal descendant of Shamir. The continued occupation of Meharban Ali in the lands upon the death of Mst.Jainab was not in any capacity recognized under the Agra Tenancy Act. Thus Meharban Ali not being a tenant within the meaning of Section 6 of the said Act was not entitled to any benefit of him remaining in occupation of the lands for any period much less period of twelve years. Thus the findings of the learned Trial Court that the plaintiff Meharban Ali acquired the rights of occupancy tenant also cannot be upheld and are set aside.” (underlining added)

4. I completely agree with the aforesaid findings and conclusions of the first appellate court because appellant himself had made statements in the proceedings before the Dy. Custodian, Ex. DW-1/6 and DW-1/8 and in which appellant/plaintiff specifically stated that he was the son not from Shamir but from Hakim Ali. Therefore, the first appellate court was justified in holding that the appellant/plaintiff was not the natural son of Shamir but was the natural son of Hakim Ali through his wedlock with Mst. Jainab.

5. Before me, counsel for the appellant again sought to argue that since appellant/plaintiff in para 2 of his plaint has stated that appellant/plaintiff was in occupation of the land as a non-occupancy tenant for 30 years, accordingly, appellant/plaintiff will become the owner by virtue of Section 11 of the Agra Tenancy Act, 1901. Firstly this argument has been rejected by the first appellate court in para 45 of the judgment which I have reproduced above. Further, for claiming tenancy rights under Section 11 the person in his own right must be in occupation for 20 years and not the one claiming rights on devolution by a Will. I also do not find that any evidence has been led to prove this plea because appellant/plaintiff has never claimed rights independently on his own but has always claimed rights to possession of the suit land as a legal heir of Mst. Jainab i.e rights claimed have been in terms

of Section 22 of the Act and through Mst. Jainab and not independent rights of appellant/plaintiff in his own rights of the suit land without claiming the same through Mst. Jainab. In order to appreciate the argument of the appellant reference can be made to para 2 of the plaint which is relied upon by the appellant, but to my mind this para does not contain any detailed facts to succeed in a cause of action required to be pleaded as per Section 11. The said para is reproduced below:

“2. That the plaintiff being an occupancy tenant has been in continuous cultivator possession for the last more than 30 years.”

6. Section 11 of the Agra Tenancy Act, 1901 reads as under:

“11.Acquisition of right of occupancy.- A tenant who has held the same land continuously for a period of twenty years shall have a right of occupancy in such land:

Provided that no tenant shall acquire under this section a right of occupancy in any land which he holds-

- (a) as a lessee holding under a registered lease for a term of not less than seven years, or
 - (b) as a thekedar, or
 - (c) as a sub-tenant,
- and no right of occupancy shall be acquired,
- (d) in sir land, or
 - (e) in any land which is or forms part of a military encamping ground or other area acquired or held for a public purpose, or a work or public utility:

Provided also, that in computing the period of twelve years, any time for which the land has been sublet, or otherwise transferred in contravention of the provisions of this Act, shall be excluded, but shall not be deemed to break the continuity of the tenant's holding.”

7. Para 2 of the plaint, in my opinion, is no pleading in the eyes of law with respect to Section 11 inasmuch as for application to claim applicability of Section 11, the plaint must contain various factual ingredients as per Section 11 before which a person can be successful in establishing independent rights under this Section. The case has been rightly held against the appellant because under Section 22 of the Agra Tenancy Act, 1901 it is only a natural heir/son who can succeed to the rights of the non-occupancy tenant and such a person cannot turn around suddenly to claim rights under Section 11 when he fails under Section 22. The case of the appellant/plaintiff has always been of his entitlement to the rights in the suit land on account of his being the legal heir of Mst. Jainab and in proving that the case of appellant/plaintiff failed inasmuch as his own statement showed that he was not the son of Mst. Jainab through the wedlock with Shamir and as per which wedlock one son Kabir was born and who expired before Mst. Jainab as a result of which only Mst. Jainab had limited legal rights for her life time in terms of Section 22 of the Agra Tenancy Act, 1901. As per Section 22 of the Agra Tenancy Act, 1901 legal rights thereafter cannot devolve by virtue of Will of Mst. Jainab and which was relied upon by the appellant to claim rights in the suit land. Reliance placed by the counsel for the appellant on that para of the judgment of the trial court dealing with

Section 11 serves no purpose because the said para 13 does not show any decipherable reasoning as to how the case of the appellant/plaintiff succeeds by establishing/proving a case under Section 11.

8. In view of the above, no substantial question of law arises to entertain an appeal under Section 100 CPC. The appeal is, therefore, dismissed, leaving the parties to bear their own costs.

FEBRUARY 24, 2014
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VALMIKI J. MEHTA, J