

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

+ RSA No. 35/2014
% 31st January, 2014

JAGDISH Appellant
Through: Mr. Jagdish Singh, Advocate.

VERSUS

OM PRAKASH Respondent
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This appeal is filed against the impugned judgment of the appellate court dated 31.8.2013 which has dismissed the appeal filed by the appellant against the judgment of the trial court dated 28.4.2007. By the impugned judgment two appeals were disposed of inasmuch as two suits were decided by the trial court by its judgment dated 28.4.2007. The disputes in the present case pertained to entitlement of the appellant to 75 sq. yards of the property bearing no. 117, Bhogal Lane/road, Jangpura, New Delhi. One suit was the suit of the respondent herein as plaintiff for injunction and the other suit was the suit filed by the appellant herein seeking declaration and

injunction. The suit of the respondent-plaintiff was for injunction to restrain the appellant from sub-letting, transferring, assigning or parting with possession of the suit property whereas the appellant filed a suit for declaration that he was the owner of the suit property. The injunction suit filed by the respondent herein was decreed whereby the appellant herein was restrained from subletting, assigning or otherwise parting with possession of the suit property including any third party charge or interest in the suit premises comprising of two rooms on the ground floor portion of the subject property. The suit of the appellant was dismissed and it was held that he was not the owner of the suit property. Two appeals therefore were filed by the present appellant, and which have been dismissed by the impugned judgment of the first appellate court, hence this regular second appeal.

2. It is noted that the appellant herein did not dispute that the original owner of the suit property was Sh. Mangat Ram and in whose favour a lease deed was executed by the government which was proved as Ex. DW1/2. The respondent also proved in his suit a copy of the house tax survey report as Ex.PW1/2 which showed the property to be assessed in the name of Sh. Mangat Ram, grandfather of the respondent-plaintiff and the father of Sh. Chandu Lal who was the father of the respondent herein.

3. Appellant had two defences. First defence was that by means of an oral family settlement, appellant was given ownership of 75 sq. yds in the suit property which was situated on a plot of 342 sq. yds. The second defence was that he had become the owner of the suit property by adverse possession.

4. As regards the case of becoming owner by means of a family settlement, both the courts below have held that the appellant has failed to prove this stand inasmuch as, no document worth any name was filed and no credible evidence was led by the appellant on this aspect. It was also not shown how parties were related for a family settlement to be entered into. The trial court in this regard has given the following findings and conclusions in paras 24 to 27 of its judgment and which read as under:-

“24. The version of Defendant (referred to as PW1 in the connected suit) is that there was some family arrangement between the predecessor of the defendant and the Plaintiff whereby it was argued that parties would remain jointly in possession of the suit property. Defendant further deposed that the predecessors of the parties had purchased the said plots with joint money. Defendant further deposed that he is in possession of 75 sq. yds of the property in pursuance of the said agreement. He further averred that he is in possession about 75 sq. yds in the said property since several decades.

25. It is, therefore, clear that the defendant only claims ownership and possession over 75 sq. yds of the suit

property. He has claimed the ownership of the said portion on the basis of some family arrangement between the predecessors of the plaintiff and the defendant and that the suit property was purchased by joint funds. The burden to prove this family arrangement and plea of purchase of the property from joint funds was therefore clear upon the defendant.

26. However, neither any such family arrangement has been proved on record by the defendant nor the defendant has led any evidence in respect of the fact that the suit property was purchased out of joint funds. No particulars/details of the alleged family arrangement have been pleaded or proved by the defendant. Similarly no particulars/details regarding the factum of alleged purchase of the suit property by joint funds have been pleaded or proved by the defendant. Except for a mere self-serving ipse dixit on the part of the defendant, the Defendant has not been able to substantiate his claim by adducing any documentary evidence or any other cogent evidence on record. The assertions of the Defendant are merely bald averments totally unsupported by any evidence.

27. As against this, the Plaintiff has proved the lease deed in respect of the suit property measuring 342 sq. yds. in favour of Mangat Ram which is Ex. DW1/2. The plaintiff has further proved the certified copy of the MCD house tax survey report Ex.PW1/2 in favour of Mangat Ram. The Plaintiff has also adduced the evidence of an independent witnesses in this regard namely Ram Lal PW3 (referred to as DW 3 in the connected suit) who is the owner/occupier of the adjoining house and who has categorically deposed that Late Sh. Mangat Ram was the original owner of the suit property. Further there is no reason to disbelieve the testimony of this witness.

5. I completely agree with the aforesaid findings and conclusions of the

trial court, and I also approve the similar conclusions of the first appellate

court which are contained in para 13 of the impugned judgment which reads as under:-

“13. The respondent in the present appeal namely Om Prakash testified before the trial court as DW-1 and produced the lease deed issued by DDA Ex.DW-1/1 which is not disputed. It has also been admitted by appellant Jagdish (PW-1) that house tax with respect to the suit property is assessed in the name of Mangat Ram (forefather of the respondent). The respondent also examined two witnesses namely Khem Chand(DW-2) and Ram Lal (DW-3) who fully supported the case of the respondent and stated that appellant has been residing as a tenant in the suit premises. The witnesses have remained consistent and confident while facing cross-examination and there is nothing to doubt the veracity and credibility of these witnesses. It also stands clearly proved vide EX DW-1/1 that Mangat Ram (forefather of the respondent) was having exclusive rights over the plot measuring 342 sq. yards, wherein the suit premises falls (75 sq. yards). The appellant, on the other hand, was required to prove by way of sufficient and cogent evidence his right to inheritance with respect to the suit property and further ownership by way of adverse possession. The appellant failed to bring any evidence on record to suggest that forefathers of the appellant had made any contribution towards the purchase of the property in question or that there was some family arrangement by virtue of which the land 75 sq. yards was given to the forefathers of the appellant. The appellant has even failed to specify the relationship between the forefathers of the parties. It is important to note that one affidavit was put to the appellant (PW-1) during his cross-examination Ex.PW-1/D1 to which the appellant has not recorded his categorical denial. The appellant admitted his signatures on this document. On perusal of EX PW-1/D1, it is clear that appellant vide the affidavit in the year 1994 described himself as tenant in the suit property. On

examining the testimony of appellant (PW-1) on this document, it is clear that the appellant has not disputed this document in a categorical manner and he is only recorded that he does not remember having filed any such affidavit or bond at the time of getting water and electricity connection. The signatures have been admitted and on perusal of this document there appears clear admission on the part of appellant that he has been tenant in the suit property. The claim of the appellant that he has acquired ownership with respect to the suit property by way of adverse possession has also been disproved. The document EXPW-1/1 to 27 only show the possession of the appellant with respect to the suit property and further there is no document on record to show that forefather of the appellant was in possession of the suit property since 1923. It has also been pleaded in suit no.276/06 by the appellant that his forefathers continue to be in possession of the suit property since 1923, which apparently is false since the property was given to Mangat Ram on lease by DDA vide Ex.DW-1/1 dated 12.09.1949. The question of forefathers of appellant being in possession of suit property since 1923 does not arise at all.”

6. In fact the second defence of adverse possession which was raised shows that there is no dispute that it was Sh. Mangat Ram, predecessor-in-interest of the respondent herein who was the original owner of the entire suit property situated on a plot of 342 sq. yds.

7. So far as the plea of adverse possession is concerned, the courts below have held that long possession would not be adverse possession and no evidence has been adduced by the defendant to show hostile title adverse to

the plaintiff or his predecessor-in-interest. These observations are contained in paras 41 to 45 of the judgment of the trial court and which read as under:-

- “41. The contention of the Defendant is that he has become the owner of the portion measuring 75 sq. yards by Adverse possession. The defendant, DW-1(referred to as PW1 in the connected suit) deposed that the defendant is the owner of the said plot by way of adverse possession from the last so many decades and neither the Plaintiff nor any body else has ever objected to the ownership or possession of the defendant. The defendant further deposed that the possession of the defendant is open, continuous, visible, exclusive, hostile and adverse from the last so many decades.
42. The defendant further deposed that the defendant and his forefathers continue to be in possession of the said property since 1923 without any hindrance or challenge and without any objection from any corner either from the Plaintiff or his forefathers. He further deposed that thus the defendant and his forefathers are also the owners by adverse possession. He further deposed that the Plaintiff and his predecessors knew well regarding the clear title of the defendant. The defendant further deposed that the defendant is the real owner of the portion under his occupation and Plaintiff has no right in any manner connected with the said portion.
43. It is settled law that for a person to have become owner by adverse possession it is necessary that the possession should be open, hostile, adverse and within the knowledge of the actual owner of the property and amounted to a denial of his title to the property claimed. Permissive possession can never be adverse. It is incumbent upon the person who takes the plea of adverse possession to substantiate his plea by cogent evidence that he had openly asserted his title to the property and such open and hostile possession was very much within

the knowledge of the true owner and was in denial of his title.

44. Adverting to the facts of the present case, no evidence has been adduced by the defendant to show that the defendant or his forefathers ever openly asserted that their possession was hostile and adverse to that of the Plaintiff or his predecessors in interest.
45. The defendant has only deposed that his forefathers were in possession of the suit property since 1923 without any hindrance or any objection from any corner. This itself is not sufficient to substantiate the plea of adverse the possession. At the most it may be taken that the defendant and his forefathers were in defacto possession of a portion the suit property. Mere continuous possession is not necessarily adverse. However, there is not even an iota of evidence on record to show that the possession of the Defendant or his predecessors was adverse to that of the Plaintiff and his predecessors. Further it is essentially impossible to decide the plea of adverse possession in the absence of the plea/proof of the starting point as to when the possession became adverse. There is absolutely nothing on record to show as to when, how and under what circumstances the possession of the Defendant became adverse to that of the Plaintiff.”

8. In view of the above, courts below have rightly held that the appellant is not an owner by adverse possession of the 75 sq. yds of the portion of property bearing no. 117, Bhogal Lane/road, Jangpura, New Delhi. I may also add that the plea of adverse possession is a plea which is mutually destructive of the plea of family settlement inasmuch as, to raise the plea of adverse possession, firstly, appellant had to concede to the ownership of Sh.

Mangat Ram and thereafter his successors-in-interest including the
RSA 35/2014

respondent herein, and therefore, the case as set up by the appellant clearly lacks credibility.

9. A second appeal under Section 100 lies only if there is a substantial question of law. The aforesaid discussion shows that there is no question of law involved, much less a substantial question of law, as required under Section 100 CPC for this Court to interfere. The appeal being without any merit is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 31, 2014
ib

VALMIKI J. MEHTA, J.