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

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Date of Decision: 24.11.2015

% **RSA 404/2015**

HARI KISHAN

..... Appellant

Through: Mr. Brinda Singh, Advocate

versus

M/S SCINDIA POTTERIES & SERVICES PVT LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

C.M. No.28090/2015

By this application, the appellant seeks condonation of 112 days delay in filing the appeal. For the reasons stated in the application, the same is allowed.

RSA 404/2015

1. The present second appeal is directed against the judgment and decree dated 25.04.2015 passed by the learned ADJ-3 (Central), Tis Hazari Courts, Delhi in RCA No.20/2012 preferred by the appellant/defendant to assail the judgment dated 28.02.2012 and the decree dated 24.03.2012 passed by the

learned Civil Judge (North), Delhi in Civil Suit No.144/2010. By the impugned judgment, the said first appeal of the appellant/defendant has been dismissed and the judgment and decree of the Trial Court has been affirmed. By the said original judgment and decree, the suit filed by the respondent/plaintiff against the appellant/defendant for possession was decreed.

2. The respondent/plaintiff had filed the suit for possession of quarter no.74 in Scindia Potteries Labour Quarters Complex, Sarojini Nagar, New Delhi. The respondent/plaintiff claimed that it is a company incorporated under the Indian Companies Act and earlier it was incorporated as Gwalior Potteries (Delhi) Ltd. and later its name was changed to Scindia Potteries Ltd.; then to Scindia Potteries & Services Ltd., and; finally to Scindia Potteries and Services Pvt. Ltd.

3. The plaintiff claimed that it is the owner of a huge property at Sarojini Nagar by virtue of a registered perpetual leased deed dated 18.01.1921. The original lease deed was obtained by Development Corporation of India Ltd. on the terms and conditions incorporated in the said lease. Clause 11 of the said lease permitted the lessee to assign and transfer the demised land. The plaintiff stated that the original lessee, accordingly, alienated the suit property in favour of the plaintiffs predecessor-in-title by virtue of an indenture in 1923. The plaintiff further stated that the Delhi Administration sought to acquire the leased land. However, vide notification dated 05.02.1999, the entire land forming part of Khasra No.436 admeasuring 147 biga in nazul estate of Arkpur Bagh Mochi was de-notified and the plaintiff company continued to be its user. The plaintiff had built a large number of

workers quarters on the land which were allotted to its workers in the pottery factory for their residence. The plaintiff stated that it continued to give the said quarters for the use as residence to various workers during the time when they were in service and employment. In 1969-70, the factory of the plaintiff company was virtually closed down and substantial number of workers were retrenched. The plaintiff stated that the defendant illegally and authorisedly occupied quarter no.74 sometime in 1993. He was residing in the said quarter with his family even though he was a government servant. He had been requested to vacate the quarter several times by the officials of the plaintiff, but to no avail. Consequently, the suit was filed.

4. The defendant upon being summoned filed his written statement to contest the suit. The defendant disputed the ownership of the suit property as claimed by the plaintiff. The defendant also claimed to be in occupation of suit property in his independent capacity and claimed to have become virtual owner by way of adverse possession. He claimed that he had been in occupation of the suit premises since prior to the year 1972, and for over a period of three decades neither the plaintiff nor any other person had come to the suit premises or raised any claim over the same.

5. On the basis of the pleadings, the Trial Court framed issues on 04.12.2003. Issue no.2 pertained to the claim of ownership by the appellant/defendant by virtue of adverse possession. Issue no.3 pertained to the claim of ownership of the suit property by the plaintiff. The parties led their respective evidence.

6. The Trial Court while deciding the issues in favour of the plaintiff and decreeing the suit, returned the finding that the respondent/plaintiff had

the locus standi to file the suit and that the plaintiff company was the owner of the suit property. The Trial Court also returned the finding that the defendant had not become the owner of the suit property by virtue of adverse possession.

7. The first appeal preferred by the appellant/defendant has met the same fate. Before the First Appellate Court, the appellant sought to lead additional evidence by invoking Order 41 Rule 27. On the basis of the additional evidence led by the appellant/defendant, the First Appellate Court proceeded on the basis that the appellant/defendant had been able to establish that he was residing in the suit property since the year 1976. However, the First Appellate Court – like the Trial Court, held that the appellant/defendant had not been able to establish that his possession of the suit property was openly hostile to the knowledge of the true owner, namely, the respondent/plaintiff and, consequently, the plea of adverse possession was rejected by the First Appellate Court as well.

8. Before this Court, the submission of counsel for the appellant is twofold. Learned counsel, firstly, submits that the respondent/plaintiff had not been able to establish its ownership in respect of the suit property. Learned counsel submits that the perpetual lease deed dated 18.01.1921 was executed by the Secretary to the Govt. of India in favour of Development Corporation of India, which was duly registered on 04.04.1921 in the office of the Sub-Registrar, Kashmiri Gate, Delhi. The said lease deed in Ex. PW-2/1. Learned counsel submits that the only document produced by the plaintiff to claim ownership was the letter dated 31.10.1962 Ex. PW-1/1 issued by the L&DO in favour of the plaintiff showing change of name of

the plaintiff company from Gwalior Potteries Pvt. Ltd. to Scindia Potteries Pvt. Ltd. Admittedly, no other document of ownership in favour of the plaintiff company in respect of the suit property was produced.

9. I do not find any merit in this submission. The Crown Grant was made in favour of Gwalior Potteries (Delhi) Pvt. Ltd. and it did not require any formal indenture being crated since it was a Crown Grant. In any event, there is a registered perpetual lease Ex. PW-2/1. The communication dated 31.10.1962 Ex. PW-1/1 recognises the plaintiff company as the successor of Gwalior Potteries (Delhi) Pvt. Ltd. In the face of the said communication Ex. PW-1/1 read with the earlier grant, and in view of the provisions of Government Grant Act, it does not lie in the mouth of the appellant to challenge the ownership of the respondent/plaintiff qua the suit property. The perpetual lease stands mutated in the name of the respondent. There is no mandatory requirement in law, that a fresh lease should have been executed in favour of the respondent.

10. The next submission of counsel for the appellant is that the appellant had been able to establish its peaceful occupation of the suit premises since 1976 – as accepted by the First Appellate Court. The suit was filed by the respondent/plaintiff only on 31.07.2002 and was barred by limitation and the appellant had become the owner of the suit premises by adverse possession.

11. The plea of adverse possession has been exhaustively considered and dealt with by the Trial Court and the First Appellate Court. The findings returned by both the courts below are consistent and concurrent and are premised on the evidence led by the parties. This court would not interfere with the concurrent findings of fact if they are premised on the evidence

brought on record, by applying the law, unless it is pointed out that there is a perversity in the said findings.

12. The Trial Court while dealing with the said issue, inter alia, took note of the cross examination of the defendants witness DW-1 recorded on 04.01.2012, when he stated that he did not know who is the owner of Scindia Pottery Complex. He also denied the suggestion that the plaintiff company was the owner of the property in dispute. He failed to state as to who was the owner of the property in dispute prior to his coming into possession. The Trial Court observed that for the defendant to succeed in his plea of adverse possession, he has to show that his possession was hostile to the true owner. The Trial Court took note of the judgment of the Supreme Court in ***P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.***, AIR 2007 SC 1753, wherein the Supreme Court has observed:

“There must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence. While dealing with the aspect of intention in the Adverse possession law, it is important to understand its nuances from varied angles.

A peaceful, open and continuous possession as engraved in the maxim nec vi, nec clam, nec precario has been noticed by this Court in Karnataka Board of Wakf v. Government of India and Others [(2004) 10 SCC 779] in the following terms: "Physical fact of exclusive possession and the animus possidendi to hold

as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is CS No. 144/10 16 not a pure question of law but a blended one of fact and law.

Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession”

It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper owner of the property. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper owner.

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.

New Paradigm to Limitation Act : The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned: once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession. The ingredients of CS No. 144/10 17 adverse possession have succinctly been stated by this Court in S.M.

Karim v. Mst. Bibi Sakina [AIR 1964 SC 1254] in the following terms: "Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found." See also M. Durai v. Madhu and Others 2007 (2) SCALE 309] The aforementioned principle has been reiterated by this Court in Saroop Singh v. Banto and Others [(2005) 8 SCC 330] stating: "29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak)".

13. The Trial Court also took note of the judgment of this Court in **Poonam Sharma v. M/s. Prem Nath Anand Buildcon Pvt. Ltd. & Ors.** in Regular First Appeal No.74/2005 decided on 11.01.2012, wherein reliance had been placed on **L.N. Aswathama v. P. Prakash**, (2009) 13 SCC 229. This Court in **Poonam Sharma** (supra) had observed:

"17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without CS No. 144/10 18 animus possidendi....."

14. Notice was taken on the judgment of the Supreme Court in **T. Anjanappa v. Somalingappa**, (2006) 7 SCC 370, wherein the Supreme Court has observed that the concept of adverse possession contemplates hostile possession, i.e. possession which is expressly or impliedly in denial

of the true owner. Therefore, a person who claims title by adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. Reliance was also placed on *Annasahed Bapusaheb Patil v. Balwani*, (1995) 2 SCC 543.

15. The Trial Court, after referring the aforesaid decisions, observed as follows:

“20) In the present case as well it raised the clear presumption that if the defendant are not sure who is the true owner the question of his being in hostile possession and the question of denying title of the true owner do not arise. The witness also deposed on oath that he do not remember what the words ‘Adverse Possession’ stands for & he stated that he assumed himself to be owner of the property in question since 1974-1975. The witness deposed that he has no knowledge that Scindia Potteries pays property tax in respect of the leased property to the Government. He further stated that he never attempted to pay any property tax no tender the same to the authorities. The witness is not even aware of the fact the NDMC leveled property tax on the property in question. It is clear that defendant is not paying any property tax or other tax in respect fo the suit property. The testimony of DW-2 is also on the lines of DW-1 & he also could not comprehend the meaning of the term ‘adverse possession, cause of action & locus standi’ used in his affidavit during cross examination. He clearly & categorically deposed on oath that his father claimed ownership of the suit property but he has not purchased from any one & also stated that he had not claimed any right or title or interest in the suit property as his father still alive & he is living with his father. The witness also could not tell that the suit quarter is a part assessed to house tax by NDMC. The witness is not aware about the property being tax by NDMC or CS No. 144/10 20 the plaintiff company being paying the property tax”.

16. The First Appellate Court has concurred with this finding. Had the appellant been openly exercising rights of ownership over the suit property, he would have been so representing himself before the municipal authorities and discharging the obligation to pay municipal taxes. He has not done the same, as is evident from the above extracted discussion.

17. The aforesaid discussion certainly cannot be said to result in a patently perverse finding. Consequently, there is no occasion for this Court to interfere with the impugned judgment. Accordingly, the appeal is dismissed.

18. Dasti.

VIPIN SANGHI, J

NOVEMBER 24, 2015

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