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

+ **Date of Decision: 29.07.2015**

% **RSA 277/2015**

BHAGWAN SINGH

..... Appellant

Through: Mr. Kunwar C.M. Khan and Ms.
Ashma Chaudhary, Advocates

versus

M/S MODERN SCHOOL & ANR

..... Respondent

Through: Ms. Raavi Birbal and Mr. Ravindra
Kumar, Advocates

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (OPEN COURT)

Cav No.783/2015

Since the caveator has put in appearance, the caveat stands discharged.

RSA 277/2015 & C.M. Nos.13351-52/2015

1. The present second appeal is directed against the judgment dated 25.04.2015 passed by learned ADJ-02, Patiala House Courts, New Delhi in RCA No.10/2009, whereby the First Appellate Court has allowed the said appeal preferred by the respondents/defendants in the suit and set aside the decree passed in favour of the appellant/plaintiff by the Trial Court vide

judgment dated 21.07.2007, thereby declaring that the plaintiff is entitled to occupy the suit premises, i.e. Quarter No.22, Modern School Compound, Barakhamba Raod by adverse possession.

2. The father of the plaintiff Sh. Avtar Singh was in employment with the respondent school. He retired from service on 30.06.1991. As an incidence of his employment, Sh. Avtar Singh was provided accommodation, i.e. the suit property on license basis for his residence so that he is able to discharge his duties. Sh. Avtar Singh expired on 10.05.2003. After the demise of Avtar Singh, the defendant school filed a civil suit for recovery of possession along with arrears of mesne profits, future mesne profits, interest and costs against the legal representatives of late Sh Avtar Singh, namely, Sh. Bhagwan Singh – the present appellant, Sh. Mohinder Singh –s/o late Sh. Avtar singh and Smt. Bishambari Devi – w/o of late Sh. Avtar Singh. The suit was filed on 15.12.2003.

3. The appellant then preferred the present suit on 04.12.2004 to seek a declaration that he had become the owner of the suit property by adverse possession, and the relief of injunction to restrain the respondents/defendants from interfering in his peaceful use and enjoyment of the suit property. The defendant appeared in the suit. However, the defendant did not lead any evidence. The stand of the defendant school was that the possession of Sh. Avtar Singh was permissive and the nature of possession continued to remain permissive even after the retirement of Sh. Avtar Singh. The defence was that the plaintiff/appellant was not in hostile possession of the suit premises.

4. As noticed above, the suit of the plaintiff was decreed by the Trial Court.

5. In first appeal, the First Appellate Court appreciated the evidence of the plaintiff as well as the legal position with regard to adverse possession, while allowing the appeal.

6. The submission of counsel for the appellant is that the appellant has been in continuous and uninterrupted possession of the suit premises for more than 12 years. He submits that the same has matured into adverse possession. The submission is that even after the retirement of late Sh. Avtar Singh on 30.06.1991, the plaintiff continued to remain in uninterrupted possession, without any protest by the respondent/defendant, for more than 12 years. The suit was filed by the defendant after the expiry of the period of prescription i.e. on 15.12.2003. The title of the plaintiff was perfected on 30.06.2003. Learned counsel further submits that the respondent/defendant never issued any notice requiring either late Sh. Avtar Singh, or the plaintiff to vacate the suit premises prior to the filing of the suit. It is further submitted that the first appeal had been filed only by respondent no.2, i.e. the Principal of the respondent school, and not by the respondent school itself.

7. On the other hand, counsel for the respondent/caveator has fully supported the impugned judgment. It is argued that after the retirement of Sh. Avtar Singh on 30.06.1991, the permissive possession was continued till he passed away on 10.05.2003. Thereafter, the plaintiff and the other legal representatives/occupants were asked to vacate the premises. However, since they did not vacate, the suit for possession was preferred on

15.12.2003. It is submitted that the present suit was filed as a counterblast on 04.12.2004. It is further submitted that the suit for possession filed by the respondent school has since been decreed on 31.01.2015.

8. Having heard learned counsels and perused the impugned judgment, as well as judgment of the Trial Court and the documents placed on record, I am of the considered view that there is absolutely no merit in the present appeal and no substantial question of law arises for consideration by this Court.

9. The First Appellate Court has, in depth, examined and appreciated the evidence brought on record as well as the legal position with regard to the claim for adverse possession. The plaintiff examined himself as PW-1. He claimed that he was residing at the suit property since his birth. He along with his family members have been residing in the suit property since July 1991 without any interference even after the retirement of late Sh. Avtar Singh. He admitted that his father had been in service with the respondent school from 1953 to July 1991, and that the suit property had been allotted to his father. He claimed that the allotment was on permanent basis. He had produced several documents in evidence to show his continued residence in the suit premises. In his cross examination, he admitted that his father late Sh. Avtar Singh was an employee of the respondent, and was residing in the suit premises because of his service. He also admitted that neither his father, nor he had ever claimed before any government authority that they are the owners of the suit property. They never claimed themselves to be the owners of the suit property. He admitted that his father, he and his family members were in mere possession of the suit property. He also admitted that he had

never become the owner of the suit property. He also admitted that Rs.25 was deducted from the salary of his father towards occupation charges. He claimed that his father used to tell him that the suit property had been permanently allotted to him. However, he also admitted that he has nowhere claimed himself to be the owner of the suit property in any document filed by him.

10. The First Appellate Court discussed the law with regard to adverse possession, and applied the same to the present case, as follows:

“18. Adverse possession implies a hostile possession whereby title of the real owner is denied. A person claiming adverse possession has to show that (a) he has been in continuous possession over the particular property for more than 12 years without any break or hindrance (b) his possession is to the exclusion of all other persons (c) the possession is of such a nature that it involves the exercise of rights so irreconcilable with that of true owner as to afford him an opportunity to dispute that possession during the 12 years when he was in process of perfecting his title (d) the possession must be open and hostile to the true owner (e) possession must be nec vi, nec clam, nec precario i.e for the perfection of title it must be adequate in continuity and publicity. Support is drawn from Karnataka Board of Work Vs. Government of India, (2004) 10 SCC 779 at page 785 and S M Karim Vs. Bibi Sakina, AIR 1964 SC 1254.

19. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has requisite animus the period of prescription does not commence. Support is drawn from Mohd. Mohd. Ali Vs. Jagadish Kalita, (2004) 1 SCC 271. The attribute of adverse possession is that it begins with the ouster of owner i.e disseisin. It is an act of displacement of owner by adverse claimant. Disseisin or ouster of owner is the foundation of the title by adverse possession. It remains a growing title till the expiry of 12 years of continuous, open, hostile assertion and enjoyment.

20. *The evidence adduced by the respondent/plaintiff has to be seen in the light of law laid down by Hon'ble Apex Court for claiming ownership by virtue of adverse possession. The respondent/plaintiff has examined himself as PW1. It is clear from the case of the respondent/plaintiff himself that he is son of Lt. Shri Avtar Singh. It is admitted fact that Lt. Shri Avtar Singh was employee of Modern School, Barakhama Road. It is admitted fact that he remained in the services of Modern School from 1953 till 30.06.1991. It is admitted fact that suit property was allotted to Lt. Shri Avtar Singh by virtue of his employment with Modern School and school used to deduct licence fee from his salary. It is admitted fact that Lt. Shri Avtar Singh expired on 10.05.2003. It is admitted fact that Lt. Shri Avtar Singh did not vacate the suit property after his retirement. The appellants/respondents have taken a plea that several reminders and letters were issued to Lt. Shri Avtar Singh to vacate the suit property but in vain. Respondent/plaintiff has taken a plea that Lt. Shri Avtar Singh had shifted to his native village after his retirement. This plea does not find support from the record as no evidence is adduced by the respondent/plaintiff to this effect. Respondent/plaintiff has not disclosed the name of the village or city where Lt. Shri Avtar Singh had been residing after his retirement. No witness from the place where Lt. Shri Avtar Singh was allegedly residing has been examined. The non-examination of any witness calls for an adverse inference against the respondent/plaintiff. A bald plea has been taken by the respondent/plaintiff which cannot be relied upon. It can be deduced from the testimony of PW1 that Lt. Shri Avtar Singh had been residing in the suit property till his death.*

21. *Lt. Shri Avtar Singh was a mere licensee in the suit property. His possession was permissive. He has retired from the services of the appellants/defendants. He was supposed to vacate the suit property after his retirement but did not vacate the suit property. He has never challenged the title of appellants/defendants in the suit property during the course of his lifetime. He has never claimed himself as owner*

of the suit property. There is nothing on the record to show hostile animus of Lt. Shri Avtar Singh qua appellants/defendants. Mere permissive possession even of long duration does not mature into adverse possession. Reliance is placed upon Thakur Kishan Singh Vs. Arvind Kumar, 1994 SCC (6) 591.

22. *The respondent/plaintiff is son of Lt. Shri Avtar Singh. He is PW1. His testimony shows that he has been residing in the suit property since birth and has been in exclusive possession of suit property since July, 1991 i.e after the retirement of Lt. Shri Avtar Singh. He has obtained various documents like passbook of SBI, election I card, office I card, voter slip, ration card, consumer receipt of Usha Gas Services, Reliance mobile connection, school bus passes of his children, progress report of his children, birth certificate of his daughter, newspaper bill, acknowledgment card of SSC examination, notices, receipts and certificates issues by LIC and marriage card Ex.PW1/2 to 17. The photographs Ex.PW1/19 are the photographs showing his possession and control over suit property. The respondent/plaintiff has been residing in the suit property as a family member of Lt. Shri Avtar Singh. A person is supposed to get all these documents once he resides in a particular property. These documents merely reflect that he is residing in the suit property. It cannot be inferred from these documents that occupier or possessor of a house is claiming adversely to the true owner. These documents in no way advance the case of respondent/plaintiff. Support is drawn from Suraj Bali Vs. Lala Mahadev Prasad, AIR 1932 Oudh 46.*

23. *The testimony of PW1 shows that he has been in exclusive possession of the suit property since July, 1991. This does not find support from the record as there is nothing on the record that Lt. Shri Avtar Singh had shifted to some other place by leaving the respondent/plaintiff in the suit property. The respondent/plaintiff is family member of Lt. Shri Avtar Singh who used to reside with him in the suit property so his independent possession of suit property cannot be termed from July, 1991. He came in independent possession of*

the suit property after the death of Lt. Shri Avtar Singh after 10.05.2013. The period of limitation cannot be reckoned from July, 1991.

24. *The testimony of PW1 simply shows that he has been in physical possession and control of the suit property for the continuous more than 13 years without any interference from the appellants/defendants. The possession of respondent/plaintiff is not uninterrupted as it is clear from the pleadings of the parties that a suit no.125/2004/2003 titled as Modern School Vs. Bhagwan Singh was filed by Modern School against the respondent/plaintiff and other legal heirs of Lt. Shri Avtar Singh. The testimony of PW1 does not show that he has openly claimed himself as owner of the property by denying the title of appellants/defendants. PW1 has never claimed himself as owner of suit property. His testimony does not show that there was hostile animus and his possession was adverse to the knowledge of real owner. Animus possidendi is missing from the testimony of PW1. There is nothing in his testimony about the nature of his possession. There is nothing on the record when his possession has become adverse to the real owner. Mere possession how so ever long it may be is not sufficient to mature into adverse possession. To my mind, necessary animus to claim adversely to the true owner is utterly missing. The requisite condition that possession of suit property must be hostile to the true owner is also missing. The evidence adduced by the respondent/plaintiff is not enough to show that he has become owner by virtue of adverse possession.”*

11. It is evident from the decisions of the Supreme Court in **Karnataka Board of Work** (supra), **S.M. Karim** (supra), **Mohd. Mohd. Ali** (supra) and **Thakur Kishan Singh** (supra), that mere uninterrupted possession of the premises for a period of 12 years is not sufficient to vest title in the occupant by adverse possession, as against the owner. Such possession has to be hostile to the knowledge of the owner. It should involve exercise of rights

by the occupant, which are irreconcilable with those of the true owner. It is only then the true owner would get an opportunity to assert his rights as the owner as against the occupant and challenge his claim of title to the property. The possession must be open and hostile to the true owner. The intention of the occupant must be to possess the property as an owner. Unless that intention is manifested openly to the knowledge of the owner, the period of prescription would not commence. The possession of the occupant tantamount to ouster of the owner, not only physically but also should be displayed intendment.

12. In the present case, admittedly, the appellant was occupying the suit premises as a member of the family of his late father Sh. Avtar Singh. The occupation of Sh. Avtar Singh during his employment with the respondent school was permissive. It continued to remain permissive during the lifetime even after his retirement. The case set up by the appellant that the father had shifted after his retirement to native village remained unsubstantiated. The father of the appellant, as noticed above, died on 10.05.2003. Even if one were to proceed on the basis that after the demise of father, the occupation of the appellant could be said to be adverse to the title of the defendant, the suit for possession was preferred by the defendant on 15.12.2003, i.e. within a matter of seven months.

13. The submission of counsel for the appellant is that no notice had ever been served upon the appellant or even his father to vacate the premises prior to the filing of suit has no merit. This is for the reason that prior to filing of a suit against a licensee, no prior notice is required to be served in law, and the filing of the suit itself tantamounts to notice. In fact, in the

present case, the filing of the suit for possession by the defendants on 15.12.2003, itself tantamounted to notice to vacate the premises. The submission that the first appeal had been preferred only by the Principal and not the management of the school has no merit. The memo of parties in the appeal itself shows that the school was the first appellant and the principal was the second appellant. There is no merit in the submission that there was no separate vakalatnama filed on behalf of the school. The principal of the school is the chief executive of the school. There was no necessity of separate authorisation, requiring the principal of the school to represent the school. Pertinently, the school itself has not disowned the action of the principal in preferring the appeal.

14. In view of the aforesaid discussion, I find no merit in this appeal. No substantial question of law arises for consideration by this Court. Accordingly, I dismiss the appeal, leaving the parties to bear their respective costs.

VIPIN SANGHI, J

JULY 29, 2015

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