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

+ **Date of Decision: 14.09.2015**

% **RSA 313/2015 and C.M. Nos.16532/2015 & 16534/2015**

PYAR CHAND Appellant

Through: Mr. R.P.S. Sirohi, Advocate.

versus

JAGJIT SINGH SAWHNEY & ORS Respondents

Through

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

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal has been preferred by the appellant/defendant to assail the judgment and decree dated 24.05.2015 passed by the First Appellate Court, namely District & Sessions Judge (West), Delhi in RCA No.37/2012 preferred by the appellant. By the impugned judgment, the said first appeal has been dismissed, and the judgment and decree passed by the learned Civil Judge (West), Delhi in Suit No.362/2012 filed by the respondents against the appellant have been affirmed.

2. The respondents/ plaintiffs had filed the original suit to seek recovery of possession, mesne profits and damages against the appellant/ defendant. The case of the plaintiffs was that property bearing No. XII/2452-56, 2472-76 and 2482 situated in Basti Punjabiyan, Roshanara Road, Subzi

Mandi was sold in public auction by two separate registered sale deeds dated 18.11.1972 and 16.11.1972 in favour of Sh. Jagdish Rai and Sh. Pravesh, sons of Shri Mulkh Raj and M/s Dharam Singh through their legal heirs, namely Basant Kaur, Jagjit Singh Sawhney and Gurcharan Singh Sawhney, sons of late Sh. Ram Singh Sawhney in equal shares. Subsequently, this property was partitioned by a registered partition deed executed between the said purchasers. Property bearing No. 2452-56 came to the share of plaintiffs in the said partition. Accordingly, the name of plaintiffs was mutated in the record of Municipal Corporation of Delhi with respect to the said property No. 2452-56. The plaintiffs are Sh. Jagjit Singh Sawhney and the legal heirs of Sh. Gurcharan Singh Sawhney.

3. The case of the plaintiffs is that the defendant is in unauthorized occupation of a portion of the suit property, which is shown in the site plan. The plaintiffs stated that the defendant filed Suit No. 128/2000 in order to legitimize his unauthorized occupation of the portion, including the portion constructed without authorization. In his suit, the defendant claimed to be the owner /landlord of a part of property bearing No. 2456. He claimed to be in occupation of a certain portion of the suit property and he also filed a site plan in his suit, which was incorrect. The plaintiffs obtained permission from the said Court for preparation of the site plan. The site plan was prepared and the defendant (plaintiff in Suit No.128/2000) was found to be in possession of a larger area. Consequently, the plaintiffs filed the present suit claiming that the defendant was an unauthorized occupant. They also pleaded that merely because the defendant was in possession for long period of time, his possession did not become adverse to the true owners of the

property, namely the plaintiffs. The plaintiffs stated that in the month of May 2000, they came to know about illegal, unauthorized and hostile possession of defendant when summons in Suit No. 128/2000 was served on them. The plaintiffs claimed damages at the rate of Rs.2,000/- per month since May 2000.

4. In his written statement, the defendant/ appellant, *inter alia*, stated that prior to 03.05.2000, the plaintiffs never claimed possession of the suit property from the defendant. The case of the defendant was that the suit property was originally under the occupation of one Sh.Sahib Singh S/o Sh. Prabhat Singh since the year 1955. Later, Sh.Sahib Singh handed over possession to Sh. Sant Singh S/o Sh. Krishan Singh and he executed a power of attorney on 18.04.1990. Thereafter, Sh. Sant Singh handed over the possession of the suit property to Sh. Om Prakash and executed a GPA on 11.06.1990. Sh.Om Prakash then handed over the possession of suit property to the defendant and executed a GPA on 24.08.1990. Since then, the property was claimed to be under the use and occupation of defendant.

5. On the basis of the pleadings of the parties, the following issues were framed by the Trial Court on 09.08.2001:

- (i) Whether the plaintiffs are the owners of the suit premises? OPP.
- (ii) Whether the plaintiffs are entitled to a decree for possession? OPP.
- (iii) Whether the plaintiffs are entitled to damages, mesne profits for use and occupation as claimed? OPP.

(iv) Whether the suit of plaintiffs is barred by the limitation? OPD.

(v) Whether the defendant has acquired any right by long user and possession over the suit property? If so, to what effect ? OPD.

(vi) Relief.

6. The parties led their respective evidence and examined several witnesses and led in evidence several documents. The plaintiffs established their title by producing the sale certificates Ex.PW-6/1 & Ex.PW-6/2 and the partition deed Ex.PW-6/3. PW-6 Sunil Kumar, UDC from the office of Sub-Registrar-I, Kashmere Gate, Delhi proved the said registered documents. The plaintiffs also examined Sh. Sanjeev Kumar, UDC, A&C, Civil Lines Zone as PW-3. He produced on record the certified copy of survey report Ex. PW-3/1 as well as the earlier survey report Ex. PW-3/2. The site plan was proved through Sh. Suresh Kumar PW-5 as Ex. PW-5/1. PW-4 Sh. N.K. Maurya, Record Keeper, House Tax Department, Civil Lines Zone, MCD Delhi apart from proving the survey reports also proved the mutation certificates as Ex. PW-4/1 to Ex. PW-4/4.

7. The defendant examined himself as DW-1 and proved on record the documents Ex. DW-1/1 to Ex. DW-1/48. Ex.DW-1/1 to Ex.DW-1/27 were several receipts and payment certificates issued by the Department of Rehabilitation in favour of Sh. Sahib Singh in respect of rent/ license fee paid by him towards the suit property during the 1960's and 1970's. He also exhibited the rent receipts executed by the Delhi Municipal Corporation in the year 1972, 1973 & 1976 as Ex.DW-1/28 to DW-1/31. The successive power of attorney executed by Sh.Sahib Singh in favour of Sh. Sant Singh;

by Sh. Sant Singh in favour of Sh. Om Prakash; and by Sh. Om Prakash in favour of the defendant, Will, agreements, etc were exhibited as Ex.DW-1/32 to Ex.DW-1/48. The other official witnesses produced by the defendant also corroborated the execution of some of the documents led in evidence by the defendant.

8. On the basis of the evidence led by the plaintiffs, namely the sale certificates Ex.PW-6/1 & Ex.PW-6/2 and the partition deed Ex.PW-6/3, the Trial Court held that the plaintiffs had been able to establish their ownership in respect of the suit property. In fact, the defendant did not even dispute the said registered instruments. The Trial Court then examined the defence of the defendant of his and his predecessors-in-interest being in adverse possession of the suit property – in the light of the examination-in-chief and the cross-examination, and the evidence led by him. The Trial Court rejected the defendant's defence. Consequently, the Trial Court decreed the suit for possession and also held that the plaintiffs were entitled to damages/ mesne profits @ Rs.2,000/- per month. The suit was, accordingly, decreed.

9. The First Appellate Court, while passing the impugned judgment and decree, concurred with the findings returned by the Trial Court.

10. The submission of learned counsel for the appellant is that, admittedly, Sh. Sahib Singh and thereafter, Sh. Sant Singh, Sh. Om Prakash and lastly, the defendant have been in continuous uninterrupted occupation of the suit property since 1955. The predecessors-in-interest of the plaintiffs claim to have purchased the suit property, along with the other portions thereof, in the year 1972 when Sh. Sahib Singh was occupying the suit property. The original owners, which included plaintiff No.1 and the

predecessor-in-interest of plaintiffs No.2 to 4, did not ever stake any claim in respect of the suit property either against the said Sh. Sahib Singh or thereafter Sh. Sant Singh, Sh. Om Prakash and the defendant.

11. Learned counsel for the appellant submits that according to the plaintiffs, the property was partitioned between the co-owners in the year 1982 and the suit property fell to their share. It is submitted that, at least, at that stage, the plaintiffs would have learnt of the identity of the occupants and also about the nature of the occupants' occupation. However, the suit was filed only in the year 2000, i.e. well beyond the period of 12 years. Consequently, the suit was barred by limitation as, in the meantime, the defendant had perfected his title in the suit property by prescription.

12. Having heard learned counsel for the appellant and perused the judgment of the Trial Court, the First Appellate Court and the testimonies brought on record, I am of the view that there is no merit in the present second appeal. The same does not raise any substantial question of law requiring consideration by this Court. Both the Courts below, upon appreciation of evidence, have returned consistent findings of fact to the effect that the plaintiffs are the owners of the suit property and that the defendant is an unauthorized occupant. They have also returned a finding that the defendant has not been able to establish his plea and defence that he and his predecessors-in-interest cumulatively were in adverse possession of the suit property for a period of twelve years prior to the filing of the suit. This Court would not interfere with the concurrent findings of fact returned by the two Courts below in a second appeal, unless the appellant is able to show that the said findings are perverse, or misdirected in law, or in the

matter of appreciation of evidence. It is essential for the appellant in second appeal to show that the Courts below have either ignored certain relevant evidence, or taken into consideration evidence which ought not to have been so taken into consideration. The appellant has not been able to point out any such error either in the impugned judgment, or in the judgment of the Trial Court, to shake the correctness of the said judgments.

13. The defence of the defendant himself was that Sh. Sahib Singh S/o Sh. Bhagwan Singh was residing in the suit property since 1955. It was his case in his examination-in-chief that Sh. Sahib Singh was paying rent/ license fee to the Department of Rehabilitation. In fact, he led in evidence a large number of rent/ license fee receipts and payment certificates, which were exhibited as Ex.DW-1/1 to Ex.DW-1/27. These pertain to several periods falling in the years 1965 to 1972. The defendant also led in evidence the rent receipts in respect of the rent paid to Delhi Municipal Corporation at different periods 1972, 1973 and 1976 as DW-1/28 to DW-1/31. This evidence itself shows that Sh. Sahib Singh was not an unauthorized occupant in the suit property and he was a tenant/ licensee in the suit property. The Trial Court placed reliance on ***Tulsi Ram, Tukka Ram Vs. K.L. Pandey & Anr.***, AIR 1956 Nagpur 11, wherein it had been held that a tenant cannot claim title by adverse possession. Several other decisions were also referred to by the Trial Court in this regard. As observed by the Courts below, upon the plaintiffs becoming owners of the suit property, by operation of law, the possession of Sh. Sahib Singh qua the plaintiffs became that of a tenant/ licensee even, when there was no attornment. Reference was made to ***Wing Commander Retd. R.N. Dawar***

Vs. Sh. Ganga Saran Dhama, 1992 (24) DRJ 532, wherein this Court has held that long possession of property is not adverse possession per se. The person claiming title through adverse possession has to lead evidence and prove as to how and when adverse possession commenced, and to show that the actual owner was aware of the fact that his possession was adverse to the title and interest of such owner. Mere fact that the occupant is in uninterrupted possession for several years is not sufficient to vest title by prescription on the occupant.

14. Though the defendant had claimed that the possession of Sh. Sahib Singh, and thereafter the subsequent occupants, was hostile, he did not state as to when the possession of Sh. Sahib Singh became hostile to the owners. Even according to the defendant, Sh. Sahib Singh remained in possession till 18.04.1990. His possession was lawful since he was a licensee/ tenant. Merely because he may not have paid the license fee/ rent to the plaintiffs predecessors-in-interest in the suit property, in 1972 or thereafter, by itself, did not make his possession hostile. Reliance was placed on ***Ram Nath & Ors. Vs. Neta***, AIR 1962 All. 604, where the Supreme Court has held that “*non- payment of the rent by itself raises no presumption of adverse possession or leads to the inference that it was due to repudiation of landlord's title*”. Reliance was also placed on ***D.N. Venkatarayappa and Another vs State of Karnataka & Others***, AIR 1997 SC 2930, where the Supreme Court has held that where the purchaser had failed to disclaim his title under which he came in possession, and to set up a title open and hostile to the knowledge of the true owner, he could not prove the plea of adverse possession. The defendant had not stated as to when Sh. Sahib Singh had

disclaimed his tenancy/ license and set up a title by way of adverse possession, hostile to the true owner. The Trial Court also observed that the mutation certificate Ex.PW-4/1 showed that mutation was made in favour of the plaintiffs in 1993. However, the defendant did not raise any dispute to the said mutation on the plea that he is in hostile possession.

15. The plea that the plaintiffs were aware of the defendant's possession of the suit property since 1982 when the partition deed was executed between the co-owners was also rightly rejected by the Courts below. Pertinently, DW-1 in his cross-examination, inter alia, stated *"It is correct that the plaintiffs came to know about our possession of the suit property in the year 2000 on receipt of summons in the suit filed by him"*. Thus, the defendant/ appellant did not even claim the knowledge of the plaintiffs with regard to his possession – lawful or otherwise, prior to the year 2000 when summons in his suit were issued to the plaintiffs. The argument that at the time of partition, a Chartered Accountant had prepared a report of the occupants in the suit premises, does not lead to the interference that the nature of occupation was hostile to the owners. In his cross-examination, DW-1 showed his ignorance whether Sh. Sahib Singh was the original occupier of the suit property. He was also ignorant that Sh. Sahib Singh was the owner or tenant of the suit premises. He also showed his ignorance that Sh. Sahib Singh used to pay license fee/ rent to the Rehabilitation Department and that he had paid rent to the Rehabilitation Department from 1965 to May 1970. He also pleaded his ignorance with regard to the payment of rent to the MCD by Sh.Sahib Singh from 1972 to February 1976. In view of his aforesaid statements, there was no question of the

defendants plea of Sh.Sahib Singh being in adverse possession being accepted. Pertinently, the suit was filed in the year 2000, i.e. well within the period of twelve years of Sh. Sahib Singh – who was in legal possession of the suit property, divesting his possession in favour of Sh. Sant Singh

16. Since Sh. Sahib Singh was merely a tenant/ licensee, and he did not purport to create a sub-tenancy, but to transfer possession on power of attorney basis in favour of Sh. Sant Singh, who further transferred the possession in the similar manner to Sh. Om Prakash from whom the defendant acquired, in a similar manner, the possession of the suit property, the possession of the defendant was rightly held not to be in the capacity of a sub-tenant/ sub-licensee. The same was clearly unauthorized. In fact, the plea of adverse possession raised by the defendant, militated against the possibility of his having any other title as a tenant or licensee in the suit property.

17. For all the aforesaid reasons, I find absolutely find no merit in the present appeal and, accordingly, dismiss the same.

VIPIN SANGHI, J

SEPTEMBER 14, 2015

B.S. Rohella