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HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. No.10/2011 & C.M. No.1239/2011

Decided on: 1st February 2016

BRIJ PAL

..... Petitioner

Through: Mr. Ajit Sharma & Mr. Mayank
Aggawal, Advocates.

versus

SANT RAM

..... Respondent

Through: Mr. B.P. Dhalla, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. This is a revision petition filed by the petitioner/defendant against the judgment and decree dated 30.11.2010 by virtue of which the suit for possession of the respondent/plaintiff has been decreed by the learned Senior Civil Judge-cum-RC (East), Karkardooma Courts, Delhi under Section 6 of the Specific Relief Act.

2. Briefly stated the facts of the case are that the respondent/plaintiff filed a suit for possession under Section 6 of the Specific Relief Act against the petitioner/defendant in respect of one room of property No.29/11, Main Road, Babarpur, Shahdara, Delhi-32, more particularly shown as red in the site plan Ex.PW-1/1. The case which was set up by the respondent/plaintiff was that he was the

owner and landlord of the property No.29/11, Main Road, Babarpur, Shahdara, Delhi-110032 having purchased the same from one Jai Singh son of Sh. Birmanand vide documents, namely, General Power of Attorney (Ex. PW-1/2), agreement to sell (Ex. PW-1/3), receipt (Ex. PW-1/4), Will (Ex. PW-1/5), Affidavit (Ex. PW-1/6) and possession letter (Ex. PW-1/7) on 03.02.1999. It was stated since the said date the respondent/plaintiff along with his family members was residing in one room of the aforesaid property. So far as the petitioner/defendant is concerned it was stated that he has no right, title or interest in the suit property but was extending threats to dispossess the respondent/plaintiff. It was alleged that the petitioner/defendant being the uncle of the respondent/plaintiff got a case under Section 107/151 Cr.P.C. registered at Police Station Welcome, Seelampur, Shahdara, Delhi. He was arrested on 18.10.2000 and because of the aforesaid incarceration of the respondent/plaintiff, the petitioner/defendant took the advantage and conspired with the local police to forcibly take the possession of the suit property. The respondent/plaintiff on being bailed out on 20.10.2000 found the suit property lock having been broken and the possession having been taken by the petitioner/defendant. The

respondent/plaintiff went to the Police Station for the purpose of lodging a report which was not registered by them because of which he was constrained to file the suit for possession.

3. The petitioner/defendant contested the suit and filed his written statement on 16.05.2005. It was stated that the petitioner/defendant was an employee of one Parkash Chand son of Shri Brahma resident of 29/10-11, Babarpur, Maujpur, Shahdara, Delhi and Parkash Chand along with his two brothers, namely, Malkhan Singh and Sukhbir Singh had purchased the suit property from Brahma, father of Parkash Chand vide Sale Deed dated 26.05.1999 and it was already mutated in their names. It was also stated that so far as the respondent/plaintiff is concerned, he has no concern with the suit property and it was actually Parkash Chand, who was the co-owner along with two brothers in respect of the entire property including one room which was claimed by the respondent/plaintiff. It was also stated that a criminal case under Section 380/448 IPC was registered against the respondent/plaintiff and his other family members vide FIR No.281/2000 by PS Welcome on the intervening night of 10/11.10.2000. It was also stated that the respondent/plaintiff does not have any right, title or interest in the suit property and therefore, the

suit is liable to be rejected. As regards the documents on the basis of which the respondent/plaintiff was claiming the ownership it was stated that these were false and fabricated documents and the suit property was actually not owned by Jai Singh but by one Brahma who had sold it to three persons, namely, Parkash Chand, Malkhan Singh and Sukhbir Singh vide Sale Deed. It was also stated that a false case under Section 107/151 Cr.P.C. was registered against Parkash Chand and his son Mool Chand and Charan Singh.

4. It was also stated by the petitioner/defendant that the registration of the FIR was much prior to the initiation of the suit by the respondent/plaintiff and it was alleged that the land covered by one room is measuring around 13 sq. yds and its costs come to Rs.3,50,000/-, cost of construction is Rs.55,000/- and thus the total value of the suit property is Rs.4,05,000/- and since the suit has not been property valued, the plaint is liable to be rejected.

5. In replication, the respondent/plaintiff denied the averments and on the pleadings of the parties, following issues were framed:-

- “1. *Whether the plaintiff is the owner of the suit property? OPP (Deleted on 8/09/2009).*
2. *Whether the plaintiff was in possession of the suit property till 18/10/2000 and was*

*wrongful dispossession as alleged b/w
18/10/2000 to 20/10/2000 by the defendant?
OPP*

3. *Whether the employers of the defendant are the owners of the suit property as alleged? OPD (Deleted on 8/09/2009).*
4. *Whether the plaintiff is entitled to the relief of possession as claimed? OPD*
5. *Relief?*

On 07/10/2004, following issues were added:-

1. *Whether the suit is bad for non-joinder of necessary party? OPD.*
2. *Whether the suit does not disclose any cause of action and is liable to be rejected? OPD.*
3. *Whether the suit has not valued properly for the purpose of court fee and jurisdiction? OPD.”*

6. The respondent/plaintiff himself appeared in the witness box as PW-1, Sant Ram and filed his affidavit Ex.P-1. PW-2, Jai Singh filed his examination-in chief through affidavit Ex.PW-2/1, PW-3, Ashok Kumar, Ahlmad in the Court of Shri Suresh Kumar Gupta, the learned Metropolitan Magistrate, PS Welcome deposed in the Court that Sant Ram respondent/plaintiff son of Deep Chand was arrested

on 18.10.2000 and the arrest memo was exhibited as PW-3/1. The respondent/plaintiff closed his evidence on 23.01.2008.

7. The petitioner/defendant examined himself as DW-1, Brij Pal and filed his examination-in-chief Ex.DW-1/A. DW-2, Ashok Kumar, Ahlmad from the Court of Shri Suresh Kumar Gupta, learned MM to prove the record of FIR registered under Section 448/380/392 IPC. The charge sheet was proved as Ex.PW-1/D2. One S.S. Rawat, Ahlmad of the Court of Shri Ankur Jain, MM was examined as DW-3, who proved certified copy of the complaint under Section 448/380/219/218 of PS Welcome as Ex.DW-1/4. DW-4 is Mr. P.C. Tiwari, LDC, Sub-Registrar-IV, Nand Nagri to prove the copy of the Sale Deed purported to have been executed by Sh. Brahma in favour of Malkhan Singh and two others as Ex.DW-4/2. The earlier certified copy of the Sale Deed was exhibited as Ex.DW-1/4. Mr. Naveen Kumar Gandas, record keeper from the Department of Delhi Archives was examined as DW-5. DW-5/A was the Sale Deed executed by one Chajju Singh in favour of Brahma to connect the documents and the ownership in faovur of Brahma. DW-6, Subhash Chand was also examined. DW-1, Om Pal Singh No.1882 NE, PS Welcome, Delhi

was wrongly numbered as DW-1. Finally, on 24.11.2010 the petitioner/defendant closed his evidence.

8. The learned trial court decreed the suit holding that the respondent/plaintiff was in possession of the suit property on 18.10.2000 and he was dispossessed by the petitioner/defendant and therefore, decreed the suit for possession. So far as other issues with regard to non-joinder of Prakash Chand as necessary party and valuation of the suit property, payment of court fees and jurisdiction are concerned, they were also decided in favour of the respondent/plaintiff. However, before this court, the learned counsel for the respondent has primarily challenged the decree of possession having been passed against him.

9. It has been contended by the learned counsel for the petitioner/defendant that the learned trial court has grossly erred inasmuch as the respondent/plaintiff had claimed himself to be the owner of the property after having purchased the same on 26.5.1999 from PW-2, Jai Singh; however connected documents on the basis of which Jai Singh had become the owner of the suit property were neither produced nor proved by the said witness PW-2, Jai Singh and therefore, in absence of connecting documents, the ownership of the

respondent/plaintiff was not established. It was further contended by the learned counsel for the petitioner/defendant that the onus to prove that the petitioner/defendant was in possession of the suit property was erroneously placed on him when the respondent/plaintiff had in the first instance to discharge the onus of proving that he was in possession of the suit property and that he was dispossessed. The learned counsel for the petitioner/defendant has also placed reliance on the judgments with regard to the onus being on the respondent/plaintiff in cases titled *Rangammal vs. Kuppuswani & Anr.*; (2011) 12 SCC 220, *T.K. Mohammed Abubucker (D) Thr. LRs & Ors. vs. P.S.M. Ahamed Abdul Khader & Ors.*; AIR 2009 SC 2966.

10. I have gone through both these judgments. So far as the judgment of *Rangammal (supra)* is concerned, it only enunciates the principle regarding Section 101 Evidence Act which lays down that ones who asserts must prove. There is absolutely no doubt that the initial onus of proving that the respondent/plaintiff was in possession of the suit property was on him which has been discharged by the said respondent/plaintiff in ample measure. With regard to the case of *T.K. Mohammed (supra)*, while discussing the same Section in the light of the suit for declaration, title and possession it has been

observed by the Supreme Court that the burden of proving the title and the entitlement of possession is on the party who asserts and he cannot succeed on the alleged weaknesses in the title or possession of the defendant.

11. There can be no quarrel with regard to the proposition laid down in both these judgments. In order to see as to whether the respondent/plaintiff has discharged this onus of proving that he was in possession on 18.10.2000, any one will have to glance through the evidence and after going through the evidence, I am fully satisfied that the only irresistible conclusion which could be arrived is the one which has been recorded by the trial court; however, before dealing with the said reasoning, it may be pertinent here to mention that both the learned trial court as well as the petitioner/defendant are confusing the issue of possession with the title in a suit under Section 6 of the Specific Relief Act. All that the plaintiff has to prove that he was in possession of a suit property within a period of six months prior to the date of filing of the suit and that he was dispossessed. The title of the property need not be established by the person at all by the person who was in possession and is seeking retrieval of the same.

12. Coming back to the facts of the present case, the plaintiff has categorically stated that he had purchased the property from PW-2 Jai Singh and that he was living in the suit property along with his family and uncle. He was subjected to cross-examination. He also stated that on 18.10.2000, a case under Section 107/151 Cr.P.C. was got registered and he was incarcerated and when he got released on bail on 20.10.2000 he found that the petitioner/defendant had broken the lock of the suit property and dispossessed him. His testimony has remained unchallenged. As against this, the testimony which has been produced by the petitioner/defendant is that Brij Pal Singh was living in the suit property for the last more than ten years. Brij Pal Singh is not claiming himself to be the owner of the suit property on the contrary, he states that he is an employee of one Prakash Chand whose father Brahma had allegedly purchased the property from Chhajju Singh and Prakash Chand along with his two brothers, namely, Malkhan Singh and Sukhbir Singh had purchased the property from Brahma as early as on 26.5.1999. It has been further stated by Brij Pal Singh that so far as he is concerned, he was living at the suit property but he has not been able to produce any document like ration card or election card, etc. to show that he was living at the

suit property. On the contrary, it has been admitted by him in his cross-examination that he is living along with his school going children at a place other than the suit property and he has all his documents made at that particular address. If that be so then it is very unlikely that he was residing at the suit property and this clearly belies the stand of the petitioner/defendant. In addition to this, it has also come on record that Prakash Chand is living in an adjoining property bearing No.29/10, Badarpur Road while as the suit property is 29/11. It is very likely that as Prakash Chand, who has set up a case as the co-owner of the suit property was living in the adjoining property and he wanted to grab the property of the respondent/plaintiff. It may be pertinent here to reproduce the cross-examination of DW-1, Brij Lal which will clearly show that he was not worth credence and he is only a witness who has been setup :-

“I have not filed any document to show that I am the employee of Prakash Chand. I do not have any documentary proof to show that I am residing in the suit property. I do not have any ration card or election identify card to show my possession and residence in the suit property. Vol. The said document were stolen by the plaintiff.

It is wrong to suggest that I did not have any such document bearing the address of the suit property. It is correct that my parents are staying in H. No.1025, Harsh

Vihar, Delhi. It is correct that I possess a ration card and election identity card bearing the above address. It is correct that ration card bears the name of my wife and four children also. It is correct that my elder son is 22 years old and my second child is a daughter aged about 20 years presently. My third child and fourth children both, are aged 19 and 14 years respectively. It is correct that the names of my wife, children and myself are currently mentioned in the ration card bearing the address 1025, Harsh Vihar, Delhi. It is correct that election cards of all my family members named above including myself currently bears the above address. All my children except the eldest are currently studying. It is correct that the address of these children in the school record is also the same as mentioned above. My eldest son name Monu works at Shani Chowk, Lajpat Nagar, Ghaziabad as an ice cream vender. His shop bears the name "Jain". It is correct that Monu has mentioned his residential address as 1025, Harsh Vihar, Delhi at the said shop."

13. Further, the falsity of the petitioner/defendant would be reflected from the fact that the petitioner/defendant states that on 10.10.2000 in the absence of the defendant and his family member, the respondent/plaintiff committed the offence of house breaking and theft for which and FIR was registered on 18.10.2000. If theft was committed on 10.10.2000, there was absolutely no justification and plausible reason given by him as to why he waited for almost eight days for lodging a report for registration of an FIR. In addition to this, it was the case that in the absence of the defendant and his

family, who were claiming to be living in the suit room, one Asif was sleeping in the said room, who was beaten and manhandled by the respondent/plaintiff. But no reason has been given as to why this gentleman Asif has not been produced as a witness. Section 114 sub-clause (g) of the Evidence Act lays down that if there is a witness, who is within the control of a party whose testimony is relied upon and is not produced then, the only presumption which the court may draw is that if produced he would have testified against such a party.

Section 114 (g) of the Evidence Act reads as under :-

“114. Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations The Court may presume—

- (a)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f)*

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;”

14. Both these factors cumulatively along with the evidence of the plaintiff and the star witness of the petitioner/defendant Brij Pal clearly establish that on 18.10.2000, the respondent/plaintiff was in possession of the suit property and having been dispossessed, he was entitled to retrieval of the possession and therefore, there was nothing illegal unjustifiable or material irregularity in the decree which has been passed by the learned trial court decreeing the suit of the respondent/plaintiff.

15. For the aforesaid reasons, I feel that the present revision petition filed by the petitioner/defendant is totally misconceived and there is no illegality, jurisdictional error or impropriety in the order passed by the learned Civil Judge and upheld by the learned ARC. Accordingly, the revision petition is dismissed. Pending application also stands disposed of.

V.K. SHALI, J.

FEBRUARY 01, 2016
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