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

+ RFA(OS) 17/2016

CHATTAR SINGH MATHAROO Appellant

Represented by: Mr.J.M.Kalia, Advocate with
Ms.Bhawna Garg, Advocate

versus

ASHWANI MUDGIL & ORS Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **30.08.2016**

CM No.7358-59/2016

Allowed subject to just exceptions.

RFA (OS) No.17/2016 & CM No.7360/2016

1. We have heard learned counsel for the appellant with reference to the record of the suit.
2. We find no infirmity in the impugned decree dismissing suit filed by the appellant seeking a declaration that on account of adverse possession he be declared owner of property bearing No.WZ-140, Block-A, Uttam Nagar ad-measuring 100 square yards.
3. The appellant litigates with his sister-in-law who is impleaded as respondent No.3.
4. Since the appellant did not set up a title through a document the learned Single Judge has traced the title documents of respondent No.3

through agreements to sell and wills, which we note were documents under which title and possession was being conveyed in Delhi. In any case possessory rights through these title documents have been succinctly itemized by the learned Single Judge. In appeal there is no challenge thereto.

5. The learned Single Judge has found that the appellant has shown intermittent possession and thus has held that continuous possession has not been shown. The learned Single Judge has held that even the intermittent possession is not shown to be hostile.

6. Vide CM No.7360/2016 the appellant wants to lead additional evidence to prove continuous possession.

7. In our opinion no evidence is warranted for the reason the so-called intermittent possession held by the learned Single Judge is actually continuous possession proved by the appellant from the year 1988 onwards and thus would be for more than 12 years when the suit was filed by the appellant.

8. But the question would be : Has the appellant established hostile title?

9. It is settled law that mere possession for howsoever long may be the period, cannot by prescription denude the owner of the property the ownership rights. The appellant has miserably failed to prove that the possession was hostile.

10. The relationship between the parties cannot be overlooked. The appellant is the brother of the husband of respondent No.3. It is also important to note that the house of the father of the appellant, who would obviously be the father-in-law of respondent No.3, is opposite the suit property. The appellant resides in said house which bears Municipal No.WZ-250A, Uttam Nagar, New Delhi. The suit property is opposite said

house. It bears No.WZ-140A, Uttam Nagar. Given the relationship between the parties there obviously would be unofficiousness in the dealings. Merely because the appellant was in possession of the suit property, title not being admittedly that of the appellant, and proved to be that of respondent No.3 through the chain of documents succinctly listed by the learned Single Judge, we agree with the finding returned that hostile title has not been proved.

11. The appeal as also CM No.7360/2016 are accordingly dismissed in limine.

12. At this stage learned counsel for the appellant states that being in settled possession, found to be so by the learned Single Judge, it may be observed that on the strength of the impugned judgment the respondent No.3 cannot throw out the appellant and she must regain possession as per law. We simply note said arguments and leave it at that for the reason from the pleadings of the parties we find that the defence of respondent No.3 admitted appellant's possession and needless to state that the respondent No.3 did not prefer any counter claim. She would therefore have to seek recovery of possession as per law.

13. No costs.

CM No.7357/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

AUGUST 30, 2016

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