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

% *Date of Decision: November 18, 2016*

+ **RSA 86/2016**

SUKHBIR SINGH THR HIS LRS Appellant

Through: Mr.Anuj Kumar Garg, Advocate with
Mr.Sanjay Kumar, Advocates.

versus

M/S SCINDIA POTTERIES & SERVICES PVT LTD.... Respondents

Through: Mr.Virender Kumar Sharma,
Advocate

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. This Regular Second Appeal has been directed against the judgment and decree dated January 27, 2016 whereby the learned ADJ-01 (West), Tis Hazari Courts dismissed RCA No.03/2013 filed by the appellant questioning the legality of the judgment and decree passed on November 26, 2012. The decree for possession passed by learned Trial Court in respect of the Quarter No.36, Scindia Potteries, Labour Quarters Complex, Sarojini Nagar, New Delhi has been affirmed by the First Appellate Court.

2. Civil Suit No.663/2010 was filed by M/s Scindia Potteries and Services Pvt. Ltd. against Sukhbir Singh, now represented through his legal heirs, seeking a decree for possession in respect of Quarter No.36, Scindia Potteries, Labour Quarters Complex, Sarojini Nagar, Delhi, alleging him to

be a trespasser in the suit property. The case of the respondent/plaintiff is that M/s Scindia Potteries and Services Pvt. Ltd. is the owner of a huge property at Sarojini Nagar, New Delhi by virtue of perpetual lease deed dated January 18, 1921. Since the respondent company was running pottery factory in that property, large number of worker's quarters were constructed and allotted to the workers for their residence during the course of their employment. However, in the year 1969-1970 the pottery (factory) was closed. Mr.Sukhbir Singh encroached in the said Quarter No.36 somewhere in the year 1991 and living there unauthorizably. Since he failed to vacate the same, the respondent company was constrained to take recourse to the legal remedy by filing a suit for possession.

3. In the written statement the appellant/defendant pleaded that the respondent/plaintiff company was neither the owner of the suit property nor has any locus standi to institute the suit. He had been residing there since 1965 and has got his caste certificate issued in the year 1979 at the said address. Even his letter of retirement sent to Provident Fund Office, Experience Certificate and letter to Employee's Family Pension Scheme reflect that he was in possession of the same for the period of more than 30 years.

4. The learned Trial Court framed following issues:

- i. *Whether the Plaintiff is entitled to the relief of possession as claimed in the suit? OPP.*
- ii. *Whether the Plaintiff has no locus standi to file the present suit? OPP.*
- iii. *Whether the suit is hit by Section 11 of the CPC? OPP.*

iv. *Whether the present suit has not been properly valued for the purpose of court fees and jurisdiction? OPP.*

v. *Relief.*

5. Learned Trial Court vide its judgment dated November 26, 2012 decided issue No.(i) against the respondent/plaintiff company, and remaining issues were decided in favour of the plaintiff company, but dismissed the suit as barred by limitation.

6. Feeling aggrieved by the finding of learned Trial Court on issue No.(i), the plaintiff - M/s Scindia Potteries and Services Pvt. Ltd. filed RCA No.3/2013 assailing the finding of learned Trial Court on issue No.(i) as the suit was primarily dismissed on the basis of finding on issue No.1(i).

7. The First Appellate Court allowed the appeal being of the view that mere possession of the appellant/defendant without anything more cannot defeat the right of a lawful owner of the property especially when there was no plea taken in the written statement regarding the claim of ownership by way of adverse possession to the knowledge of the owner. The First Appellate Court held that the mere possession for a long period without anything more does not automatically grant them right to continue to be in possession and cannot defeat the rights of lawful owner. Thus, while reversing the finding of learned Trial Court on issue No.(i) the suit of the respondent/plaintiff company was decreed by passing a decree for possession in respect of Quarter No.36, Scindia Potteries, Labour Quarters Complex, Sarojini Nagar, New Delhi.

8. It is undisputed that findings on issue Nos.(ii) to (iv) were never challenged by the appellant/respondent, either independently or by filing

cross-objections in RCA No.3/2013.

9. The substantial questions of law formulated by this Court on May 13, 2016 are:-

“(i) *Whether the First Appellate Court fell in error in rejecting the claim of the appellant/defendant of having perfected his title by adverse possession, which, according to the defendant was in the knowledge of the respondent/plaintiff?*

(ii) *Whether the suit of the respondent/plaintiff is time barred?”*

10. On behalf of the appellant/respondent it has been submitted that the claim of the respondent/plaintiff company is that the appellant trespassed into the suit premises somewhere in the year 1991, whereas from the documents placed by him on record his possession for at least 23 years was established.

11. Learned counsel for the appellant in his brief written submissions has referred to the issue as to when real dispute arises i.e. when one party asserts and other party denies any right. He has further relied upon S.P Chengalvaraya Naidu vs Jagannath AIR 1994 SC 853 & decision of High Court in CrI.M.A.6445/16 titled Sunder Lal Vs. State of NCT of Delhi on the question of decree obtained by fraud. He has further referred to Aura Synergy India Ltd. & Anr. Vs. New Age False Ceiling Co. Pvt. Ltd. & Anr. 229 (2016) DLT 562 as to effect of approaching the Court with unclean hands. Reliance has been placed on the decision of the Division Bench of High Court in Shalu Vs. Sandeep Soni 228(2016) DLT 257 (DB) on the issue of burden of proof. Learned counsel for the appellant has contended that the I-Card issued by the Election Commission, Birth Certificate and educational testimonials are proof of long possession of the defendant in the

suit property. Thus, the claim of the plaintiff to seek relief of possession was time barred. It has been further submitted that an order obtained by playing fraud is a nullity. The party approaching Court with unclean hands by concealing relevant facts is not entitled to any discretion. It has been further contended that the party who is in possession of best evidence is bound to produce the same irrespective of onus to prove the fact.

12. Learned counsel for the respondent Mr.Virender Kumar Sharma has submitted that M/s Scindia Potteries & Services Pvt. Ltd. is a huge area. After the pottery was closed somewhere in the year 1970, people started making encroachments and the respondent company had availed its legal remedy by filing about hundred suits for possession against the tress-passers and possession obtained through due process of law.

13. Learned counsel for the respondent has placed on record the copy of the judgment in RSA No.404/2015 titled *Hari Kishan Vs. M/s Scindia Potteries & Services Pvt. Ltd.* by the coordinate Bench of this Court in respect of Quarter No.74 in the same complex, to refute the contentions of the appellant regarding ownership of M/s Scindia Potteries & Services Pvt. Ltd. Learned counsel for the respondent further submitted that the ownership of the respondent in respect of the suit property had been established not only in this case but in all the suits filed to seek possession. Even in RSA 404/2015, the ownership of the respondent/plaintiff company in respect of Scindia Potteries Complex, Sarojini Nagar, New Delhi was held to be established and the plea of adverse possession taken by the unauthorized occupant which was not accepted.

14. Learned counsel for the respondent/plaintiff company has further submitted that the case of the appellant herein is even worse as the plea of

adverse possession has not been taken. The appellant has not challenged the finding of the learned Court on issue Nos. (ii) to (iv). He cannot change his stand at the stage of Second Appeal claiming to have acquired ownership by way of adverse possession. While referring to the stand of the defendant in the written statement on this issue it has been contended that he merely claimed to be in possession of the Quarter No.36, Scindia Potteries, Labour Quarters Complex, Sarojini Nagar, New Delhi and mere possession in the absence of the same being shown to be hostile to the true owner does not legalise his status in the suit property.

15. It is suffice to refer to the pleadings of the appellant in the written statement dated February 07, 2002. While challenging the maintainability of the suit on the ground that plaintiff M/s.Scindia Potteries & Services Pvt. Ltd. is neither the owner nor the landlord or having any concern with the suit property, it was pleaded on the basis of photocopy of the caste certificate issued in the year 1979 and some other documents that he had been in possession of the said quarter since 1965. In para 8 of the written statement the maintainability of the suit for possession was mainly challenged on the ground that the plaintiff was not the owner of the suit property so there was no question of vacating the same. When in the entire written statement the plea of being in adverse possession was not taken, there was no question of the defendant having perfected his titled by way of adverse possession to the knowledge and hostile to the true owner.

16. In RSA No.404/2015, subject matter of which was Quarter No.74, the question of ownership of M/s Scindia Potteries & Services Pvt. Ltd. in respect of the said complex was examined. M/s Scindia Potteries & Services Pvt. Ltd. was held to be owner observing as under:

“I do not find any merit in this submission. The Crown Grant was made in favour of Gwalior Potteris (Delhi) Pvt. Ltd. and it did not require any formal indenture being created 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 recognizes 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.”

17. It has already been noted that there was not a whisper in the written statement regarding his claim of ownership by way of adverse possession. Learned First Appellate Court has rightly held that long duration of possession will not automatically assign the ownership by way of adverse possession as held in the decision of Division Bench of High Court of Delhi dated December 06, 2006 in RFA 563-64/2006 titled Mohan Singh Kohli & Anr. Vs. Brij Bhushan Anand & Ors. 2007(97) DRJ 83 (DB) wherein it was held as under:

“To sum up in a case where the defendants claim title by adverse possession, the following broad principles must be applied while examining any such plea:

- (1) Onus to prove the question of title by adverse possession is on the party who make such a claim.*
- (2) Mere long possession of the land is not enough. What is important is whether the possessor had the animus possidendi to hold the land adverse to the title of the true owner.*
- (3) The period of limitation starts running from the date both actual possession and assertion of title are shown to exist.*

- (4) *The assertion of title adverse to the true owner must be clear and unequivocal, though not necessarily addressed to the real owner.*
- (5) *The party claiming adverse possession must prove that his possession is “nec vi, nec clam nec precario”.*
- (6) *The party claiming title by adverse possession must make clear averments to that effect and explain as to when he entered into the possession of the property and when the possession became adverse.”*

18. The contention raised on behalf of the appellant is that in view of the documentary evidence placed on record by the appellant showing his occupation since 1979 when the caste certificate was issued on the said address the suit being filed on July 19, 2001 was barred by limitation. Hence he became owner of the same by way of adverse possession. In this respect it is suffice to note that the plaintiff has pleaded having acquired knowledge of the unauthorised possession of the appellant in the year 1991 and the suit has been filed within the period of limitation. There is no evidence led on behalf of the appellant/respondent that his occupation in the suit property since 1965 (as per para 7 of the written statement) or 1978 (as discussed in paras 7 and 8 of the impugned judgment) was within the knowledge of the respondent/plaintiff company. It is not disputed that the factory closed somewhere in 1969-1970. The defendant was not even an employee of M/s Scindia Potteries & Services Pvt. Ltd. at any point of time. He has failed to lead any evidence as to when and in what capacity he occupied Quarter No.36, Scindia Potteries, Labour Quarters Complex, Sarojini Nagar, New Delhi or thereafter he ever made his possession known to the real owner.

19. Since the limitation starts running from the date when actual possession as well assertion of title adverse to the real owner are shown to

exist and the assertion to title adverse to the real owner has to be proved by clear and unequivocal assertion which are not pleaded in the written statement. It has been rightly held by the learned First Appellate Court that mere long duration of the possession of the deceased in the suit premises will not assign ownership by way of adverse possession in favour of his legal heirs.

20. In view of the aforesaid discussion, there is no reason to interfere with the finding of the First Appellate Court whereby the finding on the issue No.(i) was reversed and in view of the favourable finding in favour of the respondent/plaintiff company by the learned Trial Court, on the remaining issues, a decree of possession was passed in respect of Quarter No.36, Scindia Potteries, Labour Quarters Complex, Sarojini Nagar, New Delhi.

21. The Regular Second Appeal is dismissed.

22. No costs.

PRATIBHA RANI, J.

NOVEMBER 18, 2016

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