

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

+ **RSA No. 123/2016**

% **3rd August, 2016**

SH. TARA CHAND Appellant

Through: Mr. Rajesh Yadav, Mr. S.B.Singh and
Ms. Ruchira V. Arora, Advocate.

versus

SH. KULDEEP SINGH & ORS. Respondents

Through: Mr. Vipin K. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit, impugning the concurrent Judgments of the courts below; of the Trial Court dated 29.11.2012 and the First Appellate Court dated 29.2.2016; by which the courts below have decreed the suit filed by the respondents/plaintiffs for possession of plot no.5, Village Chhatarpur, Tehsil Mehrauli, New Delhi alongwith the mesne profits at the rate of Rs.2000/- per month from 1.10.1996 till vacation of the suit property. The courts below have held that the respondents/plaintiffs are the owners of the suit property having in their favour a 'Sanad' executed by the Ministry of Rehabilitation, Government of India, and pursuant to which

possession of the suit property was delivered by execution of the eviction warrants on 26.9.1970. Eviction warrants were executed against the predecessor-in-interest of the appellant/defendant no.3 namely Sh. Mange Ram. After execution of possession warrants, Sh. Mange Ram again trespassed into the suit property. Appellant/defendant no.3 and the other defendants in the suit are the sons and grandsons of Sh. Mange Ram. The courts below besides holding the respondents/plaintiffs to be owners of the suit property have rejected the case of the appellant/defendant no.3 that defendants have become owners by adverse possession of the suit property. The original defendant in the suit was Sh. Mange Ram who died during the pendency of the suit and thereafter he was substituted by his legal heirs including the appellant, being the defendant no.3 in the suit. It may be noted that even the original plaintiff in the suit Sh. Satdev Singh also expired *pendente lite* and he was substituted by his legal heirs, and who are now the respondents in the present second appeal.

2. Trial court on 16.08.1999 framed the following issues:-

- “1. Whether the plaintiff is the owner of the suit land? OPP
2. Whether the suit property has not been properly described and is not identifiable? If so, its effect? OPDs
3. Whether this suit is barred U/o 23 R 1 CPC read with order 2 CPC? OPDs
4. Whether this suit is not properly valued for the purpose of court fees and jurisdiction? If so, its effect? OPDs
5. Whether this court has no pecuniary jurisdiction to try this suit? OPDs

6. Whether the suit is barred by time? OPDs
7. Whether the defendants are in possession of the suit property for the last more than 50 years? If so, the effect? OPDs
8. Whether the plaintiff is entitled to decree of possession against the defendants? OPP
9. Whether the plaintiff is entitled to recover mesne profits from the defendants? If so, at what rate and for what period? OPP
10. Whether the plaintiff is entitled to recover interest on mesne profits? If so, at what rate and for what period? OPP
11. Whether the plaintiff is entitled to a decree for mandatory and permanent injunction as sought? OPP
12. Relief.”

3. Since there are concurrent and detailed judgments of the courts below, appreciating the pleadings and evidence of the parties for arriving at the conclusions, this Court would have limited powers to interfere with the concurrent judgments of the courts below, and that this Court can only interfere if appellant/defendant no.3 is found to have raised substantial questions of law. No substantial questions of law arise, and therefore, this appeal is liable and accordingly dismissed for the reasons given hereinafter. It is also noted that all the arguments urged on behalf of the appellant/defendant no.3 are in fact as if this Court is the trial court or the first appellate court, because before this Court the arguments of the appellant effectively are that the conclusions arrived at by the courts below as per the appreciation of the evidence on record are illegal. This Court by exercising jurisdiction under Section 100 CPC can entertain a second appeal only in case the findings and conclusions of the courts below result in a view being taken which is not the

only one possible and plausible view. This Court can only interfere if substantial questions of law arise under Section 100 CPC showing that courts below have arrived at a view which is against all canons of law and the findings and conclusions are grossly perverse. In the light of this legal position let us examine the arguments urged on behalf of the appellant/defendant no.3 in relation to the findings of facts and conclusions on such arguments, by the courts below. I would only be referring to the detailed discussions and conclusions of the trial court, inasmuch as, the first appellate court has not given any additional finding but it has only effectively reiterated and accepted the reasonings and conclusions given by the trial court.

4. On behalf of the appellant, the following arguments are urged:-

(i) Respondents/plaintiffs are not the owners of the suit property inasmuch as the original of the 'Sanad' has not been filed and proved by the respondents/plaintiffs.

(ii) The case that possession of the suit property was taken by execution of the eviction warrants against Sh. Mange Ram, predecessor-in-interest of the appellant/defendant no.3, is a perverse finding as there is no original possession certificate filed on record.

iii) This Court must hold that in the absence of the plaintiffs not deposing, and only the son of the original plaintiff deposing, the

respondents/plaintiffs have failed to prove their case, and therefore, the suit should be dismissed.

(iv) Appellant/defendant no.3, and in fact the defendants, have become owners by adverse possession of the suit property especially because in Lal Dora areas of villages it is very difficult to prove adverse possession by means of documents showing possession for over 12 years.

5. As regards the first argument as to whether or not the respondents/plaintiffs have proved their case of ownership of the suit property, it is noted that the trial court in this regard framed issue no.1. This issue no.1 has been exhaustively discussed and then decided by the trial court as per paras 26 to 34 of its judgment and which paras read as under:-

“26. Plaintiff’s case was that he had become owner of the suit property having been allotted the suit property by the Custodian, Ministry of Rehabilitation, Government of India and a Sanad was issued to the plaintiff and possession of the suit property had been delivered through police by the Custodian after issuance of eviction warrants were issued against the defendant who was stated to be an unauthorised occupant, on 26.09.70.

27. To prove this issue, plaintiff examined PW5 Sh. H.S. Pathia, Retd. Managing Officer, consultant with Evacuee Property Cell, who proved the certified copy of the possession letter Ex.PW5/1 (a Hindi translation of this document, was filed in the connected suit No.382/06 titled ‘ Mange Ram versus S.D. Singh decided by me vide separate judgment of even date) categorically deposing that the certified copy had been issued by his department and as there were no photocopies at the time, the witness had himself certified it after comparing it with the original. The proceedings relating to issuance of notice dated 20.08.1966, statement of defendant Mange Ram dated 26.08.1966 and statement of dated 06.09.1966, surrender possession notice dated 12.09.1966, statement of defendant dated 20.09.1966, order of Managing Officer and letter of approval from Chief Settlement Officer were proved through PW5 who also produced the originals of these documents as Ex.PW5/1 to Ex.PW5/8. Surrender notice to the deceased defendant dated 01.07.1970 and warrant of eviction dated

30.07.1970 were exhibited and proved by PW5 as Ex.PW5/9 and Ex.PW5/10 (original seen and returned). These documents establish the case of the plaintiff that apart from the document of title in his favour i.e. the Sanad, plaintiff also obtained physical possession of the suit property through police assistance under the orders of the rehabilitation ministry from the unauthorised occupant i.e the deceased defendant Sh. Mange Ram.

28. The original defendant i.e. Sh. Mange Ram's case was that he was in possession of the suit land since the time of his forefathers and that plaintiff could not claim right over the suit land and that even the custodian of evacuee properties could not have had any right over the property. Defendant did not prove any title documents in his favour on record or plead or prove that he had preferred any appeal to the custodian against the property being declared as evacuee property and in fact as per the proceedings Ex.PW5/2 to Ex.PW5/10 and the testimony of PW5, **had merely sought time to vacate the property.** Sh. Mange Ram had been referred to as an unauthorised occupant of the property nos.5 and 6 measuring 2919 sq. feet and 2550 sq. feet in village Chatterpur and the deceased defendant had personally appeared (as per the signatures on the proceeding sheets exhibited through PW5 and the unshaken oral testimony of PW5) merely sought time to vacate the suit land without ever raising the issue before the authority and in fact voluntarily surrendered possession of the suit land on 26.09.1970. That being the case, the defendants having absolutely no right over the suit property could be considered to be nothing more than trespassers on the suit land.

29. The certified copy of the Sanad issued in favour of the plaintiff was proved through PW4 Sh. Vijay Prakash, Custodian Clerk from the Land and Building Department as Ex.PW4/1. It was argued by Ld. Counsel for the L.R. no.3 of deceased defendant Mange Ram that the plaintiff's suit for possession was based on title and the plaintiff had never produced the original Sanad and that therefore an adverse inference illustration (g) to section 114 of the Evidence Act could be drawn for non-production of the original Sanad. **This argument of the defendant cannot sustain since the certified copy of the Sanad Ex.PW4/1 has been proved on record by the witness from the Land and Building Department and as such, a presumption as to genuineness of certified copies of public documents arises under section 79 of the Indian Evidence Act.** Ex.PW4/1 shows that the plaintiff had been allotted House no.5 measuring 2919 sq. ft. in village Chatterpur i.e. the suit property which was allotted under rule 57 vide the Ministry's order dated 19.01.1961. The contesting defendant just made bald averments that the Sanad in favour of the plaintiff was false but **failed to substantiate this allegation or could not rebut the presumption of genuineness of Ex.PW4/1 which is duly proved by PW4.** PW4 also deposed that in the file relating to plot nos.5 and 6, there was a noting dated 26.09.1970 that the possession of the plots 5 and 6 had been delivered to the plaintiff and his brother (PW3).

30. PW4 Sh. Vijay Prakash Custodian clerk in cross-examination deposed that he could not tell from record whether plot nos.5 and 6 belonged to Muslims who had migrated to Pakistan since the records were in Urdu and he did not know Urdu language but nothing turns on this since this witness had brought the summoned records and it was for the defendant to point out from the record if any discrepancy was there regarding the previous ownership which the defendant failed to do and in fact PW5 deposed clearly that house no.5 was allotted to the plaintiff on 19.01.1991 and was formerly owned by Sh. Gafoor and Jaquoor sons of Sh. Immam Khan who migrated to Pakistan and possession was handed over on 26.09.1970, Defendant could not contradict this testimony of PW5 in cross-examination. PW5 deposed that as per noting in the summoned filed, a separate possession report was prepared but the same was not available on the file but denied the suggestion that no possession report was prepared because possession was never delivered to the plaintiff.

31. Ex.PW2/1 was the site plan proved through the draftsman Sh. M.S. Chawla. This witness did not remember about the details of the suit land and nothing substantial was brought out from his testimony but he denied the suggestion that he never visited the spot for preparing the site plan. This site plan also shows that the house of Sh. Mange Ram to be on the southern side of the disputed property, and DW1 deposed in his cross-examination that the earlier house of the defendants was on the east and south of the suit property, in a manner corroborating the veracity of the site plan. It must be noted here that the defendant took permission to file the site plan which was granted but it appears that while the defendant herein as plaintiff in the connected suit i.e. suit no.382/06 titled as 'Mange Ram versus S.D. Singh filed a site plan in that suit, he did not do so in the present suit. In any case, even in that suit the author of the site plan has not been produced to prove the same and nothing turns on it.

32. The counsel for the contesting Legal Heir of deceased defendant Mange Ram argued strenuously that the plaintiff had himself never come to the witness box to prove his case and the power of attorney PW6 Sh. Kuldeep Singh, son of the plaintiff had no personal knowledge of the case thus could not have deposed in this regard. It was also argued that the S.P.A. was not properly stamped and this objection had been left open to be decided at the time of final arguments but Ld. Counsel for the plaintiff pointed out that during the course of proceedings, the plaintiff made good the deficiency in stamping and placed on record of the connected contempt petition M-36/06 the photocopy of the duly stamped S.P.A. on 29.01.2004 thus the issue of improper stamping did not survive.

33. Ld. counsel for the defendant relied on the celebrated case of **Janki Vasudeo Bhojwani and Anr. Vs. IndusInd Bank Ltd. and Ors. 1 (2005) BC 399 (SC)** which lays down the proposition that the power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that

party. That is the settled law however it would be seen in this case that apart from the power of attorney holder, the plaintiff has also produced official witnesses to prove the certified copy of the Sanad and PW3, the brother of the plaintiff who has deposed that he was personally present on the day the possession of the plots 5 and 6 was granted to plaintiff and himself respectively. Title is required to be proved by documentary evidence. Counsel for the plaintiff relied on *Sh. Durga Dass Banka versus Sh. Ajit Singh and Ors. 2012 I AD (Delhi) 166* wherein it has been held that any act which is not a private act or which is not something the principal alone can have personal knowledge of can be deposed by the attorney holder can taken in evidence while deciding the issues and that there is no bar under the Code to the attorney holder deposing about a fact which has been proved on record and that documentary evidence was required to be considered instead of giving weightage to the oral evidence led by the attorney.

34. In the present case, the plaintiff has produced documentary evidence of title in his favour i.e. the certified copy of the Sanad which has been proved through the records produced by the witness from the Land and Building Development as Ex.PW4/1 along with which the plaintiff has also proved the certified copy of the possession letter again through the summoned witness PW5 who deposed that he himself had certified the copy after comparing from the original and the defendant was unable to demolish the stand of this witness or point out any infirmity in the evidence of this witness. The plaintiff has discharged the onus of proving that he is the owner of the suit land. (emphasis is mine)

6. A reading of the paras 26 to 34 of the judgment of the trial court shows that the certified copy of the 'Sanad' in favour of the respondents/plaintiffs was proved as Ex.PW4/1. This was proved on the basis of official record and statement of the witness from the concerned government department. The certified copy of possession letter was similarly proved as Ex.PW5/1. The notices to surrender possession issued to Sh. Mange Ram and statement of Sh. Mange Ram taking time to vacate the suit premises and warrants of eviction dated 30.7.1970 were proved as Ex.PW5/2 to Ex.PW5/8 and Ex.PW5/9 to Ex.PW5/10 respectively. It is seen that Sh. Mange Ram,

predecessor-in-interest of the appellants/defendant no.3 was in possession of the suit property when the same was sold as evacuee property to the original plaintiff and Sh. Mange Ram, after seeking repeated opportunities to vacate ultimately vacated the possession of the suit land on 26.9.1970. The documents exhibited through the witness, being the official of the Department of Rehabilitation, being Ex.PW5/1 to Ex.PW5/10, show that the official record bore the signatures of Sh. Mange Ram. These findings are findings of facts based on appreciation of evidence, and therefore, such findings of facts cannot be prayed to be disturbed on behalf of the appellant/defendant no.3 by pleading that respondents/plaintiffs have not proved their ownership of the suit property as this is beyond the scope of hearing of a second appeal under Section 100 CPC.

7. The arguments urged on behalf of the appellant/defendant no.3 that original of the 'Sanad' is not filed is an argument without merit for various reasons. Firstly, the certified copy of the 'Sanad', being secondary evidence has been proved as Ex.PW4/1, and which is sufficient proof of ownership of the respondents/plaintiffs inasmuch as ownership of the suit land of Ministry of Rehabilitation is not and could not be disputed before this Court. Learned counsel for the appellant/defendant no.3 had very weakly sought to argue the lack of title in the Ministry of Rehabilitation, however, it is noted that though the appellant/defendant no.3 in the written statement originally seems to have

taken such a plea, however, such plea can be said to be given up because no issue was got framed by the appellant/defendant no.3 as regards lack of ownership of the Ministry of Rehabilitation of the suit property as an evacuee property. In fact there is clear cut finding and conclusion by the courts below that the suit property is an evacuee property which came to be vested in the Ministry of Rehabilitation and reference in this regard can be made to para 28 of the judgment of the trial court reproduced above, and which is adopted and accepted as correct by this Court. The trial court has rightly held that there is presumption as to the genuineness of the certified copy of public documents being the 'Sanad', possession proceedings and eviction warrants, more so because the witnesses of the department which issued these documents admitted to their existence and issuance of the same on the basis of the files/record maintained by such department being the Ministry of Rehabilitation. The first argument urged on behalf of the appellant/defendant no.3 that ownership of plaintiff is not proved as original 'Sanad' is not filed is therefore rejected.

8. The second argument urged on behalf of the appellant/defendant no.3 that the possession proceedings dated 26.9.1970 cannot be said to have been proved on account of non-filing of the original possession proceedings and also because signatures of Sh. Mange Ram cannot be said to exist on such possession proceedings, is also an argument totally lacking in substance

because this aspect has been exhaustively dealt with by the trial court in para 40 of its judgment noting that witness of the department PW-5 denied the suggestion of the appellant/defendant no.3 that Ex.PW5/2 to Ex.PW5/10 did not bear the signatures of Sh. Mange Ram with the fact that the appellant/defendant no.3 who deposed as DW-1 could not recognize the signatures of his father Sh. Mange Ram on the vakalatnama or replication filed in suit no. 227/2003 which was a connected case. The denial by the appellant/defendant no.3 of the signatures of Sh. Mange Ram on the eviction notices and the eviction warrants of possession proceedings dated 26.9.1970 were of no effect because DW-1 conceded that he had no knowledge of the eviction proceedings against his father and the official witness deposed on the basis of the official record containing the detailed notes with respect to repeated issuance of eviction notices against Sh. Mange Ram, Sh. Mange Ram repeatedly taking time of vacating the property, and ultimately eviction warrants being issued and possession taken by execution of the eviction warrants on 26.9.1970 with police help. Para 40 of the judgment of the trial court rightly dealing with this aspect reads as under:-

“40. The entire proceedings right from issuance of notice to Mange Ram to vacant possession being handed over had occurred in the presence of Sh. Mange Ram and PW5 deposed clearly that Sh. Mange Ram had come in his presence and categorically denied the suggestion that the documents Ex.PW5/1 to Ex.PW5/10 did not bear the signatures of Sh. Mange Ram. He deposed that Sh. Mange Ram had been identified by the Managing Officer Sh. Hit Abhilash and also deposed that Sh. Mange Ram had been served notice to vacate the suit property and on three occasions he had appeared and sought extension of time to vacate the same and finally permission was sought as per rules to evict Sh. Mange Ram from the suit property i.e. house no.5 and

warrants of eviction were duly executed on 26.09.1970. **The possession of the suit property was given to the plaintiff as per the proceedings recorded on the possession report, the copy of which was exhibited as Ex.PW4/2.** It is to be noted that the exhibition of this document was objected to by counsel for the defendants on the ground that neither had it been proved that the original was lost nor was the document a certified copy, however perusal of the report would show that the document is attested true copy and bears the signatures of the Assistant Settlement Officer Sh. S.K. Gulia. This document was thus a certified copy as rightly deposed by the official witness PW4 and proved through this witness. **PW3 deposed that the possession letter was signed by him and the plaintiff, Pradhan, deceased defendant, Patwari, a person namely Chottan and police officials and pointed out his signatures, signatures of the plaintiff, deceased defendant Mange Ram and the Pradhan on Ex.PW4/2.** The entire proceedings of taking over possession of the suit property thus took place under the orders of the Custodian and in the presence of the police and even deceased Sh. Mange Ram who signed on the same. PW3 and PW5 deposed that Sh. Mange Ram had signed the possession report. On the other hand, DW1 could not even recognize the signatures of his father Lt. Sh. Mange Ram on the Vakalatnama or replication filed by Sh. Mange Ram in the file of suit no.227/03 (the connected case, new suit no-382/06) therefore his denial of signatures of Sh. Mange Ram on Ex.PW4/2 is without any consequence and must be discarded. In any case, this witness deposed that he had no knowledge of the eviction proceedings against his father while PW3 deposed from personal knowledge of the same. **The testimony of DW2 also falls flat in the face of the documentary evidence against the defendants. No dispute regarding the identity of the property was ever raised in the entire proceedings.**"

(emphasis added)

9. Accordingly, the second argument urged on behalf of the appellant/defendant no.3 that possession proceedings are not proved is also a totally misconceived argument and in any case the same does not raise any substantial questions of law as there is a finding of fact on this aspect by the courts below, and which finding is neither perverse nor illegal. In fact even this Court can do no better than adopt the correct exhaustive reasoning and discussion of the trial court in its paras which have been reproduced above.

10. The third argument that the evidence led on behalf of the plaintiffs cannot be considered as they have not stepped in the witness box, the same has been rightly rejected by the trial court in para 33 of its judgment which I agree and adopt and therefore am not reproducing the same to avoid prolixity.

11. The next argument urged on behalf of appellant/defendant no.3 is as to whether Sh. Mange Ram and thereafter the appellant/defendant no.3 became the owner of the suit property by adverse possession. This aspect was the subject matter of issue nos.6 and 7. These issues have been dealt with and rejected by the trial court rightly in paras 44 and 45 of its judgment and which paras read as under:-

“44. The present suit was filed on 28.10.1988 as a suit for injunction. A suit for possession filed thereafter was dismissed as withdrawn and thereafter amendment seeking to incorporate the relief of possession was allowed on 10.01.97. It was argued by Ld. Counsel for the L.R. of defendant that the plaintiff was never in possession of the suit property and deceased Sh. Mange Ram was an old occupant of the suit property, and had been in possession for many years. This argument cannot stand because the plaintiff has proved through summoned records and official witnesses PW4 and PW5 as well as brother of plaintiff PW3 who deposed as per personal knowledge that on 26.09.1970, plaintiff and his brother were given vacant possession of property nos.5 and 6. In addition, plaintiff has also relied on the testimony of PW7, Sh. K.B. Sachdeva, Advocate who had been appointed as a local commissioner in suit no.254/1988 between the plaintiff and deceased defendant Sh. Mange Ram who proved the certified copy of the report prepared by him regarding possession of the suit property which was already exhibited through official witness as Ex.PW1/2. The local commissioner had reported that the plaintiff was in possession of the suit property as on 02.06.1988 and that Sh. Mange Ram had refused to take notice and participate in the proceedings. Though suggestions were put to this witness that the proceedings conducted by him were not on the suit property but on some other property, however the same were denied by the witness who stood firm to his testimony. Thus, plaintiff has proved that he was given possession of the suit property on 26.09.1970,

PW7 has proved the local commission report prepared by him wherein he reported that the plaintiff was in possession of the suit property as on 02.06.1988. The defendant was merely an unauthorised occupant of the suit property prior to handing over possession to the plaintiff and after his death, his legal heirs are merely trespassers in the suit property and they have been unable to prove any right over the property or event their continuous possession. The date of illegal trespass is given as 26.07.1988. Looking at the factual situation in any way, whether the amendment relates back to the date of filing of the suit or whether the limitation be reckoned from the date of amendment only, the same is well within time.

Issue decided in favour of plaintiff and against the defendants.

Issue no.7 Whether the defendants are in possession of the suit property for the last more than 50 years? If so, its effect? OPDs

45. The defendants were to discharge their onus regarding this issue but they have failed to prove that they have been in possession for the last more than fifty years and neither the testimony of DW1 nor DW2 carried any weight against the documentary evidence produced and proved on record by the plaintiff. As already observed in issues 1,2 and 6 above, the documents Ex.PW5/2 to Ex.PW5/10 show that the status of Sh. Mange Ram was merely that of an unauthorized occupant prior to the property being handed over to the plaintiff in the year 1970 and the L.R.s of the defendant would only be trespassers in the suit property. Whatever possession was there of the defendant, it was as an unauthorized occupant therefore is of no consequence for the decision of this case, issue decided against the defendants and in favour of the plaintiff.” (underlining added)

12(i) An issue of adverse possession is looked at very strictly by the courts because it has the effect of deprivation of the actual owner of ownership and possession of a property. Adverse possession commences in a wrong i.e wrongful possession, and is maintained against a right i.e the right/title of the actual owner to ownership and possession of the suit property. Self-serving oral averments are never accepted by the courts to hold entitlement to ownership on the basis of adverse possession. A reference to paras 44 and 45 of the judgment of the trial court reproduced above shows that no documents whatsoever were filed by the appellant/defendant no.3 of being in adverse

possession of the suit property for a period of 12 years prior to filing of the subject suit. I may note that the subject suit originally was a suit for injunction which was subsequently amended to a suit for possession inasmuch as respondents/plaintiffs had filed another suit for possession which was withdrawn and thereafter the subject suit for injunction was amended to include the relief of possession. Appellant/defendant no.3 has contended that the subject suit would be barred under Order II Rule 2 CPC and which was the subject matter of issue nos.3 and 6, and these issues were decided by the trial court in its earlier Order dated 22.3.2001. In this regard I hold that the cause of action in a suit for possession is a continuous cause of action till the trespasser remains in possession and therefore the suit for possession cannot be barred under Order II Rule 2 CPC. A right to possession and a cause of action for possession is only lost or becomes time-barred on adverse possession being pleaded and proved to the satisfaction of the court. If this is not done, a suit for possession cannot be dismissed on the ground of Order II Rule 2 CPC inasmuch as on every date an illegal trespass continues there is a fresh cause of action for a suit for possession based on title and till the title is lost by pleading and proving of adverse possession. Every fresh cause of action entitles plaintiff of a fresh suit for possession on every day of illegal trespass till the title of the owner is lost.

(ii) Trial court has arrived at a correct finding that respondents/plaintiffs were in possession when the suit was filed on 28.10.1988 as a suit for injunction. In this suit a Local Commissioner namely Sh. K.B. Sachdeva, Advocate was appointed to give a report as to possession. Sh. K.B. Sachdeva, Advocate gave his report as to possession of the respondents/plaintiffs of the suit property. Sh. K.B. Sachdeva, Advocate appeared in the witness box as PW-7 and proved the certified copy of the report prepared by him and which was already proved through the official witness as EX.PW1/2. It is also noted by the trial court that when Local Commissioner Sh. K.B. Sachdeva, Advocate sought to serve notices of Local Commissioner proceedings upon Sh. Mange Ram, Sh. Mange Ram refused to accept the notices and did not participate in the local commissioner's proceedings. Accordingly, the trial court has rightly held that from 26.9.1970 till the subject suit was filed in 1988 the plaintiffs were in possession of the suit property. The date of illegal trespass by Sh. Mange Ram, predecessor-in-interest of the appellant/defendant no.3 has been established as 26.7.1988, even if the subject suit is taken to be filed when it was amended by converting the same into a suit for possession as per the Order allowing amendment on 10.1.1997. The said date is within 12 years of the date of illegal dispossession on 26.7.1988, and therefore, the respondents/plaintiffs cannot be said to have lost title on account of the claim of the adverse possession of Sh. Mange Ram and now the appellant/defendant no.3.

13. Learned counsel for the appellant/defendant no. 3 sought to draw attention of this Court to various electricity bill, water bill and ration card of the appellant/defendant no.3 to show adverse possession but it is seen that the electricity bill and water bill, Ex.DW1/2 to Ex.DW1/3, are only of the years 2003-2004 i.e after filing of the suit and even the ration card, Ex.DW1/5, is of the year 1990. The election identity card, Ex.DW1/4, is also of the year 2002. The Lal Dora certificate in favour of Sh. Tara Chand, the main contesting appellant, Ex.DW1/6, is dated 9.2.1994. Therefore, it is seen that none of the documents proved and exhibited by the appellant/defendant no.3 will in any manner show ownership by means of hostile adverse possession of 12 years prior to 10.1.1997 when the plaint was allowed to be amended to convert it into a suit for possession. I may for the sake of completion of narration note that the trial court by its Order dated 22.3.2001 deciding the preliminary issue no. 3 as to the suit not being barred under Order II Rule 2 CPC and Order XXIII Rule 1(4) CPC, effectively holds that amendment of the suit cannot be treated as equivalent to institution of a fresh suit in the facts of the present case, and which aspect has been taken by the Trial Court in its Judgment dated 29.11.2012 as amendment relating back to the date of filing of the suit for injunction in 1988 – vide last line of the para 44 of the judgment of the trial court. I also reject the argument urged on behalf of the appellant/defendant no. 3 that merely because the land is situated in Lal Dora of the village it cannot mean on account of this fact itself that only oral evidence of adverse

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possession should be accepted. This argument has no basis in law because if such argument is accepted it would amount to valuable rights in immovable property being lost simply by oral depositions. In any case the argument is also factually misconceived because in Lal Dora areas of villages in Delhi, and which is opposite of agricultural areas, proof can be given of adverse possession by means of construction of a property and its possession from particular date and year as per house tax record, as also the factum of possession of the property by construction by showing the date and year of fixing of an electricity connection or a water connection. This argument urged on behalf of appellant/defendant no. 3 is also therefore wholly misconceived, and hence rejected.

14. No other issue was urged before this Court. I may note that there were various other issues which came up before the trial court including of identification of the suit land, and such aspects also have been very exhaustively dealt with in the judgment of the trial court, and which I am not referring herein as no such argument was urged before this Court in this regard, and even if such argument was urged, the detailed discussion rejecting such arguments as per paras 36 to 40 of the judgment of the trial court can be adopted by this Court because of the soundness of reasoning in the same showing due appreciation of evidence and pleadings as per the records of the present case.

15. In view of the above, no substantial questions of law arises and therefore this Regular Second Appeal is dismissed.

16. Today we are in the year 2016. Respondents/plaintiffs and their predecessor-in-interest being the original respondent/plaintiff Sh. Satdev Singh was dispossessed way back in the year 1988 i.e around 28 years back. For 28 years appellant/defendant no. 3 is preventing the respondents/plaintiffs from enjoying possession of the suit property owned by them. It may be noted that out of the 9 defendants in the suit it is only one defendant, namely, defendant no. 3 who has filed the present second appeal and he was the main contesting defendant in the entire judicial proceedings from the trial court to this Court. The record of this case also shows that how predecessor-in-interest of the appellant Sh. Mange Ram repeatedly failed to vacate the suit property in spite of giving assurances to the Department of Rehabilitation and ultimately he had to be evicted from the suit property by execution of warrants of eviction on 26.9.1970. Sh. Mange Ram with the appellant/defendant no.3, who is the son of Sh. Mange Ram, has thereafter obdurately and illegally trespassed in the suit property and dragged this litigation now for 28 years. Accordingly, finding complete lack of honesty on behalf of the appellant/defendant no.3 and his clinging on to illegal possession of the suit property, with the length of litigation already being 28 years, this second appeal is dismissed with costs of

Rs. 3 lacs in favour of the respondents/plaintiffs. Costs be paid within a period of 6 weeks from today.

17. The Regular Second Appeal is accordingly dismissed with the aforesaid observations.

AUGUST 03, 2016
godara/Ne/ib

VALMIKI J. MEHTA, J

