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

Date of Decision: 19th July, 2016

+ RSA 169/2016

OM PRAKASH BAWA (DECEASED THR LRS) Appellants

Through: Mr. S.S. Panwar and Ms. Nivedita
Panwar, Advocates

versus

BADRI BHAGAT JHANDEWALAN TEMPLE SOCIETY

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

C.Ms.No.23940-41/2016 (Exemption)

Allowed subject to all just exceptions.

RSA 169/2016 & C.M.No.23942/2016 (Stay)

Received on transfer.

The question of law sought to be raised in this second appeal is that neither the trial court nor the appellate court has dealt with the issue of limitation and cause of action.

In a suit for possession by the respondent-plaintiff, it was asserted that appellants herein are unauthorizedly and illegally raising construction over the suit property and in this regard a complaint was made to the local SDM by the respondent-plaintiff way back in the year 1997 and a suit

was filed by them in the very same year. Trial court has held that the burden of proving lack of cause of action and suit being barred by limitation was upon appellants and on this issue, no evidence has been led and, so these two issues were decided against appellants/defendants.

At the hearing of this second appeal, it was vehemently contended by learned counsel for appellants that the first appellate court has not at all dealt with the issue of limitation and lack of cause of action though it was specifically pleaded and argued. It was pointed out that respondent-plaintiff in his cross-examination has admitted that it is not known that since when appellants-defendants are in possession of the suit property and it is vehemently submitted that a suit for possession is not maintainable unless the plaintiff asserts that when he has been ousted from the possession.

Upon hearing and on perusal of the concurrent findings returned by the courts below, I find that in a case where plea of adverse possession is taken, what is material is as to when hostile possession is asserted by the party who takes such a plea. Simplicitor possession without assertion of hostile title is not of any consequence. So it will not be fatal to the case of the respondent-plaintiff, if it does not know as to since when appellants-defendants were in possession of the suit property. Assertion of hostile title can be legitimately raised if a notice asserting so, is published in any newspaper or put in social media or if the water, electricity bill or property tax is being paid by the party who claims adverse possession. Simply on the strength of voter identity card or ration card, adverse possession cannot be asserted for the reason that the voter identity card or the ration card etc. does not relate to the suit property in respect of which

adverse possession is claimed and infact, the ration card etc. pertains to the entire *Jhandewalan* Temple.

Regarding lack of cause of action, it would be suffice to say that cause of action did not arise when appellants enter into the suit property but would arise from the date he asserts adverse possession. There are pleadings to be effect that appellants had asserted adverse possession way back in the year 1997 by raising illegal construction and promptly respondent-plaintiff had made a complaint to the local SDM and had filed the suit for possession which has been rightly decreed by courts below.

In the considered opinion of this Court, no substantial question of law arises in this second appeal. Finding no illegality or infirmity in the judgments of the courts below, this appeal and the stay application are dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

JULY 19, 2016

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