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

+ C.R.P. 150/2016 & CM No. 33812/2016

ARUN KUMAR Petitioner

Through: Mr.Sumit Rajput, Adv.

versus

SANT LAL ARORA Respondent

Through: Mr.S.S. Panwar with Mr.Nivedita
Panwar, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **03.10.2016**

1. By the present petition, the petitioner seeks to impugn the order dated 19.05.2016 by which the application under Order 12 Rule 6 CPC moved on behalf of the petitioner, was dismissed.
2. The petitioner has filed the present suit for permanent injunction, possession, arrears of rent and mesne profit. The petitioner claimed to be lawful owner of land measuring 75 sq. yds. situated at abadi Shadi Khampur (the suit property). It is submitted that the property was owned by late Sh.Jhanju Singh and late Sh.Harkesh Singh and have been leased out to the respondent/ Sh. Sant Lal Arora through separate registered lease deed on 18.12.1967 for a period of 3 years which was further renewed for 20 years w.e.f 26.08.1970.
3. The respondent has filed his written statement. In the written statement he has taken various pleas including (i) that all legal heirs of late Shri Jhanju Singh and Shri Harkesh Singh who had leased out the property

to the defendant have not been joined as parties (ii) the court has no jurisdiction as the yearly rent is Rs.29,44/- and hence it is the Rent Controller under the Delhi Rent Control Act who has jurisdiction (iii) the respondent has paid rent upto 30.06.1983 against rent receipts and thereafter nobody has come to collect rent from the respondent. Hence, the respondent has become owner by way of adverse possession.

4. The impugned order noted that in order to pass a judgment on the basis of admission of parties under Order 12 Rule 6 CPC, it is essential that admission must be clear, unambiguous and unconditional. It concluded that in the present case the respondent has made no unconditional admission so as to enable the court to pass a judgment. It noted that the respondent has disputed the right of the petitioner in the suit property and has claimed ownership by virtue of adverse possession. It has further disputed the jurisdiction of the court being barred under the Delhi Rent Control Act. On this reasoning, the application under Order 12 Rule 6 CPC was dismissed.

5. Learned counsel appearing for the petitioner submits that the lease deed in question dated 18.12.1967 and renewed lease deed dated 26.8.1970 are registered lease deeds. He submits that what was leased out to the petitioner was only land and hence the Delhi Rent Control Act is not applicable. Hence, he submits that the impugned order is entirely erroneous. Learned counsel appearing for the respondent has reiterated his submissions made in the written statement.

6. The respondent does admit that he entered possession of the property as a lessee. Once he has entered possession as a lessee mere long possession would not fructify into adverse possession, as is sought to be claimed by the respondent.

7. Even otherwise in my opinion the stand of the applicants of mere adding the words 'adverse possession' and trying to claim ownership based on adverse possession without pleading the essential ingredients of adverse possession as is sought to be argued is a misplaced contention. What are the ingredients of Adverse Possession. In *V. Muthiah Pillai (Died) and Ors. Vs. Vedambal and Ors.*, AIR 1986 Madras 106 the Division Bench of the Madras High Court clarified the meaning of adverse possession as follows:-

“15. ... We will first state briefly the law relating to adverse possession: - The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights, but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor.

...

The classical requirement of adverse possession are that the possession must be nec vi nec clam nec precario, that is to say, the possession required must be adequate in continuity, in publicity and in extent. It is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running out, if he exercises due vigilance~ to be aware of what is happening In *Secretary of State v. Debendralal Khan* MANU/PR/0072/1933 their Lordships negatived the contention that it was necessary for the trespasser to bring the facts of his adverse possession to the notice of the real owner. More exercise of possession exclusively and continuously would not be enough in all cases to show that the true owner if vigilant would be aware of what

was happening. Permissive possession does not become hostile till there is an assertion of an adverse possession to the knowledge of the owner. (Sheodhari Rai v. Suraj Prasad Singh MANU/SC/0058/1950 : AIR1954SC758). The permissive character of the possession can be inferred from the attending circumstances even without direct evidence. If possession is found to be permissive at the inception the possessor cannot prescribe or sustain title or any claim adversely to the grantor of the possession (Ouseph Ouseph v. Mathen Mariamma, AIR 1954 T C 297 : 1954 KLT 8.

8. Hence, merely pleading long possession and consequent adverse possession may not be a valid plea.

9. Two other issues are, namely, non-joinder of necessary parties and as to whether the Delhi Rent Control Act is applicable to the facts of the case.

10. Instead of adjudicating upon these issues the trial court has merely concluded that there are no admissions available on record to warrant passing of order under Order 12 Rule 6 CPC. No finding has been returned on the pleas of the respondent. Accordingly, the impugned order suffers from material illegality. The impugned order is quashed. The trial court is requested to hear arguments afresh on the application of the petitioner under Order 12 Rule 6 CPC and pass an order in accordance with law.

11. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

12. Order *dasti*.

JAYANT NATH, J.

OCTOBER 03, 2016/neelam