

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

+ **RSA No. 241/2016 & CM Nos. 31705/2016 (stay) & 31706/2016**
(Exemption)

% **31st August, 2016**

SHRI HUKAM SINGH & ORS. Appellants

Through: Mr. S.S. Tomar, Advocate.

versus

SHRI JOGINDER SINGH (SINCE DECEASED) & ORS. Respondents

Through:

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 appellants/plaintiffs impugning the concurrent Judgments of the courts below; of the Trial Court dated 25.7.2015 and the First Appellate Court dated 13.5.2016; by which the suit filed by the appellants/plaintiffs for cancellation of the Sale Deed dated 25.7.2003 executed by respondent no.5/defendant no.5 in favour of respondent nos.1 to 4/defendant nos.1 to 4 and for the grant of consequential relief of possession with respect to the suit property being H.no. 10, Khasra no. 894, Village Alipur, Delhi admeasuring 387 sq. yds, has been dismissed.

2. The case of the appellants/plaintiffs for claiming possession of the suit property and for cancellation of the sale deed executed by defendant no.5 in favour of defendant nos. 1 to 4 was that the appellants/plaintiffs are the owners of the suit property. Ownership was claimed on the basis of a Judgment dated 22.5.1951 passed by Sh. Chetan Dass, Sub-Judge, I Class, Delhi. Original ownership of the suit property was claimed to be of Sh. Jhoonda who was the father of plaintiff nos. 1 to 3 and grandfather of plaintiff nos. 4 to 7. In the plaint, it is also pleaded that appellants/plaintiffs were dispossessed in 1979 whereupon they filed a suit bearing no. 243/1979 in the court of Sh. A.K. Srivastava, Sub-Judge, Delhi but that suit could not achieve finality as the file was misplaced. The subject suit was thereafter filed in 2003 when defendant no.5 executed the Sale Deed dated 25.7.2003 in favour of defendant nos. 1 to 4.

3. Suit was contested by defendant nos. 1 to 7. Defendant nos. 5 to 7 filed one joint written statement and defendant no. 1 to 4 filed one joint written statement. In essence, the defence of all the defendants was that neither Sh. Jhoonda and nor hence the plaintiffs were ever the owners of the suit property. The defendants claimed that a Conveyance Deed dated 15.02.1968 of the suit property bearing no. 10, Village Alipur was executed in favour of defendant no. 5 by the Government of India, Ministry of Rehabilitation. It was also pleaded that defendant nos.1 to 4 had purchased the suit property from defendant no.5

by a registered Sale Deed dated 25.7.2003. The suit was therefore prayed to be dismissed.

4. A reading of the concurrent judgments of the courts below show that the following conclusions have been arrived at:-

(i) The appellants/plaintiffs have failed to prove their ownership of the suit property and even if the case set up by defendants no. 1 to 7 is not substantiated by them, appellants/plaintiffs had to stand on their own legs to prove the ownership of the suit property. Since they failed to prove the ownership of the suit property, the subject suit was therefore liable to be and was accordingly dismissed.

(ii) The appellants/plaintiffs claimed ownership in terms of the Judgment dated 22.5.1951 of Sh. Chetan Dass, Sub-Judge, I Class, however it was found that the said judgment was carried in appeal and in appeal the issue of ownership of Sh. Jhoonda was not decided in favour of Sh. Jhoonda but the issue of ownership of Sh. Jhoonda was left open and all that was decided in the earlier litigation in appeal (Judgment dated 25.7.1952) was that the suit property could not be attached and sold for a decree obtained by one Sh. Gopi against one Sh. Haider. A revision was preferred against the judgment in appeal but the same was dismissed in default on 22.2.1953.

(iii) Even if there were discrepancies with respect to the area of the suit property mentioned in the Conveyance Deed executed by the Ministry of Rehabilitation dated 15.2.1968 in favour of defendant no.5 and in which conveyance deed property bearing H.no.10, Village Alipur was mentioned having an area of 1270 sq. ft. and that there is no mention of the Conveyance Deed dated 15.2.1968 in the Sale Deed dated 25.7.2003 executed by defendant no.5 in favour of defendant nos. 1 to 4, however, plaintiffs/appellants had to stand on their own legs to prove the ownership of the suit property and which was not done by the appellants/plaintiffs.

5. During the course of arguments, I put a specific query to the counsel for the appellants/plaintiffs as to how the appellants/plaintiffs claimed ownership of the suit property viz either the property being inherited by Sh. Jhoonda from his forefathers or the property having been purchased by Sh. Jhoonda (or the plaintiffs) from a private person or if Sh. Jhoonda (or the plaintiffs) had purchased the suit property from the government. To this query, counsel for the appellants/plaintiffs concedes that the suit property was not purchased by Sh. Jhoonda or plaintiffs either by a private sale/purchase transaction or by purchase from the government. It was however pleaded that Sh. Jhoonda was the owner of the suit property on account of Sh. Jhoonda having acquired the same from his forefathers. When counsel for the appellants/plaintiffs was further put a query that if Sh. Jhoonda had acquired

ownership and possession of the suit property from his forefathers then what is the proof and evidence filed by the appellants/plaintiffs to show ownership of Sh. Jhoonda of the suit property from his forefathers whether in the form of the revenue record or in the form of any other record, counsel for the appellants/plaintiffs concedes that neither there is any pleading in this regard in the suit plaint nor any evidence whatsoever has been led either in the form of the revenue record/jamabandi or any governmental record to show that Sh. Jhoonda has inherited the suit property from his forefathers. Therefore, it is seen that neither Sh. Jhoonda nor the appellants/plaintiffs have any record whatsoever of ownership and possession of Sh. Jhoonda or the appellants/plaintiffs of the suit property on account of the suit property being owned by the forefathers of Sh. Jhoonda. Therefore, appellants/plaintiffs have miserably failed to substantiate their claim of ownership in the suit property and once that is so, the suit for possession was bound to be dismissed as also the relief sought of cancellation of the Sale Deed dated 25.7.2003 executed by the defendant no.5 in favour of defendant nos. 1 to 4 on the basis that defendant no.5 was the owner of the suit property.

6(i) During the course of arguments, when this Court again put to the counsel for the appellants/plaintiffs that if there are no documents to show the ownership of the appellants/plaintiffs of the suit property then how the appellants/plaintiffs can be the owners of the suit property, and to which query

counsel for the appellants/plaintiffs responded by stating that the appellants/plaintiffs and their predecessor-in-interest Sh. Jhoonda were the owners of the land adjoining the suit property as the suit land was adjoining to the land owned by the appellants/plaintiffs, and hence the appellants/plaintiffs became the owners as they were in hostile possession of the suit property. Once again, it is found that even this claim of ownership on the basis of possession of the suit property being adjoining to the land/property owned by Sh. Jhoonda is not at all proved by any evidence on record of the appellants/plaintiffs or Sh. Jhoonda being in possession of the suit property for past many years and till 1979 when the earlier suit was filed by the plaintiffs/appellants, and which earlier suit did not achieve finality on account of the file being misplaced.

(ii) In fact, the last submission urged on behalf of the appellants/plaintiffs as noted above that the suit property was adjoining to the property owned by them and ownership was claimed only on the basis of the long possession of the appellants/plaintiffs and their forefathers Sh. Jhoonda, will clear the aspect with respect to the discrepancy in the Conveyance Deed dated 15.2.1968 executed by the Government of India of the suit property in favour of defendant no.5, and the sale deed thereafter executed by defendant no.5 in favour of defendant nos. 1 to 4, inasmuch as, whereas part of the suit property was owned by defendant no.5 under the Conveyance Deed of the Government of India dated 15.2.1968, the other part of the suit property is the

property with respect to which Conveyance Deed dated 16.1.1970 is in favour of the mother and sister of the defendant no.5, and which property was inherited by defendant no.5, and which totaled to become the suit property. In any case, and as already stated above, appellants/plaintiffs had/have to stand on their own legs to prove the ownership of the suit property and which the appellants/plaintiffs have quite clearly failed as no evidence whatsoever was led to prove the ownership in any manner of the appellants/plaintiffs of the suit property.

7. Learned counsel for the appellants/plaintiffs sought to bring the attention of this Court to the statement of defendant no.5 recorded in the earlier 1979 suit, and in which statement as per the the case of the appellants/plaintiffs, defendant no.5 states that defendant no. 5 did not know that the suit property was an evacuee property or not and he had no proof that the suit property was an evacuee property and that he was aged about 8 to 10 years when they came to Alipur where the house/suit property is situated, however, there cannot be reference to the statement of defendant no.5 recorded in the earlier 1979 suit because if the object is to contradict this witness/defendant no.5 in the present suit by the statement in the earlier suit, then as per Section 145 of the Indian Evidence Act, 1872 it was necessary to put/confront the specific portions of the deposition of defendant no.5 in the earlier 1979 suit to the defendant no.5 in this suit but admittedly defendant no.5 in the present suit has not been confronted

with his statement recorded in the earlier suit in this suit and thus no advantage can be taken by the appellants/plaintiffs of the statement of defendant no. 5 in the earlier 1979 suit . Also, merely because defendant no.5 does not remember the suit property to be an evacuee property would not mean that there is no conveyance deed inasmuch as there is a duly registered Conveyance Deed dated 15.2.1968 executed by the Government of India in favour of defendant no.5, and as already stated above, by the conveyance deed area of 1270 sq. ft described as the suit property bearing H.no.10 was sold to the defendant no.5 and that the other additional area forming part of the suit property would be the area as sold to the mother and sister of the defendant no.5 by the Conveyance Deed dated 16.1.1970.

8. I may finally note that the subject suit admittedly is filed in 2003. Even as per the admitted case of the appellants/plaintiffs they were dispossessed in 1979. No doubt an earlier suit was filed but that suit did not achieve finality because the file became untraceable, however, that does not mean that possession would not be with the defendant nos. 1 to 5 since 1979 for commencement of limitation which once starts running does not stop in view of Section 9 of the Limitation Act, 1963 and therefore, the subject suit which is filed in 2003 is time barred being filed beyond 12 years and therefore hit by Section 27 of the Limitation Act read with Article 65 of the Schedule of the Limitation Act, and of which provision this Court can take *suo moto* notice

because of Section 3 of the Limitation Act which requires that courts should look into the aspect of limitation although limitation is not set up as a defence. Trial court in para 34 of its judgment has rightly discussed and concluded on this aspect as under :-

“34. Another pertinent point to note is that the plaintiffs have not mentioned anywhere the plaint about the date when the plaintiffs no. 1 to 3 were allegedly dispossessed from the suit property and it is only in his cross examination of 25.05.2011 that PW1 deposed that the possession was forcibly given by the police to the defendants unlawfully in May 1979. Firstly, there is nothing on record to show that the plaintiffs were ever in possession of the suit property, PW3 who as such is a partisan witness merely testified that Sh. Moolchand (plaintiff no. 2) used to tether his animals on the disputed land but material particulars regarding the time period for instance the last time PW3 saw the plaintiff no. 2 or any other plaintiff in the suit land was not stated by PW3. Even the plea of plaintiffs regarding how they were dispossessed is not clear; in the plaint, they state that the defendants no. 5 to 9 forcibly dispossessed the plaintiffs no. 1 to 3 and their Late brother from the suit property, in the replication they state that they were implicated and dispossessed from the suit property as the father of defendant no. 5 was a Police Officer and the defendant no. 5 was also having a Police background while in evidence PW1 made the further improvement that defendants no. 5 to 7 were put in possession by the police in the year 1979 and since then they remained in possession till it was handed over to defendants no. 1 to 4. Too many variations have been brought in by the plaintiffs which make their case doubtful. Secondly to the knowledge of the plaintiffs the earlier suit for possession was not decided and in the present suit the benefit U/s 14 of the Limitation Act has not been sought to be taken. As such the present suit filed in the year 2003 so far as the relief of recovery of possession is concerned is time barred, the cause of action having arisen, if at all, as per the testimony of PW1 in May 1979 itself.” (underlining added)

9. In view of the above, I do not find any substantial question of law for this second appeal to be entertained under Section 100 CPC. The second appeal is therefore dismissed leaving the parties to bear their own costs.

AUGUST 31, 2016/ib

VALMIKI J. MEHTA, J