

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA No. 142/2016 & C.M. Appl. Nos.19844/2016 & 19846/2016**

% **9th August, 2016**

SH. SANDEEP KUMAR & ORS Appellants

Through: Mr. B.P. Yadav, Mr. S.C. Sharma
and Mr. Charan Singh, Advocates.

versus

SH. SRI PAL & 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 with delay of as many as 263 days in filing and 181 days in re-filing the second appeal. By the applications being C.M. Appl. Nos.19844/2016 and 19846/2016 condonation of the delays is sought. The only reason given in C.M. Appl. No.19844/2016 for filing of the second appeal with delay is that the delay is on account of mother of petitioner no.1 being seriously ill for a long time and which averment is made in paragraph 2 of C.M. Appl. No. 19844/2016 and the same reads as under:-

“2. That the mother of the petitioner No.1 was seriously ill from long time. All the members of his family were disturbed. At last she died on 263 and due to this reasons the petitioner no.1 was disturbed. This is the reason for delay in filing this 2nd appeal.”

2. In the application for condonation of delay in re-filing the second appeal the ground given was that appellant no. 1 was suffering from typhoid and hence the delay in re-filing. This is stated in paragraph 2 of C.M. Appl. No. 19846/2016 and the same reads as under:-

“2. That the appellant no.1 was suffering from typhoid and took long time in recovering of a good health and so he could not do proper *pairvi* of this case and therefore the long delay occurred in refiling this case.”

3. None of the applications are supported by any documents or medical certificates, and it is noted that the case of the appellant no. 1 is not that he was confined to bed in this entire period and never did any work during the delay in filing or re-filing. Really, therefore, there are no grounds for condonation of delay. The second appeal is therefore liable to be dismissed on account of the appellants not having made out sufficient cause, however, in spite of the same I have heard the counsel for the appellants on merits.

4. The challenge by means of this Regular Second Appeal is to the Judgment of the First Appellate Court dated 18.10.2014 by which the first appellate court set aside the Judgment of the Trial Court dated 22.12.2011 by which the trial court had dismissed the suit for injunction and declaration filed by respondents/plaintiff. Originally, the suit was filed by the plaintiff Sh. Jai Narain who died during the pendency of the suit and thereafter he was substituted by the legal representatives who are now the respondents in the

present second appeal. The first appellate court has held that the plaintiff (reference to plaintiff includes reference to original plaintiff as also the respondents as per the context) is not entitled to the relief of declaration of ownership with respect to the suit property comprising of 2 bighas and 3 biswas situated in khasra no. 43, situated at revenue estate of village Sabhapur, Shahdara, Delhi but as plaintiff is found to be in settled possession of the suit property, hence the plaintiff, it was held, cannot be dispossessed without the due process of law.

5. Plaintiff claimed ownership of the suit property on the ground that the suit property was originally owned by one Sh. Atru and since plaintiff had served Sh. Atru till his death, hence Sh. Atru had executed a Will bequeathing the suit property in favour of the plaintiff Sh. Jai Narain. The respondents/plaintiff also claimed the relief of injunction against being dispossessed of the suit property. The relief clauses of the plaint read as under:-

“(a) A decree for permanent injunction in favour of the plaintiff and against the defendants, thereby restraining the defendants, their agents, servant, associates or any other persons working on their behalf, from selling, alienating or parting with the possession of the property of the plaintiff and from interfering in the peaceful possession of the plaintiff of the property bearing khasra number 43, admeasuring 2 bighas and 3 biswas, situated in the revenue estate of Vill. Sabhapur Shahdara, Delhi, in the interest of justice.

(b) A decree of declaration thereby declaring the documents of the defendant, if any, which may create the right, title or interest over the property of plaintiff, to be forge, null and void.

(c) Cost of the suit be also awarded in favour of the plaintiff and against the defendants.

(d) Any other relief(s) which this Hon'ble Court deems fit and proper be also awarded in favour of plaintiff and against the defendants, in the interest of justice."

6. Appellant nos. 1 to 4/defendant nos. 1 to 4 contested the suit and pleaded ownership in their favour of the suit property on account of documents said to have been executed by Sh. Atru in favour of Sh. Bhag Mal. Sh. Jattan Singh had purchased the suit property from Sh. Bhag Mal. From Sh. Jattan Singh appellants claimed that they had purchased the suit property. Accordingly, appellant nos. 1 to 4/defendant nos. 1 to 4 sought dismissal of the suit.

7. Trial court on 4.2.2002 framed the following issues:-

- i. Whether the suit is not maintainable as per provisions of order 7 rule 11 CPC? OPD
- ii. Whether the suit is barred by provision of section 185 of Delhi Land Reforms Act? OPD
- iii. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
- iv. Whether the plaintiff is in possession of the suit property as mentioned in para 1 of the plaint? OPP
- v. Whether the defendant is in possession of the suit property? OPD
- vi. Whether the plaintiff is entitled for the relief of declaration declaring the documents of defendants if any as null and void? OPP
- vii. Whether the plaintiff is entitled for relief of permanent injunction as prayed for? OPP
- viii. Relief."

8. With respect to issue no.(v) as to whether the appellants/defendants are in possession of the suit property the trial court held that since plaintiff

failed to prove the Will in his favour from Sh. Atru hence even possession cannot be taken of the plaintiff and khasra girdhawaris filed by the plaintiff from the years 1994-95 to 1999-2000, proved and exhibited as Ex.PW1/A to Ex.PW1/1F cannot help the plaintiff. The first appellate court has however held that once the plaintiff proved possession in his favour by virtue of public documents being khasra girdhawaris of the years 1994-2000, plaintiff hence was found to be in settled possession and hence plaintiff was entitled to injunction against being dispossessed by the due process of law, and especially because the appellants had failed to prove their entitlement/title to the suit property as the documents of title by which the appellants claim ownership in the suit property through Sh. Jattan Singh and Sh. Bhag Mal were not proved on record. The relevant paragraphs of the judgment of the first appellate court are paragraphs 24, 25, 34, 35 and 36 and which paragraphs read as under:-

“24. The plaintiff herein claims to be in cultivatory possession of the suit property and has placed on record the certified copies of all the khasra girdawris right from the year 1994-95 to the year 1999-2000 viz Ex. PW1/1A to Ex. PW1/1F. The defendants have also opted not to cross examine the plaintiff on the point of possession. Contrary to the plaintiff's claim the defendants have failed to lead any documentary evidence to establish their claim of possession in the suit property. Defendant no.1 is not even able to reveal the khasra number of any of the field situated adjacent to khasra no. 43 wherein the suit property lies. Except for bare assertions, the defendants have miserably failed to prove their possession or erode the credibility of the khasra girdawries placed on record by the plaintiff.

25. This court is not convinced with the arguments of the counsel for defendants that certified copies of khasra girdawries are not admissible in evidence unless the concerned revenue officials are examined on behalf of the plaintiff. In my considered opinion record maintained by revenue officers relating to land revenue, survey and settlement etc. are public documents within the meaning of section 74 of the Indian Evidence Act. Reliance is

placed upon K. Pedda Jangaiah Vs. Mandal Revenue Officer, 1996 AIHC 1006 (AP). Certified copies of the khasra girdawries are admissible piece of evidence u/s 77 of Indian Evidence Act and examination of its author or the concerned official is not necessary. In case if the defendant had any objection regarding the credibility of the said documents, the onus lies upon him to demolish the credibility of the said documents. And having failed to cross examine the plaintiff on the issues of possession or question the veracity of the certified copies of the khasra girdawri, he cannot claim to be in possession of the suit property, merely on the basis of bare assertions. Considering the clinching piece of documentary evidence available on record, I do not have any hesitation in holding that it is the plaintiff and not the defendants who is in possession of the suit property. Both the issues no.4 and 5 are disposed off accordingly.

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34. It has been argued by the appellant that the appellant has successfully proved that he was in lawful and settled possession of the suit property for a very long time and his name was duly entered in the revenue records since 1985 till the filing of the suit. It is further highlighted that the concerned SDM had also initiated proceedings against the plaintiff u/s 81 of the DLR Act. It is submitted that the documentary evidence available on record speaks volume about the possession of the plaintiff in the suit property. It is thus argued that the findings of the Ld. Trial court are erroneous and deserves to be set aside. Counsel for appellant has placed reliance upon **Rame Gowda (dead) by LRs Vs. M. Varadappa Naidu (dead) by LRs and Anr. Manu/SC/1044/2003.** It is argued that the settled possession of the plaintiff should have been protected.

35. On the contrary, Ld. Counsel for defendant/respondent has supported the findings of the Ld. Trial court. It is argued that once the very basis of the plaintiff's claim to the title of the suit property i.e. the Will is removed, the entire structure of the plaintiff's version crumbles and he is not entitled to any relief. Ld. Counsel for defendant has argued that Ld. Trial court has rightly placed reliance upon **Anathula Sudhakar Vs. P. Buchy Reddy AIR 2008 SC 2003.**

36. It has been conclusively established above that plaintiff is in settled possession of the suit property since 1994. I cannot agree with the findings of the Ld. Trial court that the khasra girdawri of the suit property since the year 1996 till the year 2000 i.e. when the suit was filed, are not sufficient in themselves to determine the current possession of the plaintiff in the suit property. Even if the right of the possession is not bolstered by the ownership claim even then the factum of settled possession cannot be ignored. Possession in itself is a very valuable right which ought to be protected against any unlawful assault upon the plaintiff's right to retain possession. A person in settled possession of the land is entitled to retain and protect the same against an unlawful aggressor, except against true owner. Although the ownership credentials of the plaintiff stands demolished yet the ownership credentials of

the defendants are yet to be tested and established. I wonder that what would be the ensuing consequences if settled possession of the plaintiff is not protected by way of injunction. One cannot analyze the amount of unrest or even violence that may ensue amongst the rival fractions to take or protect possession. Thus, I cannot but disagree with the observations of the Ld. Trial court that since the revenue records relied upon by the plaintiff were not proved by him by calling original records, the parties should be left on their own to assert and claim possession by use of might is right. Thus this court is of considered opinion that the instant issue ought to be decided in favour of the plaintiff and not against him.” (underlining added)

9. I fully agree with the findings and conclusions of the first appellate court, inasmuch as, appellant nos. 1 to 4 /defendant nos. 1 to 4 have not proved and exhibited before the trial court any title documents showing purchase of the suit property as per the chain of documents following from the original owner Sh. Atru.

10. The documents which were proved before the trial court are stated in paragraphs 11 to 13 of the Judgment of the Trial Court dated 22.12.2011 and these paragraphs read as under:-

“11.After framing of the issues, matter proceeded for plaintiff evidence. In order to substantiate his claims, plaintiff examined himself as PW1 as a sole witness of the case and reiterated the contents of his plaint. PW1 relied upon following documents in support of his claims as under:-

Ex. PW1/1	Khasra Girdhawari for the year 1996-97
Ex. PW1/1A	Khasra Girdhawari for the year 1994-95
Ex. PW1/B	Khasra Girdhawari for the year 1996-97
Ex. PW1/1C	Khasra Girdhawari for the year 1997-98
Ex. PW1/1D	Khasra Girdhawari for the year 1999-2000
Ex. PW1/1E	Khasra Girdhawari for the year 1999-2000
Ex. PW1/1F	Khasra Girdhawari for the year 1999-2000
Ex. PW1/2	Order of Sh. L.K. Gaur, Ld. CJ

Ex. PW1/3	Order of Sh. G.G. Saxena, Ld. Additional Collector dated 15.03.2000
Ex.PW1/4	Order of Sh. Ramesh Kumar, Ld. CJ dated 21.01.2000
Mark A	Khatauni for the year 1985-86
Mark B	Khatauni for the year 1985-86 issued on 28.08.1995
Mark C	Khatauni issued on 17.4.1996
Mark D	Khatauni issued on 28.10.1998

12. PW1 was duly cross examined and discharged. Thereafter, the matter was fixed for defendant's evidence. Defendants in support of their contentions examined defendant no.3 Sh. Vinod Kumar as DW1. He relied upon following documents in support of the case of defendants as under:-

Mark A	Will Deed
Ex.DW1/1	Photocopy of order of Revenue Assistant/SDM, Seelampur dated 28.10.99
Ex.DW1/2	Photocopy of order of Revenue Assistant/SDM, Seelampur dated 18.11.99

13. DW1 was duly cross examined and discharged. Defendants further examined defendant no.1 as DW2 who deposed on the lines of written statement. DW2 relied upon following documents in support of claims of defendants as under:-

Ex.DW2/1	Copy of order dated 28.04.01 passed by Sh. G.D. Dhanuka, Id. ASJ
Ex.DW2/2	Copy of order of Revenue Assistant/SDM, Seelampur dated 26.11.99"

11. Accordingly, since the plaintiff was proved to be in settled possession by proving on record khasra girdhawaris showing his possession from the years 1994-2000, the suit having been filed by the plaintiff in the year 2000, the first appellate court has rightly passed a decree in favour of the plaintiff and against the appellants restraining the appellants from dispossessing the plaintiff/respondents without the due process of law.

12. No substantial question of law arises under Section 100 CPC for this Regular Second Appeal to be entertained. The same is accordingly dismissed.

AUGUST 09, 2016

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VALMIKI J. MEHTA, J

