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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No.29/2016

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7th September, 2016

AMARJEET SINGH AND ORS.

..... Appellants

Through: Mr. Ajaypal Singh, Advocate.

versus

JASWANT KAUR AND ANR.

..... Respondents

Through: Mr. Jai Ram Ram Garg, Advocate for
respondent No.1.

Mr. Manish Kumar Srivastava,
Advocate for respondent No.2/NDPL.

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 Judgment of the First Appellate Court dated 21.9.2015 by which the first appellate court set aside the Judgment of the Trial Court dated 2.5.2014. Trial Court by its Judgment dated 2.5.2014 had decreed the suit for declaration and injunction filed by the appellants/plaintiffs. Though the operative part of the judgment of the trial court is not exhaustively worded because it is seen that in para 15 of the judgment of the trial court the appellants/plaintiffs have been granted the relief of restraining the respondent no.1/defendant no.1 from

creating third party interest in the suit property but the same is missing in the last operative para of the judgment. In the operative para the reliefs are granted only with respect to removal of electricity connection illegally obtained by the respondent no.1/defendant no.1 in the suit property. The suit property is the property admeasuring 100 sq. yds bearing no.12, Gopal Nagar, Near Gurdwara Azadpur, Delhi-110033 and old number of which was I-G/C, out of Khasra no.13/30, situated at village Azadpur, Delhi.

2. On 13.5.2016, the following substantial questions of law were framed by a learned Single Judge of this Court:-

“(i) Whether the lower Appellate Court could have reversed the findings of the Trial Court on the issue of limitation without any such issue having been framed or plea taken by the respondents, thereby preventing the appellant/plaintiff from demonstrating that the suit was not barred by limitation.

(ii) Whether the judgment delivered by the lower Appellate Court is perverse inasmuch as there is no discussion on all the issues framed by the learned Trial Court.”

3. It is seen that in the Judgment of the Trial Court dated 2.5.2014 while dealing with issue nos.2 to 6, in paras 11 to 17 of the judgment of the trial court, there is a detailed discussion on how the appellants/plaintiffs are entitled to the injunction with respect to respondent no.1/defendant no.1 not creating third party rights in the suit property because the appellants/plaintiffs are the owners of the suit property through their predecessor-in-interest/father

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Sh. Bachan Singh. The Sale Deed dated 11.6.1959 in favour of Sh. Bachan Singh along with brother of Sh. Bachan Singh namely Sh. Joginder Singh has been filed and proved as Ex.PW1/1. The entire property purchased by the two brothers, namely Sh. Bachan Singh and Sh. Joginder Singh was of 200 sq yds out of which the subject suit has been filed with respect to that part of 100 sq yds of the property which came to be owned by Sh. Bachan Singh, predecessor-in-interest of the appellants/plaintiffs under the Sale Deed dated 11.6.1959 (Ex.PW1/1).

4. The facts of the case are that the appellants/plaintiffs in the plaint pleaded that the respondent no.1/defendant no.1 was their tenant since the time of their father who has since expired. Respondent no.1/defendant no.1 was a tenant with respect to one room and one kitchen in the suit property and which entire property is a much larger property and a constructed property. The rate of rent at present as per the appellants/plaintiffs is Rs.1,000/- per month. The site plan of the suit property containing the total construction consisting of various rooms, kitchens, toilets etc has been filed and proved as Ex.PW1/2. As per the plaint, the averments are that the respondent no.1/defendant no.1 illegally obtained the electricity connection by filing forged documents with the respondent no.2/defendant no.2/NDPL (a local electricity company) and therefore the electricity connection wrongly obtained by the respondent no.1/defendant no.1 should be disconnected by declaring the documents on the

basis of which respondent no.1/defendant no.1 has obtained electricity connection from respondent no.2/defendant no.2 as null and void. Relief of injunction against the respondent no.1/defendant no.1 was also claimed that she should not create any third party rights in the suit/tenanted premises.

Following are the reliefs claimed in the plaint:-

“A) Pass a decree of declaration declaring the documents null and void on the basis of which the defendant has obtained the electricity connection in her name vide K. No.36105055098 provided by defendant No.2.

B) Pass a injunction order in favour of the plaintiff and against the defendant No.1, her sons and their associates thereby restraining them creating any third party interest in the tenanted premises which is in their possession and further they may be restrained for making threat to withdraw the eviction petition No.29 of 2011 titled as “Amarjeet Singh & Others Vs. Jaswant Kaur & Others” pending in the court of Sh. Devender Kumar Jangala, A.R.C., Rohini, Delhi.

C) Direct the defendant No.2 to disconnect the supply of above said electricity connection immediately and to take appropriate action against the defendant No.1.

D) Pass any other or further relief(s) which this Hon’ble Court may deem fit and proper under the facts and circumstances of the case may kindly be passed in favour of the plaintiffs and against the defendants.

E) Award the cost of the suit.”

5. Respondent no.1/defendant no.1 pleaded that she is not a tenant but that she is the owner of the suit property and the property is in the possession of the defendant no.1/respondent no.1 being one room, one kitchen and one bathroom and certain open space. As per the written statement, this portion in occupation of the respondent no.1/defendant no.1 was said to be not forming part of the suit property bearing no.12 (old No.1-G/C), inasmuch as, this property which is in possession of the respondent no.1/defendant no.1 was

upon land which was owned by one Sh. Gopal Dass. It was denied that the respondent no.1/defendant no.1 had illegally taken the electricity connection. The suit was prayed to be dismissed.

6. After pleadings were complete, the trial court on 20.8.2009 framed the following issues:-

- “(1) Whether the plaintiff is entitled for the relief of declaration as prayed for? OPP
- (2) Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for? OPP
- (3) Whether the plaintiff has filed the present suit without any cause of action? OPD
- (4) Whether there is any privity of contract between the plaintiffs and defendants? OPD
- (5) Whether the suit of the plaintiff is barred u/s 41(h) of Specific Relief Act? OPD
- (6) Whether the suit of the plaintiff is maintainable in the present form? OPD
- (7) Relief.”

7. The trial court has dealt with the relevant issue nos.2 to 6 by observing as under:-

“Issue No. 2, 3, 4, 5 and 6:- These are inter-connected issues based on same evidence and hence, common discussion shall suffice.

The crux of the dispute is that what is the status of the defendant No. 1 in the suit property. The defendant No. 1 has asserted that Gurdev Singh was the owner of the suit property now. Had it been so there was no need to get the electricity supply from the plaintiffs and that too for a substantial period of time. Further it has also not been explained as to why the plaintiffs should give the electricity supply to the defendant No. 1 without there being any relationship between them. It is not the case of the defendant No. 1 that they were provided electricity on gratuitous basis. Further there is a document of MCD filed on record and duly proved wherein the status of Gurdev Singh is reflected as a tenant. The said document is Ex. PW1/3 which is inspection form of Municipal Corporation of Delhi of the property No. 12, Gopal Nagar, Near

Gurdwara Azadpur, Delhi-110033. Gurdev Singh is stated to be a tenant since last ten years @ Rs.50/- per month and inspection report pertains to the year 1980. Thus, the contention of the defendant No. 1 that they are the owners of the suit property is belied by the said document. The documents further relied upon by the plaintiff in respect of the suit property i.e. the Sale deed Ex. PW-1/1 and the subsequent documents executed inter se have been duly proved on record. It shows that the plaintiffs were transacting in respect of the said property and the ownership rights were also transferred by the same or at least they were dealing with the suit property as that of an owner. The defendant No. 1 on the other hand has not filed on record any title document from which the ownership rights in regard to the suit property could be deciphered. Having a ration card in respect of the suit property does not entitle the defendant No. 1 to claim any interest in the suit property.

12. Coming specifically on the evidence led, PW-1 was exhaustively cross-examined on behalf of the defendant. In the crossexamination, PW-1 admitted that no suit for recovery of rent or electricity charges was filed earlier neither any demand notice of any sort was served upon them. He also admitted that complaints regarding this connection were made only about one year back. Now, no doubt the plaintiffs had not filed any suit for recovery of rent as well as electricity charges but it does not mean that the plaintiffs had lost the title of the suit property. For whatever reason either on account of trifle amount of the rent or electricity charges they may not have deem it fit to sue, but, merely non-suing the defendant does not crystallize the possessory rights of the defendant No. 1 to that of a tress passer acquiring 'adverse possession';.

13. During the cross-examination of DW1 the witness admitted that there is a common wall belonging to plaintiff and herself and also that plaintiff visits the kitchen through her premises which passage in the year 2005 they had provided. Now in the event if the plaintiffs would have disconnected the electricity supply given to defendant No. 1, defendant No. 1 would not have allowed the plaintiffs to visit the kitchen through her premises. Further the existence of a common wall as claimed by her without any right, title or interest of the property also shows that the said wall belong to the plaintiff. It is quite possible and probable that apart from being a tenant, defendant No. 1 may have also encroached some other land adjoining the premises or both the parties may have encroached the land adjoining the premises and there may be a change of status i.e. a common wall or the approach of the kitchen through the house of the defendant No. 1 but the documents of MCD, the fact that the defendant No. 1 was getting electricity supply from the plaintiffs for a considerable period of time and the documentary evidence relied upon by the plaintiff cumulatively lead to the conclusion that the defendant No. 1 or even the predecessor in interest had no right, title in the suit property. As such they are the tenants in respect of the suit property.

14. It is also worth while to note that had it been otherwise the defendant No. 1 would never have resorted to surreptitiously seeking electricity connection by depositing the bill of one Amrik Singh Walia to the electricity department and

would have rather given her title documents or would have claimed that she is the owner of the property in question.

15. Considering the facts and circumstances of the case, defendant No. 1 is held to be a tenant with regard to the suit property. Being a tenant defendant No.1 cannot part with the possession of the suit property to any third person or create any third party interest and this obligation can be imposed and enforced by way of a decree of injunction. Defendant No. 1 is accordingly, restrained from creating any third party interest in the suit property. The discussion aforesaid proves relationship of a landlord and tenant inter se and as such the suit is also cannot be said to be without cause of action. Nothing has been pointed out with regard to the suit being barred u/s 41(h) of the Specific Relief Act. The question of laches would be considered in the subsequent part of the judgement. Issues decided accordingly.

16. Now reverting to issue No. 1 which pertains to a relief of seeking declaration of the documents furnished by the defendant No. 1 to defendant No. 2. As discussed above, it is clear that no documents of title or any documents pertaining to the plaintiffs were furnished by the defendant No. 1. Hence, no declaration can be granted as prayed for. Reverting to the said aspect as to whether any direction can be passed to NDPL for removal of the meter and whether the filing of the suit after six years debar the plaintiff's remedy on account of laches.

17. Now in this regard, defendant No. 2 had acted upon the complaint and its official went to remove the meter. Thus, the installation of meter was at the first place contrary to the guidelines in this regard as well as the defendant No. 2 found some concealment of facts. Thus, to contend that on account of laches the remedy of the plaintiffs is obliterated is not tenable once the defendant No. 2 had already acted on the complaint of the plaintiffs.

There exists a relationship of landlord and tenant inter se the parties. Plaintiffs have also invoked the jurisdiction of Ld. ARC and an alternative remedy in this regard is with the defendant No. 1 in as much as they could seek enforcement of their rights as tenants under section 45 of DRC Act. Plaintiffs have also admitted that they were supplying the electricity but on account of non-payment of rent the same was disconnected. In my opinion, the ends of justice would be met if defendant No. 1 is directed to file a petition u/s 45 of the DRC Act and seek directions from the Rent Controller in this regard. That would be the proper course and availing of the remedy prescribed under the Act. The electricity connection obtained by defendant No. 1, therefore, in my opinion needs to be quashed.

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(underlining added)

8. A reading of the aforesaid paras shows that the trial court has held the appellants/plaintiff as owners of the suit/tenanted property inasmuch as

their predecessor-in-interest/father Sh. Bachan Singh was the owner vide Sale Deed dated 11.6.1959 Ex.PW1/1. Respondent no.1/defendant no.1 has been held to be a tenant on account of her being shown as a tenant in the two survey reports of MCD which have been filed and proved as Ex.PW1/3 (colly). Trial court has also held that the case as set up by the respondent no.1/defendant no.1 is false for the reason that in cross-examination of son of respondent no.1/defendant no.1 (D1W1), he has admitted that for the appellants/plaintiffs to go to their kitchen they had to pass through the room of the respondent no.1/defendant no.1 and therefore this only shows that the respondent no.1/defendant no.1 was a tenant. It is also seen that in the cross-examination of the witness of the respondent no.1/defendant no.1 being her son Sh. Amreek Singh, Sh. Amreek Singh had admitted that there is no toilet in the red coloured portion of the site plan filed and the toilet in fact belongs to the appellants/plaintiffs which is being used by the respondent no.1/defendant no.1 as per understanding. It is also noted that the D1W1 in the first line of his cross-examination has admitted that he has no document with respect to ownership of the property shown in red colour in the respondent no.1's/defendant no.1's site plan Ex.D1W1/2. It is further seen from the cross-examination of D1W1 that it is only after the suit was filed that there is a property tax bill in the name of the respondent no.1/defendant no.1. In my opinion, therefore, the trial court was justified and legally correct in holding

that the appellants/plaintiffs were the owners of the suit property and the respondent no.1/defendant no.1 was not the owner of the suit property much less claiming through one Sh. Gopal Dass. As discussed later Sh. Gopal Das is the father of the person Sh. Shivjit Singh from whom Sh. Bachan Singh and Sh. Joginder Singh purchased the property by the Sale Deed dated 11.6.1959 Ex. PW1/1. No documents whatsoever were filed of Sh. Gopal Dass being the owner having sold the suit property to the defendant no.1/respondent no.1 and hence the respondent no.1/defendant no.1 being the owner through Sh. Gopal Dass.

9 For completion of narration, I must note that counsel for the respondent no.1/defendant no.1 has argued that the respondent no.1/defendant no.1 should be held to become owner by adverse possession, however, there is no such pleading in the written statement, no issue was framed and no evidence therefore led with respect to possession of the respondent no.1/defendant no.1 being hostile to the true owners being the appellants/plaintiffs which can be considered.

10. Learned counsel for the respondent no.1/defendant no.1 sought to place reliance upon the revenue record filed and proved as Ex.D1W1/7 of the year 1988-89 showing that Sh. Shivjit Singh and Sh. Baljeet Singh are sons of Sh. Gopal Dass and therefore it should be held that Sh. Gopal Dass is the owner, though I cannot understand how a revenue record with respect to a

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fully developed and urbanized part of this capital city can be considered to prove the aspect of ownership of a property, however it is seen that even if this document is considered it only shows that father of the appellants/plaintiffs Sh. Bachan Singh along with his brother Sh. Joginder Singh purchased 200 sq yds, out of which 100 sq yds of the suit property from Sh. Shivjit Singh and who is the son of Sh. Gopal Dass. Therefore, in fact this document shows the ownership of Sh. Shivjit Singh and from whom the father of the appellants/plaintiffs purchased the suit property as per the Sale Deed dated 11.6.1959 (Ex.PW1/1).

11. I would like to note that D1W1, the son of the respondent no.1/defendant no.1 has filed and proved various documents of school certificate or ration card or electricity bill etc etc, and trial court has rightly in this regard observed that these documents will only show and establish possession of the respondent no.1/defendant no.1 and not title of respondent no.1/defendant no.1.

12. The first appellate court has dismissed the suit without at all referring to the discussion with respect to issue nos.2 to 6 by observing that since the electricity connection was obtained in the year 2005 and the suit was not filed in three years from 2005, hence the relief of declaration being time barred should not be granted. This is stated by the first appellate court in paras 8 to 11 of its judgment and which read as under:

“8. Having heard the arguments advanced by the Ld. counsel for the parties and after gone through the grounds of the appeal as well as of the trial court record, this court is of the considered view that the Ld. Trial Court has passed the judgment in haste and without appreciation of the evidence lead by the parties. Inasmuch as the core issue involved in the suit before the Ld. Trial Court was in respect of the electricity connection allegedly installed by the NDPL in collusion with the defendant/appellant on the forged and fabricated document.

9. It is deposed and is in cross examination of PW-1 Paramjeet Singh, before the Ld. Trial Court that there is a common wall belonging to both the parties and the respondent/plaintiff visits the kitchen through the premises and no written complaint was made to the official of the NDPL for installation of the electricity connection and affixing electricity meter at the premises and admittedly the electricity connection was installed in the year 2005 and as per the provisions of law a suit for declaration has to be filed within the period of three years from the date of the knowledge and if the electricity meter was installed in the year 2005 than the respondent/plaintiff ought to have filed the suit up to the year 2008 but the suit before the Ld. Trial Court was filed on 01.11.11 and the same is beyond the period of limitation of three years and the suit decreed by the Ld. Trial Court has been decreed without taken into the consideration the period of limitation.

10. It is pertinent to mention that, if, the NDPL disconnect the electricity connection from the suit premises even then no fruitful purpose will be served inasmuch as the respondent/plaintiff has filed the suit for eviction and the same is pending before the Ld. ARC Court and the proper adjudication has to be made in respect of the relationship of landlord and tenant by the court of Ld. ARC.

11. In view of the aforesaid discussion, this court is of the considered view that the Ld. Trial Court has passed the judgment in haste and without appreciation of the evidence lead by the parties. Hence, the appeal under consideration is hereby allowed and the impugned judgment/decreed dt. 02.05.14 passed by the Ld. Trial Court is hereby set aside.”

13. I would like to comment at this stage that out of the 14 pages of the judgment of the first appellate court around 80% of the pages are only narration of the suit filed and the issues framed alongwith the grounds of appeal which have been reproduced word by word and comma by comma in the other pages of the impugned judgment. I have received some other judgments of this judicial officer passed as a first appellate court and I may

note that in every such judgment which has been received by this Court of this judicial officer, most of the pages of the judgments are reproduction of the grounds of appeal exactly as they are without any change. A copy of the present judgment be therefore placed before the Committee of Inspecting Judges who is dealing with the ACR of this judicial officer for the year 2015. The Committee of this Court would also call the other judgments which are passed by this judicial officer, namely, Sh. Satish Kumar, ADJ, because in such judgments passed in appeals in all likelihood they will show that this judicial officer basically passes a judgment which in its substantial part is nothing but reproduction of grounds of appeal only and that there is hardly any substantial discussion of issues involved.

14. A reading of the judgment of the first appellate court shows that the first appellate court has not at all touched the issue with respect to cause of action, issues framed and evidence led with respect to appellants/plaintiffs being the owners and hence entitled to injunction restraining the respondent no.1/defendant no.1 from transferring the suit property. The first appellate court has only considered the relief of suit for declaration being time-barred on account of electricity connection obtained by respondent no. 1/defendant no. 1 in the year 2005 and the suit being filed in the year 2011. In this regard, it is noted that counsel for the appellants/plaintiffs states before this Court that appellants/plaintiffs do not press the relief of disconnection of electricity and

the electricity connection obtained by respondent no.1/defendant no.1, and that the appellants/plaintiffs only seek to sustain and uphold the judgment of the trial court declaring the appellants/plaintiffs as owners of the suit property and the consequential injunction order against respondent no. 1/defendant no. 1, who is the tenant, from further transferring the suit property. Once this is so, the issue with respect to declaration and relief of electricity connection is immaterial and inconsequential as the same is not pressed and therefore the judgment of the first appellate court which does not deal with the issue of ownership of the appellants/plaintiffs and which has been held in favour of the appellants/plaintiffs by the detailed discussion of the trial court, is a completely perverse judgment and is liable to be set aside.

15. In view of the above discussion the substantial question of law no.2 is answered in favour of the appellants/plaintiffs and it is held that the Judgment of the First Appellate Court dated 21.9.2015 suffers from complete perversity in not even discussing the issues with respect to cause of action and relief of injunction being sought and to be granted in favour of the appellants/plaintiffs with respect to the ownership of the suit property. The judgment of the trial court is upheld to the extent that the said judgment in para 15 restrained respondent no.1/defendant no.1 from creating any third party interest in the suit property.

16. The second appeal is allowed and disposed of in terms of the aforesaid observations. A decree accordingly will be passed in favour of the appellants/plaintiffs and against the respondent no.1/defendant no.1 with respect to this relief of injunction which has been granted by the Trial Court in para 15 of its Judgment dated 2.5.2014. Parties are left to bear their own costs.

17. Let a copy of this judgment along with the copy of the impugned Order dated 21.9.2015 be placed before the Committee of Inspecting Judges of Sh. Satish Kumar, ADJ, Delhi for the year 2015 to consider the observations made by this Court in para 13 of this judgment.

SEPTEMBER 07, 2016
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VALMIKI J. MEHTA, J