

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

+ **RSA No. 225/2017**

% **Reserved on: 15th September, 2017**
Pronounced on: 19th September, 2017

NATHU RAM THROUGH LRS. Appellants

Through: Mr. R.R. Jangu, Advocate.

versus

M/s SCINDIA POTTERIES & SERVICES PVT. LTD.Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. No.33594/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.33592/2017 (condonation of delay)

2. For the reasons stated in the application, delay of 15 days
in filing the appeal is condoned.

C.M. stands disposed of.

C.M. No.33593/2017 (condonation of delay)

3. For the reasons stated in the application, delay of 387
days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.225/2017 and C.M. No. 33595/2017 (stay)

4. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the judgment of the First Appellate Court dated 11.2.2016. The first appellate court as per the impugned judgment dated 11.2.2016 accepted the appeal and decreed the suit for possession filed by the plaintiff in the suit, respondent herein, by setting aside the judgment of the Trial Court dated 28.11.2014 dismissing the suit for possession filed by the respondent/plaintiff with respect to the suit property. The suit property is Quarter No. 68, Scindia Pottery Complex, Sarojini Nagar, New Delhi.

5. The facts of the case are that the respondent/plaintiff filed the subject suit for possession of the suit property pleading that it is the owner of the huge tract of land called as Scindia Potteries Complex and in which one of the quarters built is the suit property. The total land owned by the respondent/plaintiff was roughly around 38 acres. With respect to the entire land, of which the suit property is a part, a registered Perpetual Lease Deed dated 18.1.1921, Ex.P-5 was

executed in favour of the respondent/plaintiff. The Perpetual Lease was followed up by the Deed of Indenture dated 1.2.1923 in favour of the respondent/plaintiff and proved as Ex.P-6 in the trial court. The certificate of Incorporation of Gwalior Potteries (Delhi) Ltd. dated 20.5.1946 was Ex.P-2 and the certificate of change of the name to Scindia Potteries Ltd. dated 31.03.1958 was proved as Ex.P-3 and certificate of change of name dated 14.1.1986 to the name of the present respondent/plaintiff was proved and exhibited as Ex.P-4.

6. Respondent/plaintiff was running its pottery business in the portion of the property leased out under the Perpetual Lease dated 18.1.1921 and Indenture dated 1.2.1923. For the purpose of running the pottery factory, respondent/plaintiff had also built up a large number of quarters and which were given to the employees of respondent/plaintiff for their residence during the period of their employment with the respondent/plaintiff company. By 1969-70, the factory of the respondent/plaintiff company was virtually closed and almost all the workers were retrenched. The appellant/defendant along with his family members was pleaded to have illegally and unauthorizedly occupied the suit quarter sometime in the year 1994.

The appellant/defendant failed to hand over the possession of the quarter in spite of the demands of the respondent/plaintiff resulting in the filing of the subject suit for possession.

7. The original defendant Sh. Nathu Ram (now represented by the appellants who are his legal heirs) contested the suit and pleaded that he had become owner of the suit property by adverse possession. Original defendant of the suit Sh. Nathu Ram expired during pendency of the suit and hence was substituted by the present appellants who are his legal heirs. Reference to the defendant or the appellants will therefore as per context mean and include reference to the original defendant Sh. Nathu Ram or the present appellants. It was pleaded in the written statement that the suit property was in occupation and possession of the mother of the defendant before the year 1947 and with the defendant since 1963. It was pleaded that the defendant served in the factory of the respondent/plaintiff and his services were terminated. It was pleaded by the defendant that he had become owner of the suit property on account of adverse possession since the year 1968 inasmuch as he had not vacated the suit quarter in spite of the demands by the respondent/plaintiff.

8. After pleadings were complete, the trial court framed the following issues:-

- “i) Whether the suit of the plaintiff is time barred? OPD
- ii) Whether the suit has not been valued properly for the purpose of court fee and jurisdiction? OPD
- iii) Whether the defendant has become owner of the suit property by way of adverse possession? OPD
- iv) Whether the suit has not been instituted by a duly authorized person? OPP
- v) Whether the plaintiff is entitled to the decree for possession in respect of suit premises? OPP
- vi) Whether the plaintiff company is not owner of the suit property? OPD (framed on 01.10.2008)
- vii) Relief.”

9. The issue nos.1 and 3 with respect to the suit being time barred and whether the appellants/defendants had become owner of the suit property were decided in favour of the respondent/plaintiff in terms of paras 12 and 13 of the judgment of the trial court and which paras read as under:-

“12. In view of the law discussed above it is clear that defendant has to show that

- (a) on what date he came into possession
- (b) what was the nature of his possession,
- (c) whether the factum of possession was known to the other party,
- (d) how long his possession has continued, and
- (e) his possession was open and undisturbed.
- (f) his possession was hostile to the true owner.

However nothing on record is brought by the defendant to prove as to when he came into possession. In fact, defendant is even unaware of the fact as to who is true owner of the property. In this regard it is relevant to reproduce relevant extract of the cross examination of the defendant “My father had been residing in the suit quarter for the last 70 years. I do not know whether the suit quarter was built in year 1955-1956. I do not have any document to show that my father was in possession has been in occupation of the suit

quarter since 70 years back. I cannot tell the exact dated, month and year when he came in possession of suit quarter. My father has no specific intention when my father came in possession of suit quarter". He further states "I do not know as to who pay the pays the house tax for the entire property including the suit quarter. I do not know if the plaintiff company pays the house tax for the entire property and continues to pay the same till today."

13. As plaintiff (**sic: defendant**) was unaware as to when his father came into possession of suit property and when his interest became adverse to that of true owner of the suit property or who is true owner of the suit property, plaintiff cannot be said to have become owner of suit property by way of adverse possession.

In view of the law and facts discussed above both the issues are decided against the defendant and in favour of plaintiff."

10. As regards issue no.5 of entitlement of the respondent/plaintiff to a decree for possession, trial court held this issue against the respondent/plaintiff and held that the respondent/plaintiff had failed to prove by pleadings or evidence as to how Gwalior Potteries Ltd., Gwalior (assignee under Deed of Indenture dated 1.2.1923) has become Gwalior Potteries (Delhi) Ltd, the earlier name of Scindia Potteries Ltd. and Scindia Potteries and Services Pvt. Ltd. (the present respondent/plaintiff). The relevant paras of the judgment of the trial court, in this regard, are paras 19 to 24 and these paras read as under:-

"ISSUE NO. 5

19. Burden to prove present issue lies upon the plaintiff. Plaintiff is claiming the possession of the suit property on the basis of title and as such plaintiff is seeking possession u/s 5 of Specific Relief Act. It is averred by the plaintiff in his plaint that initially Lease deed with right of alienation dated 18.01.1921 was obtained by Development Corporation of India Ltd

from Secretary of State of India and further Development Corporation of India Ltd assigned the same in favour of plaintiff company by way of Deed of Indenture in 01.02.1923. It is further averred that originally plaintiff company was incorporated as the Gwalior Potteries (Delhi) Ltd., and later on name was changed to Scindia Potteries (P) Ltd and then to Scindia Potteries Ltd then to Scindia Potteries and Services Ltd.

20. To prove the averments made by the plaintiff, following documents were brought on record:-

1. Perpetual lease deed dated 18.01.1921 (E.P-5) Lease granted by Secretary of State of India in favour of Development Corporation of India.

2. Deed of Indenture dated 01.02.1923 (Ex.P-6) Development Corporation of India assigned the property in favour of Gwalior Potteries Ltd., Gwalior

3. Certificate of Incorporation of Gwalior Potteries (Delhi) Ltd. dated 20.05.1946 (Ex.P2)

4. Certificate of Change of name dated 31.03.1958 (P3) from Gwalior Potteries (Delhi) Ltd. to Scindia Potteries Ltd.

5. Certificate of change of name dated 14.01.1986 (P4) from Scindia Potteries Ltd. to Scindia Potteries and Services Pvt. Ltd.

21. In order to prove document Ex.P5 and Ex.P6 plaintiff has examined Sh. Prabhat Mohan, UDC from LNDO, Ministry of Urban Development and PW-3 Sh. Sanjay Saxena, Book Binder from department of Delhi Archives.

22. From the perusal of Ex.P5 it reveals that on 18.01.1921 Secretary of State of India has lease the suit property in favour of Development Corporation of India. Further Development Corporation of India assign the same in favour of Gwalior Potteries Ltd., Gwalior vide Deed of Indenture dated 01.02.1923 (Ex.P6).

23. Perusal of Ex.P2 reveals that Gwalior Potteries (Delhi) Ltd., a private company limited by shares came into existence on 12.05.1946. Ex.P3 reveals that Gwalior Potteries (Delhi) Ltd. was renamed as Scindia Potteries Ltd. on 31.03.1958. Further Ex.P4 shows that Scindia Potteries Ltd. was further renamed as Scindia Potteries and Services Pvt. Ltd. on 14.01.1986.

24. Plaintiff has neither in his pleadings nor by way of evidence has shown as to how **“Gwalior Potteries Ltd., Gwalior”** has become **“Gwalior Potteries (Delhi) Ltd.”**. Also Ex.P2 itself states that Gwalior Potteries (Delhi) Ltd. came into existence on 12.05.1946. As such it cannot be said from the perusal of documents filed by plaintiff itself that there was any connection between Gwalior Potteries Ltd., Gwalior and Gwalior Potteries (Delhi) Ltd. Further more there is nothing on record which can show that Gwalior Potteries Ltd., Gwalior has merged into Gwalior Potteries (Delhi) Ltd or asset of Gwalior Potteries Ltd., Gwalior were taken over or vested into

Gwalior Potteries (Delhi) Ltd or Gwalior Potteries Ltd., Gwalior has changed into Gwalior Potteries (Delhi) Ltd.”

11. The first appellate court has for allowing of the appeal and setting aside of the judgment of the trial court denying the decree for possession to the respondent/plaintiff relied upon the judgment delivered by a learned Single Judge of this Court dated 24.11.2015 in RSA No.404/2015 titled as ***Hari Kishan Vs. M/s. Scindia Potteries & Services Pvt. Ltd.*** and as per which judgment the respondent/plaintiff was the owner of the entire property which was the subject matter of the Perpetual Lease dated 18.1.1921 and Indenture dated 1.2.1923. The relevant para 9 of the judgment in the case of ***Hari Kishan (supra)*** reads as under:-

“9. I do not find any merit in this submission. The Crown Grant was made in favour of Gwalior Potteries (Delhi) Pvt. Ltd. and it did not require any formal indenture being created since it was a Crown Grant. In any event, there is a registered perpetual lease Ex. PW-2/1. The communication dated 31.10.1962 Ex. PW1/1 recognises the plaintiff company as the successor of Gwalior Potteries (Delhi) Pvt. Ltd. In the face of the said communication Ex. PW1/1 read with the earlier grant, and in view of the provisions of Government Grant Act, it does not lie in the mouth of the appellant to challenge the ownership of the respondent/plaintiff qua the suit property. The perpetual lease stands mutated in the name of the respondent. There is no mandatory requirement in law, that a fresh lease should have been executed in favour of the respondent.”

12. The first appellate court has rightly relied upon the judgment in RSA No. 404/2015 as judgment as to title of an

immovable property, though not between parties to the present/subject suit, is relevant as per Section 13 of the Indian Evidence Act, 1872 and the judgments of the Supreme Court on Section 13 of the Indian Evidence Act. I have accordingly so held in the judgment in the case of ***Bhagwat Prasad Aggarwal Vs. Hans Raj Banga (Deceased) and Anr. (2012) 190 DLT 203*** and the relevant para 8 of which judgment reads as under:-

“8. I may note that though a judgment may not be inter parties and yet the same is binding on a person who is not a party to the earlier litigation when the issue of title is decided in the earlier litigation. Two Division Benches of the Supreme Court, of four Judges and three Judges, in the cases of ***Sital Das Vs. Sant Ram and Ors. AIR 1954 SC 606*** and ***Shrinivas Krishnarao Kango Vs. Narayan Devji Kango & Ors. AIR 1954 SC 379*** have so held that a judgment which holds that a person is an owner, such a judgment is very much admissible in evidence to show assertion of title inasmuch as the judgment is a transaction pertaining to the subject matter of the dispute under Section 13 of the Indian Evidence Act, 1872. In my opinion, this is another reason to hold that respondent No.1/plaintiff is owner of the subject property, and the challenge which is led by the appellant/objector is without any basis.”

13. In my opinion, there is yet another reason why the stand of the appellants/defendants that the respondent/plaintiff is not the owner of the suit property should be rejected inasmuch as once the Government itself is not disputing the title of the respondent/plaintiff, then, how can the appellants/defendants dispute the title of the respondent/plaintiff on a very perverse and stretched reasoning that

there is no document of how Gwalior Potteries Ltd., Gwalior became Gwalior Potteries (Delhi) Ltd. PW-2 from the L&DO department of Union of India had deposed that as per its records the respondent/plaintiff was the owner. In fact, once appellants/defendants claim to be in adverse possession of the suit property as against the respondent/plaintiff, this very fact of taking up the plea of adverse possession therefore admits the ownership of the respondent/plaintiff of the suit property. Since the appellants/defendants failed to prove the plea of adverse possession, hence, the appellants/defendants not only had no legal right, title or interest in the suit property, but it has to be held that the respondent/ plaintiff was the owner of the suit property.

14. No substantial question of law arises. Dismissed.

SEPTEMBER 19, 2017

P/Ne

VALMIKI J. MEHTA, J