

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

+ **RSA No.159/2017**

% **29th May, 2017**

SH. RAJU @ RAJESH KUMAR & ANR. Appellants

Through: Mr. Vijay Dalal, Advocate.

versus

SH. JAGDISH Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.21109/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RSA No.159/2017 and C.M. No.21110/2017 (stay)

2. Learned counsel for the appellants/defendants at the outset concedes that possession of the suit property has already been taken over by the respondent/plaintiff.

3. The present appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the courts below; of the Trial Court dated 17.12.2016 and the First Appellate Court dated 18.4.2017; by which the suit filed by the

respondent/plaintiff for possession and permanent and mandatory injunction has been decreed and the appellants/defendants were directed to hand over possession of the suit property to the respondent/plaintiff being a portion of quarter no.23/60, East Mehram Nagar, Delhi Cantt., Delhi-110010.

4. The facts of the case are that the suit property was allotted to the grandfather Sh. Bhagmal of the respondent/plaintiff. After the death of Sh. Bhagmal, the suit property devolved upon the father of the respondent/plaintiff late Sh. Nanwa Ram and after the death of Sh. Nanwa Ram the suit property devolved upon the respondent/plaintiff. The appellants/defendants were inducted in the suit property as gratuitous licensees by the father of the respondent/plaintiff. Appellants/defendants never paid any rent or any water charges or electricity charges. When the appellants/defendants in spite of various requests refused to hand over possession, then, the respondent/plaintiff served the legal notice dated 28.5.2013, and thereafter filed the subject suit. The appellants/defendants prayed for the suit to be dismissed and raised various objections of suit not having a cause of action and that there was non-joinder of necessary parties, and the suit being barred by limitation. The appellants/defendants did not dispute that suit property was allotted in the name of grandfather of the respondent/plaintiff and

thereafter devolved upon the father of the respondent/plaintiff. It was however pleaded that since the appellants/defendants were bearing expenses of the suit property, hence the suit should be dismissed.

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

“1. Whether the present suit is not maintainable as barred by law of limitation?

2. Whether the plaintiff is entitled for decree of permanent injunction, thereby restraining the defendants, their associates, agents, attorney and assignees from disposing of the suit property or creating a third party interest in the suit property?

3. Whether the plaintiff is entitled for mandatory injunction thereby directing the defendants to hand over the vacant/peaceful and physical possession of the suit property?

4. Relief.”

6. Evidence which has been led in this case has been referred to by the trial court in paras 4 and 5 of its judgment and these paras read as under:-

“EVIDENCE

4.(i) Plaintiff examined himself as PW-1 and tendered his evidence by way of affidavit as Ex.PW-1/A. In support of his contentions he relied upon the site plan as Ex.PW-1/1, Legal Notice dt. 28.05.2013 as Ex.PW-1/2, Postal receipts dt.29.05.2013 as Ex.PW-1/3, copy of Electricity bill as Ex.PW-1/4 (OSR), copy of letter dt.11.04.1988 as Ex.PW-1/5 (OSR), copy of receipt dt.04.09.1998 as Ex.PW-1/6 (OSR), copy of death certificate of grandfather of plaintiff, Sh. Bhagmal as Ex.PW-1/7 (OSR). He was cross examined by the counsel for defendant wherein he admitted that the owner of the suit property is Cantonment Board and no one can sell the property in question as same belongs to Cantonment Board.

(ii) Sh. Rish Pal, brother of plaintiff was examined as PW-2, who stated that the premises where the defendants are residing was allotted to his grandfather by Delhi Cantonment Board.

(iii) Sh. Bharat Raj, Revenue Superintendent, Delhi Cantonment Board has been examined as PW-3, who proved the House Rent Register as Ex.PW-3/A and relevant entry at serial no.23 at point X. He was cross examined on behalf of defendants.

5.(i). **In defence**, DW-1 Sh. Raghuvinder Singh & DW-2 Joginder Singh, friend of the defendant were examined.

(ii) Defendant no.1 examined himself as DW-3 and tendered his affidavit in evidence as Ex.D-3. He relied upon the documents Ex.DW-3/1 i.e. copy of passport.

During his cross examination, he admitted that he has no document in respect of suit property. He also admitted that plaintiff have two sons and four daughters and all are living in the same property.

(iv). Defendant no.2 examined herself as DW-4 and tendered her affidavit in evidence as Ex.D-4. She relied upon the document i.e. copy of Aadhar Card as Ex.DW-4/1 and copy of complaint dt.08.05.2013 as Ex.DW-4/2.”

7. On the basis of the evidence, both the courts below have held that the appellants/defendants did not claim ownership/title of the suit property and it was also admitted that the grandfather of the respondent/plaintiff was allotted the suit property by the Delhi Cantonment Board. During cross-examination, DW-3 himself admitted that neither he is owner of the suit property nor he is the tenant in the suit property. He also admitted that he does not have any document of title of the suit property. Similar was the testimony of DW-4 who is the wife of the DW-3. DW-3 was the defendant no.1 in the suit.

8. In my opinion, no illegality can be found in the impugned judgments of the courts below because it is an undisputed fact emerging on record that the appellants/defendants claimed no title nor claimed any tenancy in the suit property. This was specifically admitted by the DW-3 and DW-4 in their cross-examinations as

already stated above. Also, the suit was held within limitation because it was on 5.7.2013 that the appellants/defendants took action to sell the suit property, and therefore, the suit filed on 25.7.2013 was within limitation. In any case, limitation with respect to filing of the suit against gratuitous licensees would only commence when adverse possession is first pleaded to commence and thereafter evidence is led to prove the adverse possession. In the present case, the appellants/defendants have not pleaded or proved that they have become owners of the suit property by adverse possession.

9. No substantial question of law arises. Dismissed.

MAY 29, 2017
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VALMIKI J. MEHTA, J