

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

+ **RFA No. 809/2017**

% **22nd September, 2017**

HANSRAJ Appellant

Through: Mr. H.S.Kohli, Advocate.

versus

JAGMINDER SINGH & ORS. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.34804/2017(Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM Nos. 34802/2017(delay in filing) and 34803/2017 (delay in re-filing)

For the reasons stated in the applications, delay in filing and re-filing is condoned.

CMs stand disposed of.

RFA No. 809/2017 & CM Nos.34799/2017 (U/s 144 r/w 151 CPC) and 34800/2017 (U/o XLI Rule 27 CPC).

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit

impugning the judgment of the trial court dated 22.2.2017 by which the trial court has decreed the suit for possession and injunction filed by the respondents/plaintiffs against the appellant/defendant with respect to the suit property admeasuring 250 sq. yards out of K.No.28/4, Village Kakrola, New Delhi. At this stage, I would like to mention that the decree in question has been executed and the respondents/plaintiffs have taken possession of the suit property. It is for this reason that CM No. 34799/2017 has been filed by the appellant/defendant for restoration of possession.

2. The facts of the case are that the respondents/plaintiffs pleaded that they had become owner of the suit property by purchase of the same from the previous owner by virtue of documentation dated 18.12.2008. It was pleaded that the appellant/defendant was already in possession of the suit property and handed over possession to the respondents/plaintiffs who had purchased the same, however, after a few days the appellant/defendant requested the respondents/plaintiffs to allow him to stay in the suit property for some time and, therefore, appellant/defendant was allowed to do so. Appellant/defendant was pleaded to be a licensee and who refused to vacate the suit property,

and therefore, the subject suit for possession, *mesne* profits and injunction was filed.

3. Appellant/defendant contested the suit and pleaded that appellant/defendant is the owner of the suit property by adverse possession, inasmuch as the appellant/defendant had occupied the suit property in June, 1985. It was pleaded that the appellant/defendant was enjoying the suit property since the year 1985 being in adverse and hostile possession of the same. It was also pleaded that the appellant/defendant in the year 1987 had made construction on the suit property of two rooms, latrine, bathroom and kitchen. It was also pleaded that appellant/defendant had the necessary documents showing his possession of the suit property such as ration card, election identity card etc. The story of the respondents/plaintiffs was denied that appellant/defendant was put in possession by the respondents/plaintiffs. Suit was therefore prayed to be dismissed.

4. The trial court after completion of pleadings framed the issues on 27.3.2014 and thereafter re-framed the issues on 18.2.2016. Original issue nos. 3 and 4 framed on 27.3.2014 pertained to ownership of the appellant/defendant of the suit property on account

of adverse possession, but these two issues were deleted when the issues were re-framed on 18.2.2016. These issues as to adverse possession were deleted by the trial court by observing that the appellant/defendant cannot seek declaration in his favour of ownership without filing a counter-claim and paying the necessary court fee. The relevant paras of the impugned judgment of the trial court mentioning these aspects are paras 5 and 6 and these paras read as under:-

“5. Thereafter, on the pleadings of both the parties, following issues were framed on 27.03.2014 by my Id. Predecessor:-

ISSUES

1. Whether the suit of the plaintiff is without any cause of action against the defendant? OPD
2. Whether this Court has no pecuniary jurisdiction to try and entertain the present suit? OPD
3. Whether the defendant is owner of the suit property being in actual, physical un-interrupted possession of the built up property/house i.e. bearing plot no. 10, area measuring 250 square yards situated in village Kakrola, Mohit Nagar, New Delhi – 110078? OPD
4. Whether the defendant is in adverse possession of the suit property since 1985? OPD
5. Whether the plaintiff is entitled for a decree of possession against the defendant thereby directing the defendant to hand over a peaceful and vacant possession of the suit property bearing plot no. 10, area measuring 250 square yards situated in village Kakrola, Mohit Nagar, New Delhi – 110078 as shown in red colour in the site plan? OPP
6. Whether the plaintiff is entitled for a decree of permanent injunction against the defendant in respect of the suit property bearing plot no. 10, area measuring 250 square yards situated in village Kakrola, Mohit Nagar, New Delhi – 110078 as shown in red colour in the site plan? OPP
7. Whether the plaintiff is entitled for decree of damages/ mesne profit against the defendant Rs.10,000/- per month from the date of filing of the suit till handing over the possession of the suit property to the plaintiff by the defendant? OPP
8. Relief.

6. It is pertinent to mention here that when the case was listed for defendant's evidence, Ld. Predecessor vide order dated 18.02.2016 deleted issue nos.3 & 4 framed on 27.03.2014 observing that 'issues nos. 3 & 4 have an effect of making declaration in favour of the defendants without any counter claim/court fees from the defendants side'. The application for review of the order dated 18.02.2016 moved by the defendant was dismissed vide order dated 14.03.2016 by my Ld. Predecessor. Thereafter, my Ld. Predecessor vide order dated 29.03.2016 enlisted the following issues for decision in view of the observations made in order sheet dated 18.02.2016:-

ISSUES

1. Whether the suit of the plaintiff is without any cause of action against the defendant? OPD
2. Whether this court has no pecuniary jurisdiction to try and entertain the present suit? OPD
3. Whether the plaintiff is entitled for a decree of possession against the defendant thereby directing the defendant to hand over a peaceful and vacant possession of the suit property bearing plot no.10, area measuring 250 sq. yds. situated in village Kakrolla, Mohit Nagar, New Delhi – 110078 as shown in red colour in the site plan? OPP
4. Whether the plaintiff is entitled for a decree permanent injunction against the defendant in respect of the suit property bearing plot no.10, area measuring 250 sq. yds. situated in village Kakrolla, Mohit Nagar, New Delhi – 110078 as shown in red colour in the site plan? OPP
5. Whether the plaintiff is entitled for decree of damages/mesne profit against the defendant Rs.10,000/- per month from the date of filing of the suit till handing over the possession of the suit property to the plaintiff by the defendant? OPP
6. Relief.”

5. Surprisingly, appellant/defendant has not challenged the order dated 18.2.2016 which struck-off issues of the claim of ownership of the appellant/defendant of the suit property by adverse possession and which order has therefore become final. In this RFA the appellant/defendant has however challenged the order dated 18.2.2016 of deletion of issue nos. 3 and 4 framed on 27.3.2014 with respect to claim of adverse possession, and which the

appellant/defendant can do under Section 105 CPC, and therefore, this Court has to examine the issue of claim of adverse possession of the appellant/defendant. In any case, it is noted that even after issues of adverse possession as claimed by the appellant/defendant were so struck out, suit was contested on the ground of ownership by adverse possession of the appellant/defendant and the appellant/defendant led evidence on this issue of adverse possession which has been decided in the impugned judgment dated 22.2.2017. Therefore, this Court has to examine the validity of the impugned judgment and decree and as to whether the appellant/defendant has proved his claim of adverse possession of the suit property.

6. It is trite that possession is not an adverse possession. A person may remain in possession for a long time yet, such possession will not mature into an adverse possession. It has been now held by the Supreme Court that a person who claims adverse possession must bring the aspect of claim of adverse possession to the knowledge of the true owner. A person pleading adverse possession has no equities in his favor. A recent judgment of the Supreme Court in this regard as to adverse possession is the judgment in the case of *Chatti Konati Rao*

and Others vs. Palle Venkata Subba Rao (2010)14SCC 316. The relevant paras of this judgment are paras 12 to 15 and these paras read as under:-

“12. We have bestowed our thoughtful consideration to the submission advanced and we do not find any substance in the submission of Mr. Bhattacharya. What is adverse possession, on whom the burden of proof lie, the approach of the court towards such plea etc. have been the subject matter of decision in a large number of cases. In the case of *T. Anjanappa v. Somalingappa*, it has been held that mere possession however long does not necessarily mean that it is adverse to the true owner and the classical requirement of acquisition of title by adverse possession is that such possessions are in denial of the true owner's title. Relevant passage of the aforesaid judgment reads as follows:

"20. It is well-recognized proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of *Karnataka Board of Wakf vs. Government of India and Ors.* It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. SCC Para 11 of the judgment which is relevant for the purpose reads as follows:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove

that his possession is "*nec vi, nec clam, nec precario*", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See *S.M. Karim v. Bibi Sakina*, *Parsinni v. Sukhi* and *D.N. Venkatarayappa v. State of Karnataka*) Physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (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. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (*Mahesh Chand Sharma v. Raj Kumari Sharma*)"

14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter.

15. *Animus possidendi* as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea

of adverse possession is not a pure question of law but a blended one of fact and law.”
(underlining added)

7. Another recent judgment of the Supreme Court in this regard is the judgment in the case of ***P.T. Munichikkanna Reddy and Others vs. Revamma and Others (2007) 6 SCC 59***. In paras 19, 21 and 23 of this judgment the Supreme Court has observed that intention to dispossess needs to be open and hostile enough to bring the same to the knowledge of the owner. Supreme Court has held that it is necessary that intention has to be proved of a person to be in adverse possession and the issue is that intention of the adverse user gets communicated to the owner of the property. It was therefore held that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper-owner. The relevant paras of the Supreme Court in the case of ***P.T. Munichikkanna Reddy (supra)*** are paras 16 to 23 and which paras read as under:-

“16. In similar circumstances, in the case of *Thakur Kishan Singh V/s. Arvind Kumar*, this court held:

"5. As regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a

co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissible possession into adverse possession. Apart from it, the Appellate Court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse."

(emphasis supplied)

17. The present case is one of the few ones where even an unusually long undisturbed possession does not go on to prove the intention of the adverse possessor. This is a rare circumstance, which Clarke LJ in *Lambeth London Borough Council V/s Blackburn*, refers to:

"I would not for my part think it appropriate to strain to hold that a trespasser who had established factual possession of the property for the necessary 12 years did not have the animus possidendi identified in the cases. I express that view for two reasons. The first is that the requirement that there be a sufficient manifestation of the intention provides protection for landowners and the second is that once it is held that the trespasser has factual possession it will very often be the case that he can establish the manifested intention. *Indeed it is difficult to find a case in which there has been a clear finding of factual possession in which the claim to adverse possession has failed for lack of intention.*"

(emphasis supplied)

18. On intention, *The Powell V/s. Macfarlane*, is quite illustrative and categorical, holding in the following terms:

"If the law is to attribute possession of land to a person who can establish no paper title to possession, *he must be shown to have both factual possession and the requisite intention to possess ('animus possidendi').*"

* * *

If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner.

* * *

In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, *but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the*

sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner.

* * *

What is really meant, in my judgment, is that the animus possidendi involves the intention, *in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.*"

(emphasis supplied)

19. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

20. While dealing with the aspect of intention in the Adverse possession law, it is important to understand its nuances from varied angles.

21. Intention implies knowledge on the part of adverse possessor. The case of *Saroop Singh V/s. Banto*, in that context held:

"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See *Vasantiben Prahladi Nayak V/s. Somnath Muljibhai Nayak*).

30. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd. Mohd. Ali V/s. Jagadish Kalita*)"

22. A peaceful, open and continuous possession as engraved in the maxim nec vi, nec clam, nec precario has been noticed by this Court in *Karnataka Board of Wakf V/s. Government of India and Others*, in the following terms:

"...Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and

law. Therefore, a person who claims adverse possession should show: (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. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

23. It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper-owner of the property. This is where the law gives importance to *hostility and openness* as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper-owner."

(underlining added)

8. I may note that the trial court has also in the impugned judgment referred to various judgments on the aspects of adverse possession and which paras of the judgment are paras 25 to 30 and which read as under:-

"25. To claim ownership through adverse possession, it is necessary for a person to admit the title of the real owner and to establish his open and hostile possession without any interruption. It is not sufficient to plead for a defendant that he has been in adverse possession for 12 years. It should be definitely alleged how and when adverse possession commenced; how defendant has dispossessed the plaintiffs and has been in possession continuously ever since for more than 12 years so openly that either the plaintiffs were aware of their possession or ought to have been aware, had they exercised due diligence.

26. It is also settled law that the gaining title to the land through the adverse possession requires a strict compliance with the law. The plea of adverse possession is mixed question of law and facts and before a party can succeed in establishing title on the basis of adverse possession, the plea to that effect must be specifically raised. The Hon'ble Delhi High Court in case titled as *Shri Shahabuddin vs. State of U.P. & Ors.*, after analyzing and going through the law with regard to the plea of adverse possession has held as under:

“24: For the purpose of proving adverse possession, a defendant has to establish ouster of the real owner and must also prove *animus decidendi*. A person claiming adverse possession is bound to plead and prove ouster of the owner and/or his predecessor in interest from the property in question. It is obligatory on the part of such person to specifically plead and prove the date since when his possession became adverse to the owners. The nature of possession also has to be specifically mentioned.

XXXXX XXXXX XXXXX

“26: A person claiming title by adverse possession has to show that he has asserted hostile title as well as done some overt act to assert such claim. Even mere continuance of unauthorized possession by licensee after termination of license for more than 12 years does not enable a licensee to claim title by adverse possession. Ouster of the real owner does not mean actual driving out of the co-sharers from the property. In any case, it will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession.

XXXXX XXXXX XXXXX

“28: A claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the real owner, the burden is always on the person who asserts such a claim to plead and prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such a case the court must have regard to the animus of the person doing such.

XXXXX XXXXX XXXXX

“29: It is thus implicit that a claim of adverse possession can arise only against the real owner of the property. In a case where title itself of the plaintiff is dispute, the plaintiff would have to establish lawful title in accordance with law. In such a case, the defendant also would have to establish by clear and cogent evidence as to the manner in which it had expressed hostile intention and a claim adverse to that of the real owner of the property. It may not be wrong to state that the defendant or his adverse possession would have to assert as to the name and particular of the person against whom it was claiming title by adverse possession.

XXXXX XXXXX XXXXX

“30: Actual possession without the required animus militates against the claim of title based on adverse possession. Thus, mere unlawful possession does not mean adverse possession. A trespasser’s possession is adverse to the true owner only when the adverseness of the trespasser’s claim is within an owner’s knowledge. There must be on the part of the trespasser, an expressed or implied denial of title of a true owner and animus of exclusive ownership. (Ref. Entitled Basanti Dei V. Bijayakrushna Patnaik and Ors.)

XXXXX XXXXX XXXXX

“35. In the light of the above, it is apparent that both pleadings and the evidence has to be clear, unequivocal and specific as to on what date and even in which month the property was occupied and the date of the dispossession of the real owner. All questions relating to the date and nature of a person’s possession whether the factum of his possession was known to the owner and the legal claimants and the duration for which such possession has continued and also the question whether the possession was open and undisturbed are all questions of facts and have to be asserted and proved. The attributes of adverse possession is that it begins with dispossession or ouster of the owner. It remains an “inchoate” title or a growing title till expiration of the statutory period of its continuous open and hostile assertion and enjoyment. Before title of adverse possession is perfected, all presumptions and interments are in favour of the real owner. Burden of proving adverse possession is a very heavy one. No court can take the plea of acquisition of title by adverse possession casually and it is settled law that much importance should not be attracted to the mere evidence of witnesses who casually and cavalierly simply deposed that the land was in possession of somebody and/or another. Mere oral evidence may not be sufficient to substantiate a claim of adverse possession. The party who so pleads must show something more than that.

(emphasis supplied)

27. So far as the essential pleadings and evidence to support a claim of acquisition of title by adverse possession is concerned, the pronouncement of the Hon’ble Supreme Court in *Madhvakrishna & Anr. v. Chandra Bhaga & Ors.* (1997) 2 SCC 203, has held thus:

“5. In this case, except repeating the title already set up but which was negative in the earlier suit, namely, that they had constructed the house jointly with Mansaram, there is no specific plea of disclaiming the title of the appellants from a particular date, the hostile assertion thereof and then of setting up adverse possession from a particular date to the knowledge of the appellants and of their acquiescence. Under these circumstances, unless the title is disclaimed and adverse possession with hostile title to that of the Mansaram and subsequently as against the appellant is pleaded and proved, the plea of adverse possession cannot be held proved. In this case, such a plea was not averred nor evidence has been adduced. The doctrine of adverse possession would arise only when the party has set up his own adverse title disclaiming the title of the plaintiff and established that he remained exclusively in possession to the knowledge of the appellant’s title hostile to their title and that the appellant had acquiesced to the same.”

28. Reference may also be made to the pronouncement of the Hon’ble Supreme Court in *P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.*

(2007) 6 SCC 59, wherein placing reliance on the earlier pronouncement in **S.M.Karim v. Bibi Sakina AIR 1964 SC 1254**, it was held thus:

“ 2. *Inquiry into the particulars of adverse possession*

31. Inquiry into the starting point of adverse possession i.e dates as to when the paper-owner got dispossessed is an important aspect to be considered. In the instant case the starting point of adverse possession and other facts such as the manner in which the possession operationalised, nature of possession; whether open, continuous, uninterrupted or hostile possession have not been disclosed. An observation has been made in this regard in *S.M.Karim v. Bibi Sakina AIR 1964 SC 1254*]: (AIR p. 1256, para 5)

*“Adverse possession must be adequately in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. **There is no evidence here when possession became adverse,** if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for ‘several 12 years’ or that the plaintiff had acquired ‘an absolute title’ was not enough to raise such a plea. **Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.**”* (emphasis supplied)

29. Learned counsel for the defendant has argued that the defendant in hand would be deemed to be in adverse possession since inception of the occupation. However, this unique proposition is not supported by any judicial precedent. To the contrary, the Hon’ble Supreme Court in **T. Anjanappa & Ors. v. Somalingappa & Anr. reported at (2006) 7 SCC 570** has rejected such a plea overturning the decision of the High Court to the contrary. In paras 16 and 17, the Hon’ble court stated thus:

“16. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner’s title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former’s hostile action.

17. The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Governemnt was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been

established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. ...” (Emphasis supplied)

30. The Hon’ble Supreme Court of India in the case titled as *State of Haryana vs. Mukesh Kumar & Ors.* AIR 2012 SC 559, observed as under:-

“35. A person pleading adverse possession has no equities in his favor since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got the law of adverse possession from the British, it is important to note that these days English Courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European Commission.”

9. From the aforesaid discussion, it becomes clear that the courts look at disfavour with the claim of adverse possession. Adverse possession is looked upon with disfavour because adverse possession commences in a wrong i.e act of wrongful possession and is maintained against a right i.e right, title and interest of the true owner. Adverse possession has to be proved by clear cut evidence showing when the adverse possession commences i.e the date, month and year or at least the month and year and adverse possession has to be proved to be *nec vi, nec clam, nec precario*. Wrong possession is not automatically an adverse possession. Also for commencement of adverse possession, it should be brought to the notice of the true owner the claim of adverse possession so that the true owner can take all steps in accordance with law.

10. In the present case, on behalf of the appellant/defendant, evidence to claim adverse possession from the year 1985 as pleaded by the appellant/defendant till the date of filing of the suit on 3.7.2012, is in the form of four documents. These four documents are Ex.DW1/1 to Ex.DW1/8, and which documents are referred to in para 8 of the impugned judgment of the trial court and which para reads as under:-

“8. In response, the defendant has examined himself as DW-1 and proved on record his affidavit in evidence as DW1/A and copy of health card of child as Ex.DW1/1; sterilization certificate of Nirmala Ex.DW1/2; copy of ration card and election card as Ex.DW1/3 & Ex.DW1/4, respectively; School Leaving Certificate of his two sons as Ex.DW1/5 & Ex.DW1/6 respectively; copy of electricity bills and passbook of gas connection as Ex.Dw1/7 and Ex.DW1/8 respectively. Defendant has also examined Sh. Khajan Singh as DW-2 who was cross examined.”

11. In my opinion, the aforesaid documents, the first of which begins in terms of the ration card of the year 1992 only shows possession of the appellant/defendant of the suit premises. As already stated above, mere possession, and even long possession is not equal to claim of adverse possession. Adverse possession must begin by assertion of a claim of title in the suit property as against the true owner of the property. There is no evidence which is led on behalf of the appellant/defendant of hostile assertion of title whether by seeking mutation of the property in the local authority records to show the

appellant/defendant as the owner or even payment of the property tax or filing of income tax returns or letting out of the property to a tenant etc etc. Therefore, in my opinion, the court below has rightly held that the appellant/defendant has failed to prove his plea of adverse possession.

12. It is also relevant to note in this regard that appellant/defendant claimed that he had constructed the suit property in the year 1987, however, no evidence whatsoever has been led on behalf of the appellant/defendant of having made construction on the suit property in the form of documents showing incurring of expenditure on the cost of construction. This is another reason why the court below has rightly denied the claim of adverse possession of the appellant/defendant.

13. Learned counsel for the appellant/defendant argued the same aspect before this Court, as was done before the trial court, that appellant/defendant is in adverse possession in view of the documents Ex.DW1/1 to Ex.DW1/8, but as already stated above, these documents only show possession and not assertion of a hostile title as against a true owner. Therefore, these documents cannot be used in favour of

the appellant/defendant to sustain the claim of the appellant/defendant of having acquired title of adverse possession.

14. Learned counsel for the appellant/defendant argued that it was not the respondents/plaintiffs, but Delhi Development Authority who was the owner of the suit property, however when queried to show that such factual aspect has been pleaded in the written statement of the appellant/defendant, it was conceded that there is no plea in the written statement of the appellant/defendant that DDA is the owner of the suit property. This Court therefore refuses the appellant/defendant to raise such factual plea. Since no amount of evidence can be looked into on a factual plea which is not pleaded, hence the cross-examination by the appellant/defendant of the respondents/plaintiffs that DDA is the owner is of no legal effect.

15. No other issues are argued before this Court except as discussed above.

16. There is no merit in the appeal. Dismissed.

SEPTEMBER 22, 2017
ib

VALMIKI J. MEHTA, J