

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

+ **RFA No.682/2017**

% **Reserved on: 2nd August, 2017**
Pronounced on: 9th August, 2017

VED PRAKASH AND ANR. Appellants

Through: Mr. Varinder Sharma, Ms.
Parul Sharma, Advocates.

versus

NIRANJAN SINGH 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.27336/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.682/2017 and C.M. No. 27292/2017 (stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the judgment of the trial court dated 27.3.2017 whereby the trial court has decreed the suit of the respondent/plaintiff for

possession of the suit property. The operative para of the judgment of the trial court reads as under:-

“A decree of possession of the suit property bearing No.F-48 (sic: F-49), Vishwas Park, Uttam Nagar, New Delhi-110059, more specifically shown in red colour in site plan Ex.DW1/PD and a decree of permanent injunction is passed in favour of the plaintiff and against the defendants, restraining defendants, their agents, servants, attorneys and persons acting on their behalf from creating third party interest, construction, demolition in the aforesaid property.”

3. I may note that the respondent/plaintiff filed the suit claiming ownership of the property bearing no. F-49, Vishwas Park, Part-II, Solanki Road, Uttam Nagar, New Delhi – 110059 which comprised of land area of 100 sq. yds. in terms of sale deed dated 7.4.2006 executed in favour of the respondent/plaintiff by the earlier owner Smt. Brij Kumari. The disputed portion of the property is an area of 50 sq. yds. out of the 100 sq. yds. purchased by the respondent/plaintiff under the sale deed dated 7.4.2006. This area was called by the appellants/defendants as property no. F-48, and therefore, the suit is decreed in terms of the operative para for property no. F-48, however, the reality is that the possession has been decreed for an area shown in the site plan which forms part of property no. F-49. Possibly, in fact, the use of the property no. F-48 in the operative

para of the judgment of the trial court dated 27.3.2017 is therefore a typographical error and the suit actually stands decreed for the suit property which forms part of property no. F-49 and that this is so becomes clear from the discussion in the impugned judgment of the trial court which is with respect to property no. F-49.

4. The facts of the case are that the respondent/plaintiff pleaded that he had purchased the suit property by means of a duly registered sale deed dated 7.4.2006 from the erstwhile owner Smt. Brij Kumari. This sale deed along with the chain of the earlier title documents in original were proved and exhibited by the respondent/plaintiff as Ex. P-2 (colly). Respondent/plaintiff pleaded that he had gone to his parental home in District Bulandshehar, Uttar Pradesh on account of his father being ill and that after the demise of his father when the respondent/plaintiff returned to Delhi he was shocked to know that appellants/defendants along with their father Sh. Om Prakash have trespassed into the suit property. It was further pleaded that on account of appellants/defendants and their father Sh. Om Prakash threatening the respondent/plaintiff with dire consequences, various complaints were filed at the Police Station

Binda Pur being complaints dated 18.06.2007, 22.07.2007, 03.08.2007, 08.08.2007 and 09.02.2008. Respondent/plaintiff pleaded that Aadhar Card and Election Identity Card of the respondent/plaintiff are with respect to the suit property and also his bank account and Tata mobile phone bill have the address of the suit property. Respondent/plaintiff pleaded that he has performed the marriage of his son Sh. Prince at the suit property and the son of the respondent/plaintiff Sh. Manish also had his Aadhar Card and Driving Licence of the address of the suit property. The daughter of the respondent/plaintiff Smt. Sannu Chaudhary is also pleaded to have an identity card at the address of the suit property and which showed the possession of the respondent/plaintiff on the suit property. It was further pleaded that the defendant no. 2 Sh. Kanchi Lal had been recently released from Jail in a murder case and he threatened to murder the respondent/plaintiff and his family members and a complaint dated 5.5.2013 in this regard was lodged at Police Station Binda Pur. The suit for possession was therefore prayed to be decreed.

5. Appellants/defendants contested the suit and pleaded in their written statement that the suit property/area of 50 sq. yds. was

purchased by the father of the appellants/defendants, namely Sh. Om Prakash. from Smt. Brij Kumari in December, 1993 for a sale consideration of Rs.20,000/-. It was further pleaded that construction was carried out on the suit property in the year 1994 by the appellants/defendants along with their father Sh. Om Prakash and since then the appellants/defendants are in continuous possession of the suit property. It was pleaded that the earlier owner Smt. Brij Kumari had falsely taken away the original papers of 50 sq. yds. purchased by Sh. Om Prakash from Smt. Brij Kumari and did not return the same. The suit was therefore prayed to be dismissed.

6. After pleadings were complete, trial court framed issues and parties led evidence, and which aspects are noted in paras 14 to 17 of the judgment of the trial court and which paras read as under:-

“Issues:

14. Vide order dated 31.03.2014 passed by learned predecessor of this court, the following issues were framed:

- “1. Whether the defendants are the owner of the suit property by way of adverse possession? OPD
2. Whether the suit has not been valued for the purpose of court fee and jurisdiction properly, if so its effect ? OPD
3. Whether the plaintiff is entitled to the decree of possession, as prayed for ? OPP
4. Whether the plaintiff is entitled to decree of permanent injunction as prayed for ? OPP
5. Relief.”

Parties Evidence

15. The Plaintiff has examined only one witness in order to prove his case i.e. PW-1 Mr. Niranjn Singh, the plaintiff himself. PW-1 has proved on record the following documents:-

1. *Copy of the site plan Ex.P1.*
2. *Copy of the sale deed Ex.P2.*
3. *Copy of the complaints dated 18.08.2007 and 22.08.2007 Ex.P3.*
4. *Copy of the documents showing the possession of plaintiff Ex.P5.*
5. *Copy of the complaint dated 23.05.2012 Ex.P6.*
6. *Copy of the theft bill dated 09.08.2012 Mark P-8.*
7. *Copy of the complaint to the Commissioner of Police alongwith postal receipt Ex.P9.*

16. Defendants have examined two witnesses in their defence. DW-1 (defendant no. 1) Mr. Ved Prakash has proved on record the following documents:-

1. *Copy of Ration card of his father Mr. Om Prakash Ex.DW1/A.*
2. *Copy of Ration card of his father Mr. Om Prakash pertaining to the property bearing No. E-187, Vishwas Park, Uttam Nagar, New Delhi – 110059 Mark A.*
3. *Death Certificate of his late brother Mr. Rajesh Kumar Ex.DW1/C.*
4. *Death Certificate of his father late Mr. Om Prakash Ex.DW1/D.*
5. *Copy of Election Voter I Card of his mother Mrs. Son Devi Ex.DW1/E.*
6. *Copy of Election Voter I card of his father Late Mr. Om Prakash as Ex.DW1/F.*
7. *The photographs Mark XI to X5.*

17. DW-2 is Mr. Kanchi Lal (defendant no. 2). Besides relying on the documents exhibited during the testimony of DW-1 Mr. Ved Prakash, he has also proved on record the following document:-

1. *Original Loan Agreement Ex.DW2/A.”*

7. The main issue which was argued by the appellants/defendants before the court below was issue no. 1 as to they and their father becoming owners of the suit property by adverse possession. It may be noted that no issue was got framed by the

appellants/defendants with respect to their claim of the suit property having been purchased by Sh. Om Prakash in terms of the alleged documentation of December, 1993 from Smt. Brij Kumari. Trial court held the issue of adverse possession against the appellants/defendants and therefore decreed the subject suit for possession. The following reasons are given by the trial court and with which I agree:-

(A) Adverse possession must be proved to be hostile to the true owner and the possession has to be open, hostile and continuous. That the person who claims adverse possession has no equities in his favour since he is seeking to defeat the rights of the true owner and therefore adverse possession has to be clearly pleaded and proved. The relevant observations of the trial court in this regard are contained in paras 24 and 25 of the impugned judgment and which paras read as under:-

“24. It is also well settled that 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.

25. This Court also relies on case titled as ***Chattar Singh Matharoo v. Ashwani Mudgil and others*** decided on **16.09.2015** by Hon’ble Mr. Justice Valmiki J. Mehta in CS (OS) No. 576/2006 wherein while deciding Issue no. 1, it was observed that the law with respect to a person becoming owner by adverse possession is well settled. As per that a person who claims ownership by adverse possession, must lead evidence before the Court so as to show possession which is open/peaceful, hostile and continuous of the

suit property for twelve years as against the true owner. The claim of adverse possession is required to be proved strictly, in as much as, the claim of adverse possession commences in a wrong act and continues against a right i.e the action of adverse possession commences in a wrongful act of taking possession of the property of another person and such wrongful possession is maintained against a right being the ownership right of the owner of the property.” (underlining added)

(B) Respondent/plaintiff had proved ownership of the suit property in terms of the duly registered sale deed and earlier chain of title documents and which were proved as Ex.P-2 (colly). This aspect has to be taken with the aspect that the case of the appellants/defendants cannot be believed that the original title papers with respect to 50 sq. yds. of property purchased by the appellants' father Sh. Om Prakash from Smt. Brij Kumari were fraudulently taken away by Smt. Brij Kumari with others. As noted by the trial court that admittedly no police complaint was lodged by Sh. Om Prakash or the appellants/defendants that Smt. Brij Kumari had illegally taken away property papers for 50 sq. yds. Also, allegedly taking away of the complete chain of the property papers by Smt. Brij Kumari from Sh. Om Prakash and the appellants/defendants is inconceivable because the property papers of Smt. Brij Kumari were for a total area of 250 sq. yds. and the appellants/defendants along with their father only claimed right to 50 sq. yds. of land.

(C) The documents filed by the appellants/defendants do not prove the case of open, hostile and continuous possession. I may note that that dates of the documents which are filed by the appellants/defendants before the trial court are not stated in the impugned judgment but it is seen that these documents which are filed are of the year 2005 onwards and the subject suit was filed on 5.9.2013. The death certificate of father of the appellants/defendants Sh. Om Prakash Ex.DW1/D is of the year 2012. The death certificate Ex.DW1/C of the brother of Sh. Om Prakash, namely, Sh. Rajesh Kumar is of January, 2006. The loan agreement Ex.DW2/A of appellant no. 2/defendant no.2 for Rs.8,500/- is of the year 2005. The document Ex.DW1/PA being the Driving License of Sh. Ved Prakash son of Sh. Om Prakash is dated 8.12.2015. Also the trial court has noted that the above documents proved by appellants/defendants are of property no. F-48 and not F-49 and which latter number is the number of the suit property. As regards the Ration Card which is proved as Ex.DW1/A it has to be noted that appellants/defendants cannot also place any reliance on this ration card/Ex. DW1/A because there is no date which is found in this ration card and there is

definitely no date of this ration card of prior to the year 2005. Therefore, the trial court has rightly held that the appellants/defendants failed to prove adverse possession of the suit property for a period of twelve years prior to filing of the suit and much less from the year 1993 when allegedly suit property of 50 sq. yds. was purchased by Sh. Om Prakash from Smt. Brij Kumari.

(D) An earlier suit filed by Sh. Om Prakash against Smt. Brij Kumari and Sh. Ramesh Chand, and which was decreed in terms of the judgment of the Civil Judge dated 26.2.2010, was an *ex-parte* judgment and therefore cannot be relied upon with the fact that litigation was with respect to property no. F-48 and not F-49. To these findings and observations of the trial court I would like to add that the plaint in the earlier suit filed by Sh. Om Prakash against Smt. Brij Kumari though pleaded claim to ownership on the basis of documents of December, 1993, however, when this suit no. 1029/2006 was decreed in terms of the judgment of the Civil Judge dated 26.2.2010 the suit was decreed for injunction for Sh. Om Prakash not being dispossessed without due process of law without there being any finding in the *ex-parte* judgment dated 26.2.2010 that Sh. Om Prakash

was the owner of the property. There was also no finding in this judgment as to how long, i.e for what period, was the possession of Sh. Om Prakash on the suit property. This becomes clear from paras 11 to 14 of the said judgment dated 26.2.2010 and which read as under:-

“11. In order to prove his case plaintiff examined himself as PW1 and tendered his affidavit Ex. PW-1/1. He also examined Sh. Tejpal as PW2

12. He relied upon the following documents

- i) Ex.PW-1/A Site plan
- ii) Ex.PW-1/B Copy of Ration Card
- iii) Ex.PW-1/C Subscription receipt of periodical “Rishi Prasad”
- iv) Ex/PW-1/D to Ex. PW-1/H Photographs

13. The whole testimony of PW1 and PW2 has gone unrebutted and uncontested as no appearance has been put forth by the defendant who was proceeded against *exparte* vide order dated 15.10.2007. The plaintiff has placed relevant documents on record which sufficiently prove the possession of the plaintiff over the suit property. There is no reason to disbelieve the unassailed testimony of plaintiff witnesses. Hence I am of the firm view that plaintiff has successfully proved his case by preponderance of the probability.

14. In the light of the above mentioned discussion, I decree the suit of the plaintiff and restrain the defendants, their attorneys, associates, servants etc. from dispossessing the plaintiff from the suit property i.e. F-48, Vishwas Park, Part II, Solanki Road, Uttam Nagar, New Delhi measuring about 50 sq. yds., except in due course of law. No order as to cost. Decree sheet be prepared accordingly. File be consigned to record room after necessary compliance.”

Therefore, no reliance can be placed by the appellants/defendants on the earlier proceedings in the suit no. 1029/2006 filed by Sh. Om Prakash against Smt. Brij Kumari and which culminated in the judgment of the Civil Judge dated 26.2.2010.

(E) That claim of adverse possession alleged by the appellants/defendants cannot be proved to have been made out because appellant no. 2/DW-2/Sh. Kanchi Lal admitted that he had no documentary evidence to prove that the construction in the suit property was raised in the year 1994 and nor the appellants/defendants had any documents whatsoever to show that the suit property was purchased by Sh. Om Prakash in the year 1993 for a sum of Rs.20,000/-. Sh. Kanchi Lal/DW-2 also admitted that he was in jail from 1988-90 but claimed ignorance that it was in a murder case. In the opinion of this Court once there was no evidence whatsoever with respect to any construction being made by the appellants/defendants or their father in the year 1994, for this additional reason also the trial court was justified in coming to the conclusion that the appellants/defendants had failed to prove ownership of the suit property by adverse possession.

(F) The father of the appellants/defendants Sh. Om Prakash had signed as a witness in two of the chain of earlier title documents being receipt Ex. DW1/PB dated 13.11.1991 and the Will dated 21.4.1992/Ex. PW1/PC. Therefore once Sh. Om Prakash knew the

existence of documents of years prior to the year 1993 showing transfer of title of suit property from Smt. Brij Kumari to others and when Sh. Om Prakash only claimed to have purchased the suit property from Smt. Brij Kumari later in the year 1993, the case of appellants/defendants/Sh. Om Prakash of being in adverse possession since the year 1993/1994 is clearly false.

8. Some of the relevant paras of the judgment of the trial court and which arrived at the aforesaid findings and conclusions are paras 21, 22, 24, 25, 26, 27, 35, 38 and 40 and these paras read as under:-

“21. This court relies on *Mahender Pal Singh vs. Ali Hussian Khan decided on 01.12.2011* by Hon'ble Mr. Justice G.S.Sistani in CS(OS) No. 1684/2009 wherein judgment titled *Himaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and others, AIR 2009 Supreme Court 103* and judgment titled *Karnataka Board of Waqf vs. Government of India (2004) 10 SCC 779* have also been referred. The law relating to adverse possession was discussed. It is well settled proposition of law that in order to establish claim of adverse possession, the first and basic ingredient in law is that the possession of the person must be hostile and owner would be deemed to be in possession of the suit property so long as there is no intrusion. Non-use of the property by the owner even for a long time would not affect his title. The position will be altered when another person takes possession of the suit property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile in denial of the tile of the true owner.

22. The party claiming adverse possession must prove that his possession 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.

XXXXX

XXXXX

XXXXX

24. It is also well settled that 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.

25. This Court also relies on case titled *Chattar Singh Matharoo vs. Ashwani Mudgil and others decided on 16.09.2015* by Hon'ble Mr. Justice Valmiki J. Mehta in CS(OS) No. 576/2006 wherein while deciding Issue No. 1 it was observed that the law with respect to a person becoming owner by adverse possession is well settled. As per that a person who claims ownership by adverse possession, must lead evidence before the Court so as to show possession which is open/peaceful, hostile and continuous of the suit property for twelve years as against the true owner. The claim of the adverse possession is required to be proved strictly, inasmuch as, the claim of adverse possession commences in a wrong act and continues against a right i.e. the action of adverse possession commences in a wrongful act of taking possession of the property of another person and such wrongful possession is maintained against a right being the ownership right of the owner of the property.

26. Plaintiff has pleaded that he is a registered owner of the property bearing No. F-49, Vishwas Park, Uttam Nagar, New Delhi-110059 admeasuring 100 square yards out of Khasra No. 100/81/1 situated in the Revenue Estate of Village Palam, New Delhi now known as Vishwas Park, New Delhi-10059 vide registered sale deed dated 07.04.2006 Ex.P2 shown in the rough site plan and regularized by the MCD vide resolution No. 2367/STG dated 06.09.1982 bounded as under:

East :	Road 20 feet
West:	Gali 10 feet/lane
North:	Portion of the plot No. 149-A
South:	Plot no. 48

The whole property of the seller was measuring 250 square yards.

27. It has been the case of the plaintiff that this property was purchased from Mrs. Brij Kumari, wife of Mr. R.C.Sharma resident of Muradabad, Uttar Pradesh vide registered Sale Deed having registration No. 4889 in Book No. 1 volume No. 2766 on pages 165 to 169, dated 10.04.2006. The seller had given complete chain of previous transaction of the suit property to the plaintiff and the plaintiff had taken physical possession of the suit property after execution of the sale deed in the year 2006. Due to ill health of father of the plaintiff, he left to his parental home in District Bulandshehar, Uttar Pradesh. When plaintiff returned after death of his father, he was shocked that defendants alongwith their father had trespassed the suit property. On his objection, defendants were requested to vacate the suit property within some days, however ,they were taking time on one pretext or other and later refused to vacate the suit property. The

defendants are real brother in unauthorised illegal possession of the suit property shown red in the site plan Ex.DW-1/PD. The plaintiff has also submitted that he has got Aadhar Card No. 47920716874, bank account with Punjab National Bank, Vikaspuri, New Delhi and motorcycle in the name of his son Manish which shows his possession in the suit property. Even his son Mr. Prince was married from this property on 15.12.2008. In May, 2012, plaintiff came to know that defendants hatched criminal conspiracy to prepare fabricated documents of the suit property and also threatened that defendant no. 2 Mr. Kanchi has just released from Jail in murder case. He is also involved in other criminal cases and he could commit murder of the plaintiff and his family members. On this plaintiff lodged complaints with police on 05.05.2013 vide DD No. 104B at Police Station Binda Pur. It has also been submitted that Mr. Om Prakash father of the defendant was also involved in theft of electricity and copy of the theft bill dated 09.08.2011 is mark P8. It has further been submitted that defendants had installed electricity connection in collusion with officials of BSES Janak Puri in their name for property bearing No. F-48, Vishwas Park, Uttam Nagar, New Delhi-110059 with the help of forged and fabricated documents of the property of the plaintiff and got installed the electricity connection in property number F-49, Vishwas Park, Uttam Nagar, New Delhi-110059. Plaintiff had to call the police and lodge complaint with the office of DGM BSES Janak Puri, New Delhi vide diary no. 263 dated 05.05.2013 also with the office of Vigilance of BSES Chitranjan Park, New Delhi vide diary no. 235 dated 08.08.2013 against meter no. 26159984 AP no. 1004775806.

XXXXX

XXXXX

XXXXX

35. Learned counsel for the plaintiff has submitted defendants have failed to prove any document in order to support that they are in adverse possession since 1993. Nothing has been proved on record that sale deed was executed by Mrs. Brij Kumari in favour of the father of the defendant. Adverse possession has not been taken as defence since no document has been produced on record in order to show that defendants are in continuous uninterrupted possession. Referring to cross-examination of DW-1 has deposed that he cannot tell whether he has any document in order to show that his father (Late Mr. Om Parkash) had purchased the suit property from Mrs. Brij Kumari in December, 1993. He has also deposed that he cannot produce any document in order to show that his father had raised construction on the suit property in the year 1994. He has denied the suggestion that he do not have document in order to show that his father had purchased the suit property from Mrs. Brij Kumari in December, 1993 as no such property was purchased from Mrs. Brij Kumari by his father. He has further deposed that no such police report was lodged in respect of incident dated 09.04.2006 wherein Mrs. Brij

Kumari, her husband Mr. Ramesh Chand and Mr. Vikas had visited his father (Mr. Om Parkash) had taken away the property documents executed by them in favour of Mr. Om Parkash. He has also admitted that Mrs. Brij Kumari, her husband Mr. Ramesh Chand and Mr. Vikas had not threatened DW-1 Mr. Ved Parkash. DW1 has also admitted that his father Mr. Om Parkash had signed as witness on Ex.DW1/PB i.e. Receipt dated 13.11.1991 at Point A. His father has also signed Will dated 21.04.1992 Ex.PW1/PC. The rough site plan Ex.DW1/PD was also shown to DW-1 wherein he has admitted that defendants are in possession of portion shown red in the site plan Ex.DW1/PD.

XXXXX

XXXXX

XXXXX

38. DW-1 has also admitted that they have not lodged any complaint against Mr. Niranjana Singh with the police in respect of any forged or fabricated documents of the suit property kept by Mr. Niranjana Singh. It is clearly shows that even though the defendants have taken the plea that defendants nor their father took any action against any person including Mrs. Brij Kumari, Mr. Ramesh Chand @ Randhawa Thekedar, Mr. Vikas as well as the plaintiff herein.

XXXXX

XXXXX

XXXXX

40. DW-2 Mr. Kachchi Lal has also deposed that he has no documentary evidence to prove that construction in the suit property was raised in the year 1993. He has no witness to prove that construction in the suit property was raised in the year 1993. He has not placed on record any documentary proof/receipt etc. in order to show that he has purchased the suit property in the year 1993 for a sum of Rs.20,000/-."

(underlining added)

9. I may note that in the judgment of the trial court there is an issue discussed of the earlier legal proceedings initiated by Sh. Om Prakash against Smt. Brij Kumari being with respect to property no. F-48 and the suit property being F-49, however, in my opinion, such discussion possibly may have no bearing with respect to the conclusions to be arrived at, inasmuch as, the case of the

appellants/defendants is that the property which appellants/defendants call as property no. F-48 is in fact 50 sq. yds. of the property no. F-49 and as shown from the last line of para 35 of the judgment of the trial court which has already been reproduced above. In any case therefore the earlier litigation does not help the appellants/defendants and which aspect has already been discussed in detail hereinabove.

10. In view of the above discussion it is seen that the trial court has arrived at valid conclusions and has given valid reasoning/discussion for arriving at the conclusions. Once the conclusions of the trial court are based on the evidence on record and therefore the conclusions cannot be said to be illegal or perverse, then this court would loathe to interfere with such findings and conclusions arrived at by the trial court.

11. In view of the above discussion there is no merit in the appeal and the same is hereby dismissed.

AUGUST 09, 2017/godara/AK

VALMIKI J. MEHTA, J