

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

+ **RSA No.23/2017**
RSA No.24/2017

% **27th July, 2017**

+ **RSA No. 23/2017**

BALDEV SINGH SOLANKI Appellant
Through: Appearance not given
versus

BHAGWATI DEVI (DECEASED) THROUGH LRS AND ORS.
..... Respondents
Through: Mr. Amit Chandel and Mr.
K.R.Verma, Advs. For R-1 to
R-4

+ **RSA No. 24/2017**

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Through: Appearance not given
versus

BHAGWATI DEVI (DECEASED) THROUGH LRS AND ORS.
..... Respondents
Through: Mr. Amit Chandel and Mr.
K.R.Verma, Advs. for R-1
through L.Rs. and R-3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1.(i) These two appeals under Section 100 of the Code of Civil
Procedure, 1908 (CPC) are being disposed of by this common

judgment as appellant in both the appeals is the same. The property in question is also the same. The main issue in both the cases is the same of the claim of the appellant/plaintiff to land admeasuring 200 sq. yds bearing no.F-42 forming part of Khasra No.74/1, Village and Revenue Estate of Pooth Kalan, Delhi.

(ii) RSA No. 23/2017 arises with respect to a suit for recovery of possession filed by the appellant/plaintiff with respect to subject land and which suit was dismissed by the trial court in terms of its judgment dated 22.12.2012. Trial court by its judgment dismissed the suit for recovery of possession which was filed by the appellant/plaintiff on 6.3.1999.

(iii) RSA No. 24/2017 pertains to the suit filed by the appellant/plaintiff for cancelling and declaring as null and void the third-party sale deeds with respect to the suit land which were executed in favour of the defendants in the suit. This suit, which was instituted on 26.4.2002, was dismissed by the judgment of the trial court dated 10.11.2014.

2. Both the judgments of the trial court dated 22.12.2012 (subject matter of RSA No. 23/2017) and the judgment of the trial

court dated 10.11.2014 (subject matter of RSA No. 24/2017) were challenged by the appellant/plaintiff by filing first appeals. The first appeals have been dismissed by the first appellate court in terms of its judgments dated 1.9.2016 and 19.3.2016 with respect to RSA Nos. 23/2017 and 24/2017 respectively. Hence the plaintiff in the suits has filed these two appeals.

3. In RSA No. 23/2017, the courts below have dismissed the suit for possession by holding that appellant/plaintiff had claimed ownership in terms of the revenue record of the year 1979-1980 which was proved as Ex.PW4/D and Ex.PW4/M being the khautani and khasra girdawri for the year 1979-80, but, appellant/plaintiff claimed that he was dispossessed by the defendant nos. 1 and 2 on 8.9.1998 and no revenue record was filed for the huge gap between 1979-80 till 8.9.1998 and in fact till 6.3.1999 when the suit was filed that the appellant/plaintiff continued to be the owner of the suit land and also continue to be in possession of the suit land. Trial court held that mere revenue record does not confer any title to a person and to which observation I would like to add that though *prima facie* record may indicate title and possession, however, such revenue record has

generally and necessarily to be in and around the date of filing of the suit or the alleged date of dispossession and once there is a gap of as many as 18 years/19 years from the year of the revenue record till the alleged date of dispossession of the appellant/plaintiff and the filing of the suit in the subsequent year, such old record is not enough for proving the title and possession of the appellant/plaintiff on the date of filing of the suit.

4. It may be stated that the case of the respondents/defendants was that originally the suit property was purchased by Smt. Bhagwati Devi on 17.3.1980 from one Sh. Ram Kishore and documents with respect to which were registered before the Sub-Registrar and thereafter the present defendants in the suit had purchased the property and which thereafter was sold on 8.12.1995 to one Sh. Praveen Kumar for which the usual set of documentation was registered in favour of Sh. Praveen Kumar. It was also pleaded by the respondents/defendants that the appellant/plaintiff had earlier filed the suit for injunction before the court of the Civil Judge, Delhi and in which Suit No. 131/1996 the stay application filed by the appellant/plaintiff was dismissed and the appellant/plaintiff filed an

appeal against the order dismissing the stay application but that appeal was not pursued and the same came to be dismissed on 28.4.2000. Thereafter the suit was also not pursued by the appellant/plaintiff and which was accordingly dismissed.

5. After pleadings were complete the trial court framed the issues and parties led evidence. These aspects are noted in paras 10 to 13 of the impugned judgment of the trial court and which paras read as under:-

“10. On the basis of the pleadings, following issues were framed:-

- 1) *Whether the suit is bad for mis-joinder of parties and nonjoinder of necessary parties? OPD 3 to 5***
- 2) *Whether the suit has not been properly valued for the purpose of Court Fees and jurisdiction? OPD 3 to 5.***
- 3) *Whether the suit is barred by the provisions of DLR Act? OPD***
- 4) *Whether the plaintiff had been dispossessed from the suit and on 08.09.1998? OPP.***
- 5) *Whether the plaintiff has no cause of action against the defendant no.3 to 5? OPD.***
- 6) *Relief***

11. In support of his case, the plaintiff has examined Sh. Om Prakash as PW-1, Sh. Krishan Kumar, Halka Patwari, Pooth Kalan as PW-2 & Ct. Ravinder as PW-3. The plaintiff has examined himself as PW-4.

12. On the other hand, defendants have examined total three witnesses. Smt. Bhagwati Devi was examined as DW-1 & Sh. Om Parkash (the defendant no.4) was examined as DW-2. He claimed to be the owner in possession of the suit property on the basis of GPA, receipt, possession letter, will, etc. which were exhibited as Ex.DW-2/1 to Ex.DW-2/4. Smt. Renu Sengar was examined as DW-3 who claimed to be defendant no.5 in her affidavit. She claimed to be the owner in possession of the suit property on the basis of GPA, receipt, possession letter, will, etc which were exhibited as Ex.DW-3/1 to Ex.DW-3/4.

13. In this case, original defendants were Smt. Bhagwati Devi and Satish Kumar. Rest of the defendants were impleaded later on being the transferee of the suit property.”

6.(i) The main issue was issue no. 4 and as stated above the same has been decided against the appellant/plaintiff by the trial court observing that the revenue record does not confer title or possession and which in the opinion of this Court is correct because the record is of around 18-19 years prior to the filing of the suit.

(ii) In fact, I would like to note at this stage that in the suit which is the subject matter of the connected RSA No. 24/2017 filed by the same plaintiff, trial court has referred to the document Ex.PW2/B exhibited in that suit and which shows that the suit property as on 20.7.1988 stood vested in the Gram Sabha and thus showing that the appellant/plaintiff no longer was the owner of the suit land as in 1988 i.e even around eleven years prior to the filing of the suit. This fact I am referring to because it has to be for this reason that the appellant/plaintiff had not continued to remain as the owner till alleged date of dispossession in the year 1998 or when the suit was filed in the year 1999 and that therefore this evidence of Ex.PW2/B in the suit filed on 26.4.2002 (subject matter of RSA No. 24/2017) was

not filed in the present suit. In my opinion, therefore courts below have rightly held that the appellant/plaintiff was not entitled to the reliefs prayed on the ground that he was not the owner and also that appellant/plaintiff was allegedly dispossessed in the year 1998 by the defendant nos. 1 and 2.

(iii) I may also add that in terms of law of prescription contained in Section 27 of the Limitation Act, 1963 read with Articles 64 and 65 of the Act thereof that the ownership of the suit property is lost if the suit is not filed within 12 years of dispossession. The period of 18/19 years from the year 1979-80, and which is the year of the revenue record proved by the appellant/plaintiff; is of a period of 18 years prior to the alleged dispossession in the year 1998 and 19 years before the filing of the suit in the year 1999. Thus the principle contained in the law of prescription clearly applies against the appellant/plaintiff and for this additional reason, which this Court is entitled to give under Order XLI Rule 27 CPC the judgments of the courts below are liable to be sustained.

7. In view of the aforesaid there is no merit in RSA No. 23/2017. No substantial question of law arises. Dismissed.

RSA No.24/2017

8. The facts of the case have already been given above and it is also already noted above that the trial court held that though respondents/defendants did not appear and contest the suit after being served in the suit on its revival which was adjourned *sine die*, however, appellant/plaintiff failed to prove his title to the suit property and as shown from the document Ex.PW-2/B, and which revenue record shows that the ownership of the suit land was not with the appellant/plaintiff and that the ownership of the suit land stood vested in the Gram Sabha in the year 1988 i.e eleven years prior to filing of the suit. There is therefore no merit in this appeal. No substantial question of law arises. Dismissed.

JULY 27, 2017
ib/AK

VALMIKI J. MEHTA, J