

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

+ **RFA No. 602/2006**

+ **RFA No. 601/2006**

+ **CONT. CAS (C) 864/2012**

% **27th September, 2018**

+ **RFA No. 602/2006**

PAWAN MEHRA

..... Appellant

Through: Mr. P.K. Sharma, Advocate
(Mobile No. 9811283658).

versus

PARAS RAM

..... Respondent

Through: Mr. Ajit Kumar Singh,
Advocate (Mobile No. 9899204289).

+ **RFA No. 601/2006**

PAWAN MEHRA

..... Appellant

Through: Mr. Naresh Kaushik and Mr.
Devik Singh, Advocates
(Mobile No. 8888556671).

versus

BANWARI LAL

..... Respondent

Through: Ms. Laxmi Singh, proxy
Advocate for Mr. Ajit Kumar
Singh, Advocate (Mobile Nos.
9654013250, 9899204289).

+ **CONT. CAS (C) No. 864/2012**

SONAL MEHRA

..... Petitioner

Through: Mr. P.K. Sharma and Mr.
Manish Sharma, Advocates
(Mobile No. 9811283658).

versus

BANWARI LAL AND ORS.

..... Respondents

Through: Ms. Laxmi Singh, proxy
Advocate for Mr. Ajit Kumar
Singh, Advocate (Mobile Nos.
9654013250, 9899204289).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 602/2006

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC') is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 22.07.2006 by which the trial court has dismissed the suit for possession and *mesne* profits filed by the appellant/plaintiff and against the respondent/defendant with respect to the suit property comprising of one room, one finished

kitchen, bathroom and latrine in the property no. WZ-436, Village Tihar, Hari Nagar, New Delhi, situated in erstwhile revenue record as Khasra Nos. 2066 and 2078/2, and as shown in Red in the Site Plan/Ex PW1/2.

2. The facts of the case are that the appellant/plaintiff pleaded that he is the co-owner of the suit property, and since the respondent/defendant was a trespasser in the suit property, hence the respondent/defendant was asked to vacate by serving a Legal Notice dated 22.11.2002. However, the respondent/defendant failed to vacate the suit property hence the subject suit for possession was filed in which *mesne* profits were also claimed at Rs. 2,000/- per month from three years prior to the filing of the suit.

3. The respondent/defendant contested the suit by filing written statement. It was pleaded by the respondent/defendant that he was the owner of the suit property because he had purchased it from Sh. Ganesh. It was also pleaded by the respondent/defendant that he had become owner of the suit property on account of adverse possession.

4. The only issue which has to be examined by this Court, is the sole issue which was argued on behalf of the respondent/defendant, and which is as to whether respondent/defendant has become the owner of the suit property by adverse possession. So as to complete the narration, I would like to add that the trial court, as per the detailed discussion in paras 9 to 11 of the impugned judgment, has held that respondent/defendant is the co-owner of the suit property, and this detailed discussion includes reference to the Revenue Record Ex.PW4/1 to PW4/4, showing the name of the appellant/plaintiff and his predecessors-in-interest as co-owners of the suit property. Reference is also made in these paras to earlier litigation for partition between the co-owners and the decree passed in this regard dated 09.03.1987 has been proved and exhibited as Ex.PW5/11.

5. Adverse possession in law has to be proved and established by a person who claims to be in adverse possession showing *nec vi, nec clam, nec precario* i.e. open, hostile and continuous possession. Mere possession is not adverse possession and unless and until possession is accompanied by an assertion of title,

hostile to the true owner, the possession does not become adverse possession. Article 65 of the Limitation Act, 1963, states that where a person files a suit for possession of an immovable property claiming title, a cause of action accrues and limitation for filing a suit for possession based on title commences when the defendant is shown to have pleaded and proved assertion of a title adverse to that of the plaintiff. Therefore, the point of time of assertion of hostile title is the specific point of time, arising of the cause of action for claiming ownership by adverse possession of 12 years by a defendant in a suit.

6. Let us examine in this case as to whether there is assertion of any hostile title by the respondent/defendant against the appellant/plaintiff or any other co-owner or against the world at large. I may note that it is not in dispute that the respondent/defendant is said to be in possession of the suit property since around 1986-87 and the subject suit has been filed on 20.01.2003. However, the issue requiring decision is not length of possession but length of possession of at least 12 years accompanied by an assertion of hostile title in favour of the respondent/defendant.

7. In my opinion, the respondent/defendant has miserably failed to prove that he has been in adverse possession of the suit property. The trial court has also committed a gross illegality in holding that the respondent/defendant is in adverse possession by simply referring to the factum of possession of the suit property by the respondent/defendant since 1986/1987. As already stated above, possession is not automatically adverse possession. It is a indubitable position appearing on record that though respondent/defendant claimed ownership of the suit property by purchase from one Mr. Ganesh, however, how Mr. Ganesh became the owner, what are the documents by which Mr. Ganesh became owner, what are the documents which Mr. Ganesh executed in favour of the respondent/defendant etc., have thus not been filed and proved by the respondent/defendant. Therefore, there is no document to show thaty the claim of ownership of the respondent/defendant on account of having purchased of the suit property by from Mr. Ganesh. Thus, the respondent/defendant cannot claim possession through title on account of purchase of the suit property from Mr. Ganesh allegedly claimed to be from the year 1975. It is seen that respondent/defendant has not led

any evidence of writing to any public authority, be it the Municipal Corporation for the purpose of mutation or any other aspect of property tax issue or the income tax authority or the police etc. establishing that the respondent/defendant was the owner of the suit property. Not only there is no assertion of title existing in the respondent/defendant by stating so to any public authority, respondent/defendant has also never issued any notice to the appellant/plaintiff or any other co-owner claiming ownership title in the suit property by having purchased the same from Mr. Ganesh or how and in what other manner the ownership title is asserted as against the appellant/plaintiff or the other co-owners. Rights in valuable immovable properties cannot be lost by self-serving statements and *ipse dixit* of assertion of title and therefore this Court rejects the argument and evidence led on behalf of the respondent/defendant that he has become the owner by adverse possession by assertion of a hostile title. Proving of assertion of a hostile title is to the satisfaction of the court on preponderance of probabilities, and in the opinion of this Court, in the facts of the present case, the oral averments of the respondent/defendant will not

be sufficient for holding that the respondent/defendant has discharged the onus of proof upon him with respect to assertion of a hostile title. It is, therefore, held that the appellant/plaintiff is a co-owner and hence entitled to possession of the suit property and that the respondent/defendant has failed to prove that he was/is in possession of the suit property as owner by adverse possession.

8. Now, this Court will have to determine what are the *mesne* profits which have to be paid by the respondent/defendant to the appellant/plaintiff. Whereas the appellant/plaintiff has claimed *mesne* profits at Rs.2,000/- per month with respect to the suit property which as stated above comprises of one room, one kitchen, one bathroom and one latrine in Hari Nagar, Delhi, the respondent/defendant in the cross-examination has put a suggestion to the plaintiff as PW-1 that rate of rent of the area for the premises such as the suit premises would only be Rs. 300/- per month. Therefore, we have a starting figure of Rs. 300/- per month being the rate of rent of the suit premises. The issue is whether *mesne* profits should be granted only at Rs. 300/- per month or at Rs. 2,000/- per month as claimed by the appellant/plaintiff or at any other different figure.

9. In my opinion, this Court is entitled to take judicial notice of the rents prevailing in Delhi in the year 2003 with respect to the suit property which is situated in Hari Nagar, New Delhi, and in the year 2003, this Court would like to draw judicial presumption in the facts of the present case that the suit property will have rental value of at least Rs. 1,000/- per month. Therefore, the appellant/plaintiff will be entitled to *mesne* profits at rate of Rs. 1,000/- per month from three years prior to filing of the suit on 20.01.2003 and till the filing of the suit, and *pendente lite* and future thereafter at Rs.1,000/- per month which shall be increased by 15% every three years in view of Section 26 of the Delhi Rent Control Act, 1958 which allows a landlord to increase rent by 15% every three years. Increase of rent by 15% every three years will be compounded in the sense that each increase of rent of 15% will be of 15% over the last rate of *mesne* profits/rent which has been determined with the first 15% increase commencing from the date of filing of the suit and which is three years after the first end of three years arrears period towards the claim of the *mesne* profits. The appellant/plaintiff is also entitled to interest on *mesne* profits @ 6% per annum simple in view of definition of *mesne* profits contained in

Section 2(12) CPC which provides that *mesne* profits will include interest on *mesne* profits. The appellant/plaintiff is also held entitled to costs of the suit and the present appeal.

10. Accordingly, this appeal is allowed. Suit of the appellant/plaintiff is decreed with costs for possession of the suit property comprising of one room, kitchen, bathroom and latrine situated in WZ-346, Village Tihar, Hari Nagar, Delhi and as shown in red colour in the site plan Ex.PW1/2 alongwith a decree for *mesne* profits as stated in the preceding para. Decree sheet be prepared.

RFA No. 601/2006

11. The facts of this case are identical to the facts of RFA No. 602/2006 with the difference that the seller to the respondent/defendant in the present case is alleged to be one Sh. Laxman. Therefore, this appeal is allowed and the suit of the appellant/plaintiff is decreed with costs for possession of the suit property comprising of one room, kitchen, bathroom and latrine situated in WZ-346, Village Tihar, Hari Nagar, Delhi and as shown in red colour in the site plan in this suit Ex.PW1/2. A decree for *mesne* profits is also passed at the rate of Rs. 1000/- per month commencing

from three years prior to the suit with 15% compounded increase after every three with first increase of 15% being from the date of filing of the suit. The appellant/plaintiff will also be entitled to interest @6% per annum till payment on the *mesne* profits payable from the end of each month. Decree sheet be prepared.

CONT. CAS (C) No. 864/2012

12. Disposed of as not pressed.

SEPTEMBER 27, 2018/AK

VALMIKI J. MEHTA, J