

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

Date of Decision: September 27, 2013

+ RSA 17/2010

MUNICIPAL CORPORATION OF DELHI

...Appellant

Through: Mr.Ashok Bhasin, Sr.Advocate

with Mr.Gaurang Kanth, Ms.Biji Rajesh
Advocates

Versus

AMARJIT KAUR & ORS

...Respondents

Through: Mr.S.K.Bhalla, Advocate

CORAM:

HON'BLE MS.JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. By way of this regular second appeal under Section 100 of the CPC, a challenge has been made to the impugned judgment and decree dated 2nd September, 2009 passed by the learned Additional District Judge in RCA No.04/2009 whereby the first appeal of the respondents/plaintiffs has been allowed and the judgment/decreed dated 13.3.2009 passed by the learned Additional Senior Civil Judge, West District, Delhi in Suit No.2463/2008 has been set aside.

2. Initially, Shri Avtar Singh had filed a suit for possession in respect of a piece of land admeasuring 200 sq.yds bearing number G-60, Shiv Nagar, Hari Nagar, Village Tihar, Delhi as well as for recovery of damages towards use and occupation of the said land by the appellant/defendant. The said ShriAvtar Singh had expired during the pendency of the suit and in his place

his legal representatives i.e., the respondents herein were substituted to continue the proceedings of the said suit. It was alleged in the plaint that Shri Avtar Singh was the owner of plot no.G-60, Shiv Nagar, Hari Nagar, Village Tihar, Delhi admeasuring 200 sq.yds having purchased the same by virtue of registered sale deed dated 15.6.1957. It was alleged that he was given the actual physical possession of the said piece of land at the time of purchase by him and he got raised a boundary wall around the same and also fixed a gate in one of the walls. It was alleged that the appellant i.e., defendant before the learned Additional Senior Civil Judge had illegally and without his consent had occupied the said piece of land in the year 1970 and raised some temporary structure over it. He had complained about the same to the concerned officials of the appellant/defendant and also had several meetings with them but of no use ultimately. He had served a legal notice dated 21.9.1991 upon the appellant/defendant to which he received no response. Thereafter, he had filed the aforesaid suit for recovery of possession of suit property and for recovery of damages before the learned trial court.

3. The aforesaid suit was contested by the appellant/defendant firstly on the ground that the suit was barred by limitation. The other contention was that Sh.Avtar Singh had no title to the said land. It was also alleged by the appellant/defendant that Shri Avtar Singh was never in actual possession of the suit land nor Shri Avtar Singh was the true owner of the same. It was further alleged by the appellant/defendant that the sale deed relied upon by Shri Avtar Singh was a forged one and that no sale deed was registered with respect to the said land. It was alleged that defendant has been running a primary school on the suit land since 1959 without any interruption or

hindrance of any kind from any corner and appellant/defendant had become the owner of suit land by way of adverse possession since 1971.

4. In replication, Shri Avtar Singh had disputed the plea of adverse possession raised by the appellant/defendant and also denied that he was never in actual physical possession of the suit land, as was alleged.

5. On the basis of pleadings of the parties, the learned trial court framed following issues on two different dates:-

1. Whether the suit of plaintiff is not barred by limitation?

(framed on 7.2.1995)

1. Whether the plaintiff is owner of the suit land? OPP

2. Whether the valuation of suit property for the purpose of court fee and jurisdiction is not correct? OPD

3. Whether notice under Section 478 DMC Act is not served upon the defendant. OPD

4. Whether plaintiff is entitled to a decree of possession, as prayed for? OPP

5. Whether plaintiff is entitled to decree of damages, as prayed for, or it entitled to what amount and at what rate? OPP

6. Relief.

(framed on 20.1.2003)

6. After the trial of the suit, vide judgment/decreed dated 13th March, 2009, issues nos.2 and 3 (framed on 20.1.2003) were decided in favour of present respondents/plaintiffs and issue nos.1, 4 and 5 (framed on

20.1.2003) and issue no.1 (framed on 7.2.1995) were decided against the respondents/plaintiffs and in favour of appellant/defendant. The learned trial court dismissed the suit by holding that respondents/plaintiffs are not entitled for recovery of possession as well as recovery of damages in respect of the suit property.

7. Aggrieved with the same, first appeal i.e., RCA No.4/2009 was filed before the learned Additional District Judge, Delhi. After hearing the parties, the learned Additional District Judge vide impugned judgment dated 2nd September, 2009 has held that appellant/defendant never acknowledged respondents/plaintiffs to be the owner of the suit land. It is nowhere stated in the written statement or in the evidence as to who else was the owner of the suit land if not the respondents/plaintiffs. The learned Additional District Judge has also observed that Ms. Swantantra Bala DW1 has also stated in his evidence that respondents/plaintiffs are neither the owner of the suit land nor ever remained in possession of the same. In cross-examination, the said witness has also deposed that he has never seen the original title deed of plot no.G-50 to G-70 in order to ascertain as to who were the real owners of the said plot and his department is not in a possession of copies of the ownership/title deed of the real owners of these plots and he did not try to ascertain the particulars of the original owners of these plots, On the basis of pleadings of appellant/defendant and its evidence, the learned Additional District Judge held that there could be no plea of adverse possession against a person who is not considered as owner/title holder of the property in question and therefore the appellant/defendant being in hostile possession or question of denying the title of the true owner did not

arise at all when the true owner is not known, as such requirements of claim of adverse possession have not been established at all. Accordingly, the learned ADJ has set aside the findings of the learned trial court that the appellant/defendant has become owner by adverse possession.

8. The learned trial court also did not believe the sale deed Ex.PW 1/1 in favour of deceased plaintiff Avtar Singh on the ground that the attesting witness Shri TirathSingh(PW2) had deposed in cross-examination that he was not aware about the contents of the sale deed and did not know who else signed the same. The learned Additional District Judge had set aside the said finding also by holding that sale deed was of the year 1957 and it was more than 30 years old document and section 90 of the Indian Evidence Act raises a presumption of the genuineness of a document which is more than 30 years old and is produced from a proper custody. Relying upon a judgment of the Supreme Court in **Sri LakhiBaruah& others vs. Sri Padma KantaKalita and others: AIR 1996 SC 1253**, the learned Additional District Judge held that sale deed has been produced on record by the predecessor-in-interest of the respondents/plaintiffs.

9. Considering the evidence on record, the learned Additional District Judge vide judgment/decree dated 2nd September, 2009 has allowed the first appeal and passed a decree of possession in respect of the suit land measuring 200 sq. yds in favour of the respondents/plaintiffs and against the appellant/defendant. It has also been held that respondents/plaintiffs are also entitled to the damages @ Rs.2000/- per month from the appellant/defendant w.e.f. the date of filing of the suit till the appellant/defendant vacates the suit land. About the damages, the learned

Additional District Judge has observed that appellant/defendant's witness has stated nothing about the damages claimed by respondents/plaintiffs and rate of rent prevailing in the market at the time of filing of the suit and considering the size and location of plot damages have been awarded. Respondents/plaintiffs were also held entitled to the cost of the suit as Rs.10,000/-.

10. Aggrieved with the aforesaid judgment/decreed dated 2nd September, 2009, present regular second appeal has been filed by the appellant/defendant wherein following substantial question of law was formulated by this court on 25.7.2011:-

“Whether the Appellate Court was justified in overlooking the open continuous and peaceful possession of the appellant from 1959 and which would have ripened into title by law of prescription inasmuch the suit for possession was filed by the respondents/plaintiffs only in the year 1992.”

11. Mr.Ashok Bhasin, learned senior counsel appearing for the appellant/defendant has contended that appellant/defendant is in continuous, uninterrupted, open and overt possession of plot no.G-60. Hari Nagar, Village Tihar, New Delhi admeasuring 200 sqyds and has been running a Municipal School on the said premises since 1959. In this regard, Admission entry having first entry of 16.7.1959, attendance register of the year 1959, assessment file with respect to the suit property from 1964 to 1991 were produced before the learned trial court to substantiate the stand that the appellant/defendant is in possession of the suit land from 1959 onwards. It is submitted that the suit for possession and recovery of

damages was filed in the year 1992 by Shri Avtar Singh, by contending that he had purchased the suit land by virtue of sale deed dated 15.6.1957. It is admitted in the plaint that Shri Avtar Singh had come to know of the alleged illegal occupation of the appellant/defendant in the year 1970. Further, in the evidence, the said position is admitted by the respondents/plaintiffs. It is contended that as the possession of the appellant/defendant was acknowledged in the year 1970 by the respondents/plaintiffs and the present suit for possession and recovery of damages was filed in the year 1992, as such, the suit was barred by limitation period as per Article 65 of the Limitation Act, 1983 as the same was filed after a period of 12 years. In support of the contentions raised, learned senior counsel has relied upon *Mulkh Raj vs. Des Raj*: (1974)Cur.L.J.575 and *NagarathnaMudaliar vs. Sami Pillai* and anr: AIR 1936 Mad 682.

12. On the other hand, learned counsel for the respondents/plaintiffs has contended that in the present case, the appellant/defendant has pleaded that the respondents/plaintiffs are neither the owner of the property in question nor the sale deed in their favour is genuine, as such, the plea of adverse possession is not available to the appellant/defendant. In support of his contention, learned counsel has relied upon **T.Anjanappa and Ors. Vs, Somalingappa & anr: JT 2006(8) 382.**

13. Learned counsel has contended that the adverse possession can be claimed against the lawful owner whereas appellant/defendant does not admit respondents/plaintiffs as the lawful owners. Learned counsel has further submitted that plea of adverse possession by appellant/defendant and plea of denying the ownership of respondents/plaintiffs cannot co-exist, as

such appeal is liable to be rejected. Learned counsel has further contended that limitation would start running against the true owner only when the defendant/appellant start claiming the adverse possession against him which is not the position in the present case.

14. Having gone through the impugned judgment, pleadings of the parties, evidence adduced during the trial and submissions made by both the counsel before me, I find that the contentions raised by the respondents/plaintiffs have force in it. It is nowhere claimed by the appellant/defendant that it had acquired title of the ownership by adverse possession against the true owner. Appellant/defendant has neither admitted the respondents/plaintiffs as the true and lawful owners of the suit property nor admitted the sale deed in their favour as genuine. As per evidence on record, appellant/defendant does not know who is the owner of suit land. There are number of judgments which hold that for a suit for recovery of possession on the basis of title, the limitation would start to run against the owner of the property only when the defendant starts claiming adverse possession against him.

15. In **T. Anjanappa and others vs Somalingappa and anr: (2006) 7 Supreme Court Cases 570**, where the possessor was not sure whether plaintiff therein or the Government was true owner of the property, it was held that claim of adverse possession was not maintainable. The relevant para of the judgment is reproduced as under:-

“12. The concept of adverse possession contemplates a hostile possession i.e., a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not

acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property."

It was further held in the aforesaid judgment that:-

xxxxxxx 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 does not arise."

16. In **L.N.Aswathama v P.Prakash: (2009) 13 SCC 229**, the Supreme Court reiterated the legal position with regard to claim of title by prescription. The relevant para of the judgment is reproduced below:-

"17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without *animus possidendi*. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the

former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence.”

17. In **Annakili Vs. A.Vedanayagam & Ors: AIR 2008 SC 346**, the Supreme Court has held that mere long possession for period of more than 12 years without anything more would not ripen into title. The possessor must have animus possidendi and hold the land adverse to the title of true owner. The relevant para of the judgment of Supreme Court is reproduced as under:-

“22. Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.”

18. As noted above, in the present case, appellant/defendant never claimed adverse possession against the respondents/plaintiffs as the lawful owner of the suit property, as such, plea of adverse possession is not

available to it. The appellant/defendant did not recognize the title of the respondent/plaintiff and as per evidence on record nor is also aware as to who else was the owner. In these circumstances, the continuous long possession for over 12 years is immaterial. Further the limitation would start running against the true owner only when appellant/defendant starts claiming adverse possession against respondents/plaintiffs. In the present case, necessary ingredients of adverse possession are missing.

19. The judgments relied upon by the learned counsel for the appellant/defendant have been considered. The same are not applicable to the facts of the present case.

20. In these circumstances, the substantial question of law is answered accordingly. The appeal stands dismissed. There is no order as to costs.

September 27, 2013
ssb

VEENA BIRBAL, J