

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

+ **RFA No. 669/2018**

% **17th August, 2018**

RAM NIWAS

..... Appellant

Through: Mr. Abhimanyu Singh Khatri,
Advocate. (9717960907)

versus

O.P.KHANNA (DECD.) THRU LRS & ORS. Respondents

Through: Mr. Rajat Aneja, Ms. Vandana
Aneja and Ms. Nisha Sharma,
Advocates. (9910507896)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No. 737/2018

Counsel appears for the caveator. Caveat accordingly stands
discharged.

CM No. 32889/2018(Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No.669/2018 & CM No.32888/2018(stay)

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 5.7.2018 by which trial court has decreed the suit for declaration, mandatory and permanent injunction filed by the respondents/plaintiffs with respect to the suit property show in site plan Ex.PW1/K and totalling to an area of 378.80 sq. yards. Original plaintiff no.1 Sh. O.P. Khanna expired *pendente lite* and he was/is thereafter represented by his legal heirs who are respondent nos.1(a) to (c) in this appeal.

2. The facts of the case are that the respondents/plaintiffs filed the subject suit pleading that Sh. O.P. Khanna (original plaintiff no. 1) and Sh. Baij Nath Khanna (plaintiff no. 2) are brothers and plaintiff no.3/respondent no.3 is the son of Sh. Baij Nath Khanna. All the three plaintiffs/respondents have purchased the suit property admeasuring 350 sq. yds falling in K.No. 70/1/1 , Mangolpur Kalan Village, Delhi by means of a registered Sale Deed dated 13.6.1984. Respondents/plaintiffs were pleaded to be in possession of the suit property after purchase of the same from the seller/vendor Sh. Tara

Chand. It was further pleaded by the respondents/plaintiffs that though the Sale Deed dated 13.6.1984 in their favours was with respect to 350 sq. yds, but on the spot it transpired that there was an additional area of 28.8 sq. yds, and therefore with respect to this additional area on 20.7.1985, in favour of the plaintiff no.3/respondent no.3 further set of documents being Agreement to Sell, Power of Attorney, Will etc were executed. Respondents/plaintiffs have also pleaded that they carried on business from the suit premises under the name and style of Khanna Footwear and which business was assessed to sales tax with the Delhi Sales Tax Authority with sales tax being paid and ST-I forms being issued under the concerned Sales Tax Act. On account of the old age of the deceased plaintiff no.1-Sh. O.P.Khanna, the business was closed, and suit property was kept locked with the same being visited on few occasions in a year by respondents/plaintiffs or their family members. Appellant/defendant was doing the business of wooden doors and other ancillary wood work in front of the suit property, on the other side of the road, in the name and style of Jai Wood Works. The property of the appellant/defendant was demolished by the concerned authorities

being unauthorised and hence the appellant/defendant requested the respondents/plaintiffs to keep the goods of the appellant/defendant temporarily in the rear portion of the suit property and which was open to the sky, the respondents/plaintiffs permitted the same. No rent or license fee was charged by the respondents/plaintiffs from the appellant/defendant. The suit property however remained in the lock and key of late respondent no.1/plaintiff no.1 Sh. O.P.Khanna. Appellant/defendant turned dishonest and on being asked to remove his goods he refused to remove the goods and thereafter when the son-in-law of Sh. O.P.Khanna namely Sh. Arun Kathuria visited the spot, the appellant/defendant fought with him and injured him resulting in a complaint being lodged with the police station on 30.3.2004 and on medical examination of Sh. Arun Kathuria at B.S.A.Hospital, Rohini, Delhi on 30.3.2004 the Doctor found injuries on the person of Sh. Arun Kathuria. It may be noted that the respondents/plaintiffs have registered a case under FIR No. 396/2004 at Police Station Rohini under Sections 448, 325,34 IPC. It is further pleaded that on 2.4.2004, the daughter and wife of plaintiff no.1 Sh. O.P.Khanna visited the spot and the appellant/defendant with other persons objected to the same

and threatened them with dire consequences. On 2.4.2004 one stranger Sh. Amrik Singh came to the spot and sought to purchase the suit property by offering 25% of the value of the suit property, and consequently the present suit was filed seeking reliefs of declaration, mandatory injunction and permanent injunction.

3. Appellant/defendant filed his written statement and as per the written statement it was contended that the suit property was in fact owned by the appellant/defendant and not by the respondents/plaintiffs. It was pleaded by the appellant/defendant that in fact it the property which was demolished by the DDA was that of respondents/plaintiffs and not that of the appellant/defendant. It was contended by the appellant/defendant that both he and respondents/plaintiffs had purchased the properties, which were on the different sides of a road, from the same owner namely Sh. Tara Chand. The appellant/defendant pleaded to be in possession of the suit property from the last more than 15 years. Suit was therefore prayed to be dismissed.

4. The following issues were framed in the suit.

- “(i) Whether the plaintiffs are the owners and in possession of the suit property on the basis of the sale deed dated 13th June, 1984? OPP
- (ii) Whether the plaintiffs are entitled to decree for mandatory injunction? OPP
- (iii) Whether the defendant was given the permissive possession of the suit property by the plaintiffs? OPP
- (iv) Relief.”

5. Trial court, in my opinion, has very thoroughly analyzed all the facts and documents on record and rightly held that the respondents/plaintiffs are the owners of the suit property and are entitled to the reliefs prayed for in the suit. This detailed examination is done by the trial court in paras 18 to 20 of the impugned judgment and these paras read as under:-

“18. Issue no.(i):- Whether the plaintiffs are the owners and in possession of the suit property on the basis of the sale deed dated 13th June, 1984? OPP

The onus to prove this issue was upon the plaintiffs. In the present case one witness has been examined on behalf of plaintiff i.e. PW-1 Ms. Seema Kathuria, who has filed her evidence by way of affidavit which is Ex.PW-1/1. She is daughter of late Shri O.P. Khanna. No other witness has been examined on behalf of plaintiff. The defendant has examined only two witnesses i.e. himself as DW-1 and has filed his evidence by way of affidavit which is Ex.D-1. DW-2 Shri Amit Kumar was also examined on behalf of the defendant. No other witness has been examined in this case. Evidence by way of affidavit of DW-2 is Ex.DW-2/X. The plaintiffs have also relied upon some documents in support of their case. Site plan relied upon by the plaintiff is Ex.PW-1/K wherein open portion is shown in red colour. The original registered Sale Deed dated 13.06.1984 in favour of plaintiff namely Shri Baij Nath and Shri Om Prakash Khanna and executed by one Shri Tara Chand S/o Shri Chunni Lal is Ex.PW-1/A. The

counter foils of **ST-35 Form** under Delhi Sales Tax Rules, 1975 are collectively **Ex.PW-1/F**. Bunch of those ST-35 Forms are on record on which rubber seal impression of Khanna Footwear having the address of 70/1/1, Mangolpur Kalan, New Delhi is appearing. Said Forms relate to the period 1986 and 1987. Carbon copy of one police complaint in case titled as Ram Niwas Vs. Shri O.P. Khanna is Ex.DW-1/P-1. Same relates to the suit property. The said suit was bearing number 104/2004. The certified copy of the relevant ordersheet is also on record. Said suit was filed on 31.03.2004 and summons were issued to the defendant in that suit for 02.04.2004 and on 02.04.2004 the suit was dismissed for non-prosecution and subsequently the counsel for the plaintiff in that suit appeared and earlier order was recalled. It is relevant to note that in said plaint Ex.DW-1/P-1 it is mentioned that the plaintiff Shri Ram Niwas is owner and in use and occupation of two adjoining plots measuring 350 sq. yards and 56 sq. yards out of Khasra no.70/1/1 now known as Marble Market, Mangolpur, Delhi-110085. It is further mentioned therein that the plaintiff Shri Ram Niwas is doing his business of furniture work and also all kinds of wood works from the said pieces of plots. It is relevant to note that in the written statement filed by defendant Shri Ram Niwas in the case in hand, he has specifically denied that he had been doing the business of wooden doors and other ancillary wood work under the name and style of Jai Wood Works. The PW-1 has also relied upon some photographs of the property showing the possession of the plaintiffs and unauthorized construction carried out by the defendant allegedly. These **photographs** are collectively **Ex.PW-1/N**. One **Agreement** dated **27.03.1984** between Tara Chand on the one hand and Shri Baij Nath and Shri O.P. Khanna on the other hand regarding the property in question is **Ex.PW-1/B**. The **receipt dated 26.03.1984** executed by Tara Chand in favour of Baij Nath and Shri Om Prakash Khanna is **Ex.PW-1/C**. Total consideration shown in said receipt is Rs.40,000/- It also reflects that property measuring 350 sq. yards comprising of Khasra no.70/1/1 is situated in Lal Dora of village Mangolpur Kalan, Delhi. One **Agreement to Sale dated 20.07.1985** is **Ex.PW-1/G**. It is between Shri Tara Chand on the one hand and Shri Baij Nath and Sh. Om Prakash Khanna on the other hand. It relates to the suit property. One affidavit of Shri Tara Chand is Ex.PW-1/H. Will of Shri Tara Chand is Ex.PW-1/I. It is in favour of Shri Baij Nath Khanna and Shri Om Prakash Khanna. It relates to 28.8 sq. yards of land forming part of Khasra no.70/1/1 situated in Lal Dora of village Mangolpur Kalan, Delhi. **Agreement to Sale Ex.PW-1/G relates to 28.8 sq. yards of land as mentioned above.** Said document also reflects that adjoining plot of land measuring 350 sq. yards was sold out to the second party by first party through registered Sale Deed dated 13.06.1984.

19. In the cross-examination of PW-1 it has emerged that the total property belonging to the plaintiffs is measuring 378.8 sq. yards out of

which there is Sale Deed of 350 sq. yards in favour of Shri O.P. Khanna and uncle of PW-1 and there is Power of Attorney in favour of Shri Ramann Khanna regarding remaining property. In cross-examination a suggestion was given to the PW-1 that two sons of Tara Chand were in possession of the suit property at the time of filing of the suit. It was denied by PW-1. It is important to note that in cross-examination of PW-1 another suggestion was given that Ram Niwas is in possession of property of one Mr. Amrik Singh. This suggestion was denied. PW-1 volunteered that Amrik Singh has no concern with the property. It was also stated by PW-1 that the suit property was purchased by her father from Tara Chand. At this stage it is relevant to note here that an application under Order 1 Rule 10 CPC was filed in this case by Shri Amrik Singh S/o Shri Shiv Charan for getting himself impleaded as defendant no.2 in this case. Said application was dismissed with cost of Rs.15,000/- vide a detailed lengthy order dated 31.07.2006 passed by Hon'ble High Court. It is also relevant to note here that DW-2 Shri Amit Kumar has stated in his cross-examination that Amrik Singh is residing in his village and DW-2 stated that Amrik Singh is in jail for committing murder of his brother/cousin. It is relevant to note that in the written statement the defendant has mentioned that he is in possession of the property in question for the last more than 15 years. However, in the evidence by way of affidavit Ex.D-1, it is stated by defendant that defendant is in possession of the property in question for last more than 20 years. DW-1 has stated in the cross-examination that he had purchased the suit property from Shri Shiv Charan, brother of Tara Chand, however, in the W.S. it is stated that the defendant purchased the suit property from Tara Chand. DW-1 volunteered that property was purchased from Shri Shiv Charan by his father about 35 years ago. Here the defendant has blown hot and cold in the same breath. Somewhere he is stated to be in possession for the last more than 15 years, somewhere he is stating to be in possession for more than 20 years and here he has stated that property was purchased by his father about 35 years ago. In the affidavit Ex.D-1 it is stated that the defendant purchased the property, however, in cross-examination it is mentioned that his father purchased the same. Defendant has admitted that suit property falls in Lal Dora land. Defendant admitted in cross-examination that Shri Arun Kathuria came to the suit property on 30.03.2004 and on that date one lady was accompanying him. This clarifies that some incident took place on 30.03.2004 between Shri Arun Kathuria and defendant. Defendant has denied the suggestion that he was engaged in unauthorized construction in the front portion of the suit property on 30.03.2004. However, he has admitted that he was doing construction in the suit property at that time. He stated that no MCD permission is required for constructing on Lal Dora land. He also admitted that Shri Arun Kathuria asked him to stop the construction and volunteered that both of them were

arrested by the police. He admitted that he is facing criminal trial on the basis of complaint lodged by Shri Arun Kathuria and also admitted that he filed suit for Permanent Injunction against Sh. O.P. Khanna in Tis Hazari Courts on 31.03.2004 and the certified copy of plaint in that suit is Ex.DW-1/P1. He admitted that his signatures appearing on the plaint Ex.DW-1/P-1 are different from his signatures at Point A and B on his affidavit Ex.D-1. He also admitted in cross-examination that in the plaint Ex.DW-1/P-1 it has not been pleaded that suit property was purchased by his father from brother of Shri Tara Chand. He also admitted that in Tis Hazari Courts he did not file any document reflecting his title or possession over the suit property. In the present case one Local Commissioner was also appointed who was namely Ms. Namrata Chopra. She has given her report dated 15.04.2004 and 16.04.2004 which are Ex.PW-1/O. Defendant has also relied upon the Local Commissioner report. **Defendant has utterly failed to rely upon any title document related to the suit property in his name or in the name of any of his family members. As per report of Local Commissioner dated 15.04.2004 it is reflected that the Local Commissioner was unable to inspect the suit property as there was no light in the suit premises. Said report reflects the time of 8.05 PM. The Local Commissioner report dated 16.04.2004 is of 9:45 AM wherein it is mentioned that on being asked from Mr. Ram Niwas as to since when he is in the premises, he replied that from 1989 and he was also asked to show any document of ownership of the premises and he replied that he will not show her any document regarding his ownership, but if required, he will produce the same before the court. The defendant has neither shown any document regarding his ownership of the suit property to the Local Commissioner nor he has produced the same before the court even during evidence.** It is also relevant to note that in the report of Local Commissioner dated 16.04.2004 it is mentioned that Local Commissioner was not able to collect any information regarding the possession and ownership of Mr. Ram Niwas with respect to the suit property from nearby shops as no owner was available and all daily wage labourers were working and they just confirmed about the ownership of Ram Niwas of his shop in front of the suit premises. It means that defendant Ram Niwas was having shop in front of the suit premises. It is not out of place to mention here that on 15.04.2004 the status quo order was passed regarding the possession as well as title of the suit property and on 20.03.2013 the interim order dated 15.04.2004 was made absolute, with the consent of the counsel for the defendant.

20. **It is relevant to note that in cross-examination the defendant stated that he do not have any documentary evidence to show that the suit property was ever owned by his ancestors.** He admitted that there is main gate in front portion of the suit property. He stated that he is not

aware about the status of the case filed by him in Tis Hazari Courts against Sh. O.P.Khanna. He has also stated in cross-examination that Jai Wood Work was his elder brother's Firm and he was not paying income tax or sales tax since it was a job work firm with very meager earnings. He stated that he never received any postal communication at the address of the suit property and he never disclosed his address of the suit property in any bank account or any fixed deposit. He stated that the suit property is measuring about 375 sq. yards and is about 90 feet long and 45 feet wide and the Khasra number in which the suit property falls is 70/1/1. It is strange to note that the defendant never received any postal communication at the address of the suit property. Defendant alleges to be in possession of the suit property for last more than 15 years. He denied the suggestion that his claim of ownership over the suit property is false or that he is blackmailing the plaintiff to extort money for vacating the suit property.” (emphasis is mine)

6. A reading of the aforesaid paras show that the Sale Deed of purchase by the respondents/plaintiffs was proved as Ex.PW1/A. The ST-35 counterfoils under the Delhi Sales Tax Act were collectively proved as Ex.PW1/F. The plaint in the suit filed by the appellant/defendant was proved as Ex.DW1/P1 to show inconsistencies in the stand of the appellant/defendant in that suit with the present suit. The photographs of the property showing possession of the plaintiffs have been proved on record as Ex.PW1/N. The other documents with respect to the ownership of the suit property are inter-alia proved as Ex.PW1/B (27.3.1984), PW1/C (26.3.1984), PW1/G(20.7.1985 relating to 28.8 sq. yds). Trial court has then noted that appellant/defendant has been changing stands as per the

convenience because whereas in the written statement it was said that he was in possession of the suit property for 15 years, however, in his evidence by way of affidavit this period was increased to 20 years. Appellant/defendant had contended as per the pleading that he purchased the property from Sh. Tara Chand but in his cross-examination he said that he has purchased the suit property from Sh. Shiv Charan, brother of Tara Chand. In fact, the appellant/defendant in his cross-examination said that the property was purchased by his father and he is in possession of the same since the last about 35 years i.e the period of 15 years stated in the written statement was extended to be of 35 years as per the evidence of the appellant/defendant.

7. Trial court has in fact arrived at very important conclusions in the aforesaid quoted paras of the impugned judgment and which are that the appellant/defendant though claimed ownership of the suit property, yet the appellant/defendant did not file even a single document to show his ownership of the suit property and the second aspect is the respondents/plaintiffs who have in their possession the entire line of title documents with respect to the suit property.

8. In view of the aforesaid discussion, it is clear that the appellant/defendant is a thankless person. He believes in stabbing the persons who helped him in the time of his need by allowing the appellant/defendant storing his wooden products, and this is by the appellant/defendant illegally claiming ownership and possession of the property. Such a dishonest person like the appellant/defendant must be dealt with by heavy hands with this Court, and who misuses the legal process as also the laws of civilized society by illegally taking over possession of the property of other person, being the respondents/plaintiffs in the present case.

9. In view of the aforesaid observations, there is no merit in the appeal and this appeal is dismissed with costs of Rs.3 lacs. Costs shall be paid to the respondents/plaintiffs within a period of six weeks from today.

AUGUST 17, 2018/ib

VALMIKI J. MEHTA, J