

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

+ **RFA No. 1005/2018**

% **14th December, 2018**

MOHAN NAINWAL

..... Appellant

Through: Mr. Rahul Pandey, Advocate
(70138517151)
Appellant in person.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

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 10.08.2018 by which the trial court has dismissed the suit filed by the appellant/plaintiff for declaration, possession and permanent injunction with respect to the property described by the appellant/plaintiff as H. No. 66-A, Near

MCD Primary School, New Rohtak Road, Karol Bagh, New Delhi.

The trial court by the impugned judgment has dismissed the suit filed by the appellant/plaintiff by holding that the appellant/plaintiff has failed to prove his title or possession over 30 years with respect to the suit land.

2. The facts of the case are that the appellant/plaintiff pleaded that his father, Sh. Devi Dutt, by virtue of an Agreement dated 12.03.1951 purchased the property from one Sh. Sita Ram Verma. The appellant/plaintiff pleaded that his father, Sh. Devi Dutt, executed in his favour a Will dated 15.11.1963 by which the suit property was bequeathed in his favour and hence, the appellant/plaintiff is the absolute and exclusive owner of the suit property. It was pleaded that the respondent/defendant/Municipal Corporation of Delhi (*hereinafter* "MCD") had purchased the adjoining piece of land measuring 1873.24 sq. yds. (1649.62 sq. meters) for running a primary school. This purchase was made by the MCD on 07.05.1969 and a school was thereafter constructed. It was pleaded that the house of the appellant/plaintiff does not fall in the land which is owned by the MDC but is adjacent to the land owned by the MCD and the

appellant/plaintiff is the owner by virtue of the Will of his father Sh. Devi Dutt. That before the suit was filed, on 03.02.2011, MCD had sought to illegally demolish the property of the appellant/plaintiff but the situation was resolved, however after filing of the subject suit on 10.02.2011, the respondent/defendant/MCD on 10.03.2011 with police force demolished the suit property and dispossessed the appellant/plaintiff. It was thereafter pleaded that since the appellant/plaintiff was the owner of the suit property he was entitled to the reliefs claimed in the suit. In the alternative, it was pleaded that the appellant/plaintiff had become owner by virtue of prescription as he and his predecessor being the father, Sh. Devi Dutt, and the earlier owner Sh. Sita Ram Verma were in possession of the suit property for over 30 years.

3. The suit was contested by the MCD by filing a written statement. It was pleaded that the appellant/plaintiff is an encroacher and he has no title to the suit property. It was pleaded that how Sh. Sita Ram Verma became the owner of the suit property for transferring the same to the father of the appellant/plaintiff has not been shown by filing of any title documents in favour of Sh. Sita Ram

Verma. The construction raised by the appellant/plaintiff was pleaded to be illegal without any sanction plan. It was also contended by the MCD in denying that the appellant/plaintiff and his predecessor were in possession of the suit property for 30 years. It was thus pleaded that the suit was liable to be dismissed.

4. Only two issues have to be examined by this Court, and these two issues were also urged on behalf of the appellant/plaintiff before the trial court. The first issue was with regard to whether there existed a title in favour the appellant/plaintiff and his predecessors in the suit property. The second issue is as to whether the appellant/plaintiff and his predecessors have proved themselves to be in continuous possession for 30 years to become owners by the law of prescription. The trial court has decided both these issues against the appellant/plaintiff by holding that the appellant/plaintiff has failed to prove the title and the appellant/plaintiff has also failed to prove his possession for 30 years.

5. On the aspect of title and possession, the trial court has held against the appellant/plaintiff by observing as under:-

“14. This witness tendered his evidence affidavit on 15.09.2014. Ex.PW-1/3, PW-1/19, Ex.PW1/20, Ex.PW1/28, Ex.-1/39 and Ex.PW-1/41 are photocopies and marked as Mark A to F respectively. During his cross examination, PW deposed that since agreement Ex.PW 1/1 is in Urdu language, he does not know the contents of the same. Ex.PW 1/1 is an agreement pertaining to the suit property executed during the lifetime of his father. Ex.PW 1/1 was translated but witness does not know the name of translator. This translator never deposed in order to prove the translation. Witness does not know if Ex.PW 1/1 is registered or not. Witness does not know as to who are the witness of document Ex.PW 1/1. Will Ex.PW 1/2 was drafted and executed at Tis Hazari Courts. It is not known as to who drafted the Will. Witness does not remember if he had also signed Will Ex.PW 1/2. Plaintiff denied the suggestion that his father did not have any right to execute Ex.PW 1/2 and that his father was not the owner of suit property. Witness deposed that he is the only child of his father. Witness deposed that name of father of Sh. Bhupender Nainwal has been wrongly written as Devi Dutt, i.e. father of plaintiff. Witness is 8 th standard pass. He deposed that there must be some other nephew of plaintiff whose name is in the Ration Card Ex.PW1/4. **Witness deposed that he has placed on record the document of ownership/ title deed of Sh. Sita Ram Verma from whom the father of the plaintiff is supposed to have purchased the property. But after the witness was shown the file, witness deposed that document Ex.PW1/1 is the title deed of the suit property in favour of Sh. Sita Ram Verma but on perusal of this document, it is clear that it is not the title deed in favor of Sita Ram Verma.** Ex.PW1/1 is a document written in Urdu language translation of which is also Ex.PW1/1. The said translation is original copy translated by one Laxman Rao. Said Laxman Rao has not been deposed by the plaintiff. Original document Ex.PW1/1 appears to be signed by two persons one Mr. Ram Kishan and another Mr. Sunder Lal in Hindi and appears to be executed by one Sita Ram who has inscribed his signature on revenue stamp of 10 paise running across the stamp as well as original document Ex.PW1/1. **Document Ex.PW1/1 is a sale deed as per the translation copy filed along with Ex.PW1/1. This sale deed is executed by Sh. Sita Ram Verma in favor of Sh. Devi Dutt, father of the plaintiff. Ex.PW1/1 is not the title deed in favour of Sit Ram Verma as deposed by plaintiff during his cross examination. It is infact sale deed in favour of Devi Dutt, father of plaintiff executed by Sita Ram Verma. Plaintiff deposed that it is correct that there was no valid electricity connection in suit property. Father of plaintiff had taken a temporary connection from neighbors.** In next line of his

deposition plaintiff further deposed that it is correct that he is not staying in suit property since 1951. It is wrong to suggest that the electricity connection was taken from adjoining MCD school. Witness volunteered that his father had taken electricity connection from Kothi no. 6 belonging to one Sh. Khanna. It is correct that no site plan has been filed by the plaintiff. Ex.PW1/1 also does not show any houses adjacent to suit property. **Plaintiff deposed that it is correct that he has not placed on record receipts of water bill, electricity bill, house tax receipts since 1951 or 1963 upto the year 1995.** Plaintiff deposed that whatever documents were available with him, he has filed the same on record. Even on the day of his cross examination, plaintiff could not place on record any of the abovementioned documents for the period 1951 to 1995. However, MTNL bill of 1993 is Ex.PW1/7. Plaintiff was an MCD employee but could not say that persons residing in Delhi have to file house tax. Plaintiff deposed that he had not got any assessment order passed from municipal authority with respect to suit property to pay house tax.

xxx

xxx

xxx

Issue no.1:- Whether the plaintiff is entitled for a decree of declaration as prayed in prayer A-1?. OPP

17 Plaintiff has prayed to pass a decree for declaration in favour of plaintiff and against the defendant that the plaintiff has right, title and interest in suit property. It is the case of the plaintiff that he became owner of suit property by virtue of Will Ex.PW1/2 executed in his favour by his father Sh. Devi Dutt. It is deposed that Sh. Devi Dutt bought the property from Sh. Sita Ram Verma. But the plaintiff has failed to prove that Sh. Sita Ram Verma was lawful owner of suit property. Title deeds in favour of Sh. Sita Ram Verma have not been filed. Chain of title deed has not been proved by plaintiff. No government record has been filed by the plaintiff to prove that Sh. Sita Ram Verma was the owner of the suit property. Defendant MCD has disputed the title and ownership of plaintiff claiming the suit property is built upon land allotted to the MCD school. Onus to prove this issue is on the plaintiff. In view of abovementioned discussion, plaintiff has failed to prove this issue in his favour. A person who does not have title over the suit property cannot pass a better title to another. Alternatively, plaintiff is claiming title to suit property on

the basis of adverse possession. Law relating to adverse possession is that the claimant must prove open, hostile, continuous and uninterrupted possession to the property against its true owner and that too for a continuous period of 30 years or more. Plaintiff has been unable to prove that he was in possession of suit property for more than a period of 30 years. **No document has been proved by plaintiff to prove that he is in continuous possession for more than 30 years.** Moreover, adverse possession cannot be used as a sword to claim title to property but can only be used as a shield to defend against hostile ejectment. Therefore, this issue is decided against the plaintiff.”

(Emphasis Supplied)

6(i). I completely agree with the aforesaid findings and conclusions of the trial court, inasmuch as for the appellant's/plaintiff's father, Sh. Devi Dutt, to be the owner, it had to be shown as to how the vendor who sold the suit land to the appellant's/plaintiff's father was the owner of the said suit land. No title documents were filed as to how the predecessor, Sh. Sita Ram Verma became owner of the suit land, and this had to be shown by title deeds in favour of Sh. Sita Ram Verma from his predecessor, being the owner of the land either as per the revenue record or if the suit land was purchased by Sh. Sita Ram Verma from any person including the Government, but in this regard no documents whatsoever were filed and proved by the appellant/plaintiff to show as to how Sh. Sita Ram Verma was the owner. Once Sh. Sita Ram

Verma was not the owner, then merely because an Agreement was executed by him on 15.11.1963 in favour of the father of the appellant/plaintiff, Sh. Devi Dutt, it would not mean that Sh. Devi Dutt would become the owner of the suit property. This is because of the principle *nemo dat quod non habet* i.e. no one can give what he does not have. Once, Sh. Sita Ram Verma was not the owner of the property, he could not pass any title in the property to the father of the appellant/plaintiff.

6(ii). Also, a plea of becoming an owner by adverse possession and law of prescription has to be proved by *nec vi, nec clam, nec precario* i.e. open, hostile and continuous. Thus, onus with respect to adverse possession is a heavy onus and has to be discharged to the satisfaction of the court. Self-serving statements cannot substitute the requirement of substantial evidence to show continuous possession for 30 years. The trial court in this regard has rightly held that the appellant/plaintiff has failed to file any documents to show continuous possession for 30 years prior to filing of the suit.

7. Ld. counsel for the appellant/plaintiff argued that the suit property of the appellant/plaintiff was demolished without any notice,

and therefore, the action of the respondent/defendant/MCD is illegal, however, it is conceded that no such issue was got framed by the appellant/plaintiff in the trial court. Even assuming, that such an issue was framed, the aspect of issuing notice is on the aspect of complying with the principles of natural justice in order to know whether the appellant/plaintiff has a case for staying demolition, and in the present case, since the suit has now been contested to the hilt, and therefore the principles of natural justice otherwise stand complied with. The appellant/plaintiff despite the complete opportunity in the suit has failed to prove any right title and interest in the suit property. The trial court has therefore rightly dismissed the suit.

8. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed.

DECEMBER 14 , 2018/ib

VALMIKI J. MEHTA, J