

\$~

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

%

Judgment pronounced on: 29.07.2019

+

RSA 355/2016

GANGA RAM SAINI

..... Appellant

Through: Mr. N.K. Jha, Advocate

versus

BIMLA DEVI

..... Respondent

Through: Mr. A.K. Singla, Senior Advocate with
Mr. Abhimanyu Singh Khatri, Mr. Susheel
Tripathi and Mr. Rahul Shukla, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

RSA 355/2016 & CM No. 18957/2017

1. This regular second appeal under section 100 of the Civil Procedure Code, 1908 impugns the order dated 20th October 2016 passed by the the learned Appellate Court, dismissing the appeal against the judgement and decree dated 30th July 2012 of the learned Trial Court, inter alia, directing the appellant (defendant) and his family members to vacate and hand over possession of the 'suit property' i.e. a room measuring 14.3' x 9.9', bearing property number 10468, Manakpura, Karol Bagh, New Delhi 110005.
2. The respondent/plaintiff had filed a suit for possession, mesne profits and recovery of damages, against the appellant apropos the aforementioned property. She claimed to have purchased the suit property, along with other properties from their owner viz. Mr Ramesh Chand Saini, son of late Mr

Khem Chand Saini, resident of 10462, Manakpura, Karol Bagh, New Delhi 110005, by way of a Sale Deed dated 1st August 2002, registered with the Sub Registrar concerned. It was her case that she was in possession of ground floor, as tenant, of property bearing number 10467 Manakpura, Karol Bagh, New Delhi 110005 and by way of the aforesaid Sale Deed had purchased property numbers 10466 to 10468 against a sale consideration of ₹ 1,50,000/-. The said document and the site plan of the property was proven as Exhibit PW1/1 and Exhibit PW1/2. Possession of the suit property was not handed over to the plaintiff despite repeated requests, therefore, she filed a case against the latter. She deposed that the defendant was in unauthorised and illegal possession of the suit property for five years prior to her purchase of it, as the defendant had taken permission of the previous owner Mr. Ramesh Chand Saini for using the said property for merely one month, but had stayed on despite repeated requests by the said seller to vacate it. By way of a legal notice dated 9th May 2005 she demanded the defendant to vacate the suit property and to pay damages for his illegal occupation of the premises. She claimed to have sent the notice by way of registered A.D. as well as through UPC. The postal receipt and the UPC was exhibited as PW1/3 and PW1/4, respectively.

3. The defendant/appellant had set up a case of independent right in the suit property on the basis of adverse possession. He submitted that he was in possession of the said property since 1985; that it had been purchased by his paternal grandfather in the name of his first cousin Mr. Ramesh Chand Saini, son of late Mr. Khem Chand Saini. Like the aforesaid purchase, the petitioner's grandfather had also purchased the adjacent property bearing number 10469 to 10472 Manakpura, Karol Bagh, New Delhi 110005, in the

name of the defendant's own elder brother Mr. Sukh Dev Saini, son of Mr Prem Chand Saini; that by way of a family arrangement the defendant had sought permission from his relative, Mr. Ramesh Chand Saini, to stay in his property. Earlier, he was on the second floor but later he shifted to the ground floor because of the nature of his vocation, i.e. repairs and maintenance of electric generators, etc.

4. He admitted that the plaintiff's father-in-law- Mr. Prabhati Lal, was a tenant in property bearing number 10467, Gali No. 14, Manakpura, Karol Bagh, New Delhi 110005 and after his demise the tenancy was succeeded by his son Mr Nanak Chand, the husband of the plaintiff. He argued that the entire property was constructed jointly by his father and his uncle (tau); that the construction of the property was joint in nature, as there was only one staircase and only one gate to the property bearing number 10465. The defendant also claimed that while shifting to the ground floor, he occupied two rooms, one of which was the suit property and he jointly used the facility of the toilet, etc.

5. In due course, he asserted title on the suit property on the basis of adverse possession and stated that he had been residing in it without permission from any person and surely not from his cousin-Mr. Ramesh Chand Saini, as alleged in the plaint. He claims to have repaired the suit property repeatedly over the years and to have been using it as his residence for years on end. Interestingly, he had stated that the repeated requests and attempts by his cousin, Mr. Ramesh Chand Saini in collusion with his own father-Mr. Khem Chand Saini, were to no avail and that he had also filed police complaints against such attempts. He denied that he had been residing in the property only since the past five years and not from 1985.

6. In the aforesaid context, the Trial Court only considered the issue whether the plaintiff was entitled to a decree of possession apropos the suit property. After examining the records and testimony, it returned to finding the affirmative on the basis of the fact that the plaintiff had proven the registered sale deed in her favour, while the defendant had failed to bring anything cogent on the record to prove that he was in hostile possession of the suit property since 1985. It further found that the defendant had instead complicated his own case, by first stating that he had entered into the suit property by way of a family arrangement. This arrangement could only be with his cousin-Mr. Ramesh Chand Saini, in whose name the suit property had been purchased by his grandfather. Secondly, he admitted in his Written Statement and in his affidavit by way of evidence that the previous owner of the suit property, his cousin-Mr. Ramesh Chand Saini and indeed his own father tried to dispossess him from the suit property a number of times. This admission and pleading by the defendant clearly establishes that his possession was never adverse to its registered owner. The plaintiff had stepped into the shoes of its earlier owner; she did not sit quiet on her right, title and interest in the suit property in view of the fact that she sent a legal notice and followed it up with the suit for possession.

7. It is in these facts that the Trial Court concluded that it could not be said that the defendant had acquired title by adverse possession. It referred to the dicta of the Supreme Court in *Vasantben P Nayak vs Somnath P Nayak*, 2004 RLR 265 SC and *Kalika Pal vs Chharapal Singh* 1997 (2) SCC 544, which held that long and uninterrupted possession of the suit property, was an essential requirement for a person claiming title by adverse possession. The learned Trial Court also noted that once the plaintiff had

proven her title to the suit property the onus shifted to the defendant to prove his case that he was in adverse possession of the suit property for at least 12 consecutive previous years.¹ The Trial Court further held that the defendant had failed to prove as to how his possession became hostile, especially since the earlier owner, that is, his cousin-Mr. Ramesh Chand Saini with the support of his own father-Mr. Khem Chand Saini, tried repeatedly to dispossess him from the suit property. Indeed, he goes on to contradict himself in his Written Statement vis-a-vis his deposition in evidence. Firstly, he said that he had averred against his father and his cousin-Mr. Ramesh Chand Saini, regarding their efforts to dispossess him from the suit property, but in his testimony he goes on to deny any such endeavours. Secondly, he referred to filing complaints before the police and other authorities in his Written Statement. However, he brought no evidence on record in this regard, therefore, his defence was never proven and the issue was returned against him and he was directed to vacate the suit property.

8. His appeal before the learned First Appellate Court against the judgement and decree of the Trial Court, was dismissed on the ground that while the appellant had called the sale deed a mere “paper transaction”, but the same was not denied entirely. Instead he proceeded to claim ownership over the suit property by way of adverse possession since 1985; that he did not specifically deny execution and registration of the sale deed itself. The impugned order noted that the defendant in the cross examination of the plaintiff’s witness, was along the lines that the sale deed and its registration was fraudulent and that instead of a lease deed, the sale deed had been

¹ M Durai vs Muthu and Ors. 2007 (3) SCC 114 and PT Munnichikkanna Reddy and Others vs Revamma and Others 2007 (6) SCC 59.

executed from the seller, Mr. Ramesh Chand Saini. He also contended that no sale consideration had been transacted, however, the sale deed itself mentions an amount of ₹ 1,50,000/- towards sale consideration, of not only the suit property but other properties along with it. The learned First Appellate Court also noted that while possession of some of the purchased properties had not been handed over to the plaintiff, nevertheless, she was in possession of the property number 10467 Manakpura, Karol Bagh, New Delhi, 110005 and the non mentioning of this fact in the sale deed would not go to the root of the controversy. It referred to the assertion of the plaintiff that she had purchased the suit property and noted that this assertion had not been challenged by the defendant. The plaintiff's testimony in this regard is as under:

“It is correct that at the time of purchasing the property number 10466 to 10468 I demanded the possession of first floor of property number 10466 and 10468 but despite my demand the possession was not given to me. It is correct that I purchased the property in question.”

9. The impugned order had reasoned, that in so far as the appellant had not disputed that the property in question was purchased by the plaintiff, his contention that the non-production of the original sale deed and the non-examination of an officer from the Office of the Sub-Registrar apropos registration of the Sale Deed, was inconsequential. It found that the said contention was an afterthought and in view of the decision in ***Mohd MD Abdul Husain vs Mohd Akkesh Ali 1991 (2) CCC 735 (GAU)***, the burden of the defendant that he had acquired title by adverse possession was not proven. It also referred to the decision of the Supreme Court in ***Karnataka Board of Wakfs vs Government of India 2004 (10) SCC 779***, which held,

inter alia, that merely because a property is possessed by someone and used for a long time, would not by itself affect the title of the owner; the circumstance though gets altered when another person takes possession of the property and asserts his exclusive right over it and the legal owner fails to initiate any action to recover possession for years together; that the title of the adverse possessor gets triggered by the inaction and default of the legal owner. In other words, neither stealth nor license nor force could be the basis for adverse possession. The defendant, however, pleaded and had admitted that efforts were made by Mr. Ramesh Chand Saini and his father in the year 1992, 1996 and 1998 to evict him from the suit property, but as mentioned hereinabove he did not produce any documents in this regard. Nevertheless, the same would go on to prove that efforts were made by the legal owner that is Mr. Ramesh Chand Saini, to dispossess the defendant from the suit property. Notably, the impugned order has reproduced the relevant portions of his affidavit in evidence, wherein he first asserts the aforesaid endeavours for his dispossession and juxtaposes it with his cross-examination, where he completely denies any such steps being taken. It observed that the defendant evidently was unsure of his own case because he contradicted his own testimony, on the basis of which he had sought to build a case for adverse possession.

10. In this second appeal, the same arguments have been sought to be raised as contended before the learned First Appellate Court. The questions raised in this appeal are: i) Whether the certified copy of the sale deed i.e. Exhibit PW1/1 could be considered to be duly proven without examining the attesting witnesses or the seller or without calling for the records of registration from the office of the Sub- Registrar? And ii) Whether, in the

circumstances despite, the mandatory terms of sections 67 and 68 of the Indian Evidence Act, 1872, a presumption of genuineness of the certified copy of the sale deed could be drawn?

11. As discussed hereinabove, both the learned Trial Court and the First Appellate Court have successively, concluded that on the basis of the records, the plaintiff had proven the sale deed especially, in view of the fact that the appellant/defendant had not questioned the purchase of the suit property itself, but focused primarily to prove that the registration of the sale deed was an act of fraud, because Mr. Ramesh Chand Saini was to merely execute a lease deed but was fraudulently made to execute a sale deed. The Court would note that, interestingly the defendant never produced any communication from or authority from Mr. Ramesh Chand Saini that he had been duped or defrauded by the plaintiff into executing a Sale Deed instead of a lease deed. Ramesh Chand Saini has not complained or filed any representation that he had not been paid the sale consideration, nor did he ever say that the plaintiff was occupying her residential address i.e. 10467 unauthorisedly. Therefore, insofar as the assertion of the plaintiff that she had purchased the property, and was in possession of one part of it went uncontended, she had established her title to the suit property. Besides, the Court would note that neither Mr. Ramesh Chand Saini nor his legal representatives have challenged the plaintiff's position. On the contrary, the plaintiff herself had filed a suit against Mr. Ramesh Chand Saini.

12. The learned Senior Counsel for the respondent submits that, when the sale deed was tendered in evidence there was no question apropos its illegality or validity in the cross examination by the defendant-appellant, therefore, the document was rightly considered to have established the title

of the plaintiff on the suit property. The Court would note that this submission is already answered in the affirmative in the plaintiff's favour by both the courts below and there is no apparent reason to differ with the said reasoning and conclusion.

13. The Court would also refer to the decision of this court in ***Hans Raj vs Jagminder Singh and Others*** 2017 (8) AD (DELHI) 483 which held, inter alia, that adverse possession is looked upon with disfavour because it commences on a wrong, i.e. a wrongful possession is maintained against a right i.e. the right, title and interest of the true owner of the property. Therefore, adverse possession would have to be proven by way of clear evidence showing the precise date, month and year or at least the month and the year when the adverse possession had commenced and remained so peacefully, open and continuous. ***Hansraj*** (*supra*) had referred to the judgement of the Supreme Court in ***Chatti Konati Rao vs Palle Venkata Subba Rao (2010) 14 SCC 316*** which held inter alia:

"..... 12. We have bestowed our thoughtful consideration to the submission advanced and we do not find any substance in the submission of Mr. Bhattacharya. What is adverse possession, on whom the burden of proof lie, the approach of the court towards such plea etc. have been the subject matter of decision in a large number of cases. In the case of T. Anjanappa v. Somalingappa (2006) 7 SCC 570, it has been held that mere possession however long does not necessarily mean that it is adverse to the true owner and the classical requirement of acquisition of title by adverse possession is that such possessions are in denial of the true owner's title. Relevant passage of the aforesaid judgment reads as follows :

"20. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse

possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of Karnataka Board of Wakf vs. Government of India and Ors. (2004) 10 SCC 779. It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the judgment which is relevant for the purpose reads as follows :

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession

is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D.N. Venkatarayappa v. State of Karnataka (1997) 7 SCC 567) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma (1996) 8 SCC 128]"

14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse

possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law.

15. Bearing in mind the principles aforesaid when we proceed to consider the facts of this case, we find that appellants have miserably failed to prove that they have perfected their title by adverse possession. It is worth mentioning here that initial plea of the appellant was that they had purchased the property from the original owner, alternatively by virtue of agreement to sale they came in possession of the property. Both these pleas have not been substantiated. Neither the purported sale deed nor agreement to sale have been placed on record. As regards the plea of adverse possession, appellants' case is that out of the consideration money of Rs.1,600/-, Rs.1,000/- was paid to the real owner and on payment of Rs. 225/- to the tenant in possession namely Bombothu Chitteyya, he relinquished his possession. This relinquishment of possession by the tenant shall not enure to the benefit of the appellants against the true owner so as to accept their claim for adverse possession. Appellants are required to prove that their possession was adverse to the true owner. The plea of the appellants on the basis of the purported order dated 18th February, 1954 of the Settlement Officer directing for issuance of Patta in their favour

also does not advance their case. It is not the appellant's case that plaintiffs were party before the Settlement Officer. Further, it is not in dispute that no Patta was issued in favour of the appellants and in fact rough Patta was issued in favour of the second plaintiff. Thus, the appellants have not proved the necessary ingredients to establish their title by adverse possession. In our opinion, the Division Bench is absolutely right in rejecting the appellants' plea of adverse possession and decreeing the plaintiff's suit, after setting aside the judgment and decree of the trial and the appellate Court....”

14. In other words, what is to be proven by the person claiming title by way of adverse possession is, that: i) his continuous possession i.e. of 12 years and the *animus possidendi* i.e. both factual and requisite intention to possess the property to the exclusion and ouster of the real owner was in the knowledge of the real owner and ii) despite such knowledge the real owner did not take any action to dispossess such claimant from the property. In other words, the person claiming adverse possession must prove ouster of the owner and/or his predecessor, from the suit property and specific pleadings must be led in this regard and proven in the claim for adverse possession, for it to be adjudicated as his title against that of the real owner's. Mere continuance of possession would by itself not become the basis for claiming title by adverse possession; the adversity must be in the knowledge of the real owner for 12 years.

15. In the present case, the appellant/defendant has been unable to show the date from which he set up a hostile assertion and exclusive claim to the suit property to oust the possession and ownership of the plaintiff. On the contrary, the appellant admits that his cousin, Mr. Ramesh Chand Saini, in whose name admittedly, the defendant's grandfather had purchased the said

property, had tried to oust him from the property in the years 1992, 1996 and 1998, alongwith the defendant's own father. He also failed to produce his alleged complaints made to the police and/or other authorities apropos the aforesaid failed steps to dispossess him and instead asserting his own exclusive adverse possession of the suit property, to the ouster of Mr. Ramesh Chand Saini.

16. Quite clearly, the appellant has failed to prove his adverse possession over the suit property. No substantial question of law is raised in this appeal. On the contrary, the plaintiff has pursued her claim in the suit property on the basis of the sale deed, by issuing the legal notice which was served upon the appellant and by filing the suit for possession. Both the judgements of the Trial Court as well as the Appellate Court call for no intervention.

17. The petition is without merit and is accordingly dismissed.

18. In view of the above, the interim order dated 25.11.2016 stands vacated. The amount deposited be released to the respondent, alongwith interest accrued thereon.

NAJMI WAZIRI, J

JULY 29, 2019