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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 5th December, 2019

+ **CM (M) 1375/2018 & CM APPL. 46175/2019**
RAJESH ANAND Petitioner
Through: Mr. S.K. Sharma & Mr. Yugant
Kuhar, Advocates (M-9999989082)

versus
RAHUL WADHWANI & ANR Respondents
Through: Mr. Ajayinder Sangwan, Mr. Sachin
Sangwan, Mr. Sachin Choudhary &
Mr. V.P. Singh, Advocates (M-
9811164628)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. The Plaintiff/Petitioner (*hereinafter*, “*Plaintiff*”) is aggrieved by the impugned order dated 1st June, 2018, by which the Id. ADJ has dismissed the application under Order XV-A CPC.

2. The case of the Plaintiff is that he is the owner of shop bearing No.6 (private No.6A), adjoining Shop No.5, Central Market, Lajpat Nagar, New Delhi - 110024 (*hereinafter*, “*suit property*”). The Plaintiff claims to have purchased the suit property from one Ms. Pushpa Kapoor vide registered sale deed dated 7th September, 2015. A copy of the registered sale deed has been placed on record. In clause 2 of the said sale deed, the earlier owner had informed the Plaintiff that the suit property was under the tenancy of Respondent No.1/Defendant No.1 - Mr. Rahul Wadhwani (*hereinafter*, “*Defendant No.1*”). As per this clause in the sale deed, the tenant was paying a monthly rent of Rs.1,50,000/- and the right to recover the same was vested in the Plaintiff. Accordingly, the Plaintiff filed a suit for possession and

recovery of arrears of rent with interest, mesne profits and permanent injunction.

3. After completion of the pleadings in the suit, the following issues were framed:

“A. Whether plaintiff is entitled to a decree of possession of suit property bearing no. 6 (private no. 6A), Central Market, Lajpat Nagar, New Delhi-110024? OPP.

B. Whether plaintiff is entitled to a decree towards arrears of rent of Rs. 24,07,500/- from 1.11.2014 till 31.01.2016? OPP

C. Whether plaintiff is entitled to any interest if so, at what rate and for which period? OPP

D. Whether plaintiff is entitled to any damages / mesne profits / user charges if so, at what rate and for which period? OPP.

E. Whether there is no relationship of landlord and tenant between the parties? OPD

F. Whether the defendant no.1 has become the owner of suit property by way of adverse possession? OPD

G. Whether the suit has not been properly valued for the purpose of jurisdiction as well as for the purpose of court fee? OPD.

H. Whether the suit is barred by limitation? OPD

I., Relief.”

4. The suit is pending for recordal of evidence of the parties. At this stage, the Plaintiff moved an application under Order XV-A CPC, seeking deposit/payment of market rent as no amount was being paid by the Respondents/Defendants (*hereinafter, “Defendants”*). The said application was dismissed vide the impugned order dated 1st June, 2018. The observations of the Id. ADJ are as under:

“10. This provision pre-supposes the relationship of landlord and tenant or the licence and licensee between

*parties which is not so admittedly. In order to decide this application, this court can not go into the merit of the defence taken up by the defendant. The defendant had taken the defence of becoming the owner of the suit shop by way of adverse possession. The plaintiff had not filed any such agreement or receipt showing payment of rent of Rs.1,50,000/- by defendant no. 1 to plaintiff or his predecessor in interest i.e. Smt. Pushpa Kapoor. The apprehension which the plaintiff has shown in para no. 11 of the application can not redress by passing order this application. For the reasons, stated above, this **application is found to be devoid of any merits, hence dismissed.**”*

5. Ld. counsel for the Plaintiff submits that the Defendants are admittedly tenants. The sale deed and clause 2 therein is relied upon by the Plaintiff. It is further submitted that the wife of Defendant No.1, i.e. Defendant No.2/Respondent No.2, filed a complaint before the SHO, Lajpat Nagar, making various allegations against the Plaintiff. In the said complaint, it was clearly admitted that the Defendant is a tenant in the property. Ld. counsel for the Plaintiff submits that the said complaint was taken cognizance of and an FIR was also registered against the Plaintiff, which is still pending investigation. It is further submitted that in the cross-examination conducted in the said FIR, Defendant No.1 - Mr. Rahul Wadhwani, himself admitted that he was a tenant in the suit property. In view of these admissions, ld. counsel relies on the judgment in ***Raghubir Rai v. Prem Lata & Anr. [FAO(OS) 597/2013, decided on 15th May, 2014]***, passed by a Division Bench of this Court, as per which the provisions of Order XV-A CPC clearly empower the Court to fix the market rent and the Court ought to take a view at this stage itself as to whether any amount is liable to be deposited by the tenant.

6. On the other hand, ld. counsel for the Defendants submits that there is no illegality or perversity in the impugned order. In fact, he submits that a reading of the issues which have been framed shows that the main issue that is left to be adjudicated is the claim of adverse possession. He submits that as per the sale deed itself, there is no rent agreement between the parties. There is also no rent receipt, as the clause in the sale deed clearly states that the sum of Rs.1,50,000/- was being paid in cash. Thus, in the absence of a written rent agreement and any rent receipt in favour of Ms. Pushpa Kapoor, no rights vest in the Plaintiff to claim any rent from the Defendants.

7. Ld. Counsel further submits that, in fact, the Defendants are in possession of the suit property since 15th January, 2000 and hence, the Defendants have become the owners of the suit property, by adverse possession. He thus submits that any adjudication at this stage, by fixing any amount for deposit under Order XV-A CPC, for use and occupation, would be prejudicial to the Defendants, especially when the Defendants have a strong case on merits. Ld. counsel relies upon the recent judgment of the Supreme Court in ***Ravinder Kaur Grewal and Others v. Manjit Kaur and Others, (2019) 8 SCC 729*** to argue that the plea of adverse possession can be used as a shield and a sword. In the present case, the Defendants are using the same to resist the suit filed by the Plaintiff so that until and unless the plea of adverse possession is adjudicated, no amount is liable to be deposited.

8. This Court has heard the ld. counsels for the parties and perused the record, as well as the judgments cited by the parties. Ms. Bhumika Ahuja – Defendant No.2/Respondent No.2 was present in Court. Since the complaint was filed by her against the Plaintiff, her statement was recorded today. Her

statement reads as under:

“Statement of Ms. Bhumika Ahuja W/o Shri Rahul Wadhwani, R/o F-Ist 250, Madan Gir, Delhi. (M:8130056263)”

On S.A.

I am aware of Shop no.6, Central Market, Lajpat Nagar, New Delhi. I was married to Mr. Rahul Wadhwani 10 years ago, and since then, I am aware of this shop. I also sit in the shop along with my husband. We sell footwear in the shop. I am not aware as to who is the landlord of this shop. We are not paying any rent to anyone. I know Mr. Rajesh Anand, the owner of the next shop. He runs a shop selling gold jewellery. I have filed FIR No.0831/2015, Lajpat Nagar Police Station, South East, Delhi. I gave a hand written complaint on 9th October, 2015 to the SHO, Lajpat Nagar. Whatsoever I have written in my complaint to SHO, Lajpat Nagar is true. Currently I am running the shop and my husband is only involved in supplying footwear to the local markets.”

9. A perusal of the statements made in the complaint filed to the SHO shows that a categorical assertion has been made to the following effect:

“I am Bhumika Ahuja running a Shop No.6, Central Market, Lajpat Nagar, Sukanya Footwear from last 15 yrs, as a tenant.”

10. The said complaint is dated 9th October, 2015. Subsequent to the said complaint being filed, an FIR has also been registered with the Lajpat Nagar Police Station on 9th October, 2015, which is currently under investigation. A copy of the cross-examination recorded in the said proceedings, which has been produced before the Court, clearly shows that Defendant No.1 made a statement to the following effect:

“Q: In your statement to the police U/S 161 Cr.PC you

have stated that your staff namely Rahul and Amrish used to sleep outside the shop for guarding (chawkidari) the shop, but today in the court you have stated that they sleep outside the shop as they have no place to sleep. Which of your statement is correct?

A: My statement made to the police is correct. The possession of the shop in which I am a tenant was given to me by Mrs. Pushpa Kapoor. ...

11. Insofar as these statements and averments are concerned, ld. counsel for the Defendants submits that these have been made in criminal proceedings and the same cannot be used in the present suit, where the Defendants claim right by way of adverse possession. This Court does not agree with the submission of the Defendants. Any person who puts criminal law into motion, on the basis of a statement made, that he or she is a tenant in a particular property, ought to be bound by the said statement. It cannot be permissible for any party to avail of legal remedies under criminal law by taking one stand and then take a completely different one in the civil suit filed and claim adverse possession.

12. The plea of adverse possession, taken in the written statement, in light of the statements made in the criminal complaint, the FIR and the cross-examination, cannot, at this stage, be held to be plausible, inasmuch as the same is in complete contradiction to the stand taken in the criminal proceedings. Moreover, in the registered sale deed placed on record, the earlier owner has clearly represented to the present owner i.e., the Plaintiff, as under:

“2. That the Vendor has told to the Vendee that the said Half Portion of the said Shop is under tenancy of Mr. Rahul Wadhwani S/o Smt. Jyoti Wadhwani, where no Rent Agreement was executed and it was a oral

tenancy, but the tenancy was started from 1st day of February, 2013, at the monthly rent of Rs.1,50,000/- (Rupees one lakh fifty thousand only) which was payable in cash by the tenant and the tenant has not paid rent since the last ten months, and therefore Vendor has handed over the possession of the said Half portion of the said Shop on as is where is basis to the Vendee at the time of signing of this Sale Deed and also Vendor hereby gives the right to the Vendee to recover rent for the last ten months from the tenant and to deal with the tenant and get the tenant evicted from the said. Half Portion of the said Shop.”

13. The earlier owner Ms. Pushpa Kapoor has served notice dated 10th October 2015, on the Defendant No.1. However, just one day before the said notice, i.e., on 9th October 2015, complaint has been filed by Defendant No.2 with the SHO P.S.Lajpatnagar. In the said complaint she states that she is a tenant. The plea of adverse possession was never taken till the execution of the sale deed in favour of the Plaintiff i.e., 7th September, 2015.

14. In the judgment of **Raghubir Rai (supra)**, the Id. Division Bench of this Court has clearly held that if, on the basis of the pre-ponderance of probabilities the tenant may not be found to have a right to continue in possession of the property, some amount ought to be directed to be paid for the said period. The Id. Division Bench has also clearly drawn a distinction between the provisions of Order XXXIX Rule 10 CPC and Order XV-A CPC. The observations of the Id. Division Bench are as under:

“24. We are of the view that the Court, in exercise of powers under Order XV-A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant / defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period even if the tenant before the Court may not have

admitted the same or disputed / controverted the same. Similarly, in a suit between the owner of immovable property and an unauthorized occupant, Order XV-A empowers the Court to direct the defendant who though may not be liable to be ejected / dispossessed immediately without trial but who, on preponderance of probabilities may not be found to have a right to continue in possession of the property, to deposit during the pendency of the suit such amount as may appear to be reasonable, to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation. This, in our view is necessary to avoid the process of the Court being abused by unscrupulous litigants and to curb the growing tendency of using the process of litigation as a tool of oppression.

*25. We should however not be interpreted as laying down that Order XV-A empowers the Court to, without evidence assess mesne profits or to merely by taking judicial notice and without any material on record, arbitrarily direct the defendant to deposit a much higher amount than what he had been paying or had agreed to pay. Reference in this regard can be made to the judgment of the Division Bench of this Court in **National Radio & Electronic Co. Ltd. Vs. Motion Pictures Association** 122 (2005) DLT 629 laying down that mesne profit have to be proved by reliable and cogent evidence in accordance with law. Of course, if the erstwhile tenant / defendant is found to have agreed to periodically increase the rent / user charges, even if such contract may have come to an end, in exercise of powers under Order XV-A of the CPC direction for deposit with such increases can be made unless strong grounds exist for such increases being not due.*

...

28. We are prima facie unable to believe that a

valuable commercial property, as the subject property is, would have been let out at a rent below Rs.3,500/- per month, allowing the letting to fall within the ambit of the Rent Act, whereunder the eviction of a tenant is not only difficult but virtually impossible. Both the parties obviously have been indulging in transactions in cash, perhaps to avoid taxes. We in the circumstances are of the opinion that there is no reason to interfere with the order of the learned Single Judge.”

15. Insofar as the judgment in ***Ravinder Kaur Grewal (supra)*** is concerned, the principles of adverse possession are well-settled. There is no doubt that on the basis of adverse possession, a party can maintain a suit and can also use the same a defence. However, in the said judgment itself, the Supreme Court has clearly observed that the rights claimed by adverse possession are not to be applied in all cases and various conditions have to be satisfied to claim ownership on the basis of adverse possession. The observations of the Supreme Court are set out hereinbelow:

“60. The adverse possession requires all the three classic requirements to coexist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e., adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser’s long possession is not synonymous with adverse possession. Trespasser’s possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it

and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

61. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff

having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

63. When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.”

16. The Plaintiff has placed on record a lease deed to show the current market rent being paid for the neighbouring property in 2008 and 2015. In the impugned order, the application of the Petitioner under Order XV-A CPC has been rejected without considering all these materials, including the proceedings before the Criminal Court. The Id. Trial Court has simply observed that a landlord-tenant relationship has to be established before any order under Order XV-A CPC can be passed. The order, being unreasoned and cryptic and not considering the documents and pleadings on record and in the criminal proceedings, is not sustainable. The admissions by the Defendants in the criminal complaint and in the cross-examination are too glaring to be ignored. Under these circumstances, at this stage, it is held that a landlord-tenant relationship exists.

17. Admittedly, the tenants are not paying any amount for occupying such a prime commercial property. The sale deed clearly records the representation by the previous owner that the tenants were paying a sum of Rs.1,50,000/- per month as rent and the same was due for more than 10 months, as on the date when the sale deed was executed. There is no reason to disbelieve the said sale deed. Accordingly, at this stage, it is directed, that the Defendants shall deposit before the Id. Trial Court, a sum of Rs.1,50,000/- per month, on or before the 10th of every month, beginning from December 2019 in order to enjoy possession of the suit property. Insofar as the arrears are concerned, the Id. Trial Court would be entitled to pass appropriate orders after adjudication of all the issues.

18. The issues in this matter are stated to have been framed since May, 2016. However, cross-examination of the Plaintiff's witness has not commenced till date. Accordingly, it is directed that the Id. Trial Court shall adjudicate the suit expeditiously. No adjournment shall be granted to either party and any unreasonable adjournment sought shall be liable to be burdened with heavy costs.

19. The petition is allowed in the above terms. All pending applications are disposed of.

20. The next date before Court is cancelled.

PRATHIBA M. SINGH
JUDGE

DECEMBER 05, 2019

Rahul