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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 24th February, 2020
+ **CM (M) 230/2020**

KISHORI LAL & ORS. Petitioners
Through: Mr. D. S. Dalal and Mr. Jogender
Kumar, Advocate. (M:9312271428)
versus

AKHTAR ALAM & ORS. Respondents
Through: Mr. Rajiv Bajaj and Ms. Saguka
Wadhwa, Advocates for R-1 & 2.
(M:8527531588)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 7322/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 230/2020 & CM APPL. 7321/2020 (stay)

2. The present petition challenges the impugned order dated 11th February, 2020 by which the Petitioners'/Applicants' application under Order VI Rule 17 CPC for amendment of their objection petition has been rejected by the Appellate Court.

3. The background of this petition is that a suit for possession and damages was filed by the Plaintiff/Respondent No. 1 – Mr. Akhtar Alam (*hereinafter, "Plaintiff"*) against Mr. Kundan Lal, Ms. Khursheeda Begum and Mr. Rafiq Ahmad in respect of plot nos.161, 162 and 163 situated in Bagh Kare Khan, Gali No.4, Delhi (*hereinafter, "suit property"*). In paragraph 3(a) of the said suit, the Plaintiff pleaded that the suit property earlier vested in the custodian and the same was released on the condition

that any allottee/tenant would not be evicted, except in accordance with law.

Paragraph 3(a) of the plaint reads as under:

“The Custodian Evacuee property, New Delhi, while passing the restoration order dated 15th October, 1959 (photostat copy enclosed) in respect of plot no.161, 162, 163 situated in Bagh Kare Khan, Delhi (Village Sadhora Kalan) of which the suit property is a part, imposed a condition that the owners of the property – now plaintiff in interests hereir, shall not evict any allottee/tenant of the said property except in the circumstances in which lessee can be evicted under the law for the time being in force. The Custodian further attorned the allottees/tenants vide its order no. AOC/D/5133 dated April, 1964 passed by Mr. Bishan Lal, Asstt. Custodian (Com) directed to pay the rent of the said property and otherwise deal with the aforesaid landlords – Shri Shafiq and others (Photostat copy enclosed herewith)”

4. The said suit was decreed by the Trial Court on 8th September, 2009. Thereafter, the Plaintiff sought execution of the decree on 8th December, 2009. In the execution petition, the Petitioners claimed that they were always in possession of the suit property and that the decree was obtained by playing fraud upon the Court. It was further averred that the Plaintiff always had knowledge of the Petitioners’ occupation of the suit property and in another suit relating to the neighbouring property, the Plaintiff himself had impleaded the Petitioners herein under the mistaken impression that they were the legal heirs of one Mr. Ram Lal, who was the Defendant in the second suit. Thus, the Petitioners prayed that the decree cannot be executed against the Petitioners, inasmuch as the Petitioners were wrongly not impleaded in the original suit. The said objections were dismissed by the Trial Court on 17th January, 2019 against which an appeal has been filed and

is pending before the Appellate Court.

5. In the said appeal, the Petitioners filed an application under Order VI Rule 17 CPC seeking to add further paragraphs to their objection petition. Mr. Dalal, ld. counsel for the Petitioners, submits that the Petitioners wish to mention the dates since when they have been in possession of the suit property as the same were not mentioned in the objection petition. He further submits that the Petitioners had filed certain documents to show that they were in possession of the suit property even prior to the filing of the suit.

6. Ld. counsel further submits that since the Petitioners have not been impleaded as Defendants in the original suit, they are entitled to a complete defence on merits as it is their case that they are in possession of the suit property by way of adverse possession and, in any event, without prejudice to this submission, they also have settled possession of the suit property. It is further submitted that the application under Order VI Rule 17 CPC can be entertained even at the appellate stage, which, according to him, is a valuable right of the Petitioners. Reliance is placed on the following judgments:

- ***Madhukar & Ors. v. Sangram & Ors., AIR 2001 SC 2171;***
- ***Rame Gowda (Dead) by LRs v. M. Varadappa Naidu (Dead) by LRs & Anr., (2004) 1 SCC 769;***
- ***Mount Mary Enterprises v. Jivratna Medi Treat Private Ltd., (2015) 4 SCC 182;***
- ***Lakha Ram Sharma v. Balar Marketing Pvt. Ltd., (2008) 17 SCC 671.***

7. On the other hand, on behalf of the Plaintiff, it is submitted that the objections have been dismissed in 2019 and due to the fact that the appeal is still pending, the Plaintiff has not been able to enjoy the fruits of the decree, which was passed in 2009. Ld. counsel specifically relies on the order dated 17th January, 2019 by which the objections were dismissed and wherein the Executing Court has observed that no date has been mentioned as to when the Petitioners came into possession of the suit property and thus, the plea of adverse possession is not valid.

8. The Court has heard ld. counsel for the parties and perused the record. A perusal of the objections originally filed by the Petitioners clearly shows that the Petitioners did not mention as to since when they were in possession of the suit property. The Petitioners, having not mentioned the date, were duty bound to at least file documents to show since when they were in possession of the suit property. The only documents, which are stated to have been filed by the Petitioners include Voter ID-Cards and other documents that have been placed with objections. The plea relating to possession as contained in the objections filed by the Petitioners reads:

*“2. That the Decree Holder was well aware that the objectors **were in actual possession** and owner of the suit property and still he deliberately chose not to make them party to the suit.*

...

7. That the fact that the Decree Holder was aware of the fact that the objectors were in actual possession of the property is clear from the following facts: -

...

f. That although the Decree Holder was already aware that the objectors were real owner and in possession of the suit property even prior to the filing of the suit, Still it specifically came on record

that objectors were residing in the suit property and still the said was not mentioned in the present case.

... ”

A perusal of the above extract shows that the same is conspicuously silent as to the date since when the Petitioners claim to be in possession.

9. In the order dismissing the objections, the Executing Court has held as under:

“11. Coming to third ground, it is to observe that only on the basis of bald averments, plea of adverse possession cannot be established. 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. The law on this aspect has been settled by catena of judgments of Hon'ble Apex Court as well as of several High Courts and it has been established that 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 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. In the present case, the objectors have not made a single averment on which date they came into possession of the suit property and what was the nature of their possession and when their possession had become adverse to the plaintiffs, who are the owners of suit property. Accordingly, I am of the view that even if the present objectors would have been impleaded in the present suit as party and would have been allowed to lead the evidence, the fate of the suit

would have been the same. It is settled proposition in law that the possession, however long, does not culminate into the ownership and therefore, the objectors have no right in the suit property in any manner.”

10. At the appellate stage, the Petitioners cannot be allowed to improve upon the objections, which were originally filed before the Executing Court. At the time of filing of the objections, the Petitioners ought to have shown the Court the period for which they were in occupation of the suit property as it is their case that they were wrongly not impleaded in the original suit itself. At the appellate stage, once the objections have been dismissed, the Petitioners cannot be allowed to completely change the basis of their objections by adding the plea that they were in possession of the suit property since 1949-50. This could constitute a case now being set up to the prejudice of the Respondents.

11. The objections having already been dismissed by the Trial Court, the Appellate Court has to consider as to whether the order dismissing the objections is valid and in accordance with law. While the amendment is not being permitted, there is no doubt that the Appellate Court would have to take into consideration the objections which were originally filed along with all the documents placed on record by the Petitioners. If there is any document which the Petitioners have already placed on record to show the period since when they were in possession of the suit property, irrespective of the fact that no date has been mentioned in the objection petition, the said documents shall be considered.

12. The amendment prayed for by the Petitioners is not liable to be permitted. Only the documents filed with the objections can be relied upon

for showing the period since when possession is claimed, as there is no date mentioned in the objection application. Accordingly, the impugned order does not warrant any interference.

13. The present petition is disposed of in the above terms. All pending applications are also disposed of. *Dasti*.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 24, 2020

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