

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

% **Date of decision: 12th February, 2020**

+ **CS(OS) 312/2019, IA No.8464/2019(u/O.XI R-12 CPC) & IA No.11637/2019 (of the defendant no.1 u/O. VII R.11 CPC)**

ECONOMICS TRANSPORT ORGANISATION LTD..... Plaintiff

Through: Mr. Sujit K. Mishra, Adv.

Versus

**MOHAN INVESTMENTS &
PROPERTIES PVT. LTD. & ANR. Defendants**

Through: Mr. Saurabh Banerjee with Mr.
Bikram Singh, Advs. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit against defendants no. 1 and 2 namely (a) Mohan Investments & Properties Pvt. Ltd. and (b) Economics Transport Organisation (Q.T.S.), pleading (i) that the plaintiff has been in open, continuous, uninterrupted and hostile possession of the ground floor admeasuring 3650 sq.ft. and mezzanine of property No.1-E/6, Jhandewalan Extension, New Delhi, adversely to the interest of any other person including the defendants, for the last 34 years, exercising absolute rights of ownership with respect thereto; (ii) that the plaintiff Economics Transport Organisation Ltd. was earlier a partnership firm under the name and style Economics Transport Organisation, which was subsequently converted into a company; (iii) that one B.K.Khanna & Company Pvt. Ltd. was the owner/landlord of building bearing no.1-E/6, Jhandewalan Extension, New Delhi and had let out the portion aforesaid of the said property to the defendant no.2 Economics Transport Organisation (Q.T.S.) Pvt. Ltd. vide

Lease Deed executed between them; (iv) that subsequent thereto the plaintiff has been in actual and constructive possession of the aforesaid portion and has been using it for its official purpose and neither the defendant no.2 nor B.K.Khanna & Company Pvt. Ltd. were in possession thereof; (v) that the entire property no.1-E/6 was put to auction by the Income Tax Office for recovery of income tax dues from B.K.Khanna & Company Pvt. Ltd. and the defendant no.1, in the said auction held on 6th June, 1985, purchased the said property and a certificate of sale dated 14th January, 1986 was issued in favour of the defendant no.1; (vi) that the plaintiff has always denied the manner in which the defendant no.1 has become the title holder of the property “as the plaintiff being in possession of the suit premises has always asserted their right as hostile title holder”; (vii) that the defendant no.1 was well aware of the exclusive possession of the plaintiff and claim of the plaintiff as owner; (viii) that the defendant no.1, immediately after issuance of certificate of sale in its favour, filed eviction petition before the Rent Controller against the plaintiff, as the plaintiff was in exclusive possession of the property; (ix) that the said eviction petition was dismissed by the Rent Controller; (x) that the defendant no.1 on 20th August, 1990 filed another suit for possession and recovery of monies against the plaintiff, again impleading the plaintiff only as the defendant; (xi) that the said suit has also been dismissed vide judgment dated 2nd January, 2014; (xii) that the plaintiff, since late 1980s has always been in possession and has all licenses, registrations in its favour at the address of the aforesaid premises and the electricity connection in the said premises is also in the name of the plaintiff; (xiii) that the plaintiff has been bearing all maintenance expenses and other expenses with respect to the said premises, including in keeping

the property habitable; (xiv) that the defendant no.1, after the judgment dated 2nd January, 2014, has filed yet another suit, this time against the defendant no.2 only; (xv) that it has come to the knowledge of the plaintiff that the defendant no.2, in connivance with defendant no.1, has been trying to dispossess the plaintiff, by obtaining a favourable decree in favour of the defendant no.1 in the said suit; (xvi) that the defendant no.2 has served a letter dated 10th May, 2015 calling upon the plaintiff to hand over possession to the defendant no.1.; and, (xvii) the cause of action paragraph 15 of the plaint is as under:-

“15. That the cause of action for the institution arose on diverse dates when the Defendant No.1 has filed the suit against the Defendant No.2 for possession of the suit possession in which the plaintiff is in exclusive possession i.e. on 02.08.2014, for the first time without making the Plaintiff of party whereby the Defendant No.1 has tried to disposes the Plaintiff of which the plaintiff had no knowledge. The cause of action has thereafter being continuing one has also arisen on subsequent dates when the Defendant No.1 in their effort has tried to disposes the Plaintiff on the suit property i.e. on 06.12.2018 when the suit filed by the Defendant No.1 has been partly allowed. Further, the cause of action has arisen on 10.05.2019 when the Defendant No.2 has served a Notice upon the Plaintiff to hand over the vacant possession of the suit property to the Plaintiff and as such the said cause of action is still subsisting and continues in favour of the Plaintiff and against the Defendant.”

2. On the aforesaid pleas the plaintiff has sought the reliefs of, (i) declaration of having perfected title to the aforesaid premises by adverse possession; (ii) perpetual injunction restraining the defendants from

interfering with the peaceful possession of the plaintiff of the premises aforesaid; and, (iii) perpetual injunction restraining the defendants from interfering with title and possession of the plaintiff, by creating third party rights in the property.

3. The suit, unaccompanied with any application for urgent relief, came up before the Joint Registrar for admission on 31st May, 2019, when without even considering whether on the averments in the plaint the plaintiff was entitled to the reliefs claimed, the suit was entertained and summons thereof ordered to be issued.

4. The defendant no.1, on service of summons filed IA No.11637/2019 for rejection of the plaint and has also filed written statement.

5. Though the counsel for the defendant no.2 appeared before this court on 22nd October, 2019, but has not filed any written statement till date. None appears for the defendant no.2 today.

6. The counsel for the defendant no.1 and the counsel for the plaintiff have been heard.

7. The counsel for the defendant no.1 has argued, that rejection of the plaint is sought on the grounds of (i) the suit being barred by *res judicata* i.e. by the judgment dated 2nd January, 2014 supra; (ii) the requisite period for the plaintiff to perfect title by adverse possession having not lapsed; (iii) the plaintiff having not instituted any proceeding under Section 31 of the Specific Relief Act, 1963 for cancellation of the sale certificate in favour of the defendant no.1, being not entitled to challenge the title of the defendant no.1.

8. The counsel for the plaintiff has argued, (i) that the plaintiff was not a party to the suit filed by the defendant no.1 and dismissed vide judgment

dated 2nd January, 2014; (ii) the defendant no.1, in the second suit filed after the judgment dated 2nd January, 2014 and in which order has been obtained in collusion with defendant no.2, having not even impleaded the plaintiff as a party; (iii) that none of the grounds urged have been taken in the application under Order VII Rule 11 of the CPC.

9. I have considered the records and the contentions of the parties.

10. It is not in dispute and is borne out from documents on record, that the defendant no.1, in or about the year 1990, instituted a suit for recovery of possession of the premises aforesaid and for recovery of Rs.5,06,000/- and future mesne profits against (a) Economics Transport Organisation, being the predecessor partnership firm of the plaintiff, (b) Satya Prakash Arya, (c) Daya Nand Arya, (d) Sudershan Kumar Arya, (e) Prakashnand Arya, (f) Chander Mohan Arya, (g) Jai Prakash Arya, (h) Anil Kumar Arya, (i) Rattan Prakash Arya, (j) Anand Kumar Arya, (k) Murti Devi Arya, (l) Peari Devi, (m) Anachi Devi Arya, (n) Bimla Devi Arya, (o) Satya Nand Arya, (p) Narender Kumar Arya, and, (q) Sanjay Arya, pleading (i) that the defendant no.1 was the owner/landlord of the premises aforesaid having acquired the property vide sale certificate dated 6th June, 1985; (ii) that Economics Transport Organisation, a partnership firm, was inducted as a tenant in respect of the premises aforesaid at a rent of Rs.9,000/- per month by the previous owner of the property; (iii) that the defendant no.1, after purchase of the property, had requested Economics Transport Organisation to pay rent to the defendant no.1 but Economics Transport Organisation had failed to do so; (iv) that the defendant no.1, till 1st December, 1988 when the provisions of the Rent Act were applicable to the premises, was unable to take proceedings for ejectment of Economics Transport Organisation but had

thereafter terminated the tenancy of Economics Transport Organisation; and, (v) that Economics Transport Organisation, after termination of its tenancy, was not entitled to continue in the premises.

11. A perusal of the judgment dated 2nd January, 2014 in the aforesaid suit shows that the Economics Transport Organisation and its partners impleaded as defendants, contested that suit, pleading that the defendant no.2 herein Economics Transport Organisation (Q.T.S.) Pvt. Ltd. was “the real tenant” the in the property under Rent Agreement dated 25th March, 1975 and Clause 14 of the said agreement permitted Economics Transport Organization for continue business in the premises. While the plaint in the aforesaid suit showed Economics Transport Organisation and its partners only as defendants, the judgment dated 2nd January, 2014 also shows the plaintiff herein i.e. Economics Transport Organisation Pvt. Ltd., as defendant no.18 in the suit. The counsel for the plaintiff, on enquiry states that on conversion of Economics Transport Organisation, a partnership firm, into the plaintiff company, the plaintiff company was impleaded as defendant no.18 in the suit. The judgment dated 2nd January, 2014 finds/holds, that the defendant no.1 as plaintiff in that suit, had failed to prove that Economics Transport Organisation, a partnership firm, thereafter converted into the plaintiff company, was the tenant under the defendant no.1 in the premises aforesaid, and on the contrary it stood proved that Economics Transport Organisation (Q.T.S.) Pvt. Ltd. was the tenant in the property. The tenancy of the tenant Economics Transport Organisation (Q.T.S.) Pvt. Ltd. having not been terminated and Economics Transport Organization (Q.T.S.) Pvt. Ltd. having not been sued for ejectment the suit was dismissed.

12. A perusal of order dated 6th December, 2018 in the second suit filed by the defendant no.1 against the defendant no.2 Economics Transport Organisation (Q.T.S.) Pvt. Ltd. only, for ejectment from the premises, shows a decree for ejectment to have been passed in favour of the defendant no.1 and against the defendant no.2. The defendant no.1 has also filed before this Court a copy of the order dated 11th February, 2019 of this Court, in RFA No.123/2019 preferred by the defendant no.2 against the order dated 6th December, 2018 of ejectment and a perusal of which shows the said Economics Transport Organisation (Q.T.S.) Pvt. Ltd. to have withdrawn the appeal and only sought time to vacate the premises on or before 15th May, 2019 and which was granted subject to the defendant no.2 Economics Transport Organisation (Q.T.S.) Pvt. Ltd. filing an undertaking in this Court and which undertaking was filed in the form of affidavit of Bhimsen Saini, Attorney of Economics Transport Organisation (Q.T.S.) Pvt. Ltd.

13. The counsel for the defendant no.1 states that the defendant no.2 Economics Transport Organisation (Q.T.S.) Pvt. Ltd. has not vacated the premises and on the contrary made an application to wriggle out of the undertaking given and which application has been dismissed. It is further stated that the defendant no.1 has already initiated contempt proceedings against the defendant no.2 Economics Transport Organisation (Q.T.S.) Pvt. Ltd. and Mr. Bhimsen Saini aforesaid and which are pending.

14. I have hereinabove observed that the suit, on the face of it did not lie. What the plaintiff, by instituting this suit is seeking to do, is to assert independent right to be not removed from possession of the premises aforesaid in execution of the ejectment decree obtained by the defendant no.1 against the defendant no.2 in the second suit aforesaid and in which

plaintiff was not a party. The relief of permanent injunction sought by the plaintiff, of restraining the defendants from interfering with possession of the plaintiff of the premises, cannot be to restrain the defendant no.1 from, in execution of the said ejectment decree, dispossessing the plaintiff from the premises.

15. The remedy of the plaintiff, if claims to be not entitled to be dispossessed in execution of the decree obtained by defendant no.1 against defendant no.2, is under Order XXI Rules 98 to 105 of the CPC read with Section 47 of the CPC which bars a separate suit being filed therefor.

16. The institution by the plaintiff of this suit is thus totally misconceived and an ignorance of the applicable laws.

17. Since the said ground was not invoked by the counsel for the defendant no.1 in his application under Order VII Rule 11 CPC or in his arguments, opportunity has been given to the counsel for the plaintiff to respond thereto.

18. The counsel for the plaintiff has argued that the suit is maintainable because (i) the defendant no.1 is barred by Order II Rule 2 of the CPC; (ii) that the defendant no.1 has relinquished all rights against the plaintiff by not impleading the plaintiff as a party in the second suit filed only against defendant no.2 Economic Transport Organisation (Q.T.S.) Pvt. Ltd.; and, (iii) the claim of the defendant no.1 against the plaintiff is now barred by the *res judicata*.

19. However now on second thoughts, the counsel for the plaintiff states that he does not want any finding on merits of the claim of the plaintiff to be returned in this order and withdraws the present suit with liberty to file

objections in the execution, if any, sought by the defendant no.1 of the decree for ejectment against defendant no.2.

20. The suit is dismissed as withdrawn with costs of Rs.1 lakh payable by the plaintiff to the defendant no.1.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 12, 2020

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