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

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Judgment delivered on: 06.01.2020

+ C.R.P. 199/2018 & CM APPL. 38165/2018

SHRI RAM PRAKASH & ORS.

..... Petitioners

versus

RAJ KUMAR

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. M.S. Rohilla, Advocate.

For the Respondent:

Mr. Vijay Kr. Gupta and Mr. Mehul Gupta,
Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn judgment dated 08.06.2018 whereby the suit filed by the petitioners under Section 6 of the Specific Relief Act, 1963 for restoration of the possession, has been dismissed.

2. The petitioners filed the subject suit claiming that the petitioners were in possession of the subject property i.e. property bearing no. 91, ground floor, Bharat Nagar, Ashok Vihar, Phase-II, Delhi and had been illegally dispossessed.

3. The recorded owner of the property was one Shri Mela Ram. Shri Mela Ram expired on 16.06.1992. Shri Mela Ram was married to Smt. Rani. However, Shri Mela Ram and Smt. Rani did not have any children born out of the wedlock.

4. The case of the petitioners was that the wife of petitioner no. 1, Smt. Swarn Kanta was adopted by Shri Mela Ram and Smt. Rani within one week of her birth in 1947. Smt. Swarn Kanta was the daughter of Smt. Vidya Wati, sister of Smt. Rani.

5. Petitioner no. 1 is the husband of the Smt. Swarn Kanta and petitioner no. 2 to 4 are the children of Smt. Swarn Kanta.

6. On the other hand, respondent Sh. Raj Kumar is the son of Shri Ram Lubhaya the brother of Smt. Rani and Smt. Vidya Wati.

7. Smt. Swarn Kanta expired on 10.12.1994 and Shri Ram Lubhaya died in 1984. Smt. Rani died on 19.01.2007.

8. As per the case of the petitioners, since wife of the petitioner no. 1, Smt. Swarn Kanta was the adopted daughter of Shri Mela Ram, she became a co-owner of the property along with Smt. Rani, on the death of Shri Mela Ram on 16.06.1992.

9. As per the petitioners, after the demise of Smt. Swarn Kanta a Suit for Partition was filed by the petitioners against Smt. Rani claiming that Smt. Swarn Kanta had succeeded to 50% share of the estate of Shri Mela Ram being adopted daughter of Shri Mela Ram

and Smt. Rani.

10. As per the petitioners, Smt. Rani continued to hold possession of the subject property for and on behalf of Smt. Swarn Kanta after her demise for her and on behalf of the petitioners.

11. It is the case of the petitioners that on the demise of Smt. Rani on 19.01.2007 they came to the subject property for the purpose of mourning. The petitioners claimed to have continued in possession of the subject property till 31.01.2007 when they were forcibly dispossessed by the respondent.

12. Learned counsel for the petitioners submits that since the petitioners were in constructive possession of the subject property through Smt. Rani till her death and in physical possession from 19.01.2007 till they were dispossessed on 31.01.2007, they were entitled to restoration of possession of the subject property under Section 6 of the Specific Relief Act, 1963.

13. Per contra, the case of the respondent is that neither Smt. Swarn Kanta nor the petitioners were ever in physical possession of the subject property and even the adoption by Shri Mela Ram and Smt. Rani is disputed.

14. It is contended that the allegation that Smt. Swarn Kanta was adopted in 1947 prior to enactment of Hindu Adoption and Maintenance Act 1956 is ex facie not correct as there was no custom

of adoption of a female child prior to 1956 Act, and as such Smt. Swarn Kanta could never have been adopted in 1947.

15. However, without prejudice learned counsel for the respondent submits that since there was a dispute between Smt. Rani and the petitioners and she had disputed that Smt. Swarn Kanta was adopted by Shri Mela Ram and Smt. Rani or that she was an owner, there is no question of the possession of Smt. Rani being for and on behalf of Smt. Swarn Kanta or the petitioners.

16. Further, it is contended by learned counsel for the respondent that petitioners had come to the subject property only after the demise of Smt. Rani on 19.01.2007 for mourning and as per their case stayed till 31.01.2007 when they were dispossessed. Learned counsel submits that casual possession does not translate into a settled possession as required under Section 6 of the Specific Relief Act and the trial court has rightly held that since the petitioners have failed to show that they were in settled possession of the subject property, the suit filed by the petitioners has rightly been rejected.

17. Learned counsel further submits that Smt. Rani had transferred the subject property by execution of the sale documents in favour of the respondent and respondent had filed a suit for injunction against the petitioners based on the said documents in which a counter claim was filed by the petitioners challenging the said documents. It is submitted that the counter claim has been dismissed by a judgment of

the same date and petitioners have failed to appeal against the said judgment and as such the challenge of the petitioners to the title of the respondent has been decided in favour of the respondent and would operate as res judicata.

18. In the evidence affidavit filed by the petitioners before the trial court, petitioners have categorically contended that after the death of Smt. Swarn Kanta, petitioners had approached Smt. Rani for giving half share of the property to the petitioners but she did not agree to the same and accordingly a Suit for Partition was filed. It is further stated in the affidavit that Smt. Rani had permitted the respondent to occupy and live on the first floor of the subject property so that he may help her in living.

19. Perusal of the affidavit clearly shows that petitioners have not claimed that either Smt. Swarn Kanta or the petitioners were in physical possession of the subject property prior to 19.01.2007. Even post 19.01.2007, it is categorically stated in the affidavit that on the date of demise of Smt. Rani, the petitioners came to the ground floor of the suit property and the petitioner no. 2, Paras performed the last rites of Smt. Rani. Thereafter it is contended that last rites were performed and Pagri was tied on petitioner no. 2.

20. Perusal of the record shows that the claim of the petitioners is that petitioner came into physical possession of the subject property on 19.01.2007 and remained there till they were dispossessed on

31.01.2007. Even though the respondent disputed that petitioners were ever in physical possession of the suit property even for the said period. Even if assuming that petitioners were in possession of the subject property from 19.01.2007 till 31.01.2007, the same would not translate into a settled possession so as to entitle the petitioners a decree of restoration of possession under Section 6 of the Specific Relief Act.

21. Trial court, in the impugned judgment, has held that petitioners have not been able to show that they were ever in possession of the suit property through Smt. Rani.

22. Admittedly, there was a dispute between the petitioners and Smt. Rani and a Suit was pending with regard to the title in which Smt. Rani has contended that neither she nor her husband had ever adopted Smt. Swarn Kanta as their legal heir or that she had succeeded to the estate of her husband.

23. When on record there was a dispute pending between Smt. Rani and the petitioners, the contention of the petitioners that Smt. Rani was holding constructive possession even for them is not tenable. The petitioners have not been able to place on record anything to show that the petitioners had ever asserted that they were in constructive possession of the suit property through Smt. Rani. Petitioners have not been able to show any material on record that they were ever in physical possession of the suit property prior to death of Smt. Rani or

that Smt. Rani had accepted or acknowledged the constructive possession of Smt. Swarn Kanta or the petitioners.

24. The only contention of the petitioners is that petitioners have been in physical possession of the suit property for a period of 12 days. Even if assuming that petitioners had established that petitioners were in physical possession of the said property for 12 days. It does not help the case of the petitioners. Same does not translate into a settled possession.

25. Trial court in the impugned judgment had referred to the evidence of petitioner no. 4 Anju Bala. She has admitted that she was never in possession of the suit property.

26. Further, trial court has held that petitioners had gone to the subject property only for the purposes of performing last rites of Smt. Rani and to attend the relatives and visitors and not for the purposes of residing there and also not with the intention of retaining the possession of the suit property. Trial court has accordingly returned a finding that petitioners were never in possession of the subject property.

27. Supreme Court in *Poona Ram Versus Moti Ram* 2019 (2) SCALE 207 relying upon the judgment of the three judges' bench of the Supreme Court in *Rame Gowda Versus M. Varadappa Naidu* (2004) 1 SCC 769 has held as under:-

“13. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent or a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of animus possidendi. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case.”

28. Clearly petitioners had not been able to show that they were in settled possession or long possession of the suit property. There was a dispute between Smt. Rani and the petitioners. Petitioners had gone to the subject property on 19.01.2007 for the purposes of mourning and performing last rites of Smt. Rani and were allegedly dispossessed on 31.01.2007 (i.e. within 12 days). Possession of 12 days and that also for the purposes of mourning, attending to the guests and for performing the last rites cannot be held to be settled possession. It

cannot be held that the petitioners were ever in physical possession of the subject property for the purposes of settling in possession of the subject property.

29. Trial court has rightly held that petitioners have failed to establish that petitioners were in settled possession of the subject property and accordingly has rightly decided the issue against the petitioners and held that they were never in possession of the subject property or have been wrongfully dispossessed.

30. The contention of learned counsel for the petitioners, that trial has also returned a finding of ownership qua the property and thus has travelled beyond the mandate of Section 6 of the Specific Relief Act, is also not sustainable. It is observed that trial court has extracted certain paragraph of the judgment in the counter claim (referred to above) of the respondent and the reference is only for the purpose of dealing with the contention of the petitioners that Smt. Rani was holding possession of the subject property for and on behalf of the petitioners. Trial court has not in this case returned a finding of facts as to the ownership of the subject property. It has only referred to the judgment in the other suit which was filed by the respondent in which the counter claim had been filed by the petitioners and which counter claim has been dismissed.

31. For the purpose of record, it may also be noticed that petitioners have not challenged the judgment dismissing the counter claim filed

by the petitioner in the suit filed by the respondent.

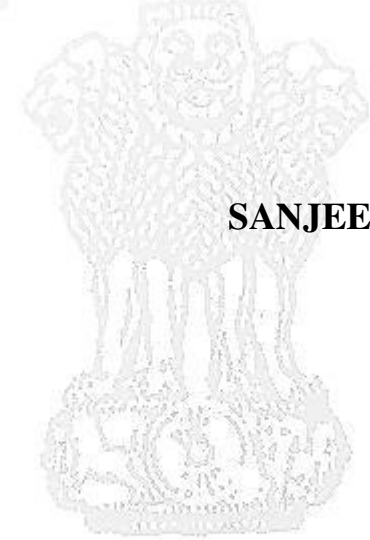
32. In view of the above, I find no infirmity in the view taken by the trial court that petitioners have not been able to establish that petitioners were in settled physical possession of the suit property or entitled to any relief of restoration of possession under Section 6 of the Specific Relief Act.

33. I find no merit in the petition. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

JANUARY 06, 2020

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