

\$~Suppl.-1

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

+ RFA (OS) 7/2021

BAL VIKAS SAMITI (REGD.)Appellant

Through: Mr. Jay Sahai Endlaw, Advocate

Versus

DELHI URBAN SHELTER

IMPROVEMENT BOARDRespondent

Through: Mr. Anuj Chaturvedi, Advocate

% Date of Decision: 02nd February, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 2270-2273/2021

Allowed, subject to just exceptions.

Applications stand disposed of.

RFA (OS) 7/2021 & CM APPL. 2269/2021

1. The appeal has been heard by way of video conferencing.
2. Present appeal has been filed challenging the order dated 13th October, 2020 passed by learned Single Judge of this Court dismissing the civil suit being CS (OS) No. 306/2020 as not maintainable. It is further prayed that the civil suit be registered, admitted and remanded back to the trial court for further proceedings.

3. While dismissing the suit, learned Single Judge has held as under:-

“7. Since the suit land was a dumping ground and was under the Slums and JJ Department of the Govt. of NCT of Delhi in the year 2010, a statutory body i.e. the defendant was created in terms of Section 3 of the Delhi Urban Shelter Improvement Board Act, 2010. Thus, all the functions, assets and liabilities of the Slums and JJ Department were taken over by the defendant. It is the admission of the plaintiff that due to the dispute between the management and staff, the school closed in the year 2010 and the recognition of the school was withdrawn by the Department of Education, East Delhi Municipal Corporation on 31st March, 2016 and the building is lying closed since April, 2016. The plaintiff claims that since the school was lying locked, a theft took place which was revealed in November, 2017 and thus, FIR was registered in this regard and thereafter, the plaintiff is seeking certified copies of all the documents which have been stolen in the theft. The plaintiff was issued a show cause notice on 17th January, 2019 and subsequent thereto, the proceedings are pending including the challenge by the plaintiff to the show cause notice by filing an appeal before the Appellate Authority i.e. the Lieutenant Governor, Delhi.

8. From the pleadings in the plaint itself, it is evident that the plaintiff does not specifically plead his possession of the suit property since 1970 and that an inference has to be drawn that the same was integrated with the adjoining land between the years 1983 to 2000 and as per the defendant, the damages have been levied from the year 1992. Hence, the plaintiff has neither been able to show the continuous possession of the suit land, hostile to the defendant and the said possession, if any, was in the garb of encroachment on the suit land with the adjoining land.

9. Dealing with the adverse possession relating to the Government land meant for public utility, the Supreme Court in Ravinder Kaur Grewal and Others (supra) held as under:-

"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".

10. Consequently, the plaintiff having not set out the necessary ingredients of a claim for adverse possession, the suit and application are dismissed as not maintainable."

4. Learned counsel for the appellant/plaintiff submits that the learned Single Judge failed to appreciate that the question of a person perfecting title by adverse possession being a mixed question of law and fact could have been decided only after evidence had been adduced.

5. He emphasizes that whether a plaintiff makes out a prima facie case or not, may be a consideration for grant or non-grant of interim relief, but insofar as the suit is concerned, it cannot be dismissed at the admission stage without issuance of summons.

6. Learned counsel for the appellant emphasises that the appellant/plaintiff had been in hostile uninterrupted possession of the suit property since 1970 and in support of his contention, he relies upon Audit Report dated 16th July, 2010, site plan dated 17th October, 1983 and the Press Note dated 15th November, 2003 of Sahara Time.

7. *Per contra*, learned counsel for respondent submits that the present suit is a counter blast to the notice dated 21st February, 2019 and the demand notice dated 22nd November, 2019 issued by the respondent. He states that other than the bald pleadings, there is no document in support of the contention of adverse possession advanced by the appellant/plaintiff.

8. Having heard learned counsel for the parties and having perused the paper book, this Court finds that the appellant/plaintiff had been allotted land admeasuring 3000 sq. yrd. in Trilokpuri, JJ Colony for running a school vide letter dated 13th September, 1983. One of the conditions stipulated in the said letter was :-

“5. *That the DDA reserve the right to cancel the allotment in the breach of terms and conditions and take action for removal of encroachment without any further opportunity and compensation.*”

9. This Court is of the opinion that had the appellant been in unauthorized possession of the additional land admeasuring 2008.54 sq. yards since 1970, as is being pleaded before this Court today, the appellant would not have been allotted even 3000 sq. yards land in Trilokpuri, JJ Colony in 1983, as the allotment then would be in violation of the basic condition stipulated in the allotment letter dated 13th September, 1983.

10. In any event, an essential ingredient of adverse possession is that the owner should not take care to know the ‘notorious facts’ and knowledge should be attributed to him on the basis that but for due diligence he would have known it. In view of clause 5 of the said

allotment letter, it is apparent that the respondent neither knew nor was informed of the alleged occupation of neighbouring land admeasuring 2008.54 sq. yards in 1983. This Court takes judicial notice that when land is allotted, the same is measured, its dimensions are marked and then handed over. Consequently, lack of due diligence can't be pleaded or alleged.

11. This Court also finds that it is not a case where the respondent did not take notice of the appellant's unauthorized occupation subsequently. In fact, it levied damages and issued notice dated 21st February, 2019 on the appellant/plaintiff alleging trespass by it on the land admeasuring 2008.54 sq. yards.

12. This Court is further of the view that the learned Single Judge has rightly observed in the impugned order that the notice/report dated 16th July, 2010 does not clarify whether the same was in relation to the suit land or adjoining land.

13. It is settled law that newspapers are second hand and secondary evidence. This Court is of the view that the newspaper report dated 15th November, 2003 cannot be relied upon to prove the plea of adverse possession as it is based on a 'self-serving' interview given by one of the members of the registered Society.

14. This Court has perused the site plan dated 17th October, 1983 and finds that it has been prepared by an alleged draftsman. It is not clear even to the counsel for the appellant/plaintiff as to at whose instance the said plan had been prepared and as to whether the draftsman was an employee of the plaintiff or the defendant.

15. This Court is of the view that till the demand notice dated 22nd November, 2019 and the notice dated 21st February, 2019, which have been challenged by the appellant, are quashed, the suit for adverse possession would not be maintainable.

16. In our view, the learned Single Judge has rightly pointed out that Courts have to be loath to confer the right by adverse possession vis-a-vis to property dedicated to public use. In the present instance, the occupied land in the site plan is shown as a dumping ground and even the school on the allotted 3000 sq. yards land is lying closed since April, 2016.

17. Consequently, this Court is of the view that no interference is called for in the impugned order. Accordingly, present appeal and application are dismissed.

MANMOHAN, J

ASHA MENON, J

FEBRUARY 02, 2021

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