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

+ CM(M) 1192/2021 & CM APPL. 46551/2021

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr. Sandeep Agarwal, Sr. Adv.
assisted by Mr. Tushar Sannu, Standing
Counsel for SDMC along with Mr. Pragi
Laal Officer, School Inspector, SDMC and
Ms. Neera, DDE, SDMC

versus

SMT. AMARJIT KAUR & ORS.

..... Respondents

Through: Advs. (appearance not
circulated)

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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08.04.2022

1. The Supreme Court has, in its recent judgment in *Rahul S Shah v. Jinendrakumar Gandhi*¹, bemoaned the fate of litigants who have, after struggling to get a decree from a court, to suffer many times over in getting that decree executed. The travails of the litigants, as the Supreme Court observes with dismay, commence *after* the decree is obtained. Such, indeed are the hardships that execution proceedings entail, that, often times, a litigant lives to see the award, but not the reward.

2. This appears to be a textbook case on the point.

¹ 2021 6 SCC 418



3. The respondent filed Suit 2463/2008, on 28th January, 1992, for recovery of possession of a piece of land admeasuring 200 Sq. Yds. bearing Municipal Number G-60, Shiv Nagar, Hari Nagar, Delhi, against the erstwhile Municipal Corporation of Delhi (MCD), and also claimed damages.

4. I may note, here, that with the trifurcation of the MCD, the land in question is now under the jurisdiction of the South Delhi Municipal Corporation (SDMC) which, accordingly, is the petitioner in this petition.

5. The MCD was running a primary school on the suit property which claims to have been in existence since 1959.

6. The learned ASCJ dismissed the aforesaid suit by judgment dated 13th March, 2009, holding that the respondents had failed to prove their title over the suit property, and that the MCD had perfected its title over the property by adverse possession.

7. The respondent appealed against the said decision dated 13th March, 2009 of the learned ASCJ to the learned Rent Control Tribunal (“the learned RCT”).

8. The judgment of the learned ASCJ was reversed by the learned RCT by judgment dated 2nd September, 2009. The learned RCT granted “a decree of possession in respect of land measuring 200 sq.



yds. bearing no. G-60, situated at Shiv Nagar, Hari Nagar, New Delhi” along with damages at the rate of ₹ 2000 per month with effect from the date of filing of the suit till the MCD vacated the suit property, and costs of ₹ 10,000/-.

9. The MCD appealed against the said judgment of the learned RCT before this Court by way of RSA 17/2010 which was dismissed by a learned Single Judge *vide* judgment dated 27th September, 2013.

10. The MCD, aggrieved by the dismissal of RSA 17/2010, preferred Civil Appeal 3391/2016 before the Hon’ble Supreme Court. By the following order dated 4th April, 2016, the Supreme Court disposed of the Civil Appeal:

“Civil Appeal No. 3391 of 2016

(@Petition(s) for Special Leave to Appeal (C)
No(s).14207/2015)

MUNICIPAL CORPORATION OF DELHI

.... Appellant(s)

Versus

AMARJIT KAUR & ORS.

....Respondent(s)

ORDER

Leave granted.

We have heard Mr. Sanjiv Sen, learned Senior counsel appearing for the appellant – Municipal Corporation of Delhi and Mr. S.K. Bhalla, learned counsel appearing for the respondents.

The central issue that arises for consideration is to whether the respondents – plaintiffs had been able to prove their title in the property in question. The trial court, on a



consideration of the evidence adduced by the respondents – plaintiffs, was of the view that the witness to the sale deed did not inspire confidence and, therefore, dismissed the suit.

The first appellate court, however, was of the view that the sale deed was a document, over 30 years old, and acted on the presumption in terms of Section 90 of the Indian Evidence Act, 1872 and declared the right, title and interest of the respondents - plaintiffs in the suit property and consequentially decreed their suit.

Mr. Sanjiv Sen, learned Senior counsel appearing for the appellant has urged that the High Court did not examine as to whether the sale deed of the respondents – plaintiffs had been proved in accordance with law and without such scrutiny has sustained the decision of the first appellate court.

In view of the above, on a perusal of the impugned judgment and order of the High Court, we are of the considered opinion that the matter ought to be remanded to the High court to answer the issue as to whether the respondents – plaintiffs had been able to prove their sale deed as required in law and on the basis thereof, adjudicate their right, title and interest in the suit property.

We accordingly remand the matter to the High Court on the above issue and request it to answer the same within a period of six months from today.

The appeal stands disposed in the afore-stated terms.”

11. Resultantly, RSA 17/2010 stood revived before this Court.

12. The matter came up before a learned Single Judge of this Court, consequent to remand by the Supreme Court, on 4th April, 2016. Paras 7,8, 13, 14 and 24 to 32 of the order passed by the learned Single Judge of this Court on 4th July, 2018 in the remand proceedings read thus:



“7. The respondents / plaintiffs instituted the suit, from which this appeal arises, pleading (i) that the respondents/plaintiffs are the owners of a piece of land ad-measuring 200 sq. yds. (30” x 60”), bearing Municipal No.G-60, situated in Hari Nagar, of village Tihar, District Delhi now known as Shiv Nagar, Hari Nagar, New Delhi by virtue of a sale deed registered on 14th June, 1957 vide No.1627, Book No.1, Volume No.74, Pages No.381 to 383 at the Sub-Registrar Office, Delhi; (ii) that the respondents / plaintiffs have been in actual physical possession of the aforesaid land and raised boundary wall around the same; (iii) that the appellant / defendant wrongfully, illegally and without the consent of the respondents / plaintiffs occupied the said piece of land, somewhere in the year 1970, and raised some temporary structure thereon; and, (iv) that the appellant/defendant is in unauthorized occupation of the property.

8. The appellant / defendant contested the suit, as per its amended written statement dated 3rd August, 2000, pleading (a) that the respondents / plaintiffs have no right, title or interest in the property; (b) that the respondents / plaintiffs had submitted a fake sale deed before the Court; (c) that the respondents / plaintiffs never got possession of the disputed property, so the sale deed could not be executed in favour of the respondents /plaintiffs; (d) that the appellant / defendant is the owner of the property and M.C. Primary School, Shiv Nagar, Hari Nagar, Delhi has been running on the said property since 1959, without any interruption or hindrance of any kind from any person; (e) that the appellant / defendant became the owner of the said property by way of adverse possession since 1971; (f) that the suit is barred by Section 41(h) of the Specific Relief Act; (g) that the Civil Court has no jurisdiction to entertain the suit as the respondents / plaintiffs have to seek demarcation of the land before the SDM and to seek a remedy before the SDM; (h) that the respondents / plaintiffs are not the owners of the suit land; (i) that the respondents / plaintiffs had not given any khasra number or girdawari of the suit land and the subject property does not bear the Municipal Number G-60; and, (j) that the site plan filed by the respondents / plaintiffs is wrong.

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13. The counsel for the appellant / defendant today also started her arguments by taking up the plea that the appellant / defendant is admittedly in possession of the property since 1959 and the suit filed in the year 1992 i.e. after 33 years, was barred by time.

14. Not only is the aforesaid contention contrary to the direction issued by the Supreme Court while remanding this Second Appeal but the counsel for the appellant / defendant also, on enquiry, whether it is open to the appellant / defendant as “State” within the meaning of Article 12 of the Constitution of India, to set up a plea of adverse possession, has fairly stated that the appellant / defendant is not arguing on the basis of adverse possession or of the suit claim being barred by time.

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24. A perusal of the testimony of PW1, being one of the respondents / plaintiffs and PW2 Tirath Singh aforesaid who only have deposed about the sale deed however does not show that the original sale deed was produced before the Court at any point of time.

25. The counsel for the respondents / plaintiffs also admits that the original was never produced before the Court and only the certified copy was produced before the Court.

26. I have thus enquired from the counsel for the respondents / plaintiffs as to where is the original sale deed.

27. The counsel for the respondents / plaintiffs states that the original sale deed was / is not available with the respondents / plaintiffs.

28. The respondents / plaintiffs did not examine any witness from the office of the Sub-Registrar and did not have the record of the Sub-Registrar containing the document of which certified copy has been issued, provided before the Court.

29. The counsel for the respondents / plaintiffs has drawn attention to Section 68 of the Evidence Act, particularly to proviso thereof, to contend that where the document as a sale deed is registered, the production of the certified copy alone



can be enough. It is further argued that though the appellant / defendant in its written statement contended that the sale deed is vague, forged and fabricated, but did not deny the execution by Mayawati thereof. It is contended that thus, the execution of the sale deed has not been specifically denied within the meaning of proviso to Section 68. Reliance in this regard was placed on State of Haryana Vs. Ram Singh IV (2001) SLT 427, Land Acquisition Officer and Mandal Revenue Officer Vs. Narasaiah 2001 II AD (SC) 502, Vedachala Chettiar Vs. Ameena Bi Ammal AIR (31) 1944 Madras 121, Gobinda Vs. Chanan Singh AIR 1933 Lahore 378, and, Kadiya Umma Vs. Mayankutty AIR 1992 Kerala 261.

30. I am unable to agree. The appellant / defendant in its written statement having taken the plea of the sale deed being forged and fabricated and the Supreme Court having remanded the appeal for hearing only to adjudicate about the proof of the sale deed, the factum of original sale deed being not before the Court and being not with the respondents / plaintiffs also, assumes significance.

31. It is deemed appropriate to enquire into this aspect.

32. The Sub-Registrar-II, Kashmere Gate, Delhi, by whom the certified copy Ex.PW1/1 has been issued on 5th June, 1992, is directed to, on the next date of hearing, produce before this Court the record relating to registration of document No.1627, in Additional Book No.1, Volume No.74 at pages 381 to 383 on 14th June, 1957. 33. The appellant / defendant to depute an officer to collect the dasti summons for production of the document aforesaid from this Court and to ensure service and compliance therewith. If the record is not at the office of Sub-Registrar-II, Kashmere Gate, Delhi, the person in custody of the said record, wheresoever else it may be, is also directed to produce the same.”

13. The matter next came up before the learned Single Judge on 1st August, 2018. The learned Single Judge noted that the Record Keeper, Sub-Registrar-II, Kashmere Gate was present in court and had produced the record relating to the registration of the concerned sale deed and certified copy of the document which was taken on record



and exhibited.

14. In paras 5 and 6 of the judgment of the learned Single Judge, passed on the said date, it is specifically noted thus:

“5. I have next enquired from the counsel for the appellant/defendant, whether the appellant/defendant has got verified at the spot that the sale deed is of the subject property.

6. The counsel for the appellant/defendant states that on spot verification has been done and the sale deed aforesaid relates to the suit property.”

15. Clearly, therefore, the MCD made a specific statement before this Court that spot verification had taken place, on the basis of which it was verified that the sale deed relates to the suit property.

16. Having noted thus, the learned Single Judge proceeded to dismiss RSA 17/2010 a second time, holding thus:

“7. I have already, in the order dated 4th July, 2018 reproduced hereinabove, recorded the state of oral evidence led in the appeal with respect to the sale deed. The argument of the appellant/defendant, which prevailed with the Hon’ble Supreme Court which remanded the matter with direction to adjudicate the appeal afresh, was that the sale deed had not been proved in accordance with law.

8. The First Appellate Court has in this regard relied upon on Section 90 of the Evidence Act, 1872 and having personally examined the record produced from the office of the Sub-Registrar, I am satisfied of the registration of the sale deed and the First Appellate Court has found to have correctly invoked Section 90 of the Evidence Act, 1872.

9. I may mention that mere possession/occupation of an immovable property, for howsoever long, does not divest the owner from the right to sue for recovery of possession thereof.



Supreme Court, in Sant Lal Jain Vs. Avtar Singh (1985) 2 SCC 332 followed by this Court in Prabhu Dayal Vs. Roop Kumar AIR 2005 Del 144 (DB), held that mere possession of the property, for howsoever long, does not vest any title. The suit for recovery of possession, from which this appeal arises, was on the basis of title and the limitation therefor provided in Article 65 of the Schedule to the Limitation Act, of 12 years, commences from the date when possession of the defendant becomes adverse to the plaintiff. The appellant/defendant, as has already held in order dated 4th July, 2018, being a state within the meaning of Article 12 of the Constitution of India, is not entitled to take the plea of possession adverse to the citizen of the state and it thus has to be held that the suit was not barred by time.

10. Else, the respondent/plaintiff has been found to be the owner of the property vide the sale deed aforesaid.

11. Thus, no substantial question of law arises for adjudication in this Second Appeal under Section 100 of the CPC, which is again dismissed.

12. The record of a Sub-Registrar requisitioned has been returned to Mr. Anoop Singh.

Decree sheet be drawn up”

17. The MCD (by then the SDMC) carried the matter yet again to the Supreme Court by way of SLP(C) 29233/2018, which assailed the judgment dated 1st August, 2018 supra of the learned Single Judge in RSA 17/2010.

18. The Supreme Court dismissed the SLP on 13th November, 2018 by the following order:

“The Special Leave Petition is dismissed.

Pending applications, if any, stand disposed of.

However, looking to the fact that the petitioner is running



a primary institution in the property in question, the petitioner shall be allowed to retain the possession of the premises till the end of the academic session 2018-2019 subject to an undertaking being filed by the petitioner before the executing court to the effect that the petitioner shall handover vacant possession to the respondents immediately after the end of the academic session 2018-2019.”

19. If the respondent was naive enough to believe that his travails have ended, with the Supreme Court having lend its imprimatur to the directions to hand over, to him, the suit property, he was to find himself sadly mistaken.

20. The respondent, thereafter, filed Execution 62877/2016 before the learned ASCJ, for execution of the judgment and decree dated 13th March, 2009. In these execution proceedings, for the first time, 23 years after the suit had been filed and 22 years after the suit had been decreed in favour of the respondent, the SDMC raised a ground that the suit property was not identified. The learned ASCJ, *vide* order dated 8th November, 2021, stated that there was no difficulty in identifying the suit property and, therefore, directed warrants of attachment to be issued in respect of the suit property admeasuring 200 Sq. Yds bearing no. G-60, situated at Shiv Nagar, Hari Nagar, New Delhi.

21. Consequent to a report from the Bailiff, this direction stands reiterated in the impugned order dated 13th December, 2021.

22. The SDMC has now approached this Court under Article 227 of the Constitution of India, assailing the impugned order. The sole



ground urged by Mr. Aggarwal, learned Senior Counsel for the petitioner, is that without demarcating the land, it would not be possible to identify the property which is required to be handed over to the respondent.

23. To my mind, this contention is completely unacceptable in the facts of the present case. The suit was filed by the respondent in 2008. It was dismissed in 2009. The appeal against the dismissal was allowed by the learned RCT and the suit was accordingly decreed on 2nd September, 2009. The decree was affirmed by this court on 27th September, 2013. The matter was carried to the Supreme Court which, *vide* order dated 4th April, 2016, remanded the matter only for the court to examine whether the respondents had been able to establish to their share to the suit property. This aspect has been held in favour of the respondents by this Court by judgment dated 1st August, 2018, in the remand proceedings. The SLP preferred against that order also stands dismissed by the Supreme Court on 13th November, 2018. While dismissing the SLP, the Supreme Court had noted the fact that the petitioner was running a primary institution in the suit property and, keeping in view the said fact, permitted the petitioner to retain possession of the premises till the end of that academic session in 2019, subject to an undertaking to be filed by the petitioner before the executing court, to the effect that the petitioner would hand over the vacant possession to the respondent, *immediately after end of the academic session 2018-19*.

24. It is a sad commentary on the process of justice in this country



that, after such an order having been passed by the highest Court in the land, the respondent has had to wait for a further three years, and is yet to obtain possession of the suit property.

25. No plea, that the property was not identifiable and was required to be demarcated before its possession could be handed over to the respondent, was, apparently, taken at any stage despite the matter having travelled twice to the Supreme Court. In fact, in the very first paragraph of the objections filed by the petitioner, in response to the execution proceedings initiated by the respondents consequent to the aforesaid order of the Supreme Court, the petitioner states that “it was always willing to hand over the possession of the alleged plot no. G-60, Shiv Nagar, Hari Nagar, New Delhi to the decree holder and there is no resistance from the SDMC in this respect”.

26. The contention that the land to be handed over was not identifiable and that, unless it was demarcated, the respondent could not obtain any benefit of the litigation that the respondent has had to pursue over two and half decades as on date, cannot, in my view, be accepted at all.

27. There is no reason for this Court to interfere with the impugned order passed by the learned ASCJ.

28. This petition is accordingly dismissed.

29. Given the travails that the respondent has had to suffer over two



and half decades and the sentiments expressed by the Supreme Court in its judgment in ***Rahul S Shah***¹, I was initially inclined to award costs. However, keeping in mind the fact that the petitioner is a Municipal authority and any costs awarded would ultimately percolate down to the common man, I am refraining from doing so.

C. HARI SHANKAR, J.

APRIL 8, 2022

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