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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on 14.08.2023**Pronounced on : 18.08.2023*

+ RSA 150/2023 & CM APPL. 41587/2023(stay)

RATTAN LAL & ANR.

..... Appellants

Through: Mr. C.S. Parashar, Advocate
along with Mr. Unnat Parashar,
Advocate

versus

RAGUNATH

..... Respondent

Through: None.

CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J**

1. This second appeal impugns the judgment dated 12.05.2023 passed by the ADJ-03, North West District, Rohini Courts, Delhi ('First Appellate Court') in RCA DJ No. 83/2017, upholding the judgment dated 19.08.2017 passed by the ACJ - cum - ARC, North West District, Rohini Courts, Delhi ('Trial Court') in New Suit No. 59521/2016, whereby the Trial Court granted the decree of possession and mandatory injunction in favour of plaintiff and against the defendants with respect to the suit property i.e. property No. E-515, Mangolpuri, Delhi ('suit property').

1.1. The Appellants herein are defendants and Respondent herein is the plaintiff in the civil suit. The civil suit was filed by the plaintiff seeking relief of possession and permanent and mandatory injunction. The Appellants are married to each other. The Appellant No. 1 and Respondent are brothers.



2. The Trial Court in its judgment dated 19.08.2017 has returned a finding that Respondent has proved his ownership over the suit property and is, therefore, entitled to the relief of possession against the defendants. The First Appellate Court as well has, after appraising the evidence, concluded that the initial owner of the suit property was Smt. Munni Devi and the suit property has been purchased by the plaintiff i.e., Respondent herein, from Smt. Munni Devi in the year 1982. The First Appellate Court also concluded that the Respondent has been able to prove his proper title over the suit property.

Arguments of the counsel for the Appellants

3. Learned counsel for the Appellants states that the Courts below have relied upon the General Power of Attorney ('GPA'), Agreement to Sell and affidavit, all dated 02.12.1982, filed by the Respondent to show his title to the suit property.

3.1. He states that the said documents are forged and fabricated and the Appellants herein do not admit to the genuineness of the said document.

3.2. He states that no objection with respect to the mode of proof was raised when the said documents were tendered in evidence by the Respondent. He states that however, the absence of such an objection and the mere exhibition of the said document cannot dispense with the obligation of the Respondent to prove the said documents.

3.3. He states that there was no evidence on record for the Courts below to conclude that the said documents have been proved in accordance with law. He states that the originals of the said documents were not produced before the Trial Court, no witnesses of the said documents were examined and the signatures of the vendor were not identified in the manner prescribed in law. He relies upon the suggestion given to the Respondent i.e., PW-1, during the



cross-examination to contend that the documents are forged and fabricated.

3.4. He states that the Respondent in the plaint had alleged that the Appellants herein were inducted as licensees in the year 2008. He states that, however, a perusal of the cross-examination of PW-1 shows that plea of the Respondent is false.

3.5. He states that the Respondent in the cross-examination has admitted that the Appellants herein have been in uninterrupted and continuous possession of the suit property for at least twenty-four (24) years. He states that it is admitted that the Appellants herein constructed a portion of the first floor with their own funds. He states that the Appellants reasonably believe that the suit property was purchased by the father of the Appellant No. 1 and Respondent and is a joint family property.

3.6. He states that the Appellants are not aware as to who was the recorded owner of the suit property. He states that on account of continuous and uninterrupted possession of the Appellants, they have become owners by adverse possession. He states that even in the absence of a specific pleading on adverse possession by the Appellant, the Courts below should have considered the said plea. In this regard he relied upon judgment of the Supreme Court in *Nazir Mohamed vs. J. Kamala & Ors., (2020) 19 SCC 57*.

3.7. He states that the Trial Court erred in permitting the Respondent herein to tender in evidence, photocopies of the GPA, Agreement to Sell and affidavit. He states that no leave was sought from the Court as per the mandate of Section 65 of the Indian Evidence Act, 1872, and therefore, the reliance placed on the said document is contrary to law. In support of the said submissions, he relies upon the judgment of the Supreme Court in *H. Siddiqui (dead) by LRs v. A. Ramalingam, (2011) 4 SCC 240*.



Analysis and Findings

4. This Court has heard the learned counsel for the Appellants and perused the record.

5. The Trial Court *vide* impugned judgment dated 19.08.2017 has returned a finding that the Respondent is the owner of the suit property. While returning the said finding, the Trial Court has relied upon the GPA, Agreement to sell and affidavit, all dated 02.12.1982, executed by the vendor (i.e., Smt. Munni Devi) in favour of the Respondent, which documents have been exhibited as PW-1/2 (colly). The Trial Court also relied upon the fact that admittedly, the electric meter and the water meter in the suit property stand in the name of the Respondent. The Trial Court further referred to the possession slip (Ex. PW-1/5) and the licence fee deposit slip (Ex.PW-1/6) issued in favour of the original allottee, Smt. Munni Devi, by Delhi Development Authority ('DDA') and produced from the custody of the Respondent. Smt. Munni Devi, as noted above is the vendor who executed the Agreement to sell in favour of the Respondent. The finding of the Trial Court in this regard reads as under: -

"Per contra, the plaintiff has proved his ownership on the basis of customary documents i.e. GPA, Agreement, Affidavit which are Ex. PW1/2 (Colly). The electricity connection is also admittedly in his name. The electricity bill has also been placed on record. The said property has been purchased from Ms. Munni Devi. The possession slip in favour of Ms. Muni who was the original allottee has been proved as Ex.PW1/5 and the copy of license fee deposited by her vide document dt. 30.05.1977 has been proved as Ex.PW1/6. As such the plaintiff has been able to prove his ownership over the suit property on the basis of documents as discussed above. The utility bills i.e. of electricity and water are also in his name and having proved in evidence as Mark-D and Mark-F."

(Emphasis Supplied)

5.1. The Appellant No.1 examined himself as DW-2 and was cross-examined on 08.03.2017. The Appellant No.1 during cross examination



admitted that the suit property was purchased in the year 1982 from Smt. Munni Devi (i.e., the vendor). The identity of the vendor was thus, admitted by the Appellants.

5.2. Further, the Appellant No. 2, who examined herself as DW-1 admitted in her cross-examination that she does not have in her possession any documents, which would evidence that the suit property was purchased from Smt. Munni Devi by the father of Appellant No.1 i.e., late Sh. Agan Lal along with the elder brother of Appellant No.1 i.e., late Sh. Naroti Lal. Thus, the defence set up in the written statement that the property was purchased in the name of late Sh. Agan Lal and late Sh. Naroti Lal, has not been proved by the Appellants. The findings of the First Appellate Court to this effect have been recorded at paragraph 15 of the impugned order, which reads as under: -

“At the cost of repetition, the defendants have alleged that the suit property was purchased by Sh. Agan Lal and Sh. Naroti Lal. The onus to prove this fact was upon the defendants, which has not been discharged. Further, admittedly the documents Ex.PW-1/2 are unregistered but as there is no document in favour of the defendants or Sh. Agan Lal and Sh. Naroti Lal, the plaintiff has a better title over the suit property.”

(Emphasis Supplied)

5.3. Thus, in the facts of this case, the Appellants do not dispute that Smt. Munni Devi was the original allottee and the suit property was sold by her. The Appellants are merely disputing that the suit property was sold to the Respondent herein, however, the same is a bald plea as the Appellants have not placed on record any documents of purchase of the suit property in favour of late Sh. Agan Lal and late Sh. Naroti Lal.

6. Secondly, the Appellants set up a defense in the written statement that the sale consideration, which was paid to the vendor i.e., Smt. Munni Devi, was paid by the father of the Appellant No.1. However, the First Appellate Court after perusing the evidence of Appellant No. 1, i.e., DW-2, has returned



a finding of fact that the said plea of the Appellant No. 1 was improbable in the facts of the case and further, the said plea could not be proved by the Appellants. The finding of the First Appellate Court in this regard reads as under: -

“16. Furthermore, perusal of the cross examination of the defendant no.1 as DW-2 shows that he admitted in his cross examination that: -

“At that time, my father was of old age being 50 years of age and he did not keep well. It is correct that my elder brother Sh. Raghu Nath use to work and maintain his family. Vol. We used to work together.....

It is correct that the suit property was purchased in the year 1982. I cannot say whether the suit property was purchased in the year 1982 in the exclusive name of Sh. Raghu Nath. The suit property was purchased from one Ms. Munni Devi....”

17. Hence, the defendant has admitted that at the relevant time, his father was not working. He has admitted that the plaintiff was working and was maintaining his family. He has admitted that the property was purchased in the year 1982 from Smt. Munni Devi. It may be mentioned that the documents which have been executed in the favour of the plaintiff are also of the year 1982 and they have also been executed by the original allottee Smt. Munni Devi. At the cost of repetition, no other document is on record qua the suit property. Hence, it can be presumed that he had no contribution towards the purchase of the suit property. As the documents are in the favour of the plaintiff and defendant no. 1 has admitted the year and the seller of the same, the plaintiff is entitled to the benefit of the same. The Ld. Trial Court has correctly held that the plaintiff has proved his ownership on the basis of these documents.”

(Emphasis Supplied)

6.1. The inference that can be drawn from the aforesaid findings of the First Appellate Court is that as per the evidence, the sale consideration was paid to the vendor by the Respondent herein. Before this Court, as well the Appellants have not contended that there is any proof of payment of sale consideration by the father of Appellate, late Sh. Agan Lal and elder brother of Appellant, late Sh. Naroti Lal.

7. The learned counsel for the Appellant has not impugned any of the



aforenoted concurrent fact findings of the Trial Court and First Appellate Court during the course of the arguments.

8. The Appellants having failed to prove their defense before the Trial Court, raised a new plea before the First Appellate Court that the originals of documents exhibited by the Respondent as Ex.PW-1/2 (colly) to prove his proprietary title, were not produced by the Respondent before the Trial Court. This issue/objection was admittedly not raised at any stage before the Trial Court and the said documents were admitted to evidence and duly exhibited. It is a settled law that objection of mode of proof, if not raised at the time of tendering of the evidence, cannot be raised by a party subsequently and more specifically for the first time in appeal. In this regard, the Supreme Court in ***Lachhmi Narain Singh (D) Through LRs & Ors. v. Sarjug Singh (Dead) Through LRs & Ors., 2021 SCC OnLine SC 606***, has held as under:

*“25. In view of the foregoing discussion, it is clear **that plea regarding mode of proof cannot be permitted to be taken at the appellate stage for the first time, if not raised before the trial Court at the appropriate stage.** This is to avoid prejudice to the party who produced the certified copy of an original document without protest by the other side. If such objection was raised before trial court, then the concerned party could have cured the mode of proof by summoning the original copy of document. But such opportunity may not be available or possible at a later stage. Therefore, allowing such objection to be raised during the appellate stage would put the party (who placed certified copy on record instead of original copy) in a jeopardy & would seriously prejudice interests of that party. It will also be inconsistent with the rule of fair play as propounded by Justice Ashok Bhan in the case of *R.V.E. Venkatachala (Supra)*.”*

(Emphasis Supplied)

8.1. This Court, therefore, finds that the dispute raised to the documents exhibited as Ex.PW-1/2 (colly) is a bald plea. The Appellants have no basis for disputing the said documents. They have not led any evidence which would raise doubt on the veracity of the said documents and as noted above, the Appellants in fact admit that the vendor is Smt. Munni Devi. Further, as



noted above, the Respondent has also produced the possession slip (Ex. PW-1/5) and license fee deposit slip (Ex. PW-1/6) issued in favour of the vendor by DDA. The custody of the said documents with the Respondent coupled with documents exhibited as Ex. PW-1/2 (colly) substantiate the plea of the Respondent that the suit property was purchased by him.

8.2. With respect to the stage of raising an objection to the admissibility of the documents, the Supreme Court in its another decision of ***R.V.E Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr., (2003) 8 SCC 753***, has held that an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The Supreme Court, more specifically in case of objection with respect to the ‘mode of proof’, has held that the objection should be taken when the evidence is tendered. The Supreme Court further held that once the document has been admitted in evidence and marked as an exhibit, the objection qua admissibility cannot be allowed to be raised at any stage subsequent to the marking of document as an exhibit. The relevant extract of the judgment in ***R.V.E Venkatachala Gounder*** (Supra) reads as under:

20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection



*should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. **Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence.** In the first case, acquiescence would be no bar to raising the objection in a superior court.*

(Emphasis Supplied)

9. Therefore, the submission of learned counsel for the Appellant that the photocopies of GPA, Agreement to Sell and receipt are not admissible as Ex.PW-1/2 as provisions of Section 65 of the Evidence Act, 1872 were not followed by the Trial Court, is not maintainable at the stage of first appeal.

9.1. This Court is of the opinion that this plea is an off-shoot of the plea already discussed hereinabove. As noted hereinbefore the Appellants have not disputed the admissibility of the said documents at the stage of their tendering by PW-1 and this plea of mode of proof was raised only for the first-time during appeal. The Appellants permitted the documents to be exhibited and relied upon during the final arguments without any demur. It was only after the Appellants suffered the judgment of the Trial Court that the plea of non-



production of originals was raised for the first time in the first appeal. In the facts of this case, no reliance can be placed by the Appellants on the decision of the Supreme Court in *H. Siddiqui* (Supra) as the documents were admitted in evidence and exhibited without any objection by the Appellants.

9.2. Thus, this Court is of opinion that the objection to the documents exhibited as Ex.PW-1/2 on the ground of 'mode of proof' in a second appeal does not give rise to a substantial question of law. The law in this regard is well settled by the Supreme Court as noted hereinbefore and the Trial Court has committed no error, since no objection was raised.

10. With respect to the plea of adverse possession raised during the course of arguments before this Court, it is an admitted fact that the Appellants herein did not set up a plea of adverse possession in their written statement. They have, in fact, categorically admitted that electric meter and water meter installed in the premises stand in the name of the Respondent; and that they used to pay the cost of the electricity drawn, in cash to the Respondent for payment of the bills.

10.1. No particulars for setting up and substantiating the claim of adverse possession have been set out in the pleadings or in the evidence led by the Appellants as DW-1 and DW-2. Thus, since no plea of adverse possession has been raised, the same was not adjudicated upon by the Trial Court. The Appellants, in fact, have set up a plea of co-ownership in the written statement and raised the plea of continuous possession of a portion of the suit property for a long period. The plea of co-ownership raised by the Appellants is inconsistent with the plea of adverse possession.

11. The Supreme Court in the judgment of *Uttam Chand (dead) through LRs v. Nathu Ram (dead) through LRs & Ors, (2020) 11 SCC 263*, while



referring to its previous judgments has held that person/defendant claiming title by adverse possession has to prove who is the true owner of the property. The relevant extract of the judgment in ***Uttam Chand*** (Supra) reads as under:

*“11. In T. Anjanappa [T. Anjanappa v. Somalingappa, (2006) 7 SCC 570], this Court has set aside the finding of the High Court that the defendants claiming adverse possession do not have to prove who is the true owner. **If the defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise....**”*

*12. In Kurella Naga Druva Vudaya Bhaskara Rao [Kurella Naga Druva Vudaya Bhaskara Rao v. Galla Jani Kamma, (2008) 15 SCC 150], the payment of tax receipts and mere possession for some years was found insufficient to claim adverse possession. **It was held that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient.**”*

(Emphasis Supplied)

The Appellants in this case have not admitted to the exclusive ownership of the Respondent and therefore, they are precluded from raising the plea of adverse possession against the Respondent.

11.1. Even before this Court, the Appellants during oral arguments, took a stand that they are not aware, who is the true owner of the suit property as on date.

11.2. Therefore, the plea of adverse possession raised by the Appellants as a new plea in first appeal is inconsistent with the case setup in the written statement and the trial. In law, the Appellants are precluded from taking the said plea in view of the decision of the Coordinate Bench of this Court in ***Bharat Bhushan Jain & Anr. v. UOI & Ors., 2014 SCC OnLine Del 3577***, wherein this Court has held that the plea of ownership by title and adverse ownership cannot be raised together being inconsistent and mutually destructive. The plea of adverse possession is a question of fact and cannot be raised in appeal only on the basis of prolonged possession of suit property in



the absence of the proof of the other ingredients necessary for proving the said defense including the fact that the possession was hostile to the true owner of the property. In this regard, it would be instructive to refer to the decision of Supreme Court ***Government of Kerala & Anr. v. Joseph & Ors., 2023 SCC OnLine SC 961***, wherein the Supreme Court has settled the law as under:

“31. Possession must be open, clear, continuous and hostile to the claim or possession of the other party; all three classic requirements must coexist- nec vi , i.e., adequate in continuity; nec clam , i.e., adequate in publicity; and nec precario, i.e., adverse to a competitor, in denial of title and knowledge.....

32. The person claiming adverse possession must show clear and cogent evidence substantiate such claim;

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35. Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;

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37. Such clear and continuous possession must be accompanied by animus possidendi - the intention to possess or in other words, the intention to dispossess the rightful owner;.....

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6. A plea of adverse possession must be pleaded with proper particulars, such as, when the possession became adverse. The court is not to travel beyond pleading to give any relief, in other words, the plea must stand on its own two feet.

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49. Claim of independent title and adverse possession at the same time amount to contradictory pleas. The case of Annasaheb Bapusaheb Patil v. Balwant (two-Judge Bench) elaborated this principle as:.....

51. The Court in Uttam Chand (supra) has reiterated this principle of adverse possession.

52. Burden of proof rests on the person claiming adverse possession.

56. In the instant facts, for the respondents to be granted the enjoyment of the disputed property, clear, continuous and hostile possession would have to be established by way of cogent evidence and the animus possidendi must be demonstrated. We now proceed to examine whether these requirements are met with in the present case.”

(Emphasis Supplied)



11.3. Therefore, in the opinion of this Court the First Appellate Court has rightly concluded at paragraph 14 of the judgment that the Appellants cannot be permitted to raise the plea of adverse possession for the first time in appeal. The relevant extract of the impugned judgment reads as under: -

“14. The defendants have taken this objection in the appeal that no title passes in the favour of the plaintiff as the documents are unregistered. It is also argued that the property was purchased by the father of the parties and Sh. Naroti Lal. However, the defendants have not placed on record any documents to prove this fact. It is only a mere oral allegation. As the parties are related to each other, the fact that the defendants were residing in the suit property is not surprising. It is not understandable that the parties may have been residing together, no matter whose title over the same prevails. However, mere possession shall not grant a title in favour of the defendants, no matter how long the possession is, unless a defence of adverse possession was taken, which has not been taken in the present case. Hence, the fact that the defendants have been in possession of the property since 24 years is of no consequence.”

(Emphasis Supplied)

12. In view of the aforesaid, this Court finds that there is no substantial question of law raised in the present appeal and the same is accordingly dismissed. The pending application(s) also stands disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 18, 2023/mr/aa