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

+ **EFA(OS) 11/2023 & CM APPL. 46695/2023**

SHRI ATUL CHANDER PAUL & ANR.

..... Appellants

Through: Mr. Inderbir Singh Alag, Sr. Adv.
with Mr. Pawash, Mr. Kunal Lakra
and Mr. Vinayak Uniyal, Advocates

versus

SMT. SATISH PAUL & ORS.

..... Respondents

Through: Mr. Arvind Chaudhary, Advocate for
R-1&3 (appeared through VC)
Mr. Shivam Goel and Mr. Akash
Katiyar, Advocates for R-2 and 4.
Mr. Sanjeev Mahajan, Mr. Aman
Sareen and Mr. Nishant Pathak,
Advocates for R-5.

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Date of Decision: 14th September, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed against the order dated 23rd March, 2023 passed by the learned Single Judge in *Ex. APPL. (OS) 390/2022* in *Execution Petition No. 50/2021*. By way of the impugned order, the learned Single Judge has dismissed the objections preferred by appellants herein to the execution proceedings instituted in respect of a final decree of partition dated 05th November, 2019 pertaining to property bearing no. R-496, New Rajender Nagar, New Delhi ('suit property').



2. The facts as canvassed by the appellants are as follows:
- 2(i) The suit property was originally applied for in the name of late Sh. Ram Bheja Mal, as a displaced person in lieu of the properties left by the family in Pakistan after partition. The said late Sh. Ram Bheja Mal expired prior to the allotment/registration of the suit property in his name. His three sons, namely, late Sh. Prakash Chander Khetrapal, late Sh. Jagdish Chander Paul and late Sh. Ramesh Chander Paul jointly contributed funds to acquire the suit property. After the demise of their father, late Sh. Ram Bheja Mal, it was decided that the suit property would be acquired in the name of late Sh. Jagdish Chander Paul. Thus, the suit property was allotted in the name of late Sh. Jagdish Chander Paul, and perpetual lease deed dated 30th June, 1960 was executed in his favour.
- 2(ii) The suit property at the time of its allotment comprised of part built up portion on the ground floor. Subsequently, by contribution of funds by all the three brothers, the extended ground floor, entire first floor and barsati floor were constructed over a period of time. Father of the appellants, late Sh. Ramesh Chander Paul, made payments for construction of the entire first floor of the suit property.
- 2(iii) Ever since the suit property was purchased, late Sh. Ramesh Chander Paul was in joint possession with the other two brothers, namely, late Sh. Prakash Chander Khetrapal and late Sh. Jagdish Chander Paul. Thus, when the construction of the suit property was completed sometime in the year 1962, the first floor of the said property came into the possession of late Sh. Ramesh Chander Paul, father of appellants.



- 2(iv) Late Sh. Jagdish Chander Paul expired on 20th August, 1980. Late Sh. Prakash Chander Khetrapal remained unmarried and he died intestate without leaving any Will in the year 1995.
- 2(v) Late Sh. Ramesh Chander Paul, father of appellants, retired from service on 30th November, 1981, and he along with his family, i.e., his wife and his children, i.e., the appellants herein, shifted in the first floor of the suit property on 05th October, 1981. Late Sh. Ramesh Chander Paul expired on 09th December, 2003 and after his demise his wife and children, i.e., appellants herein continued to be in exclusive possession of the first floor of the suit property.
- 2(vi) Mother of the appellants expired on 24th June, 2020 and after her death, the appellants continued to be in exclusive possession of the first floor of the suit property.
- 2(vii) Though the respondents who are the decree holders and judgment debtors in the suit, were well aware of the fact that appellants are in continuous and uninterrupted possession of the first floor of the suit property, the decree holder filed a suit for partition of the suit property in collusion with the judgment debtors. The suit for partition being *CS(OS) 486/2013* was with respect to whole of the suit property, including the first floor.
- 2(viii) The appellants came to know of the pendency of the said suit on 30th November, 2018 and filed an application for their impleadment along with their mother, which was never listed before the court. Thus, the said suit was decreed vide order dated 12th December, 2018 in view of the settlement arrived at between the decree holder and judgment debtors, by holding that the remedy, if any, was available to the



appellants herein.

3. Execution Petition being *Ex. P. 50/2021* was filed by respondent no.5 herein against the other respondents for execution of the decree. Objections to the said execution petition were filed on behalf of appellants herein, which were dismissed by the impugned order dated 23rd March, 2023. Hence, the present appeal has been filed.

4. It is to be noted herein that the appellants are the children of late Sh. Ramesh Chander Paul, while the respondents are legal heirs of late Sh. Jagdish Chander Paul.

5. On behalf of appellants, it is contended that the objections filed by appellants were akin to a civil suit as they claimed right over the suit property by way of adverse possession. The objections of the appellants have been dismissed without granting an opportunity to the appellants to establish their claim by leading detailed evidence.

6. It is further contended that to establish claim of adverse possession there cannot be any direct documentary evidence except for what was produced before the learned Single Judge viz. the electricity bills, water bills, etc. which the learned Single Judge failed to recognize.

7. On the other hand, learned counsel for respondents have justified the impugned order passed by the learned Single Judge. It is submitted that the possession was permissive in nature and no right had accrued in favour of the appellants. Long possession would not give right to appellants, as the same was permissive and not hostile. It is further submitted that late Sh. Jagdish Chander Paul was the absolute owner of the entire suit property. Lastly, learned counsel for respondents state that none of the appellants are staying in the suit premises.



8. We have heard learned counsel for the parties and have perused the record.

9. It is manifest from the record that the suit property was exclusively owned by late Sh. Jagdish Chander Paul on the basis of perpetual lease deed dated 30th June, 1960 existing in his favour. There is no document on record to show that title to first floor of the suit property vested with the appellants or their father. Rather, the pleadings on record clearly show that the possession of appellants in first floor of the suit property was permissive in nature. Such permission does not confer any legal right, title or interest upon the appellants over the suit property.

10. It has been admitted on behalf of the appellants that first floor of the suit property had been earlier rented out by late Sh. Jagdish Chander Paul and rent qua the same was also received by late Sh. Jagdish Chander Paul that was utilized by him for his own purposes. The respondents are the surviving legal heirs of late Sh. Jagdish Chander Paul, who till his demise in the year 1980 was the sole registered owner of the entire suit property.

11. This Court notes that appellants have sought to set up contradictory claims of lawful title on the one hand and title by prescription/adverse possession on the other hand. On the one hand, appellants claim that their father had lawful title to the first floor of the suit property because he contributed to the purchase of the said property and further got constructed the first floor of the said property. On the other hand, they claim that their father had perfected his title on the first floor of the suit property by way of adverse possession. The said stands put forward by appellants are mutually exclusive and cannot stand together. If one is claiming lawful title, then he cannot claim title through adverse possession and vice-versa.



12. As pointed out to this Court, appellants are no longer residing on the first floor of the suit property for the last many years. Appellant no.1 has been a resident of the United States of America for over a decade and appellant no.2 has been residing at her matrimonial home in Delhi for the last over three decades in Geetanjali Enclave, as per the memo of parties filed in the present appeal.

13. It needs no gainsaying that late Sh. Ramesh Chander Paul, father of appellants was aware that the ownership and title deed was in the exclusive name of late Sh. Jagdish Chander Paul. Despite this fact, during his lifetime, late Sh. Ramesh Chander Paul never took any steps to establish any claim of ownership qua the first floor of the suit property or to challenge the absolute title of late Sh. Jagdish Chander Paul qua the entirety of the suit property. As submitted on behalf of respondents, it was always to the knowledge of late Sh. Ramesh Chander Paul that his possession of the first floor of the suit property was permissive, and hence the question of perfection of title by prescription or adverse possession cannot arise.

14. Learned Single Judge has returned a categorical finding that the appellants have been unable to satisfy the minimum requirements for sustaining a plea of adverse possession. Thus, it has been held as follows:

“22. The principles of the impact of possession over properties as well as the importance of pleadings to sustain such a plea was succinctly explained by the Supreme Court in Maria Margarida in the following terms: -

“61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62. Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another such as in a mortgage or lease. A licensee holds possession on behalf of the owner.



63. Possession is important when there are no title documents and other relevant records before the court, but, once the documents and records of title come before the court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.

64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the courts.

65. A suit can be filed by the title-holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

66. A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the



pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.”

23. When tested on the aforesaid principles also, the Court finds itself unable to hold that the Objectors have been able to satisfy the minimum requirements for sustaining a plea of adverse possession. As noticed hereinabove, while the various materials and documents that have been relied upon may tend to indicate that the Objectors were in permissive occupation of the first floor, they have woefully failed to establish that they had openly asserted an independent and exclusive right of ownership over the first floor of the suit property or that the said assertion was open and hostile to the actual owners. As is evident from the judgments rendered by the Supreme Court on the subject and noticed hereinbefore mere permissive possession cannot translate into possession being adverse to the actual owners.”

15. This Court finds no infirmity with the finding of the learned Single Judge that the appellants herein were unable to draw attention to any material placed on record which could have been read as constituting an assertion of absolute title over the first floor of the suit property, in the knowledge of the original owners and one which could be recognized as being in open denial of the title of the original owner.

16. In view of the aforesaid detailed discussion, no merit is found in the present appeal. The same is accordingly dismissed.

MINI PUSHKARNA, J

MANMOHAN, J

SEPTEMBER 14, 2023/au