



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 07th November, 2023
Pronounced on: 20th December, 2023

CS(OS) 1208/2013 & IA 4587/2015

ATUL SETHI

..... Plaintiff

Through: Ms. Leena Tuteja & Mr. Ishaan
Chawla, Advocates.

versus

STATE

..... Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Suit for **Possession and Mandatory Injunction** has been filed on behalf of the plaintiff seeking directions to be issued to the defendant to hand over the possession of the Property bearing No. D-73, Anand Niketan, New Delhi (*hereinafter referred to as "suit property"*).
2. Briefly stated, Late Smt. Labh Devi, the maternal grandmother of the plaintiff herein was the owner of the suit property *vide* Perpetual Lease Deed dated 31.05.1968. She died on 28.06.1981 bequeathing the suit property in favour of her daughter, Smt. Ajit Sethi, wife of Shri Krishan Kumar Sethi (mother of the plaintiff) *vide* Will dated 19.04.1973. Smt. Ajit Sethi was granted a Probate in respect of the Will in a Probate Petition No. 47/1982 *vide* Order dated 18.02.1983. The Suit No. 1654/1986 was filed by



Smt. Ajit Sethi against the Lieutenant Governor of Delhi seeking substitution of her name in the Perpetual Lease Deed dated 31.05.1968. The said Suit was decreed in her favour on 09.04.1986 and her name was substituted in the Perpetual Lease Deed dated 31.05.1968. The necessary documents were filed in the Delhi Development Authority as well as in Anand Niketan Cooperative Society Limited and the name of Smt. Ajit Sethi was substituted in all the records. Pursuant thereto, she got the suit property mutated in her name.

3. Smt. Ajit Sethi expired on 26.11.2011 and is survived by the plaintiff as her sole legal heir. The plaintiff also inherited the suit property by virtue of Will dated 07.01.1999, being the last Will of Smt. Ajit Sethi.

4. Late Smt. Labh Devi, the maternal grandmother of the plaintiff, had inducted Shri Kanwar Rawat Singh as a tenant on 01.07.1977 who continued as a tenant in the suit property till 06.04.2013 on which date as per the information of the plaintiff, Shri Kanwar Rawat Singh expired.

5. After the demise of Smt. Labh Devi, Shri Kanwar Rawat Singh became a tenant under Smt. Ajit Sethi who filed an Eviction Petition under Section 14(1)(a) Delhi Rent Control Act, against Shri Kanwar Rawat Singh in November, 1983, but the same was dismissed on the ground of non-service of Notice of Eviction. An Appeal was preferred *vide* RCA No. 468/1991 which was decided *vide* Judgment dated 13.10.1998.

6. It is submitted that from the Order passed in the Appeal, the relationship of landlord and tenant between Late Smt. Ajit Sethi and Shri Kanwar Rawat Singh was established.

7. Till the death of Smt. Ajit Sethi, the mother of the plaintiff, Shri Kanwar Rawat Singh, the tenant, was paying a rent of Rs. 700/- per month and on



the demise of Late Smt. Ajit Sethi, he attorned the plaintiff as a landlord and was paying the rent to him. Shri Kanwar Rawat Singh used to pay the rent quarterly, and the last rent was paid *vide* Cheque No. 647521 dated 02.02.2013 draw on State Bank of Bikaner and Jaipur for the period from January to April, 2013.

8. The plaintiff has explained that as per the practice, the tenant used to pay the rent quarterly and duly intimate him about the payment. However, the plaintiff did not receive any rent from first week of May, 2013. As such the plaintiff tried to contact Shri Kanwar Rawat Singh through mobile phone and otherwise but received no response. The plaintiff then visited the suit property and found the door lying locked and deserted. On enquiries from the neighbours, the plaintiff got the information that Shri Kanwar Rawat Singh was not keeping good health and has not been seen in the suit property since 11.03.2013, from that date, the suit property is lying locked. The plaintiff thereafter, started receiving calls from the brokers and developers showing interest in the suit property.

9. It is submitted that apprehending that some anti-social elements may take an advantage of the suit property lying locked and break open and enter the suit property, the plaintiff tried desperately to contact Shri Kanwar Rawat Singh. On 27.04.2013, the mobile phone was answered by a girl who stated that she was the daughter of a distant relative of Shri Kanwar Rawat Singh and that he has expired on 06.04.2013 and she, however, refused to divulge any other information.

10. The plaintiff has claimed that since Shri Kanwar Rawat Singh was a bachelor and had no class I legal heir or any other legal representative or dependent who was staying in the suit property, he was left with no



alternative but to file the present Suit.

11. It is asserted that as per the provisions of Section 29 of the Hindu Succession Act, 1956, since Shri Kanwar Rawat Singh had no legal heir, his estate would vest in the State. Therefore, the plaintiff has filed the present Suit against the State with the prayer that the defendant be directed to remove locks and hand over the possession of the suit property to the plaintiff.

12. Vide order dated 07.06.2013 as no one appeared on behalf of the defendant, he was proceeded ex-parte.

13. During the pendency of the Suit, an Application bearing no.13890/2013 under Section 151 of the CPC, 1908 was filed by one Shri Bajrang Singh claiming himself to be the Authorized Representative of Shri Karni Singh (the cousin brother of the deceased Shri Kanwar Rawat Singh). As the said application was not pursued, the same was dismissed in default on 17.01.2014.

14. Thereafter, a similar Application under Section 151 of CPC, 1908 bearing no. 13130/2013 was filed by Shri Sanjeev Kumar posing himself as the self-appointed guardian of one Shri Amrendra Kumar allegedly the adopted son of deceased Shri Kanwar Rawat Singh. This application was also dismissed in default on 28.03.2014

15. Thereafter, the Application bearing no. 13718/20115 under Order I Rule 10 of CPC, 1908 for impleadment was filed by Shri Amrendra Kumar alleging himself to be the adopted son of Late Shri Kanwar Rawat Singh. This application was dismissed *vide* detailed Order dated 13.09.2022, wherein it was found that the alleged Adoption Deed produced on behalf of Shri Amrendra Kumar, was a forged and fabricated document.



16. **The plaintiff appeared as PW1 in support of his case** and tendered his evidence by way of affidavit Ex. PW-1/A.

17. **Submissions heard.**

18. The plaintiff in order to prove his ownership in the suit property, produced the copy of the Perpetual Sub-Lease Deed dated 31.05.1968 Ex. PW-1 which was originally executed in favour of Late Smt. Labh Devi, the maternal grandmother of the plaintiff. The suit property was thereafter vide the Letter dated 01.07.1988 Ex. PW-1/3, the suit property was mutated in the name of Late Smt. Ajit Sethi, mother of the plaintiff.

19. The Decree in the Civil Suit filed by Late Smt. Ajit Sethi against the Lieutenant Governor for her name to be substituted in the Perpetual Lease Deed dated 31.05.1968 was decreed *vide* Order dated 09.04.1986. The copy of the Judgment dated 09.04.1986 along with typed copy is marked as Mark-C. The copy of the Judgment dated 13.10.1998 along with typed copy is marked as Mark-D. The copy of the Death Certificate of Late Smt. Ajit Sethi is Ex. PW-1/5. The last Will dated 07.01.1999 of Late Smt. Ajit Sethi is Ex. PW-1/6.

20. The uncontested and unchallenged testimony of the plaintiff, therefore, establishes not only the fact of plaintiff being the owner of the suit property, but also that Late Shri Kanwar Rawat Singh, the tenant originally inducted by Late Smt. Labh Devi, was occupying the suit property as a tenant till his demise on 06.04.2013. Late Shri Kanwar Rawat Singh was not survived by any legal heir and, therefore, in terms of Section 29 of the Hindu Succession Act, 1956, the suit property now vests with the State.

21. None has contested the Suit on behalf of the defendant, who was proceeded ex-parte by the order of this court dated 07.06.2013.



22. The documents proved by the plaintiff coupled with the plaintiff's testimony establish that he is entitled to recovery of the possession of the suit property.

23. In view of above, the present Suit is allowed and the defendant is directed to hand over the peaceful possession of the suit property, after removing whatever belongings of Mr. Kanwar Rawat Singh are found to be lying in the suit property, to the plaintiff.

24. The present Suit for Possession and Mandatory Injunction is decreed. The pending application, if any, is disposed of.

25. The Decree Sheet be prepared accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 20, 2023
S.Sharma