



2024 : DHC : 334



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

+ RSA 15/2024 and CM APP No. Nos.2303-2306/2024

SMT JODHIAN (SINCE DECEASED

THROUGH LRS) & ORS.

..... Appellants

Through: Mr. Manendra Mishra and Mr.
Lalit Bhati, Advocates

versus

METHODIST CHURCH IN INDIA

.... Respondent

Through: Mr. Nalin L. Sahai and Mr.
Shubhashish Roy, Advocates

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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15.01.2024

1. This is a second appeal under Section 100 of the Code of Civil Procedure, 1908.

2. These proceedings emanate out of Suit 408/2011 instituted by the respondent Methodist Church in India (also referred to as “the Church”, hereinafter) against the appellant.

3. The respondent contended that Budh Ram, the deceased husband of Appellant 1 Jodhian (also deceased and represented through her legal representatives who have filed the present appeal) was working as a *mali* (gardener) with the Butler School (hereinafter “the school”). During his service with the School, Budh Ram was permitted to stay in quarter 3 situated at 17, Boulevard Road, Delhi

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Page 1 of 13



2024 : DHC : 334



(hereafter “the suit property”) as a licensee. Budh Ram expired on 20 July 1998. With his death, the right of his family members to continue in the said property also came to an end. Nonetheless, the appellants continued to remain in possession of the suit property even after July 1998. Repeated notices issued to the appellants to vacate the suit property were futile. A legal notice was also issued to the appellants calling upon them to vacate the suit property.

4. The respondent, thereupon, instituted Suit 408/2011, seeking a decree of mandatory injunction, directing the appellants to hand over the vacant possession of the suit property along with damages/mesne profits.

5. The suit was decreed by the learned Civil Judge, vide judgment dated 16 December 2015. The operative portion of the said judgment reads as under:

“In light of the findings on all issues, the present suit is decreed in favour of plaintiff and against all defendants jointly & severally for mandatory injunction directing them to handover vacant possession of the suit property i.e. Quarter no.3, situated at 17, Boulevard Road, Delhi-54, as show in site plan Ex. PW1/2, to the plaintiff within three months from the date of this judgment failing which defendants shall also be jointly & severally liable to pay damages/mesne profits @ 3,000/- (three thousand) per month pendente lite & future till recovery of possession of suit premises.

Costs of the suit are also awarded in favour of the plaintiff.”

6. The appellants preferred RCA DJ 61820/2016 (*Smt. Jodhain v. Methodist Church in India*) against the said judgment dated 16 December 2015 of the learned Civil Judge to the learned Additional



2024 : DHC : 334



District Judge (the learned ADJ).

7. Before the learned ADJ, the appellants contested the titular rights of the respondents over the suit property. They sought to contend that the respondents were not owners of the suit property and had no right, title or interest therein. They also contested the respondent's stand that the appellants were licencees in the suit property. The appellants sought to contend that Budh Ram was in occupation and possession of the suit property since a point of time anterior to 1940 and, therefore, prior to his joining service with the school. As such, it was sought to be contended that the respondent could not have allotted the suit property to Budh Ram. Predicated on the extensive and continuous occupation of the suit property by Budh Ram, the appellants pleaded perfection of title by adverse possession.

8. The learned ADJ has, before returning his findings, recorded the grounds urged in the appeal thus:

“GROUNDS OF APPEAL:

11. The first ground raised by the appellant is that the learned trial court has failed to appreciate that under the guise of suit for mandatory injunction, the plaintiff has prayed for the relief of possession. However, they have not paid appropriate court fees for the said relief.

12. Another ground raised by the appellant/defendant is that the plaintiff has failed to produce Reverend Samson Nath, the attorney of the plaintiff as a witness. Hence, Ld. Trial Court wrongly held that the plaint has been properly signed and verified by the competent person.

13. It has been alleged that learned trial court ignored the fact that the plaintiff failed to prove their ownership qua the suit property in the present suit. Rather it has relied upon the judgment passed in another suit “*Butler Memorial Girls Sr. Sec. School v.*

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Page 3 of 13



2024 : DHC : 334



Smt. Jodhian and others” bearing CS number 517/2002 which was dismissed vide judgment dated 03.12.2010. It has been contended that the said judgment is not binding on the parties to the present suit, as the plaintiff was not a party to the earlier suit. Ld. Trial Court relied on the said judgment without realizing that it was neither between the same parties nor the issue of title was raised in that suit. Hence, there was neither any issue-estoppel nor any cause of action estoppel.”

9. The learned ADJ has proceeded to concur with the findings of the learned Civil Judge and, therefore, dismissed the appeal.

10. Before me, learned counsel for the appellants has urged only one contention. His submission is that the respondents’ suit was barred by Order II Rule 2 of the CPC as, they had earlier instituted Suit 517/2002 against the appellants and, having failed in the said suit, without challenging the said judgment, instituted a second suit against the same appellants.

11. I have queried of Mr. Manendra Mishra, learned counsel for the appellant as to how he can raise the said contention before this Court in second appeal, having specifically urged, before the learned ADJ in first appeal, that the parties to CS 517/2002 were not the same as those in the suit 408/2011, and, specifically that the respondent was not the plaintiff in suit 408/2011.

12. He has no answer to offer though, at point one of point, he sought to contend that the submissions may have been made by mistake. In my view, such a contention merely begs the issue. This Court is seized with the second appeal under Section 100 of the CPC.

Such an appeal is different in tone and texture from an appeal under



2024 : DHC : 334



Section 96 of the CPC. It is not an extension of the suit proceedings. It lies only on substantial questions of law. The Court cannot, therefore, permit the appellants, in second appeal, to make out a new case, much less to advance a contention which is diametrically opposed to the contention raised before the first appellate court.

13. The appellants specifically contended before the learned ADJ in first appeal *that the respondent was not the plaintiff in Suit 517/2002*. That contention was obviously taken because, during the course of recoding of evidence in Suit 517/2002, it had been admitted by the appellants that the respondent was in fact the owner of the suit property. When the appellants were sought to be confronted with that admission, they sought to wriggle their way out by adopting a stand that the two suits were between different parties, as the respondent was not the plaintiff in Suit 517/2002. Now, having failed in that attempt, they seek to assert before this Court and contend that the respondent was the plaintiff in Suit 517/2002, albeit under another name.

14. Such a contention is obviously not available to the appellants.

15. Even otherwise, the Court is presented, with concurrent findings of facts by the learned Civil Judge and the learned ADJ. The scope of interference with concurrent findings of facts in second appeal is heavily circumscribed. One may refer in this context the following passage from the judgment in *Hero Vinoth v. Seshammal*¹:

¹(2006) 5 SCC 545



“24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

16. I have nonetheless perused the impugned judgment, to examine whether any substantial question of law arises, *de hors* the sole argument which was advanced by Mr. Mishra before this Court.

17. The learned ADJ has identified four contentions as having been advanced by the appellant, and has dealt with each of them, *seriatim*.

18. The first submission raised by the appellants before the learned ADJ was that the respondent had failed to produce Rev. Samson Nath – who had signed the suit papers – as a witness. This contention was advanced as one of the defences raised by the appellants, was that the plaint had not been properly signed and verified. The learned ADJ has held that the onus to prove this allegation was on the appellants and that they had failed to discharge the said onus. This contention has therefore been rejected.

19. The second contention that was raised was that the respondent



had disguised the suit for possession as a suit for mandatory injunction and, had, therefore, paid insufficient court fees. The learned ADJ has noted that this contention was not raised before the learned Civil Judge. I have also gone through the judgment of the learned Civil Judge and find that this observation of the learned ADJ is correct on facts.

20. The third contention was that the suit property did not belong to the respondent. In this context, learned ADJ has held thus, in paras 17 to 19 of the impugned judgment:

“17. The appellants have further alleged that the trial court failed to appreciate that plaintiff has not led any evidence to prove that they are the owner of the suit property. Rather, it relied upon the judgment Ex. PW1/3. Admittedly, a suit was earlier filed by Butler Memorial School against the present defendants for damages and mesne profits. The certified copy of the judgment and decree in the said suit is Ex. PW1/3. As it is reflected from the said judgment, *it is an admitted position between the parties that the quarter/suit property belongs to Methodist Church and was situated in campus of Butler School. The defendants themselves had given this suggestion to PW-1 Ms. Promila Massey during her cross-examination that the Butler school is governed, managed and owned by Methodist Church of India. Another suggestion was given to her that the suit property belongs to the Church and not to the school, which she admitted.* It was further observed by Ld. Civil Judge in the said judgment that *DW-1 has deposed that the Methodist Church controls the school and the campus, in servant quarter of which they have been residing. These suggestions put to PW-1 by the defendants go on to prove that they themselves admit that the suit property belonged to Methodist Church of India i.e the present plaintiff/respondent.*

18. This court agrees with the contention of the learned counsel that issue of ownership was not directly or substantially in issue in the previous suit. Hence, there cannot be any issue estoppel. Issues framed in both these suits were different. However, the suit property and the defendants in both the suits is the same and *it is admitted case of the defendants themselves that the suit property is owned by Methodist church.* As observed by the Learned Civil Judge-III, Central, THC in the judgment Ex. PW1/3,



"Admittedly the quarter belong to the Methodist Church and was situated in the campus of Butler School. In majority of cases when an institute is established, residential or servant quarters are also provided to its employees. It is admitted by both the parties that Budhram joined the service of the school on 01.04.1970. Thus, a presumption can be drawn that he was allotted the quarters by the Church authorities since he was an employee under them."

19. The said judgment has attained finality as no appeal has ever been filed by any party against the same. Hence, *it was an admitted position even on the date of filing of the suit that the plaintiff is the owner of the suit property.*"

(Emphasis supplied)

21. In the afore extracted paragraphs, the learned ADJ has noted that in CS 517/2002, the appellants had specifically admitted that the suit property belonged to the respondent and was situated in the campus of the school. The appellants had, in fact, advanced this suggestion to PW-1 Ms. Promila Massey during her cross-examination in the said suit. It was further suggested by the appellants, that the suit property belonged to the Church and not to the school which also she admitted. This is yet another reason why the contention of Mr. Mishra's attempt, before this Court, to equalize the Church and School, cannot sustain.

22. The learned ADJ has further noted that Appellant 1, as DW-1 had, in Suit 517/2002, deposed that the Church controlled the school and the campus and that they had been residing in the suit property.

23. In these circumstances, the learned ADJ has observed that the



suggestion which was put to PW1 Ms. Promila Massey by the appellants themselves indicated that the appellants had admitted that the suit property belonged to the Church, i.e. the present respondent. In as much as the property in question was the same, and the judgment in CS 517/2002 had attained finality, there could be no question of the appellants contending that the suit property was not owned by the respondents.

24. The fourth and last contention of the appellants, which the learned ADJ has dealt with, is the plea of adverse possession. The appellants sought to contend that they were not the licensees in the suit property and had perfected their title to the suit property by adverse possession as Budh Ram was in possession of the suit property prior to 1960. The findings of the learned ADJ on this issue are contained in paras 20 to 26 of the impugned judgment which read thus:

“20. It has been further submitted that Ld. trial court misinterpreted the testimony of DW-1. DW-1 was not even born when his father late Sh. Budh Ram came in possession of the suit property in 1960. Further, the court failed to appreciate that the defendants were neither tenants nor licensee in the suit property and have become owners of the same by way of adverse position.

21. Issue no. 2 is whether the defendants or their predecessor-in-interest have become owners of the suit property by adverse possession. Before proceeding further, it would be relevant to examine the concept of adverse possession. The doctrine of "Adverse Possession" means that if a trespasser or a stranger, who comes into possession of the land and remains in continuous, open, uninterrupted and exclusive possession of the same for a period of 12 years, he becomes owner of the same as the real owner of the land had failed to protect his property. In the case titled as



Balkrishan vs. Satyaprakash², Hon'ble Supreme Court held as under:

"The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three "neck"- *nec vi, nec clam* and *nec precario*. In other words, he must show that his possession is adequate in continuity, in publicity and in extent."

22. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Hence, a person claiming title by adverse possession has to show:

- (1) On what date he came into actual possession of the property.
- (2) Such possession should be open and hostile to the entire world.
- (3) Exclusive possession and use of the property.
- (4) Such possession should be hostile or adverse to the true owner.
- (5) Such possession should be a continuous one without any interruption.

23. In the case titled as **Dagadabai (Dead) By LRs v Abbas @ Gulab Rustum Pinjari³** it was held by Hon'ble Supreme Court that a person first admits the ownership of the true owner over the property before claiming ownership on the strength of adverse possession. It was held,

"It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well-settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants. It is only thereafter and

² 2001 (2) SCC 498

³ (2017) 13 SCC 705



subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it."

24. In the case at hand, the defendants have denied the title of the plaintiff in their written statement. Hence, their plea of adverse possession fails at the very threshold. However, even on the touchstone of evidence, the defendants have failed to prove that they have become owners of the suit property by way of adverse possession. The defendants/appellants were required to prove that they/their father had become owner by way of adverse possession as Late Sh. Budhram was in possession of the suit property even prior to 1960. However, no such evidence was led by the defendants. There is no proof like any ration card or voter ID card, electricity bill etc in the name of Sh. Budhram or the defendants in the suit property to show that they have been in possession of the suit property since 1960. Infact, DW-1 expressed his ignorance as to how and when his father came in possession of the suit property.

25. DW-1, son of Budhram has admitted in his cross examination that his father had joined Butler School as a gardener on 1st April 1970. He admitted that he has not filed any title document with respect to the suit property showing him as the owner. Specific question was put to the witness that the suit property quarter was given to his father being an employee in Butler school in the year 1970, to which he answered - "*I cannot say anything but we were residing prior to the year 1970 in the suit property quarter*". However, when DW-1 was further asked how his father came into possession of the suit property, he answered "I do not know". He also admitted that there is no document on record to show how his father came into possession of the suit property. It is clear that DW-1 has given evasive answers to the questions put to him in cross-examination with respect to their possession qua the suit property."

25. Following the aforementioned decisions of the Supreme Court, the learned ADJ has observed that the appellants had failed to prove the ingredients of adverse possession. Besides, he has held that one of the



primary ingredients for a successful plea of adverse possession is that the person in adverse possession has to admit the ownership of the person adverse to whose title he was in possession of the suit property. Having denied the title of the respondent over the suit property, the learned ADJ holds that the appellant could not raise the plea of adverse possession.

26. Besides this, it has also been found by the learned ADJ that the appellant had failed to lead any evidence that Budhram was in possession of the suit property prior to 1960. No documentary proof of any residence in the suit property prior to 1960 was forthcoming. The learned ADJ has also relied on the evidence of DW1, the son of Budh Ram, who admitted in cross-examination that Budh Ram had joined the school as a Gardener on 1 April 1970. On being questioned as to how Budh Ram had come into possession of the suit property, DW 1 had stated that he was unaware. He also admitted in evidence that there was no documentary evidence to show as to how Budh Ram came into possession of the suit property.

27. In these circumstances, the plea of adverse possession has also been found to be without substance.

28. The findings of the learned ADJ proceed on a holistic appreciation of the evidence on record. They cannot be said to suffer from any perversity.

29. That said, as already noted, the only contention advanced before



2024 : DHC : 334



me by Mr. Mishra is that the suit of the respondent was barred by Order II Rule 2 of the CPC as, having failed in Suit 517/2002, the respondent could not, by merely changing its name, have instituted a fresh suit. That contention, as I have already noted, is in the first place not available to the appellants and in the second, not acceptable as the appellants have argued directly to the contrary before the learned ADJ in first appeal.

30. The appellants, having occupied the respondents' property since decades, apparently desire to continue in perpetuity.

31. No substantial question of law arises for consideration.

32. The appeal is dismissed in *limine*.

C.HARI SHANKAR, J

JANUARY 15, 2024

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Click here to check corrigendum, if any