



2024:DHC:9617



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 27.11.2024*+ **RC.REV. 355/2024 & CM APPL. 69161-69164/2024**

KAMALJIT SINGH @ KAMAL (SINCE DECEASED) THROUGH
HIS LRSPetitioner

Through: Mr. Gautam Singhal, Mr. Bhilashi
Chopra & Ms. Aastha Vishnoi,
Advocates.

versus

PROTIVA PANDEYRespondent
Through:

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM APPL. 69162/2024 & CM APPL. 69164/2024 [Exemption]**

1. Allowed, subject to just exceptions.
2. The Applications stands disposed of.

CM APPL. 69161/2024 [for additional documents]

3. This Application has been filed on behalf of the Petitioners/tenants praying for placing on record electricity bills, telephone bills, income tax returns and other bank statements etc., in support his contentions that the Petitioners/tenants have possession and title over the premises i.e., Shop No.3, Ground Floor, D-37, South Extn., Part-I, New Delhi-110049 [hereinafter referred to as "subject premises"].



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4. The documents referred to by the Petitioners/tenants do not evidence title of the subject premises but merely show that the Petitioners/tenants remain in possession of the subject premises for an extended period of time. This fact is not disputed. It is settled law that possession for a long period of time does not grant adverse possession to a party.

5. In any event, as stated above, these documents do not evidence title of the subject premises.

6. The Application is accordingly dismissed.

RC.REV. 355/2024 & CM APPL. 69163/2024 [for stay]

7. The present Petition has been filed on behalf of the Petitioners/tenants impugning the order dated 01.07.2024 [hereinafter referred to as “Impugned Order”] passed by the learned Senior Civil Judge – cum – Rent Controller South-East, Saket Courts, New Delhi. By the Impugned Order, the Leave to Defend/Contest Application filed by the Petitioners/tenants has been dismissed and the directions have been passed to hand over the vacant peaceful possession of the subject premises.

8. Learned Counsel for the Petitioners/tenants has raised two contentions before this Court. In the first instance, it is contended that the Respondent/landlady is not the owner of the subject premises and that the Petitioners/tenants have acquired title of subject premises by adverse possession. Secondly, it is contended that there is alternate space available in a property at Kotla Mubarakpur property as well as alternate space available on the ground floor, first floor and second floor of the subject building, which can be utilized for the need of the



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Respondent/landlady.

9. So far as concerns the plea of adverse possession, the learned Trial Court has examined the same and has given the following findings:

- (a) That it is settled law that an Eviction Petition cannot be converted into a title dispute;
- (b) That the Petitioners/tenants have not filed any legal proceedings in support of his contention *qua* adverse possession.

10. The learned Trial Court has also found that what a landlord is required to show is that he has a better title than the tenant, over the subject premises.

10.1 Undisputably, the Respondent/landlady has filed a registered sale deed to show her ownership of the subject premises. This Court thus finds no infirmity with this finding of the learned Trial Court.

11. The Supreme Court in ***Ravinder Kaur Grewal v. Manjit Kaur***¹, while dealing with the aspect of adverse possession, has held that the following three ingredients are necessary to establish adverse possession and all three ingredients are required to co-exist. One is *nec vi* (adequate in continuity), second is *nec clam* (adequate in publicity) and third is *nec precario* (adverse to a competitor in denial of title and his knowledge). The relevant extract of ***Ravinder Kaur*** case is below:

"60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, 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 his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which

¹ (2019) 8 SCC 729



*is not pleaded. Animus possidendi under hostile colour of title is required. **Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession.** The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."*

[Emphasis supplied]

12. In *Government of Kerela & Anr. vs. Joseph & Ors*², the Supreme Court has set out the guidelines to be followed while examining adverse possession, which include:

- (i) That the persons claiming adverse possession must show clear evidence to substantiate his claim;
- (ii) Permissive possession for an extended period of time does not convert the possession into adverse possession;
- (iii) Clear and continuous possession must be accompanied by intention to dispossess the original owner which would require a declaration of title by the person in permissive possession;
- (iv) The person who claims adverse possession is required to establish the date on which he came into possession, nature, factum and duration of possession and when the possession came to the knowledge of the true owner;
- (v) The onus of proof is on the person claiming adverse possession.

The relevant extract is reproduced below:

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

33. This Court in *Thakur Kishan Singh v. Arvind Kumar* [(1994) 6 SCC 591] (two-Judge Bench) held that –

² 2023 SCC OnLine SC 961



*“5. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established **by cogent and convincing evidence** to show hostile animus and possession adverse to the knowledge of real owner. **Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession...**”*

34. Reference may also be made to M. Siddiq (supra).

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

(a) In *Gaya Prasad Dikshit v. Dr. Nirmal Chander* (two-Judge Bench) [(1984) 2 SCC 286], this court observed-

*“1... It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. **There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough.**”*

36. Reference may also be made to *Arvind Kumar* (supra); *Mallikarjunaiah v. Nanjaiah* [(2019) 15 SCC 756] (two-Judge Bench); *Uttam Chand* (supra).

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;** in *Karnataka Board of Wakf* (supra) it was observed-

“...Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature...”

(a) The case of *Annakili v. A. Vedanayagam* [(2007) 14 SCC 308] (two-Judge Bench) also shed light on this principle as under -

*“24. Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. **Animus***



possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession...

(b) In *Des Raj v. Bhagat Ram* [(2007) 9 SCC 641] (two-Judge Bench) this Court observed –

“21. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-à-vis his co-owners and they were in know thereof.”

(c) This court in *L.N. Aswathama v. P. Prakash* [(2009) 13 SCC 229] (two-Judge Bench) had observed that permissive possession or possession in the absence of *Animus possidendi* would not constitute the claim of adverse possession.

(d) It was also held in the case of *Chatti Konati Rao v. Palle Venkata Subba Rao* [(2010) 14 SCC 316] (two-Judge Bench) –

“15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed...”

[Emphasis supplied]

13. The Petitioners/tenants in the present case have not been able to controvert that the three classic ingredients are satisfied. Admittedly, no steps have been taken by the Petitioners/tenants *qua* their claim of title of the subject premises. It is settled law that the person who asserts title must prove it by clear and unequivocal evidence.



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13.1 The Petitioners/tenants may have been in permissive possession of the subject premises, however, until they are able to show the hostile declaration of their title vis-à-vis the Respondent/landlady and that such possession remained open and undisturbed by the Respondent/landlady, their claim for adverse possession would fail. No such averment or document has been shown by the Petitioners/tenants before this Court. Thus, this challenge of the Petitioners/tenants on the ground of adverse possession is without merit.

14. So far as concerns the aspect of availability of alternate premises in Kotla Mubarakpur, it is admitted by the Petitioners/tenants that the said area is a village/lal dora area and that commercial activities are not permitted there. Since the requirement of the Respondent/landlady is in respect of running of a commercial office, this area cannot be said to be suitable alternate accommodation.

15. Learned Counsel for the Petitioners/tenants contends that there is alternate accommodation available on the ground floor of the subject building which is sufficient for the requirement. The Respondent/landlady in her Reply to Leave to Defend/Contest Application has stated that the said portion is not sufficient. On a query being put to the learned Counsel for the Petitioners/tenants as to how much area is available, on the ground floor of the subject building, he is not able to respond, however it is contended that the vacant adjacent Shop No.2, is of the identical dimension, which should suffice for the Respondent/landlady's need. No other ground is raised by the learned Counsel for the Petitioners/tenants in the present Petition before this Court. Thus, the only aspect which requires examination is how much space is available on the ground floor of subject building.



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16. An examination of the site plan filed by the Respondent/landlady along with the Eviction Petition, which is available at page 89 of the case file, shows the dimensions of the space available on the ground floor. The shop which is with the Petitioners/tenants is Shop No.3 on the right hand side of the site plan, the dimensions of which are 11'-3" x 13'-9", which is approximately 154.68 sq.ft. The vacant Shop No.2 appears to be identical in size. This aspect is not disputed by the Petitioner/tenant.

17. On the aspect of alternative accommodation on the ground floor, the Respondent/landlady had disclosed in her Eviction Petition, that one shop No.2 is in the possession of the Respondent/landlady at the ground floor of subject building, although it not having sufficient space to develop a legal consultation office.

17.1 The Respondent/landlady has referred to this portion of the property and has stated that the said portion will be not sufficient to develop a legal consultation office. Thus, this portion is not available as suitable alternative accommodation with the Respondent/landlady. As is discussed above in various cases, it is settled law that the tenant cannot decide how much space is adequate for a landlord. [See *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*³]

18. The other plea raised by the Petitioners/tenants is that the Respondent/landlady also has available for use the first floor and second floor of the subject building to open an office. This was raised by the

³ (1999) 6 SCC 222



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Petitioners/tenants before the learned Trial Court as well but was rejected as it was averred that these floors (properties) do not belong to the Respondent/landlady and are not available for such use.

18.1 In addition, the Respondent/landlady has averred that Respondent/landlady intends to open legal consultation Office in the front portion of the subject premises so that it could be visible from a distance to the prospective clients and the ground floor front portion, will be most suitable. The learned Trial Court has dealt with this averment and has given a finding that it is settled law that ground floor is more suitable for running of a business. We find no infirmity in this finding.

19. In *Uday Shankar Upadhyay v. Naveen Maheshwari*⁴, the Supreme Court has held that the Court cannot dictate to the landlord as to that extent which floor he must use for his business, besides shops and businesses are usually conducted on the ground floor. As such this aspect of challenge to the requirement of the Respondent/landlady cannot survive as and, to that extent, the landlord is the best judge of his requirement. This aspect has also been dealt with in the Impugned Order in paragraphs 22, 23 and 24, which are extracted below:

22. *In the case of Ragavendra Kumar vs. Firm Prem Machinery AIR 2000 SC 534, the Hon'ble Supreme court held that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. Reference may also be made to the case of Prativa Devi (Smt) v. T.V. Krishnan (1996) 5 SCC 353.*

23. *In the case of Sarla Ahuja v. United India Insurance Co. Ltd. AIR 1999 SC 100, the following was held:*

" the crux of the ground envisaged in clause (e) of Section 14 (1) of the Act is that the requirement of the landlord for occupation of the

⁴ (2010) 1 SCC 503



tenanted premises must be bona-fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller **shall not proceed on the presumption that the requirement is not bona-fide.** When other conditions of the clause are satisfied and when the landlord shows a **prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona-fide.** It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona-fides of the requirement of the landlord it is quite unnecessary to make an endeavor as to how else the landlord could have adjusted himself..."

24. In the case of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta AIR 1999 SC 2507, it was held as under:

.. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonable suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that **an alternate accommodation, the entail denial of the claim of the landlord must be reasonable suitable, obviously in comparison with the suitable accommodation where from the landlord is seeking eviction.** Convenience and safety of the landlord and his family members would be relevant factors. **While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come...**"

[Emphasis supplied]

20. The challenge to the site plan filed by the Respondent/landlord has also been briefly discussed in the Impugned Order. The Petitioners/tenants have not filed any site plan of their own. Thus, this challenge also does not survive, in view of the judgment of a Coordinate Bench of this Court in ***Anita Jain v. Parveen Kumar Jain***⁵, which reiterates that tenant, without filing a site plan of his own, cannot dispute the site plan of the landlord.

21. The scope of examination by this Court in a Revision Petition filed

⁵ 2023 SCC OnLine Del 22



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under Section 25(B)(8) of the Delhi Rent Control Act, 1958 is well settled. The Supreme Court *Abid-ul-Islam v. Inder Sain Dua*⁶ has held that the jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the said Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the fact of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the *Abid-ul-Islam* is as follows:

“Scope of revision

“22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there

⁶ (2022) 6 SCC 30



is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

xxx

25. The aforesaid decision has been recently considered and approved by this Court in Mohd. Inam v. Sanjay Kumar Singhal [Mohd. Inam v. Sanjay Kumar Singhal, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

“22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.’

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.

[Emphasis supplied]

22. In light of the discussion above, this Court, therefore, finds no infirmity with the Impugned Order, which would require interference in revisionary jurisdiction of this Court.



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23. Accordingly, the present Petition is dismissed. All pending Applications stands closed.

TARA VITASTA GANJU, J

NOVEMBER 27, 2024/ ha

Click here to check corrigendum, if any

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