



\$-

*

IN THE HIGH COURT OF DELHI AT NEW DELHI**BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

+

RFA 356/2008 & CM APPL. 12607/2008**1. SH. SATISH KUMAR**

SON OF LATE SH. BABU RAM
R/O A-74, JANGPURA - B,
NEW DELHI - 110014

2. SH. ASHWANI KUMAR

SON OF LATE SH. BABU RAM
R/O A-74, JANGPURA - B,
NEW DELHI — 110014

..... APPELLANTS

(Through: Mr. Rajeshwar Kr. Gupta, Mr. A.K.Mishra and Mr. Sudhanshu Dwevidi, Advs.)

Versus**1. SMT. SIMLA (SINCE DECEASED THROUGH LRS.)**

(I) SH. MANOJ VERMA
SON OF LATE SH. S. C. VERMA
R/O F-10/3, UGF, MALVIYA NAGAR,
NEW DELHI-110017

(II) SMT. MONICA (VERMA) KAPOOR
WIFE OF SH. KAMAL KAPOOR
R/O 4206, UGF, SANT NAGAR,
RANI BAGH, NEW DELHI

2. SH. TARSAME LAL TANDON

H.NO. 13001, GALI NO. 1,
NAI BASTI, BHATINDA (PUNJAB)



3. SH. BALDEV KRISHAN TANDON
C/O SH. SANJEEV AUTO PARTS,
SHOP NO. 9, JEELA PARISHAD,
NEAR PUKRAJ CINEMA,
BHATINDA (PUNJAB)

4. SH. DAVINDER PAL TANDON
C/O SH. SANJEEV AUTO PARTS,
SHOP NO. 9, JEELA PARISHAD,
NEAR PUKRAJ CINEMA,
BHATINDA (PUNJAB)

5. SMT. RAJ RANI BADWAY,
H. NO. 469, HUDA COLONY,
NEAR COHANA CHOWK,
PANIPAT (HARYANA)

6. SMT. ASHA RANI GANDHI
C/O AZAD TENT HOUSE,
NEAR BUS STAND,
FARIDKOT (PUNJAB)

..... RESPONDENTS

*(Through: Mr. Anil K. Khaware, Ms. Azma Zaidi and Mr. Yogendra Kumar, Advs. for R-1
Mr. Rajnish Kumar Gaiind, Adv.)*

%

Reserved on: 20.12.2024

Pronounced on: 30.01.2025

JUDGMENT

The present first appeal has been preferred by the appellant-defendants challenging the judgment and decree dated 23.04.2008, passed by the learned Additional District Judge, Karkardooma Courts, in Suit No. 278/06/94. By the impugned judgment, the Trial Court decreed the suit for



declaration filed by respondent-plaintiff, thereby, declaring her to be the owner of the suit property.

2. The facts, as discerned from the record, indicate that Mr. Devi Dayal, a displaced person who had migrated to India during the partition, was allotted the suit property, i.e., A-74, Jangpura B, New Delhi, by the erstwhile Ministry of Rehabilitation under the provisions of the Displaced Persons [Compensation and Rehabilitation] Act, 1954. He passed away on 28.08.1963, leaving behind his wife, late Mrs. Chanan Devi, and one of their child, Mrs. Simla. Mrs. Simla is the original plaintiff in the instant suit.

3. The case of the respondent-plaintiff before the Trial Court was that late Mr. Devi Dayal had purchased the suit property and made full payment to the concerned authorities. However, before the execution of the conveyance deed/lease deed in his favour by the authorities, he had passed away. During his lifetime, late Mr. Devi Dayal had let out the premises to Mr. Babu Ram, the predecessor of the appellant-defendants. Upon the demise of late Mr. Devi Dayal, his legal heirs, including the instant respondent-plaintiff, realized the rent from the tenants, inheriting all rights, title, and interests held by the deceased in the suit property.

4. Subsequently, late Mrs. Chanan Devi, the widow of Mr. Devi Dayal and mother of the respondent-plaintiff, filed an eviction petition under Section 14(1) (e) of the Delhi Rent Control Act, 1958, before the Rent Controller in the year 1982. However, during the pendency of the proceedings, late Mrs. Chanan Devi passed away on 30.10.1982. An application for substitution of the legal heirs of the deceased, including the



respondent-plaintiff, was moved before the Rent Controller, but was not allowed due to technical reasons relating to the *bona fide* requirement of the deceased and the legal standing of her heirs.

5. According to the respondent-plaintiff, the tenants, instead of vacating the suit property, have adopted inconsistent positions before the Rent Controller, claiming to have purchased the suit property from one Mrs. Lajjawanti, wife of Sh. Mangat Ram Khanna, while simultaneously denying the title of the respondent-plaintiff to the property. The respondent-plaintiff stated that Mrs. Lajjawanti had no right, title, or interest in the suit property, which had been allotted by the competent authority to late Mr. Devi Dayal. Upon the death of Mr. Devi Dayal, the suit property is said to have devolved upon his legal heirs, including the respondent-plaintiff.

6. Before the trial court, the appellant-defendants admitted that late Mr. Devi Dayal was the original allottee of the suit premises but asserted that he was unable to pay the requisite amount to the Rehabilitation Department for the allotment. They contended that in early October 1960, late Mr. Devi Dayal sold the suit property to one Mrs. Lajjawanti. The same was allegedly confirmed by a declaration executed by late Mr. Devi Dayal on 06.10.1960, relinquishing all rights, title, and interest in the property. It was further claimed that Mr. Devi Dayal also executed a Power of Attorney in favour of Mr. Mangat Ram, the husband of Mrs. Lajjawanti, and that the outstanding dues payable to the Rehabilitation Department were subsequently cleared through Mrs. Lajjawanti.

7. The appellant-defendants maintained that after the execution of the said declaration and the delivery of possession, Mr. Devi Dayal never



claimed ownership of the suit property, which came to be occupied by Mrs. Lajjawanti as its owner. They further asserted that Mrs. Lajjawanti paid house tax for the property, applied for its mutation in her name and that a filtered water connection was sanctioned in the name of Mr. Mangat Ram. The appellant-defendants also emphasized that after the demise of Mr. Devi Dayal in 1963, neither the respondent-plaintiff nor any other legal heir of Mr. Devi Dayal ever claimed any right, title, or interest in the suit property.

8. The appellant-defendants asserted that their father, late Mr. Babu Ram, had agreed to purchase the suit property from Mrs. Lajjawanti in 1965. It was contended that Mr. Babu Ram paid the entire sale consideration to Mrs. Lajjawanti, who executed an Agreement to Sell dated 14.01.1965 in his favour and delivered peaceful and vacant possession of the suit property to him. The appellant-defendants further claimed that after this transaction, house tax for the property was paid by Mr. Babu Ram or his legal heirs, and the municipal authorities also dealt with their mother, Mrs. Bhagwanti, regarding the property.

9. The appellant-defendants maintained that they were in possession of the suit property as its rightful owners and, in any event, had acquired ownership rights through adverse possession.

10. Upon consideration of the aforesaid aspects and the documents placed on record, the learned Trial Court decreed the suit for declaration, while dismissing the claim for damages.

Submissions on behalf of the appellant-defendant:-

11. Mr. Rajeshwer K Gupta, learned counsel appearing on behalf of the appellant-defendant, submits that Mr. Devi Dayal, due to his inability to pay the requisite amount to the Rehabilitation Department and to meet the



financial obligations arising from his claims, sold the suit property bearing No. A-74, Jangpura 'B' to one Mrs. Lajjawanti on 06.10.1960.

12. After receiving the full sale consideration, Mr. Devi Dayal handed over vacant and peaceful possession of the property to Mrs. Lajjawanti and executed multiple documents in her favour on 06.10.1960, including an Agreement to Sell [Ex. DW1/7], a Power of Attorney [Ex. DW1/1], a Will, Receipt, Affidavits, and Declarations [Ex. DW1/2 to Ex. DW1/6]. Through these documents, learned counsel asserts that Mr. Devi Dayal unequivocally declared Mrs. Lajjawanti as the absolute owner of the suit property and affirmed that the possession had been handed over to her.

13. Learned counsel further submits that following the execution of these documents, Mr. Devi Dayal retained no rights, title, or interest in the suit property. It is contended that Mrs. Lajjawanti, on the basis of these documents, applied for mutation of the property in her name before the Rehabilitation Department and succeeded in having the property mutated in her favour before the Municipal Corporation of Delhi [MCD] for house tax purposes. It is further submitted that she began paying house tax for the suit property, and the Rehabilitation Department had directly communicated with her regarding the mutation of the property.

14. He further submitted that Mr. Devi Dayal passed away on 28.08.1963, after having executed and concluded the said transaction in favour of Mrs. Lajjawanti. Learned counsel submits that the sequence of events and documentary evidence clearly establishes that the ownership and possession of the suit property had lawfully passed to Mrs. Lajjawanti and that no rights, title, or interest remained vested in Mr. Devi Dayal or his



legal heirs thereafter.

15. Learned counsel for the appellants further submits that on 14.01.1965, Mr. Babu Ram, the father of the appellant-defendants, purchased the suit property from Mrs. Lajjawanti after paying the complete sale consideration. He submits that similar documents of sale, akin to those executed in favour of Mrs. Lajjawanti by Mr. Devi Dayal, were also executed in favour of Mr. Babu Ram. The vacant possession of the suit property was handed over to Mr. Babu Ram, who, along with his family, have continuously and uninterruptedly resided in the property as its rightful owner without any hindrance or interference since 14.01.1965.

16. Learned counsel contends that from 1965 to 1982, a period spanning approximately eighteen years, the appellants and their family resided uninterruptedly in the suit property without any objection or disturbance. However, in 1982, Mrs. Chanan Devi, the wife of late Mr. Devi Dayal and mother of respondent-plaintiff no.1, filed an eviction petition against Mr. Babu Ram, claiming that her husband, Mr. Devi Dayal, had inducted Mr. Babu Ram as a tenant in 1958. In response, Mr. Babu Ram filed his written statement, categorically denying the tenancy claim and asserted ownership over the said property. It is further submitted that during the pendency of the eviction proceedings, Mrs. Chanan Devi passed away on 30.10.1982. The eviction petition continued for 13 years before being withdrawn by respondent-defendant no.1, the legal heir of Mrs. Chanan Devi, on 01.03.1994.

17. Learned counsel further submits that in 1987, the respondent no.1-plaintiff, through fraud, misrepresentation, and manipulation of documents, procured a Conveyance Deed in her favour from the Land and



Development Office [L&DO]. Relying on the same, she subsequently filed a suit for declaration, recovery of possession, and damages in 1994, claiming that the appellants were unauthorized occupants.

18. Without prejudice to their primary claim of ownership, the appellants have also taken an alternate plea of adverse possession, asserting that their possession of the suit property has been adverse, continuous, open, and hostile to any claim of ownership by the respondent-plaintiff. Learned counsel argues that the appellant-defendants have perfected their title through adverse possession.

19. Learned counsel further argued that the Trial Court erred in holding that since the appellant-defendants are claiming rights over the suit property based on ownership documents, they cannot simultaneously claim adverse possession. He submits that the appellant-defendants have the right to take alternate pleas in defense, and such pleas cannot be considered inconsistent or mutually exclusive.

20. To substantiate his submissions, learned counsel places reliance on the judgment of the Madras High Court in *N.S. Spance v. D.S. Kanagarajan*¹ wherein, it was held that alternative pleas of ownership and adverse possession are not inherently inconsistent and can be simultaneously raised by a party in defense. Furthermore, learned counsel relies on *Rame Gowda v. M. Varadappa Naidu*² wherein, it was observed by the Supreme Court that even if a party fails to prove title to the suit property, it may still succeed in defending its possession based on adverse

¹ 2004 SCC OnLine Mad 823

² 2004(1) SCC 769



possession.

Submissions on behalf of the respondent-plaintiff:-

21. Mr. Anil K. Khaware, learned counsel for the respondent-plaintiff submits that Mr. Devi Dayal, the father of Mrs. Simla [predecessor-in-interest of the respondent-plaintiff], was a displaced person who migrated to India during the Partition. The suit properties, bearing numbers A-73 and A- 74, Jangpura B, New Delhi, were allotted to him in 1955 by the Ministry of Rehabilitation under the Displaced Persons [Compensation and Rehabilitation] Act, 1954, and the payment for the same was duly made by him. On 28.08.1963, Mr. Devi Dayal passed away. It is further stated that during his lifetime, Mr. Devi Dayal had let out the premises to Mr. Babu Ram, the predecessor-in-interest of the appellants, at a monthly rent of ₹90.

22. Learned counsel points out that on 18.11.1971, the Managing Officer, Mr. D.S. Chahal, substituted the property in the name of Mrs. Chanan Devi, widow of Mr. Devi Dayal, and two minor daughters, Ms. Kamla and Ms. Neelam.

23. It is further stated that in 1982, an eviction petition was filed by Mrs. Chanan Devi against the appellant-defendants. However, during the pendency of the petition, Mrs. Chanan Devi passed away in the same year.

24. In 1986, a Release Deed was executed by the legal heirs of Mr. Devi Dayal and Mrs. Chanan Devi in favour of Mrs. Simla. Subsequently, on 30.12.1986, the Land and Development Office [L&DO], Government of India, substituted the property in the name of Mrs. Simla, the respondent No.1[since deceased], on the basis of the said Release Deed executed by the remaining legal heirs of Mr. Devi Dayal and Mrs. Chanan Devi in her favour.



25. Learned counsel further submits that on 13.08.1987, a Registered Conveyance Deed in respect of the suit property was executed through the President of India in favour of Mrs. Simla, which was formally registered on 24.08.1987. He submits that these chain of events and documents conclusively establish the title of the respondent-plaintiff over the suit property, and the claim of the appellant-defendants is legally unsustainable.

26. Learned counsel for the respondent-plaintiff submits that no registered documents were produced by the appellant-defendants. He argued that reliance was placed solely on photocopies. In contrast, the conveyance deed dated 13.08.1987 in favour of the respondent-plaintiff is duly registered, and the claim of ownership of the appellant-defendant is based merely on an unregistered agreement to sell and other similar unsubstantiated documents.

27. Learned counsel asserts that the chain of title documents in favour of Mrs. Simla through her predecessors stands conclusively established. In 1971, Mrs. Chanan Devi, the mother of Mrs. Simla, was substituted as the allottee of the suit property by the Managing Officer, the Ministry of Rehabilitation. After her death, a release deed was executed in favour of Mrs. Simla by all the legal heirs of Mr. Devi Dayal and Mrs. Chanan Devi. Eventually, a registered conveyance deed was executed in favour of Mrs. Simla.

28. He submits that the controversy regarding the conveyance deed dated 13.08.1987 has already been adjudicated in favour of the respondent-plaintiff in previous legal proceedings. It is submitted that the said conveyance deed pertains to property numbers 73 B and 74 B, Jangpura, with 73 B representing the ground floor and 74 B representing the first



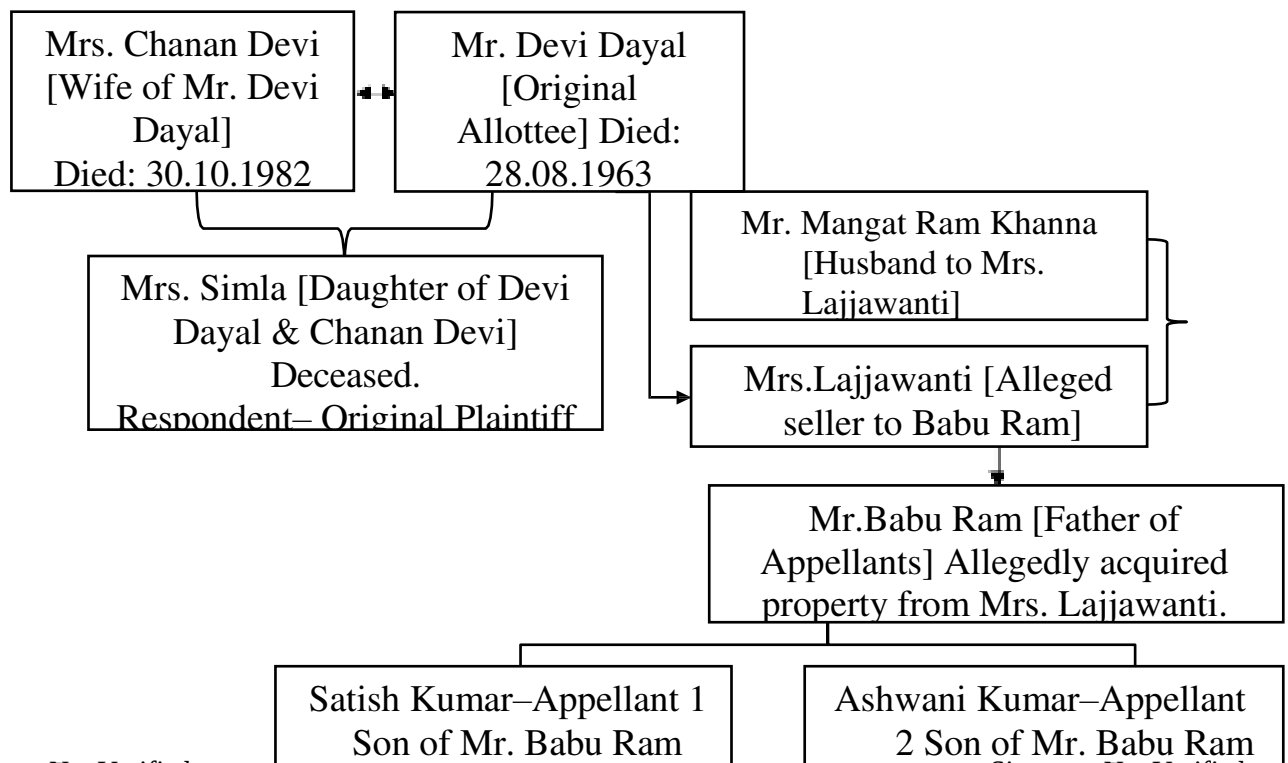
floor, as numbered at that point in time.

29. Learned counsel further emphasizes that successive Courts have already ruled in favour of the respondent-plaintiff regarding property number 73 B, and possession has been handed over to the legal heirs of the respondent-plaintiff. However, while ownership regarding property number 74 B has also been adjudicated in favour of the respondent-plaintiffs under the same conveyance deed dated 13.08.1987, the issue of possession remains unresolved due to the *ex-parte* status of the appellant-defendants.

30. Learned counsel concludes by submitting that since 2008, the present appeal has remained pending, and the appellants have been wrongfully enjoying possession of the suit property without any legal entitlement.

31. I have heard the learned counsel for the parties and have perused the record.

32. From the record, the following matrix of parties emerges:-





33. From the arguments advanced and the contentions raised, it emerges that the appellant-defendant seeks to establish a dual claim over the subject property, i.e., one based on the transfer of title through the documents relied upon, and the other, on ownership perfected by way of adverse possession. Therefore, the issues requiring adjudication in the present appeal are, first, whether the appellant-defendant has acquired ownership of the suit property on the basis of the documents presented, and second, whether the appellant-defendant has perfected title to the suit property against the respondent- plaintiff through adverse possession.

34. Regarding the first issue, the learned Trial Court meticulously examined the oral and documentary evidence presented by the parties and concluded that the respondent-plaintiff had successfully established the conveyance deed executed in her favour by the Rehabilitation Department. Conversely, the appellant-defendant failed to substantiate their claim that ownership of the suit property was initially transferred by the original allottee, Mr. Devi Dayal, to the first transferee, Mrs. Lajjawanti, or that it was subsequently transferred by Mrs. Lajjawanti to the father of the appellant-defendant herein, Mr. Babu Ram. The documents relied upon by the appellant/defendant were found insufficient to establish the transfer of title/ownership, and the Trial Court rightly declined to accept them as evidence of ownership.

35. The present dispute involves rival claims of the parties to ownership and title over the suit property, with both parties relying on distinct sets of documents, each set distinct in their character, to substantiate their respective claims. It remains undisputed that the property was originally



allotted to Mr. Devi Dayal by the Rehabilitation Department. The subsequent transfer and ownership of the property form the bone of contention in the instant case.

36. The respondent-plaintiff contends that the property remained in the ownership of Mr. Devi Dayal until it was substituted in the name of his wife, Mrs. Chanan Devi, in 1971, and later conveyed to Mrs. Simla in 1987. In contrast, the appellant-defendant asserts that the property was transferred by Mr. Devi Dayal to Mrs. Lajjawanti in 1960, who subsequently transferred it to Mr. Babu Ram in 1965. The respondent-plaintiff relies on documents such as the original allotment order, the substitution order dated 18.11.1971, and the conveyance deed executed by the Rehabilitation Department on 13.08.1987.

37. The appellant-defendant, on the other hand, relies on documents such as an agreement to sell, power of attorney, will, and declarations to assert their title and ownership.

38. At the outset, it is to be noted that the learned Trial Court has correctly held that the documents relied upon by the appellant-defendant do not establish ownership. The claim of the appellant-defendant originates from Mrs. Lajjawanti, whose own title to the property is questionable due to the absence of any document showing that she made payments to the Rehabilitation Department on behalf of Mr. Devi Dayal. The appellant-defendant failed to examine her as a witness, leaving their chain of title unsupported. It is well-settled that one cannot transfer a better title than what one possesses. Reference can be made to the recent decision of the



Supreme Court in the case of *Beena v. Charan Das*³ wherein it was observed that “No document, much less a registered instrument, was executed between the parties transferring the title of the suit premises. In its absence obviously, no transfer of title can pass from one party to another.”

39. Since the title of Mrs. Lajjawanti is itself unproven, the appellant-defendant cannot claim a better title derived from her. Moreover, the respondent-plaintiff has denied the authenticity of the signatures of Mr. Devi Dayal on the documents relied upon by the appellant-defendant. Despite this, the appellant-defendant failed to corroborate the genuineness of these documents by producing the admitted signatures of Mr. Devi Dayal or examining any witnesses connected to the creation of these documents, including Mrs. Lajjawanti.

40. On the contrary, the respondent-plaintiff has relied on a duly executed conveyance deed issued by the Rehabilitation Department and has substantiated this claim by examining a departmental witness. The assertion of the appellant-defendant that the conveyance deed was obtained by fraud or misrepresentation remains unsubstantiated, as no challenge has been brought against the validity of the conveyance deed, which continues to be recognized in law. Similarly, the substitution of the suit property in the name of Mrs. Chanan Devi and her minor daughters in 1971 has also remained unchallenged.

41. Furthermore, documents such as an agreement to sell, power of attorney, will, and declarations, in the absence of a registered deed of

³ 2024 SCC OnLine SC 2490



conveyance, do not confer any title nor transfer any interest in immovable property, as mandated by the provisions of the Transfer of Property Act, 1882. This principle finds support in the decision of the Supreme Court in *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana*⁴, wherein the Supreme Court had categorically held that documents in the nature of General Power of Attorney Sales or Sale Agreements/General Power of Attorney/Will transfers do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. Such transactions cannot be treated as completed transfers or conveyances. The relevant portion of the said decision has been extracted hereunder:-

“19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only

⁴ (2012) 1 SCC 656



to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.”

42. The application of the said rationale in the said decision to the facts in the instant case would conclusively indicate that the documents relied upon by the appellant defendant are by the appellant-defendant are legally insufficient to establish any title or interest in the suit property. Thus, their claim of ownership is untenable in the absence of a registered conveyance deed.

43. The appreciation of evidence carried out by the Trial Court is neither perverse nor illegal, and no specific errors have been pointed out by the appellant-defendant before this Court. Thus, the Trial Court has appropriately concluded the issue of ownership in favour of the respondent-plaintiff.

44. The Court shall now proceed to address the second issue concerning adverse possession.

45. Traversing the jurisprudence on the said subject, the Supreme Court, in the case of ***Annasaheb Bapusaheb Patil v. Balwant***⁵, has observed that adverse possession means occupying a property in a manner that openly denies the rights of the actual owner. For a claim of adverse possession to succeed under Article 65 of the Limitation Act, the burden of proof lies entirely on the person making such a claim. The person claiming adverse possession must provide clear and undeniable evidence showing that their possession was not only continuous and open but also hostile to the actual

⁵ (1995) 2 SCC 543



owner's title. In other words, they must prove that their actions and intent made it clear they were occupying the property as if they were its rightful owner, while actively excluding the rights of the actual owner.

46. The Supreme Court further emphasized that whether possession qualifies as adverse depends significantly on the intention, or *animus*, of the person claiming it. This intention must be assessed based on the specific facts and circumstances of each case and the conduct of the parties is a relevant consideration. Mere occupation of the property of another is insufficient. The claimant must demonstrate relevant consideration. Mere occupation of the property of another is insufficient. The claimant must demonstrate a deliberate and consistent course of conduct that effectively denies the right so the true owner over the requisite period. The pertinent portion of the decision is reproduced as follows:-

“14. Article 65 of the Schedule to the Limitation Act, 1963 prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. 15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the



statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.”

47. In ***Karnataka Board of Wakf v. Govt. of India***⁶, the Supreme Court clarified the essential requirements for establishing a claim of adverse possession. The Court held that a person claiming adverse possession must clearly set out the date on which they took possession of the property, the nature of such possession, and whether the possession was known to the true owner or was so open and apparent that the owner ought to have known about it. Additionally, the claimant must demonstrate the duration of their continuous possession and establish that their possession was open, visible, and uninterrupted throughout the statutory period prescribed for claiming adverse possession.

48. The Supreme Court further noted that a person relying on adverse possession cannot claim any equities in their favour. Since such a plea seeks to defeat the rightful ownership of another, the burden of proof lies entirely on the claimant. The burden lies squarely on the claimant to produce clear, unequivocal, and cogent evidence to substantiate every facet of the claim. Mere occupation or possession of the property, absent the requisite hostile *animus* and the fulfillment of the essential conditions for adverse possession, cannot constitute a valid claim. The claimant must demonstrate not only uninterrupted and open possession but also an intention that is manifestly hostile to the title of the actual owner, failing which the claim for adverse possession falls short of the legal threshold.

49. Examining the said established position of law in light of the facts of the instant case, it is seen that the Trial Court, while framing several issues,



has framed Issue No.5 on the aspect of adverse possession. The said issue reads as follows:-

“Whether the defendants have acquired the right of the property by way of adverse possession? OPD”

50. The findings rendered by the Trial Court reads as under:-

“Onus of proving this issue is upon the defendants as they had pleaded that they had acquired the right of the property by way of adverse possession.

29. Defendants have taken this plea in Written Statement by way of preliminary objection whereby they have claimed that they have acquired the right of the property by way of adverse possession. According to them, they had been in possession of the suit property since 1965. They submitted that they had purchased the suit property from Smt. Lajjawanti and they had relied upon the documents executed by Smt. Lajjawanti in favour of Sh. Tulsi Dass i.e. Agreement to sell Ex.D.W.1/11 and affidavit fix.D.W.1/12. They had further relied upon the document fix.D.W.1/22 where Lajjawanti W/o Mangat Ram had sold the suit property in favour of Sh. Babu Ram. They had further relied the documents Ex.D.W.1/29, fix.D.W.1/30, Ex.D.W.1/31, Ex.D.W.1/32, Ex.D.W.1/33 and submitted that they have been since then in possession of the suit property bearing No.A-74, Jang Pura B, Delhi. Alternatively, they have acquired the rights by way of adverse possession.

30. On the other hand, plaintiff counsel has submitted that the property bearing NO.A-73 B, Jang Pura, New Delhi had been allotted in the name of late Sh. Devi Dayal and the property had been mutated in her name after the death of her mother Chanan Devi and thereafter all the legal heirs of Chanan Devi, mother of the plaintiff have relinquished their shares in favour of the plaintiff. He submits that the conveyance deed had been executed in her favour by the Land & Development Office on 13.8.1987. He further submits that the defendant in his evidence has not stated anything how she had come into the possession against the real owners. His case is based on the premise that his father had purchased this property from one Lajjawanti for consideration.

31. Adverse possession means possession, which is adverse, i.e. possession of land or an interest in land by a wrong man against the will of the right man, who is the owner of the land or an interest in that land. Therefore, adverse possession, as its words imply, must be actual

⁶ (2004) 10 SCC 779



possession of another's land with intention to hold it and claim it as his own to the exclusion of rightful owner. it must commence with the wrongful dispossession of the rightful owner at some particular time, and must commence in wrong and maintained against right. It must be actual, open, notorious, hostile, under claim or right, continuous and exclusive and maintained for the statutory period. A mere user of the property cannot be taken as a definite assertion of the proprietary right, there must be some definite quality in the possession before it can be called adverse, and some act of an unequivocal character to put the owner on guard. There cannot be adverse possession if the defendant himself did not know that he was occupying somebody else's land.

32. The defendant did not say that they have been in possession of the property against the will of the original owner Devi Dayal and their possession is hostile and notorious. Rather then they have harped their case on the basis that they had purchased the land from one Smt. Lajjawanti in whose favour certain documents have been executed by Sh. Devi Dayal, rightful allottee of the land in question.

33. The basic ingredient of the adverse possession is hostile and continuous possession against the true owner which have not been proved by the defendants by any stretch of evidence. Therefore, to my mind defendants have failed to prove this issue that they had become the owner by way of adverse possession, consequent thereto defendants have failed to prove this issue. Accordingly this issue goes against the defendants and in favour of the plaintiff."

51. From the submissions advanced by the appellant-defendants, even if accepted at face value, it becomes evident from their own case that the appellant-defendants claim to have purchased the suit property from one Mrs. Lajjawanti, who, in turn, is stated to have purchased the property from Mr. Devi Dayal, the original allottee. This chain of transactions, as presented by the appellant-defendants, suggests that their claim is rooted entirely in their purported dealings with Mrs. Lajjawanti and not with the respondent- plaintiffs or any other legal heirs of Mr. Devi Dayal. Thus, the appellant- defendants were not aware regarding the owner of the suit property, which is one of the fundamental ingredients for claiming adverse



possession. This position is fortified by the decision of the Supreme Court in the case of *M. Radheshyamlal v. V. Sandhya*⁷. The relevant portion has been extracted hereunder for reference:-

“15. As stated earlier, the suit was filed on 17th November 1995. Therefore, going by the averments in paragraph 3 of the plaint, the plaintiff can, at the highest, claim to be in possession from the year 1950. In the same paragraph, the plaintiff stated that the original owner died in 1947. It is not pleaded that even before the year 1947, the plaintiff or his father were in hostile possession to the knowledge of the original owner. When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the plaint. Therefore, there is no proper foundation for the plea of adverse possession in the plaint.”

52. Thus, the Trial Court, while rightly appreciating the facts of the case, observed that adverse possession cannot be claimed if the appellants-defendants were unaware that they were occupying someone else's property. The essence of adverse possession lies in the possessor's hostile *animus* against the true owner, and such animus cannot exist if the possessor is ignorant of the true owner's title or even their existence. The possession must be adverse *qua* the actual owner, and if the entire case is based on a claim of ownership allegedly derived from a different person, there arises no question of hostility towards the original owner, who was never in contemplation. Therefore, the fundamental requirement of adverse possession, i.e., an open and hostile denial of the true owner's rights, remains unfulfilled in the present case. The absence of the necessary animus is further evident from the own admission of the appellants-defendants that they had obtained the ownership of the property through

⁷ 2024 SCC OnLine SC 318



what they claimed to be legitimate transactions on payment of consideration.

53. This position is further fortified in view of the decision of the Supreme Court in the case of *State of Kerala v. Joseph*⁸.

54. Furthermore, the Trial Court observed that the appellant-defendants have built their case on the premise that they purchased the suit property from one Mrs. Lajjawanti, in whose favour certain unregistered documents were executed by Mr. Devi Dayal, the original allottee of the property in question. This claim, however, fundamentally contradicts the essential requirement of adverse possession, which necessitates hostile, continuous, and uninterrupted possession against the true owner with an intention to exclude their rights.

55. In the present case, the appellant-defendants have failed to establish through any credible evidence that their possession was hostile to the rights of the true owner. Their claim of title through a purported sale transaction with Mrs. Lajjawanti inherently negates any assertion of hostile possession against the respondent-plaintiff, who claims title through succession from the original allottee. Adverse possession cannot arise from a claim of ownership derived from a purported sale transaction, as such a claim is rooted in an assertion of lawful ownership rather than in an unequivocal denial of the rights of the true owner. Therefore, the appellant-defendants have not satisfied the essential ingredients required to sustain a plea of adverse possession.

56. However, to contradict the said position, the appellant-defendant has placed reliance on the decisions in the case of *N.S. Spance* and *Rame*



Gowda.

57. In *N.S. Spance*, the High Court of Madras clarified that while alternate pleas, such as ownership and adverse possession, are legally permissible, they cannot succeed unless the fundamental and inseparable requirements of adverse possession are fully satisfied. These requirements include *corpus possidendi* [physical possession] and *animus possidendi* [the intention to possess the property to the exclusion of the true owner].

58. The Court emphasized that mere physical possession, without the necessary intention to exclude the true owner, does not amount to adverse possession. The possession must be open, continuous, and accompanied by an unequivocal assertion of hostile title. Any ambiguity, concealment, or lack of clarity regarding the possessor's intention undermines the claim of adverse possession. Therefore, possession alone, no matter how long it continues, will not constitute adverse possession unless it is reinforced by a clear and open assertion of ownership in denial of the true owner's rights and the alternate plea, while may be permissible, would not entitle to the relief.

59. At this juncture, it is apposite to delve into the distinction between mutually inconsistent pleas, which are permissible within the framework of law, and mutually destructive pleas, which are impermissible. This distinction becomes crucial in cases where the party adopts contradictory positions that cannot coexist logically or legally.

60. In *Harish Relan v. Kaushal Kumari Relan*⁹, this Court had the

⁸ 2023 SCC OnLine SC 961

⁹ 2017 SCC OnLine Del 6614



occasion to address the principle in question. The interplay between inconsistent pleas, such as permissive possession and possession without *animus possidendi*, was scrutinized to establish the boundaries of inconsistent positions being that that are legally permissible. While placing reliance on the decision in the case of *L.N. Aswathama v. P. Prakash*¹⁰, wherein the Supreme Court elaborated on the requisite elements for establishing adverse possession, it was observed that mere possession, regardless of its duration, would not suffice to establish a claim of adverse possession. The Court emphasized the need for possession to be actual, exclusive, open, uninterrupted, notorious, and hostile to the true owner's title for a continuous period exceeding 12 years. Furthermore, the Supreme Court clarified that possession characterized as permissive or lacking *animus possidendi*, the intention to possess the property in a manner hostile to the true owner, cannot give rise to a claim of adverse possession. The relevant portion of the decision in *L.N. Aswathama* is culled out hereunder for reference:-

“17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide Periasamiv. P. Periathambi (1995) 6 SCC 523, Md. Mohammad Ali v. Jagdish Kalita-(2004) 1 SCC 271 and P.T. Munichikkanna Reddy v. Revamma-(2007) 6 SCC 59)”

¹⁰ (2009) 13 SCC 229



(emphasis added)."

61. Thus, the jurisprudence clearly delineates that while alternative and inconsistent pleas are permissible, the law draws a red line where such pleas become mutually destructive.

62. Whether the pleas are mutually destructive or merely inconsistent essentially depends on the specific facts and circumstances of the case. In certain instances, it may be permissible to take pleas of ownership and adverse possession in the alternative. However, in a case where the initial act of obtaining possession is based on certain documents of transfer of ownership, and the further claim is grounded on such allegedly lawful transactions, it would be impermissible to accept a plea of adverse possession as the element of hostility is conspicuously absent. In the present case, the commencement of possession and its continuation were based on the alleged transfer of ownership for consideration, and the element of hostile possession was never within the contemplation of the claimant.

63. Furthermore, the appellant-defendant claims that possession remained unquestioned for a period of 17–18 years from 1965 to 1982 and was obtained by purchase, based on certain documents of a declaratory character executed by one Mrs. Lajjawanti in favour of his father, Babu Ram. Notably, the time period claimed by the appellant-defendant cannot be said to have been uninterrupted, as it does not account for the substitution of the subject property in the name of Mrs. Chanan Devi, wife of the original allottee Devi Dayal, and his minor daughters, by order dated 18.11.1971 passed by the concerned Officer. For reasons best known to the appellant-defendant, the order of substitution was never challenged by him



or his father. If the father of the appellant-defendant, Babu Ram, had indeed been a *bona fide* purchaser for consideration in 1965, he ought to have intervened in the substitution proceedings in 1971. The claim of adverse possession, therefore, appears to be an afterthought, advanced merely to sustain the claim over the property when the documents of ownership failed to convey title in accordance with the law governing the transfer of immovable property. The nature of the claim set up by the appellant-defendant completely negates any valid plea of adverse possession.

64. Upon consideration of the judgment rendered by the Trial Court and the submissions advanced by the parties, it is evident that the findings of the Trial Court are based on a proper appreciation of the facts and law. Upon careful consideration of the material on record, the submissions of the parties, and a thorough re-examination of the evidence presented before the learned Trial Court, this Court is of the considered opinion that the findings and conclusions of the Trial Court are based on a proper appreciation of the facts and the relevant law.

65. The decision rendered by the Trial Court is both sound and unassailable, thus not warranting any interference by this Court. The Court, therefore, does not find any substance in the instant appeal, and the same stands dismissed. No order as to costs. All pending applications shall stand disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 30, 2025/sp