

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR POSSESSION

Date of Judgment: 05.04.2011

RSA No.237/2008 & CM No. 16711/2008 & 7661/2010

SH. PALTOO RAM (DECEASED) THROUGH LRS.....Appellant

Through: Mr.Anil Sapra, Sr. Advocate
with Mr.Vinay Pati Triapthi, Mr.Shravanth
Shanker, Ms. Vrinda Kapoor & Ms. Urvi
Kuthiala, Advocates.

Versus

SMT. UMA DEVI (DECEASED) THROUGH REPRESENTATIVE

.....Respondent.

Through: Mr. Amarjit Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 09.07.2008 which has endorsed the findings of the trial Judge dated 07.01.2005 whereby the suit filed by the plaintiff Smt. Uma Devi seeking recovery of possession and mesne profits qua the suit property i.e. agricultural land situated at Khasra No. 586-589, Village Chanderwali (now known as Illaqa Kanti Nagar, Shahdara, Delhi) had been decreed in her favour.

2 The case of the plaintiff is that she along with her son Vinay Pal had inherited the aforementioned suit property from her deceased husband Om Prakash who was the owner of the suit property. The defendants had illegally and unauthorisedly encroached upon 550 square yards of the land seven years ago without the consent and permission of the plaintiff;

unauthorized construction had also been raised therein. In spite of legal notice dated 16.04.1990, the defendants had failed to vacate the suit property. Suit was accordingly filed.

3 The defendants filed separate written statements. The defence was more or less common. It was contended that the suit is barred by limitation; the defendants had become owners by adverse possession; additional plea was that they had purchased their respective portions from Krishna Devi who is the widow of Vinay Pal and who had inherited this property from her deceased husband Vinay Pal; Smt. Uma Devi could not have inherited this property as there was a bar under Sections 85 & 185 of the Delhi Land Reforms Act, 1954; the land being agricultural could not have been inherited by a lady; suit was liable to be dismissed.

4 On the pleadings of the parties, the following eight issues were framed:-

1. Whether the suit is within limitation? OPP
2. Whether the suit is bad for mis-joinder of necessary parties? If so, its effect? OPD
3. Whether suit is properly valued for the purpose of Court Fees and jurisdiction? OPP
4. Whether plaintiff has suppressed/concealed material facts? If so, to what effect?
5. Whether defendants have become owner of the suit property by way of adverse possession? OPD
6. Whether plaintiff is entitled to decree for possession as claimed? OPP
7. Whether plaintiff is entitled to damages for enjoying the suit property. If so, at what rate and for which period.
8. Relief.

5 Oral and documentary evidence was led which included the testimony of PW-1 Krishan Bal Sharma who was the power of attorney holder of the plaintiff Uma Devi. PW-1 had entered into the witness box and deposed on behalf of his aunt; power of attorney Ex. PW-1/1 executed in his favour by Uma Devi was of the year 1982-83. The deposition of PW-1 was made in December, 1997. This testimony of PW-1 was coupled with the documentary evidence which was the khasra girdawari and jamabandi of the aforementioned property evidencing the factum of possession of this land in favour of the plaintiff with the additional documents i.e. certified copy of a judgment dated 22.11.2001 passed by the Additional District Judge in Suit

No. 656/1994 titled as Uma Devi Vs. Om Prakash wherein the court had held that Uma Devi had inherited the property i.e. khasra No. 586-589 in Village Chanderwali now known as Illaqa Kanti Nagar, Shahdara, Delhi from her deceased husband. This judgment had been re-affirmed by the High Court and also by the Apex Court. The Court had also noted that the Halka Patwari had come into the witness box as DW-5; he had deposed that this land was mutated in the name of the plaintiff vide mutation No.7717; certified copy of which was proved as Ex. DW-5/1. This oral and documentary evidence had been taken into account to substantiate the claim of the plaintiff that she was the owner of the suit property. Even otherwise, there was no specific defence that the plaintiff was not the owner of the suit property. The defence in the written statement was that the defendants have become owners by adverse possession; additional plea was that they had purchased their respective shares from the widow of Vinay Pal (son of Uma Devi). No issue had also been framed in the court below on the question of ownership as this was never a disputed or contentious issue between the parties.

6 Argument urged before this Court that a suit for possession could not have been decreed in the absence of the plaintiff having proved her ownership is an argument without any force. Reliance by learned counsel for the appellant on the judgment reported in AIR 1994 SC 227 Guru Amarjit Singh Vs. Rattan Chand & Others is misplaced. There is no doubt to the proposition that the entries in the jamabandi are not by themselves proof of title; they are only statements for revenue purpose. However, as noted afore this was not the only document which had weighed in the mind of the court to establish the claim of the plaintiff that she was the owner of the suit property. The written statement also did not show that the claim of ownership was seriously disputed by the defendants. Reliance upon (2008) 4 SCC 594 Anathula Sudhakar Vs. P. Buchi Reddy is also without any force. Contention of the appellant is that when the plaintiff's title itself was under a cloud, the appropriate remedy was to file a suit for declaration and possession coupled with a relief of injunction. This argument is devoid of force; especially in view of the fact that no such defence had been taken in the written statement; there was no dispute on the ownership. The twin defence of adverse possession and the additional plea of the defendants having purchased their respective shares from the daughter in law of Uma Devi were the two defences of the defendants. This submission of learned counsel for the appellant is thus without any force. It does not raise a substantial question of law.

7 The second argument urged by learned counsel for the appellant is that a power of attorney holder is not in his capacity to depose on facts which are outside his knowledge. This is an undisputed proposition. Reliance by learned counsel for the appellant on the judgment reported in AIR 1999 SC 1441 Vidhyadhar Vs. Mankikrao & Another is totally out of context. Para 16 has been highlighted. There is no doubt that when a party to the suit does not appear into the witness box and does not offer himself for cross-examination by the other side, a presumption against him would arise. The second judgment relied upon by learned counsel for the appellant reported in AIR 2005 SC 439 Janki Vashdeo Bhojwani & Another Vs. Indusind Bank Ltd. is also out of context. In this case, the Apex Court had held that a power of attorney holder who does not have personal knowledge of the matters of the appellant is not a fit person to depose on behalf of such a person. It is not pointed out anywhere from the testimony of PW-1 that PW-1 was a person who did not have personal knowledge about the case; in fact no such suggestion has been given to PW-1. PW-1 was holding a power of attorney Ex. PW-1/1 duly executed by the plaintiff in his favour; his aunt being old; he as her nephew was watching her whereabouts; they were living in the same house. This argument of learned counsel for the appellant is thus bereft of any merit.

8 This is a second appeal. Substantial questions of law have been embodied at page 3 of body of the appeal. No such substantial question of law has arisen.

9 The impugned judgment after a detailed scrutiny and reappraisal of evidence both oral and documentary HAS endorsed the finding of the trial Judge which had decreed the suit of the plaintiff; defence of the defendants had been rejected. These concurrent findings of fact call for no interference. There is no merit in this appeal. Appeal as also pending applications are dismissed in limine.

Sd./-

INDERMEET KAUR, J.

APRIL 05, 2011