

(2009) 08 DEL CK 0366

In the Delhi High Court

Case No : CS (OS) 1701 of 2003 and IAs 8848, 10647 and 13220 of 2007

D.M.H.P. Sales Ltd.

APPELLANT

Vs

New Howrah Transport Company and Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 3
Delhi Rent Control Act, 1958 — Section 50
Limitation Act, 1963 — Article 65

Citation : (2009) 162 DLT 248 : (2010) 7 RCR(Civil) 2561

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Gagan Gupta, for the Appellant; Amit Singh, for D-1 and Paritosh Budhiraja, for D-2, for the Respondent

Judgement

S. Muralidhar, J.—This is a suit for recovery of possession and damages by way of mesne profits/occupation charges.

2. The case of the plaintiff is that it is a limited company registered under the Companies Act, 1956 and owner of property at 1, old Municipal No. 1616 (front and rear) and new Municipal No. 1704, S.P. Mukherjee Marg, Queens Road, Delhi-110006 (hereinafter referred to as the "suit property"). The plaintiff purchased the suit property from Shri Suresh Chandra Jai Narain Gupta by sale deed dated 22nd July 1975. The suit property was mutated in the name of the plaintiff in the municipal house tax record in April 1989.

3. It is stated that prior to the said purchase by the plaintiff, the plaintiff as well as M/s P.S. Jain and Sons were tenants in the suit property. In 1971 P.S. Jain and Sons merged with M/s Universal Industries Pvt. Ltd. One R.C. Jain was the Director both in the plaintiff as well as Universal Industries Pvt. Ltd. It is stated that P.S. Jain and Sons being the sister concern of the plaintiff, its tenancy rights got merged in the ownership rights of the plaintiff after the suit property was purchased by the latter in 1975.

4. It is stated that R.C. Jain inducted Defendant No. 1 in the godown-cum-office on the ground floor and the mezzanine portion of property, which is shown in "Red" in the site plan appended to the plaint. The ground floor was of an area of about 1590 sq. ft. whereas the mezzanine portion was 195 sq. ft. The monthly rent was Rs. 200/- which was later enhanced to Rs. 3,600. The entry to the red portion was from S.P.Mukherjee Road whereas the entry to the basement was from the rear side of the road known as Nahar Shahdat Khan.

5. It is stated in the plaint that the Defendant No. 1 did not pay rent after 31st December 1982 despite several reminders. Defendant No. 1 also did not hand over vacant and peaceful possession of the property. Instead it parted with possession to Defendant No. 2 who is carrying on business of transport under the name and style of Rajdhani Interstate Transport Company. Defendant No. 2 is also stated to have taken over wrongful and illegal possession of the lower ground floor, i.e., the basement having area of about 1200 sq. ft., marked in the "Green" in the site plan. This portion is stated to have been earlier handed over to the plaintiff by the tenant M/s Ganpat Rai Vijay Kumar on 24th May 1993 through eviction proceedings. Thereafter the Defendant No. 2 illegally broke open the locks of the said portion and took over possession allegedly on 1st July 2003. Despite a police complaint being lodged by the plaintiff, the Defendant No. 2 did not hand over the vacant possession of the said portion. It is on the above basis that the suit was filed against both the defendants seeking recovery of possession of the suit property and mesne profits.

6. In the written statement filed by the Defendant No. 1 it was contended that the earlier the plaintiff had filed a civil suit for injunction against Defendant No. 1 in the Court of the learned Civil Judge, Tis Hazari, Delhi. The suit had been filed on 3rd July 1990 and was still pending disposal in that court. In its written statement in the said suit, the defendant had challenged the right and title of the plaintiff to the suit property and had claimed there that it had perfected title to the suit property by adverse possession. In para 6 of the written statement it was stated as under:

6. That it is pertinent to give a brief background of the facts and circumstances, under which the Defendant No. 1 had asserted itself as an adverse owner of the said portion of the impugned premises, which adverse possession has also perfected itself with the passage of stipulated time under the law.

7. Further in the same paragraph, the Defendant No. 1 admitted that it was inducted in the suit property in the year 1959 by Shri R.C. Jain. However, the Defendant No. 1 was silent on whether it was paying any rent to Shri R.C. Jain. On the contrary in paras 7 and 8 it is asserted as under:

7. That the Defendant No. 1 has never recognized the plaintiff as a lawful owner of the suit premises and has also never tendered any rent to the plaintiff for the use of the suit premises. The Defendant No. 1 has been asserting his rights to the suit premises by way of adverse possession, which dates back to the year

1959.

8. That in the civil suit pending before the Civil Judge, Tis Hazari, Delhi, the Defendant vide his written statement filed on 31.7.1990, had reiterated its right as an adverse owner of the suit premises, in as much as, the Defendant has been in continuous and uninterrupted possession of the said premises from the year 1959.

8. In the present suit an interim injunction was granted in favour of the plaintiff restraining the Defendant No. 1 from alienating or parting with the suit property. Against the said order the Defendant No. 1 filed an appeal and by an order dated 22nd February 1996, interim injunction stood vacated.

9. The stand of Defendant No. 2 in his written statement is that he was given possession of the premises under his occupation by one Meena Gupta. According to the Defendant No. 2 an agreement dated 10th February 2000 had been executed between the plaintiff and Meena Gupta whereby tenancy rights were created in favour of Meena Gupta. She was also given the right to sub-let the premises. Consequently the Defendant No. 2 was inducted into the portion under his occupation as a lawful sub-lettee by Meena Gupta on a rent of Rs. 700/- per month. It is claimed that the plaintiff had joined two different causes of action against two different defendants and therefore the suit is barred under Order II Rule 3 CPC.

10. In the replication to the written statement filed by the Defendant No. 1, the plaintiff clarified that the suit in the civil court at Tis Hazari, Delhi was for an injunction whereas the present suit was for possession and which was therefore not barred in law. It was denied that the Defendant No. 1 had perfected title in respect of the suit premises by adverse possession. It was asserted that the Defendant No. 1 was a tenant and with the tenancy having been terminated it became an unauthorised occupant of the suit premises. It was reiterated that R.C. Jain had inducted the Defendant No. 1 as a tenant in the suit premises in 1971. Rent receipts were placed on record in proof of this fact. It was asserted that the plaintiff is the sole and absolute owner of the suit premises.

11. In the replication filed in the written statement of the Defendant No. 2, it is stated by the plaintiff that Meena Gupta was the wife of Vijay Gupta, partner of M/s Ganpat Rai Vijay Kumar from whom the plaintiff got a portion of the suit premises vacated by the process of law. The Defendant No. 2 had deliberately concealed the name of the husband of Meena Gupta with a view to mislead this court. It is stated that the story set up by the Defendant No. 2 was a concocted one. The agreement dated 10th February 2000 permitting Meena Gupta to sub-let the premises was denied. It has been pointed out that when the plaintiff came to know on 1st July 2003 about the Defendant No. 1 having forcibly taken possession of the premises, a police complaint was filed.

12. On the basis of the above pleadings and the documents filed by the parties, this Court framed the following issues:

1. Whether the Defendant No. 1 has become owner of the portion of the suit premises shown in red colour in the site plan annexed to the plaint, having 1590 sq. ft. area on Ground Floor and 195 sq. ft. area on mezzanine floor, by way of adverse possession? OPD-1
2. Whether any agreement was executed between the plaintiff and Mrs. Meena Gupta, D/o late Shri Prem Nath on 10.2.2000, with respect to the portion of the suit premises shown in green colour in the site plan annexed to the plaint? If this is proved, what is the consequence and effect of the said agreement? OPD-2
3. Whether Mrs. Meena Gupta had any power to sub-let the premises, shown in green colour in the site plan annexed to the plaint, to the Defendant No. 2? OPD-2
4. Whether the suit of the plaintiff, in so far as it relates to the portion shown in green colour in the site plan annexed to the plaint, is barred by the provisions of Section 50 of the Delhi Rent Control Act, 1988? OPD-2
5. Whether suit of the plaintiff is bad under the provisions of Order II of the Code of Civil Procedure, 1908? OPD-1 and 2.
6. Whether Defendant No. 1 was inducted by predecessor- in-interest of the plaintiff as a tenant in the portion of the suit property shown in red colour in site plan having 1590 sq. ft. area on Ground Floor and 195 sq. ft. area on mezzanine floor? OPP
7. Whether the Defendant No. 1 illegally handed over the aforesaid suit premises shown in red colour in the site plan to the Defendant No. 2? OPP
8. Whether the Defendant No. 2 forcibly took possession of the Lower Ground Floor/Basement portion of the suit property, shown in green colour in the site plan annexed to the plaint, and measuring 1200 sq. feet? OPP
9. Whether the plaintiff is entitled to possession of the suit property bearing No. 1, Old Municipal No. 1616 (front and rear) and new Municipal No. 1704, S.P. Mukherjee Marg, Queens Road, Delhi-110 006 as shown in red and green in the site plan? OPP
10. Whether the Defendants are liable to be evicted from the suit premises? OPP
11. Whether the Defendants are liable to pay damages to the plaintiff for wrongful use and occupation of the suit property? If yes, at what rate and for what period? OPP
12. Relief.
13. The submissions of the learned Counsel for the parties have been heard.
14. Issue No. 1: Whether the Defendant No. 1 has become owner of the portion of the suit premises shown in red colour in the site plan annexed to the plaint, having 1590 sq. ft. area on Ground Floor and 195 sq. ft. area on mezzanine floor,

by way of adverse possession?

The plea of adverse possession set up by the Defendant No. 1 appears to be misconceived. It is claimed that the Defendant No. 1 in the written statement filed in the other suit namely Suit No. 372 of 1990 pending in the Court of the Civil Judge that the plaintiff had no title to the suit property. A person setting up the plea of adverse possession has to necessarily aver that such a plea is being set up against a person who is the valid title holder/owner of the premises in question. The possession of the suit premises by the Defendant No. 1 has to be shown to be hostile to the true owner. These are the essential ingredients necessary to be proved before a party can be permitted to take the plea of adverse possession.

15. In *T. Anjanappa and Others Vs. Somalingappa and Another*, it has been explained that the concept of adverse possession contemplates hostile possession, i.e., a possession which is expressly or impliedly in denial of the title of the true owner. A person who claims title by adverse possession "must show by clear and unequivocal evidenced that his possession was hostile to the real owner and amounted to denial of his title to the property claimed".

16. Referring to the decisions in *Annasaheb Bapusaheb Patil and others Vs. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs. and heirs etc.*, the Supreme Court in *T. Anjanappa v. Somalingappa* explained as under (SCC @ p.575):

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:

14. ...Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under Article 65 [of the Limitation Act], 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 could 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. See *Annasaheb Bapusaheb Patil v. Balwant* SCC p. 554, paras 14-15.

17. In *T. Anjanappa v. Somalingappa*, the Supreme Court criticized the High Court for holding that the defendants do not have to prove who is a true owner. It was observed "if the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise".

18. In the above context, therefore, the plea of the Defendant No. 1 that the plaintiff is not the true owner, per se negatives its assertion that it has perfected title by adverse possession vis-a-vis the plaintiff. The plea of the Defendant No. 1 that the plaintiff is not the true owner of the suit property certainly therefore should result in holding that the Defendant No. 1 has failed to prove perfection of title to the suit property by adverse possession.

19. In the affidavit of evidence filed by the plaintiff, a certified copy of the sale deed dated 22nd July 1975 has been enclosed and marked as an Ex.PW.-1/3. In the cross-examination, the witness denied that the rent receipts and claimed that Ex. PW.1/10 to PW1/13 were forged. He denied the suggestion that there was any tenancy between Defendant No. 1 and the plaintiff. A question was asked if the Defendant No. 1 was having a booking agency of the Defendant No. 2, to which the witness of the plaintiff stated that he was unable to confirm. As regards the suggestion about Meena Gupta, this witness denied that he had inducted her as tenant in respect of the lower ground floor and also given her right to sub-let the property.

20. As far as the Defendant No. 1 is concerned, he filed an affidavit by way of examination-in-chief dated 30th July 2007. According to the Defendant No. 1, suit premises was given to him by R.C. Jain since he wanted to do it as act of gratitude for the agency of Telco. Defendant No. 1 claims not to be aware as to who has been paying the property tax and other related taxes. This answer by itself is a clear indication that the Defendant No. 1 was not in possession of the suit premises. If in fact had the Defendant No. 1 been in possession of the suit property, it would have been paying the property tax and other taxes. Defendant No. 1 also claims to have been unaware of the sale deed dated 22nd July 1975 or its mutation in the name of the plaintiff. The witness admitted that they were having an agency of Defendant No. 2.

21. The Defendant No. 1 has miserably failed to prove that he has perfected title to the suit property by adverse possession. Defendant No. 1 has not placed on record any document to show that it has been in continuous possession of the suit property or has been paying its property taxes or electricity charges.

22. It was sought to be asserted by the Counsel for the Defendant No. 1 that the

period for claiming adverse possession should be construed as commencing on 31st July 1990 when the Defendant No. 1 asserted such adverse possession in the written statement. This submission is clearly misconceived. The ingredients of the plea of adverse possession has been explained by the Supreme Court in the aforementioned decision in T. Anjanappa v. Somalingappa. In light of that law, it must be held that the Defendant No. 1 has failed to prove that it has perfected title to the suit property by adverse possession.

23. Issue No. 1 is accordingly answered against the Defendant No. 1 and in favour of the plaintiff.

24. Issue No. 2: Whether any agreement was executed between the plaintiff and Mrs. Meena Gupta, D/o late Shri Prem Nath on 10.2.2000, with respect to the portion of the suit premises shown in green colour in the site plan annexed to the plaint? If this is proved, what is the consequence and effect of the said agreement? The Defendant No. 2 has not led any evidence at all. The original of the agreement dated 10th February 2000 has not been placed on record. Consequently it must be held that the agreement is not proved in accordance with law.

25. The plea of Defendant No. 2 that it came into possession lawfully by means of that agreement a sub-lettee of the premises through induction by Meena Gupta must fail. This issue is accordingly answered against the Defendant No. 2 and in favour of the plaintiff.

26. Issue No. 3: Whether Mrs. Meena Gupta had any power to sub-let the premises, shown in green colour in the site plan annexed to the plaint, to the Defendant No. 2? In view of the finding on Issue No. 2, it must be held that Meena Gupta had no power to sub-let the premises to Defendant No. 2. The issue is answered against Defendant No. 2 and in favour of the plaintiff.

27. Issue No. 4: Whether the suit of the plaintiff, in so far as it relates to the portion shown in green colour in the site plan annexed to the plaint, is barred by the provisions of Section 50 of the Delhi Rent Control Act, 1988? In view of the finding on Issue Nos. 2 and 3, the suit filed by the plaintiff cannot be held to be barred u/s 50 of the Delhi Rent Control Act, 1988. Accordingly, this issue is also answered against Defendant No. 2 and in favour of the plaintiff.

28. Issue No. 5: Whether suit of the plaintiff is bad under the provisions of Order II of the Code of Civil Procedure, 1908? The contention of the defendants that is the suit must fail under Order II Rule 3 CPC. The suit filed before the learned Civil Judge was for an injunction restraining the Defendant No. 1 from creating third party rights in respect of the suit property. The present suit is for recovery of possession. It cannot be stated that the present suit constitutes part of the same cause of action as that of suit filed before the learned Civil Judge. Consequently, the issue No. 5 is answered against the Defendants 1 and 2 and in favour of the plaintiff.

29. Issue No. 6: Whether Defendant No. 1 was inducted by predecessor-in-interest of the plaintiff as a tenant in the portion of the suit property shown in red colour in site plan having 1590 sq. ft. area on Ground Floor and 195 sq. ft. area on mezzanine floor?

The plaintiff has been able to prove that the Defendant No. 1 was inducted in the red colour portion marked in the rough site plan, i.e., the ground floor as well as mezzanine floor of the suit premises. Accordingly this issue is answered in favour of the plaintiff and against the Defendant No. 1.

30. Issue No. 7: Whether the Defendant No. 1 illegally handed over the aforesaid suit premises shown in red colour in the site plan to the Defendant No. 2?

The Defendant No. 2 has not been able to demonstrate that it came to legal occupation of the suit premises in question through Defendant No. 1. It appears that the Defendant No. 2 has not been able to prove any document to substantiate this plea. On the other hand, the plaintiff has been able to show that he had filed a police complaint against Defendant No. 1 for handing over possession of the suit premises to Defendant No. 2. Accordingly, this issue is answered in favour of the plaintiff and against the Defendants.

31. Issue No. 8: Whether the Defendant No. 2 forcibly took possession of the Lower Ground Floor/Basement portion of the suit property, shown in green colour in the site plan annexed to the plaint, and measuring 1200 sq. feet? In view of the finding on Issue No. 7, this issue is also held in favour of the plaintiff and against the Defendants.

32. Issue No. 9: Whether the plaintiff is entitled to possession of the suit property bearing No. 1, Old Municipal No. 1616 (front and rear) and new Municipal No. 1704, S.P. Mukherjee Marg, Queens Road, Delhi-110 006 as shown in red and green in the site plan?

In view of the finding on the above issues, it is held that the plaintiff is entitled to possession of the entire suit property including the portion shown in red and green in the site plan. The issue is decided in favour of the plaintiff and against the Defendants.

33. Issue No. 10: Whether the Defendants are liable to be evicted from the suit premises?

In light of the findings hereinabove, this issue is decided in favour of the plaintiff. It is held that the defendants are liable to be evicted from the portion of the suit property under their respective occupation.

34. Issue No. 11: Whether the Defendants are liable to pay damages to the plaintiff for wrongful use and occupation of the suit property? If yes, at what rate and for what period?

The plaintiff has not been able to adduce any evidence as regards damages. However, the plaintiff has placed on record the rent receipts marked as PW.1/10

to PW1/13. Although the plaintiff has claimed that the rent of premises was increased from Rs. 200/- per month to Rs. 3,600/- per month, no rent receipt has been placed on record in support of this fact. The four rent receipts placed on record only show that even as on 31st March 1991, the rent of Rs. 200/- was being collected. No other document has been placed on record in support of the claim for mesne profits. Admittedly, the rent was last paid only on 31st December 1982. The plaintiff has also not placed any evidence to prove the present market value of the premises in question. Consequently this issue is decided against the plaintiff and in favour of the Defendants.

35. The suit is partly decreed in the above terms with costs by directing that the Defendants shall be evicted forthwith from the suit premises. Decree sheet be drawn up accordingly.