
(2012) 08 DEL CK 0495
In the Delhi High Court
Case No : CS (OS) No. 1644 of 2003

Kishan Chand Wadhwa

APPELLANT

Vs

Durga and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 22 Rule 10
Transfer of Property Act, 1882 — Section 52

Citation : (2012) 08 DEL CK 0495

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : B.B. Gupta and Ms. Anshul Mittal, for the Appellant; Neelam, Proxy Counsel and Mr. S.K. Verma, Advocate, D-1, 10 and 17, for the Respondent

Final Decision : Disposed Off

Judgement

Valmiki J Mehta, J.—The subject suit for possession and mesne profits has been filed by the plaintiff who is the owner of Industrial Plot No. E-6 in Block B-1 Extension situated in Mohan Cooperative Industrial Estate, Mathura Road, New Delhi. The plaintiff became owner of this plot by means of a perpetual sub-lease dated 27.10.1988 executed by the Delhi Administration. The present perpetual lessor is the Delhi Development Authority (DDA). After getting the lease rights in the plot when the plaintiff went to the spot it transpired that various unauthorized occupants were in possession of different portions of the plot. The plaintiff thereafter entered into correspondence with Mohan Cooperative Industrial Estate, the DDA, as also the police authorities, for removal of the encroachers, however, since no steps were taken by the requisite authorities, plaintiff filed the subject suit for possession and mesne profits. In this suit, the written statement was filed only by defendant Nos. 10 and 17. Originally, in this suit there were 29 defendants and which list was subsequently expanded by allowing an application under Order 1 Rule 8 of Code of Civil Procedure, 1908 (CPC). An amended memo of parties was then filed expanding the array to 97 defendants. The difficulty of the plaintiff is that there are jhuggis at the spot, and

which keep on changing hands, and therefore it is not known as to which different portions of the property are being transferred and when and to whom, hence the Order 1 Rule 8 CPC application. In my opinion, however it will not make any difference because under Order 22 Rule 10 CPC, read with Section 52 of the Transfer of Property Act, 1882, the decree passed in the suit will be binding against the original defendants as also all persons who claim under the original defendants once the rights arise subsequent to the filing of the suit. The Supreme Court in the case of Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, has held that it is not mandatory for the persons to whom title has devolved during the pendency of the suit to be substituted in place of original parties and the suit can be continued by or against the original parties to the suit.

3. Issues in this case were framed on 17.3.2006, which read as under:-

1. Whether the plaintiff is entitled for a decree of recovery of possession of the property against the defendants except from the defendant Mohan Cooperative Industrial Estate Ltd.? OPP

2. Whether the plaintiff is entitled for recovery of mesne profits from the defendants except from the defendant Mohan Cooperative Industrial Estate Ltd.? OPP

3. Whether the suit has been properly valued for the purpose of Court fees and jurisdiction and appropriate Court fees has been paid? OPP

4. Whether all the defendants except the defendant Mohan Cooperative Industrial Estate Ltd have become owners by adverse possession? OPD

5. Relief.

3. The plaintiff led evidence and the plaintiff's witnesses were cross-examined. The defendant Nos. 10 and 17 however failed to lead any evidence and therefore, right of these defendants to lead evidence was closed vide orders dated 1.8.2011 and 21.9.2011.

4. In view of the fact that the onus to prove adverse possession was on the defendants and no evidence is led on behalf of the defendants, and thus issue No. 4 is decided against the defendants.

5. I will now take up issue Nos. 1 and 2 of the entitlement of the plaintiff to possession and the claim of mesne profits. The plaintiff has proved and exhibited in this Court the perpetual sub-lease executed in his favour as Ex.P-1. Various other letters sent to the different authorities seeking removal of encroachments have been proved and exhibited as Ex.P-2 to Ex.P-12. The site plan of the property has been proved and exhibited as Ex.P-13. Plaintiff has also led evidence and deposed that the market rent of similar plot of land in this area would be Rs. 25,000/- approximately, and to this aspect there is no cross examination on behalf of the two defendants i.e. defendant Nos. 10 and 17 who

were appearing in the suit. In any case, this Court can take judicial notice that for a plot of about 1400 sq. yds the rental would be at least in the regime of Rs. 25,000/- in around the year 2003. As per the order dated 8.9.2005, the plaintiff has restricted his claim of mesne profits w.e.f. 12.5.2005, when the application for amendment of the plaint was allowed to add the relief of mesne profits.

6. In view of the above, and in my opinion, the plaintiff has proved his ownership of the suit plot. The defendants have failed to prove their ownership by adverse possession. The plaintiff is also entitled to relief of mesne profits at Rs. 25,000/- per month. In view of the above discussion, suit of the plaintiff for possession and mesne profits is decreed against the defendants. The plaintiff is held entitled to possession of the Industrial Plot No. E-6 in Block B-1 Extension situated in Mohan Cooperative Industrial Estate, Mathura Road, New Delhi against the defendants; or whoever is found to be in possession through the defendants; as per the site plan Ex.P-13. Plaintiff is also entitled to mesne profits of Rs. 25,000/- per month jointly and severally against the 97 defendants in the suit w.e.f. 12.5.2005 till passing of this decree and thereafter till the defendants handover peaceful vacant possession to the plaintiff. Plaintiff is also entitled to costs as per the rules applicable to this Court. Decree sheet be prepared. The suit is accordingly decreed and disposed of.