

(1993) 08 DEL CK 0015

In the Delhi High Court

Case No : Regular Second Appeal No. 40 of 1977

Lal Chand

APPELLANT

Vs

Begum Jan (Deceased) Mohd. Ahmed and Others

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 8(4)

Citation : (1993) 27 DRJ 394

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : R.P. Kathuria, Naveen Batra and M. Ahmed, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This is second appeal arising from the judgment and decree dated December 24, 1976, of an Additional District Judge by which he had dismissed the appeal with costs against judgment and decree dated July 16, 1975 of a Sub Judge, by which a suit was decreed for recovery of possession in respect of house bearing No. 10462, Bagichi Pirji, Qasimpura, Subzi Mandi, Delhi. (Ward No. 12 as depicted in red colour in Ex. PW7/8) and decree of recovery of Rs.382/32P as mesne profits was also passed with costs.

(2) According to the case set up by the respondent/plaintiff, she had obtained perpetual lease of the land measuring 14 Bighas 10 bids was in Khewat and Khata No.204/246 comprising of Khasra Nos.420,421,252/5 & 423. This lease-deed is dated March 3, 1943. Ex. P1 is the copy of the said registered lease-deed. Ex.P2 is the copy of the map showing the said land which was leased out to the respondent which was also registered Along with the lease-deed. There were certain unauthorised occupants in the property located in the said land which bore Municipal Nos. 12003 & 11991 (Old) and a suit was filed by the respondent against the said unauthorised occupants in the year 1943 which was Suit No-257/43. The said suit is stated to have been decreed and after

demolishing the super-structure possession is stated to have been obtained by the respondent/plaintiff and thereafter the respondent/ plaintiff is stated to have raised certain construction and in 1947 due to partition of the country and riots taking place, it is alleged that appellant occupied the property now bearing No. 10462 (of which Old No. was 11991). It is again the case of the respondent/ plaintiff that this property was declared evacuee property and a petition was filed before the Assistant Custodian and vide order dated December 15,1953, the super-structure of this property was declared as non-evacuee whereas the land of which the respondent was held to be perpetual lease holder was stated to be evacuee property. The matter was taken up before the Custodian and the Custodian vide order dated 27th March 1954 held that even the land which, in fact, was owned by Agha Mohammad Qasim was not evacuee property inasmuch as the owner had never become an evacuee. So, the entire property was declared as non-evacuee by this order which became final.

(3) The respondent had also set up the plea that vide order dated September 25,1959, the Deputy Custodian General had declared the land comprised in Khewat No. 193 Khasra Nos. 789/423/1.420,421,422,788/423/1 measuring 14Bighas as non-evacuee mentioning that the respondent i.e. Begum Jan (since deceased) was having the leasehold rights in the said land and the land belonged to Mohd.Qasim who had not become an evacuee and thus the said land was also non-evacuee.

(4) The suit of the respondent was based on title. It appears that earlier an eviction petition had been brought against the appellant where the appellant took up the plea that there existed no relationship of landlord and tenant between the parties and in fact the appellant has acquired title to the property in question by virtue of his adverse possession which has continued for more than 20 years. This written statement is dated May 25, 1962. The Additional Rent Controller vide order dated March 15, 1963 dismissed the eviction petition holding that there did not exist any relationship of landlord and tenant between the parties. Copy of the said order is Ex.D-1. This order was upheld by the Rent Control Tribunal vide judgment dated July 26,1963, copy of which is Ex.D-2. The Sao filed against the same in the High Court was also dismissed vide order dated April 8,1970, copy of which is Ex.D-3. The present suit was instituted by Mst. Begum Jan on November 4, 1970.

(5) The appellant had contested the suit on various pleas. Only two material points survive for decision in this appeal. Firstly, whether Begum Jan had been able to prove that she is the owner of the property in question and secondly, whether the appellant had acquired title to the said property by adverse possession and thus, suit brought by Begum Jan was barred by limitation.

(6) The Trial Court held that Begum Jan was the owner of the property in question and the suit was not barred by limitation and Lal Chand had not acquired any title by adverse possession and basically, the finding is based on the order dated September 25,1959, copy of which is Ex. PW7/6. It has been

held that up to the date of the passing of the said order, in view of the provisions of the Administration of Evacuee Property Act, the possession of the appellant was not adverse inasmuch as the property was declared as evacuee property up to that date and thus 12 years having not elapsed till the filing of the suit, the suit was not barred by limitation. It was also held that in fact there has been no assertion of hostile title by the. appellant continuously for 12 years preceding the filing of the suit.

(7) The first appellate Court although held that the lease deed, copy of which is Ex-P- 1, the basis of the title of Begum Jan as perpetual lease holder had but been proved, still finding was given that she was the owner of the property in question and the appellant had not acquired any title by adverse possession inasmuch as the appellant had not paid any property tax or had committed any other overt act by which it could be held that the appellant had been continuously and openly asserting his title to the property in question.

(8) The judgment of the first appellant Court on the point that respondent had not been able to prove the lease deed is erroneous in law inasmuch as he has misread the evidence which has been led on the record. Mohd. Umar, the attorney of Begum Jan had, in his deposition as PW7, categorically stated that he had brought the original lease deed and the original map attached with the lease deed which was duly registered and he identified the signatures of the executant and the witnesses on the said lease deed and he proved the certified copy of the lease deed and certified copy of the map on the record which are Ex. P-I and P-2. The first appellate Court committed grave error in mentioning in the judgment that original documents were not brought in Court. The statement of Mohd. Umar that Begum Jan had acquirer the leasehold right over the land over which the property in question stood constructed, remained unchallenged in cross-examination, so findings of the two Courts below that Begum Jan was the perpetual lease holder of the land in question and owner of the super structure/ property in question, are to be sustained.

(9) As far as limitation and acquisition of title by adverse possession is concerned, the law is very clear that if the suit for possession is based on title, the terminus for the commencement of the limitation is the date from which any hostile or adverse possession is asserted by other side. On this point, I had analysed the legal position in Rsa 89/89, Liaq Mohammad Vs. D.D.A. decided on August 5,1993. It is not necessary to again cover the same field by giving any elaborate judgment on this point.

(10) So, the short question which arises for decision is whether the appellant had or had not acquired the title to the property in question by adverse possession. The Courts below were again not correct in reading the documents proved on the record in the manner they have done. The documents Ex.PW7/5 and PW7/7 by which the property in question was completely declared as non-evacuee are dated December 12,1953 and March 25,1954. So, from March 27,1954 onwards the property was non-evacuee and the Custodian had nothing to do with this

property.

(11) However, the trial Court had mentioned that in fact the property in question came to be declared non-evacuee property vide order dated September 25, 1959. A careful reading of this document would show that it pertains to land bearing Khevat number 193 which comprised of Khasra Nos. 789/423/1.420,421,422,788/423/1. whereas the property in question is constructed admittedly now over the land which was the subject matter of the lease deed, copy of which is Ex. P-I, which pertains to Khevat and Khasra No-204/246 comprising of Khasra Nos. 420,421,242 and 423. Because there is some similarity in numbers of the khasra numbers in lease deed, Ex. P-I, and in the order, Ex.PW7/6. the Trial Court was mislead in coming to the conclusion that the property in question was declared no evacuee vide order dated September 25,1959, copy of which is Ex.PW7/6. In fact, the said order had nothing to do with the property mentioned in Ex. P-I. There can be similar number of khasra numbers in different Khevats. It is possible that Mohd. Qasim might have been owner of Khevat No. 193 which was the subject matter of the order Ex. PW7/6 and Begum Jan might have been perpetual lease holder in respect of the land as well. These Khasra numbers of Khevat No. 193 cannot, by any stretch of reasoning, be equated with Khasra numbers of Khevat No. 204/246.

(12) Counsel for the respondent has urged that Khevat numbers might have changed. If that is so, it was incumbent upon the respondent to have led evidence in the trial court to show that the Khevat numbers have changed and the Khasra numbers had remained the same. No steps have been taken by the respondents to link the property mentioned in order, copy of which is Ex. PW7/6, with the property in question.

(13) It is also evident that the property in question at least was declared non-evacuee vide order dated March 27, 1954. It is not understood how the same property could be declared evacuee property vide order dated October 25,1957. The order September 25,1959 was made in an appeal against order dated October 25,1957. The copy of order dated October 25, 1957 was not produced on the record at all. A perusal of the order dated September 25, 1959, as already mentioned above, shows clearly that this pertains to a different Khevat number 193 and Khasra numbers measure 14 Bighas whereas the lease deed, copy of which is Ex.P-1, shows that khasra numbers comprised of area of 8 Bighas or so. At any rate. Begum Jan was restored the property finally in 1954. The suit was brought in 1973.

(14) Now, only question to be seen is whether the appellant had been asserting his title to the property by adverse possession continuously and openly for a period of 12 years preceding the filing of the suit or not.

(15) In this connection, I may refer to the statement of Lal Chand, DW-5, where he, in his examination-in-chief, categorically deposed that in 1954 the plaintiff had come to him and had claimed to be the owner of the property and had

required him to pay the rent and he had controverted her pleas and had asserted that he had been in possession since long as owner. No question in cross-examination was put to him suggesting that his testimony in this regard was false and that the plaintiff had not asserted his adverse title at that time. Mere fact that the appellant had not taken any steps to pay the property-tax is no ground to hold that the appellant had not asserted his adverse title viz a viz the owner openly since 1954. It is true that as long as the property remained as evacuee property by virtue of Section 8(4) of Administration of Evacuee Property Act. the appellant would be deemed to have held the possession of the property on behalf of the Custodian but the moment the property was restored to the respondent in 1954, the possession of the appellant, which was asserted by him as adverse possession in 1954, became hostile to the respondent and thus, the suit brought after the expiry of 12 years from that date was hopelessly barred by time.

(16) The counsel for respondent has referred to the statement made by the appellant under Order 10 CPC before framing of issues where the appellant had mentioned that in 1947, he came in the possession of the property and one Ram Nath was the owner of the property. But it is nobody's case that Ram Nath had any connection with this property. Even if that statement made under Order 10 has to be kept in view, yet in light of the pleadings in the written statement where a definite plea has been taken that the appellant has been in continuous hostile possession of this property for more than 12 years, the said plea cannot be brushed aside. So, mere fact that before framing of issues, he stated that Ram Nath was the owner of the property and that is how he came into the property would not lead to any inference that in 1954 at least, when he asserted his title to the property and denied the title of the respondent the appellant is not to be deemed to be in continuous hostile possession of the property.

(17) In view of the above discussion, I hold that the suit of the respondent was liable to be dismissed with the findings that the respondent has become owner of this property by adverse possession and the suit was barred by limitation. I the appeal and set aside the impugned judgments & decree and dismiss the suit but in view of the peculiar circumstance of the case, I leave the parties to bear their own costs throughout.