

(2006) 12 DEL CK 0082

In the Delhi High Court

Case No : Regular First Appeal 563-64 of 2006

Mohan Singh Kohli and Another

APPELLANT

Vs

Sh. Brij Bhushan Anand and Others

RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : (2007) 97 DRJ 83 : (2007) 1 ILR Delhi 717

Hon'ble Judges : T.S. Thakur, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Rajiv K. Garg, for the Appellant; Suhail Dutt and Raj Nathan for Caveator, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—This is a defendant's appeal arising out of a suit for possession of a plot of land which the trial court has decreed in favor of the plaintiff-respondent. The facts giving rise to the suit are few and may be summarised as under:

2. The suit property comprises a vacant plot of land bearing Municipal No. L-21, Kalkaji, New Delhi which was acquired by one Sh. Thanda Ram on a long lease of 99 years commencing from October 12, 1971 in terms of a registered lease deed dated 31.05.1972. In the year 1973 the said plot of land was purchased by Late Sh. Brij Bhushan Anand, the deceased plaintiff who is now substituted by his legal representatives. The transfer is evidenced by a sale deed duly executed and registered in favor of the purchaser in March, 1973.

3. Briefly stated the plaintiff's case was that he had been in exclusive possession of the suit property ever since the date he came in possession pursuant to the sale deed mentioned above. His further case was that since he was living in the United States of America, the defendants had, taking advantage of his absence and the fact that the land was lying vacant constructed a garage and put up a

temporary shed on the same apart from building a brick wall around the plot in the year 1983. Civil Suit No. 113/1985 was in that backdrop filed against the defendants for possession of the plot in question & also for an injunction restraining them from interfering in future with the use and occupation of the property by the plaintiff.

4. In original suit No. 2728/1999 separately filed by the plaintiff against the defendants, a claim for payment of mesne profits @ 12,000/- per month was made and a decree for a sum of Rs. 4,32,000/- prayed for on that account for the period 01.12.1991 to 30.11.1994.

5. The defendant-appellants filed their written statements in both the suits mentioned above in which it was inter alias alleged that they had perfected their title over the suit property by prescription. According to the defendants, they were in possession of the suit land from the year 1971 onwards. They claimed to have filled up the pits and planted trees on the plot in question and continued in occupation ever since.

6. On the pleadings of the parties the trial court framed the following issues:

- 1) Whether plaintiff is owner of the impugned plot of land? OPP
- 2) Whether the plaintiff is not properly valued for the purposes of court fee and jurisdiction? OPD
- 3) Whether the defendants have become owner of the disputed plot by adverse possession? OPP
- 4) Relief.

7. Issues were framed in the connected suit for recovery of damages and for mesne profits also but since the present appeal does not question the judgment and decree in the said suit which has been dismissed by the court below, it is unnecessary for us to dilate on that aspect any further.

8. In support of his case the plaintiff appeared as his own witness apart from examining Sh. Thanda Ram Dhan Raj Mal, his vendor. The defendants remained content with getting their own deposition recorded.

9. By the judgment and decree impugned in this appeal, the trial court answered issue No. 1 in favor of the plaintiff and held that the plot in question had been acquired by Sh. Thanda Ram on lease basis from the Govt. of India in terms of a lease deed marked exhibit PW 1/A and certificate of sale marked exhibit PW 1/B. It further held that the suit property was then sold to the plaintiff in the year 1973 in terms of a sale deed marked exhibit PW 1/C for a consideration of Rs. 36,000/-. The court noted that neither the plaintiff nor his vendor Sh. Thanda Ram had been cross-examined by the defendant in regard to the acquisition of the plot by them in terms of the documents referred to above. It repelled the contention urged on behalf of the defendants-appellants that the original lessee and his transferee had violated the terms of the lease in as much as they had not

constructed a building over the same within the period stipulated for the purpose. The court held that a breach of the terms of the lease deed was a matter that did not concern a third party like the defendants and that any such violation could at best justify action by the Govt. of India in accordance with the terms of the lease.

10. Issue No. 2 was also answered against the defendants and the suit held to have been properly valued for the purpose of jurisdiction. In so far as issue No. 3 was concerned which by far happened to be the most crucial issue, the trial court held that the possession of the plot in question had been delivered to the plaintiff purchaser in terms of the sale deed marked exhibit PW 1/C. It also found that the plaintiff had called upon the defendant to demolish the construction raised in the plot in terms of a notice dated 30.04.1984 after the plot had been occupied illegally by the defendants in the year 1983. Since the needful was not done, the plaintiff had filed the suit for possession in the year 1985 which was within the period of limitation prescribed. Relying upon the decisions of Supreme Court in *Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others*, and those of this Court in - *Devi Charan Vs. Ranpat Singh, & - Harbans Kaur and Ors. v. Bhola Nath and Anr.* 57 (1994) DLT 101 the court repelled the contention urged on behalf of the defendants that they had perfected their title over the suit property by prescription. The court noticed that the defendants had failed to specify the particular date when they actually came in possession of the property. It also declined to accept the version of the defendants that the marriage ceremonies of daughters of defendant No. 1 and that of defendant No. 2 were performed in the suit land for want of documentary evidence to substantiate the said assertion. The court held that even if, the defendants were in occupation of the suit property, the same was not hostile nor had the defendants proved that the plaintiff-owner of the property was aware of any such hostile occupation. The court on those findings decreed the suit for possession filed by the plaintiff-respondent in their favor. Connected suit No. 2728/1999 for recovery of damages and mesne profits was however dismissed for want of any evidence. The present appeal, as noticed above, calls in question the correctness of the said judgment and decree in so far as the same decrees the claim for delivery of possession in favor of the plaintiff.

11. Appearing for the appellants, Mr. Garg confined his submissions to the findings recorded by the trial court on issue No. 3. He did not question before us the finding of the trial court in regard to issue No. 1 & 2. He urged that the evidence on record was sufficient to prove that the defendants-appellants had indeed perfected their title over the suit property by adverse possession. The court below was, according to Mr. Garg, in error in holding that actual physical possession of the disputed plot of land had been handed over either to Sh. Thanda Ram Dhanraj Mal or to the plaintiff. He submitted that suit land had been occupied by the defendants in the year 1970-71 and since the actual physical possession was with the defendants, there was no question of any one delivering possession of the same. The plaintiff's version that the plot had been illegally

occupied by the defendants in the year 1983 was not according to the learned Counsel factually correct.

12. The legal position regarding the essentials to be established for acquisition of title by adverse possession is well settled by a long line of the decisions of the Supreme Court and the High Courts in the country. Adverse possession, it is well settled, implies that it commenced in wrong and is maintained against right. The very concept underlying adverse possession is that the person in possession must claim to be so of right as against the true owner. It must be *nec vi, necc lam, nec precario*. It must be adequate in continuity and publicity to the extent of showing that it is possession adverse to the competitor. It must be hostile and under a claim or colour of title. It must be actual, open, uninterrupted, notorious, exclusive and continuous and it must run over the entire statutory period of 12 years. Any person who bases his claim to title by adverse possession must Therefore show by clear and unequivocal evidence that his possession was hostile to the real owner with the attributes of notoriety, exclusivity and continuity over the statutory period.

13. In *S.M. Karim Vs. Mst. Bibi Sakina*, the Supreme Court declared that adverse possession must be adequate in continuity, in publicity and extent and that a plea is required to at least show as to when possession became adverse so that the starting point of limitation against the party effected by the same can be determined.

14. In *Annasaheb Bapusaheb Patil and others Vs. Balwant alias Balasaheb Babusaheb Patil (dead) by LR. and heirs etc.,* . Their lordships described the meaning of the expression adverse possession and the pre-requisite for proving the same in the following words:

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 of the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. A 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 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. In *Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others*, the apex court declared that onus of proof to establish acquisition of title by

prescription lies on the party who makes any such assertion. The court further held that time for the purpose of adverse possession, would start running from the date both, the actual possession and assertion of title, are shown to exist. The court explained that mere possession of land, however long it may be would not ripen into title unless the possessor has animus possible to hold the land adverse to the title of the true owner and that an assertion of title by adverse possession must be clear and unequivocal though not necessarily addressed to the real owner. Consequently, where at the commencement of the possession there is no animus possible, the period relevant for the plea of adverse possession commences from the date when both, the actual possession and assertion of title by the possessor, are shown to exist. In the peculiar facts of the case before their lordships" it was held that the defendants had pleaded adverse possession for the first time only in the written statement filed in the suit, the court accordingly excluded the period till the date of the filing of the written statement from reckoning on the ground that there was no animus possible during the said period nor had the defendant claimed any title to the land in dispute adverse to the defendant. The following passage is in this connection apposite:

Mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has animus possible to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possible to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal though it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possible must be shown to exist. Where, however, at the commencement of the possession there is no animus possible, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist.

16. To the same effect is the decision of Supreme Court in *Karnataka Board of Wakf Vs. Government of India and Others*, where the court summed up the legal position in the following passage

It is well settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive possession and the animus possible to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should

show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favor. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

17. In *T. Anjanappa and Others Vs. Somalingappa and Another*, the Supreme Court laid emphasis on the animus of the person in possession for determining whether the same was adverse to the true owner and reiterated the legal principles that are applicable in cases involving adverse possession.

18. Three single bench decisions of this Court in *Devi Charan Vs. Ranpat Singh*, , *Harbans Kaur and Ors. v. Bhola Nath and Anr.* 57 (1994) DLT 101, Wg. Cdr. (Retd.) *R.N. Dawar v. Shri Ganga Saran Dhama* DRJ 1992 (24) follow the same line of reasoning.

19. To sum up in a case where the defendants claim title by adverse possession, the following broad principles must be applied while examining any such plea.

1) Onus to prove the question of title by adverse possession is on the party who make such a claim.

2) Mere long possession of the land is not enough. What is important is whether the possessor had the animus possible to hold the land adverse to the title of the true owner.

3) The period of limitation starts running from the date both actual possession and assertion of title are shown to exist.

4) The assertion of title adverse to the true owner must be clear and unequivocal, though not necessarily addressed to the real owner.

5) The party claiming adverse possession must prove that his possession is "nec vi, nec clam nec precario"

6) The party claiming title by adverse possession must make clear averments to that effect and explain as to when he entered into the possession of the property and when the possession became adverse.

20. If the defendant-appellant's case when judged on the above principles fails to qualify for a declaration of title in the name of the defendants by adverse possession. There is no clear assertion either in the written statement or in the deposition as to when the defendants occupied the suit property and whether they had the animus to hold the same as owners in denial of the title of the true owner. The plea of adverse possession has been raised by the defendants in the following words:

That the defendants have become owners of the plot with super-structure, bearing L-21, Kalkaji, New Delhi by adverse possession; and are in possession,

use and occupation thereof as owner thereof. The defendants came into possession of the said plot in 1970 and have raised the constructions thereupon and has been in exclusive, uninterrupted open, continuous and unchallenged possession thereof. It is further submitted that in 1970, a katcha room with boundary wall was constructed in the year 1970 by the defendants on the said suit plot. The said katcha room and boundary wall was made by the bricks retrieved from the old structure which was existing on the adjoining plot No. L-22, which was purchased by the defendants in 1970 itself. This was done to protect and store the material and to occupy the same and to use the same as no one was attending to it. It has a big pits which were got filled by the defendants and they planted trees in it which are still existing. Later on the structure was reinforced. These premises were used in the marriage ceremony of the daughter of defendant No. 1 in the year 1978, which was attended by relatives and the structure and small boundary wall was existing at the time, the boundary wall and the structure was also in existence in the year 1981 when SPS Kohli got married and the Tikka and Mehndi ceremony was performed on these very premises. The caterer had cooked and served meals inside this plot of land. These facts can be got substantiated from the photographs. The bricks used can be checked to prove that the same is a very old construction. The plaintiff has no right, title or interest in the suit property which is now owned by the defendants in their own rights.

21. It is evident from a plain reading of the above that the defendants-appellants have simply asserted exclusive uninterrupted, open, continuous and unchallenged possession over the plot in dispute. Apart from possession, the defendants have not alleged any animus to prescribe against the true owner of the property. Even possession has been asserted in the context of certain acts which the defendants allege to have done qua the disputed property like filling up the pits, planting of trees, performance of marriage and Tikka and Mehndi ceremony, preparation of food by the caterers for the guests etc. There is no assertion that the defendants had held the property as owners openly and continuously in clear denial of everybody else's ownership towards the same. The written statement, thus, fails to properly raise the plea of adverse possession. The plea is, in any case, tenuous and grossly deficient in particulars.

22. That apart, the allegation that the defendants had occupied the plot in the year 1970 is wholly unacceptable having regard to the documentary evidence in the form of exhibit PW 1/A and deposition of PW1 Sh. Thanda Ram Dhanraj Mal, according to whom he was put in possession of the property pursuant to the lease deed executed in his favor in May, 1972 w.e.f. October, 1971. If the defendant's version were to be accepted even when there was a proper lease deed in favor of Sh. Thanda Ram Dhanraj Mal, no possession could be delivered to the lessee as the land had already been occupied by the defendants. We have no difficulty in rejecting that version as has been rightly done even by the trial court. The lease deed in question coupled with the statement of the lessee that he acquired possession and then transferred the same to the plaintiff in whose

favor he had executed a sale deed marked exhibit PW 1/C in the year 1973 clearly shows that the version given by the defendants that they had occupied the land in the year 1973 was factually incorrect and unacceptable. There is, in any case, nothing except an oral in corroborated self serving assertion by the defendants that they had occupied the land in the year 1970. The plaintiff's case that he was put in the possession of the land in the year 1973 which was then occupied by the defendants in the year 1983, Therefore, appears to us to be more acceptable.

23. So also the assertion that the possession of the defendants was adverse on account of the stray acts of filling up of pits, cooking up of food for marriages or planting of trees in the same does not in our opinion constitute a clear assertion of title against the true owners. Stray acts like cooking food for the guests in a marriage ceremony on a plot of land conveniently located adjacent to the house of the defendants or filling up of pits or planting trees or construction of a temporary shed over the same would not, in our opinion, constitute acts that can be termed as acts of adverse possession against the original owners. There is, in any case, no evidence as to when the defendants actually occupied the land and started prescribing against the owners. The twin requirements of possession and animus possible have not been established leave alone 12 years before the filing of the suit. It is also noteworthy that the defendants have not admittedly paid any property tax qua the suit property, as according to defendant No. 1 the property did not belong to him. DW 1 has even deposed that he was not sure whether the plaintiff was aware about the possession of the defendants over the suit premises.

24. In the totality of the above circumstances, Therefore, the trial court was perfectly justified in taking the view that the plea of adverse possession raised by the defendants had not been substantiated by them. There is no merit in this appeal which fails and is hereby dismissed with costs assessed at Rs. 5,000/-.