

(1994) 02 DEL CK 0068

In the Delhi High Court

Case No : Regular First Appeal No. 526 of 1985

Mohd. Ilyas and Another

APPELLANT

Vs

Mohd. Adil and Others

RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:

Limitation Act, 1963 — Article 64

Citation : (1994) 1 AD 739 : AIR 1994 Delhi 212 : (1994) 53 DLT 655 : (1994) 28 DRJ 706 : (1994) 2 ILR Delhi 447 : (1994) 108 PLR 26

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : M. Ahmed and B.I. Singh, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) This is defendants' appeal against the judgment and decree dated 24 August 1985 of the Sub Judge. First Class. Delhi, whereby the suit of the plaintiffs-respondents was decreed. A decree of possession was passed in favor of the plaintiffs against the defendants respecting shop bearing No. 660, Ward No. VII, Bazar Farash khana. Delhi.

(2) The plaintiffs being the legal representatives of deceased Mohd. Aqil filed the suit for possession in January 1973. Principal contesting plaintiff would be Mohd. Adil (the First plaintiff) son of Mohd. Aqil. There were four defendants. Defendants land 2 (now the appellants) are step brothers of Mohd. Aqil. They are all however sons of Mohd. Yunus. The third respondent is the daughter of Mohd. Aqil, now living in Pakistan, and fourth is Bhola Nath, purchaser of the property in question from the Competent Officer under the Evacuee Interest (Separation) Act, being a composite property. plaintiffs said that shops No. 660 and 661, Ward No. VII, Bazar Farash khana. Delhi, were in the tenancy of Mohd. Aqil, his father, at a monthly rent of Rs. 13.00 and that Mohd. Aqil died on 26 March 1961. plaintiffs, Therefore, claimed the tenancy rights in both the shops. Then the plaintiffs said that they surrendered the tenancy rights of shop No. 661

to the fourth defendant, but the tenancy rights in the other shop. i.e., the suit premises, continued to be with them. Their complaint is that after the death of Mohd. Aqil and "finding the plaintiffs helpless the defendants 1 and 2 who are the brothers of Mohd. Aqil from different mothers trespassed on shop No. 660". and that in spite of the plaintiffs raising demands, defendants 1 and 2 did not hand over possession of the suit premises to them. plaintiffs say that cause of action arose in March 1963 when defendants 1 and 2 took possession of the shop in question.

(3) Defendants 1 and 2 denied the stand taken by the plaintiffs and said they had no cause of action. They said tenancy of Mohd. Aqil was statutory one and that defendant No. 4 who had purchased the property from custodian was colluding with the plaintiffs. The version of defendants 1 and 2 was that they along with Mohd. Aqil had been doing a joint business of selling milk in both the shops No.660 and 661 and that these properties were evacuee properties. Then Mohd. Aqil fell ill and could not do any work and left the business to defendants 1 and 2 leaving no interest to himself and ultimately the illness ended his life. Then defendants 1 and 2 say that they applied to the custodian and they were accepted as tenants. and that they not only paid all the arrears of rent but also current rent against receipts. These defendants also said that Mohd. Adil. first plaintiff. was never in business and that during the life time of his father he was employed in a press. Then the case of defendants 1 and 2 is that since the fourth defendant wanted to take possession of the shop after its purchase from the Custodian and threatened eviction, a compromise was arrived in July/August 1966 whereby defendants 1 and 2 agreed to surrender possession of shop No. 661 to defendant No.4 and defendant No. 4 accepted them as his tenants in shop No-660. Two writings (Exts.D-1 and D-2) were executed-in one possession of shop No.660 was given to defendant No.4 and by the other writing he received whole of the arrears of rent in respect of both the shops. Defendant No. 4 is also slated to have issued a rent receipt in respect of shop No. 660 to defendants 1 and 2 thereby admitting them to be his tenants. These defendants then say that the rent charged by the custodian of the shop was Rs.6.50 per month and the same rent was agreed to by the fourth defendant, and. however, later fourth defendant became dishonest and wanted to increase the rent. Since the defendants refused, he colluded with the plaintiffs. Defendants 1 and 2 then say that fourth defendant filed an application u/s 19 of the Slum Areas (Eviction of Unauthorised Occupants) Act against the plaintiffs seeking permission to sue them for eviction without impleading defendants 1 and 2 as parties in those proceedings. Permission to file eviction proceedings were. however, granted by the Competent Officer under the Slum Areas (Eviction of Unauthorised Occupants) Act, and when defendants 1 and 2 came to know of all this they filed a suit for declaration to the effect that they were the legal occupants and tenants in the shop and could not be evicted except by due course of law. It was stated that that suit was pending. Defendants 1 and 2 also said that various other cases, both civil and criminal, were pending between them and the plaintiffs, and that

the fourth defendant was taking advantage of that. and that whole financing of this litigation had been done by him.

(4) Defendant No.4 also filed written statement in which he accepted the case of the plaintiffs, but apart from filing the written statement he did not appear in the proceedings at any stage. In the replication, the plaintiffs denied the stand taken by defendants 1 and 2.

(5) On pleadings of the Parties, the following issues were framed.:-

1. Whether the suit is properly valued for the purpose of court fee and jurisdiction ? 2. Whether the plaintiffs are the tenants in respect of the suit premises as alleged ? 3. Whether the plaintiffs have no cause of action as alleged in para No.3 of the preliminary objection in written statement of defendants No. 1 and 2? 4. Whether the defendants are in possession of suit property as tenants under the Custodian? 5. Whether the plaintiffs are entitled to any damage? If so, at what rate and to what amount? 6. Relief. Additional Issue: Whether the suit is time barred by Limitation?

(6) On the first issue, the learned Sub Judge fixed the valuation of the shop at Rs.20,000.00 and directed that the decree, if any, will be passed only after court fee is paid within a certain period. Nothing, however, has been said on this issue before us. Issues 2 and 4 were discussed together and these were held against the defendants. Issue No. 3 and additional issue were also held against the defendants. Issue No. 5 was held against the plaintiff as no damages had been claimed in the suit and in fact this issue did not arise out of the pleadings as the plaintiffs had prayed only for a decree of possession. It is difficult to see how it could be said by the defendants that the plaintiffs had no cause of action to file this suit. The averments in the plaint did show that the plaintiffs had cause of action. His different thing if ultimately after trial it is found that cause of action alleged was fictitious. As to why the plaintiffs had no cause of action, the defendants had stated that Mohd. Aqil left no inheritance. and that his tenancy was a statutory one. On this plea ultimately the suit could fail, but it could not be said that plaintiffs had no cause of action. The issue was rightly decided against the defendants.

(7) The suit was filed on 22 January 1973 and Mohd. Aqil had died on 26 March 1961. plaintiffs had said that the cause of action arose in March 1963 when defendants 1 and 2 took possession of the shop. There is nothing on record to show that defendants 1 and 2 took possession of the shop in March 1963. defendants 1 and 2, however, said that they were working at the shop in question and shop No.661 with Mohd. Aqil since 1958 and that Mohd. Aqil, however, due to illness discontinued coming to the shop, and from 1959 onward the shop had been in their exclusive possession. Admittedly, Mohd. Aqil died in 1961. If the defendants 1 and 2 have been in possession of the shop since 1959 the suit would certainly be barred by limitation. It is not shall a fresh cause of action arose on the death of Mohd. Aqil. Under Article 64 of the Schedule to the

Limitation Act. 1963. the period Of limitation prescribed is 12 years. This Article 64 is as under :-

	Description of suit
	Period of Time from
which limitation to run period begins	

64.

For possession of Twelve years The date of immovable properly based dispossession on previous possession and not on title. when the plaintiff while in possession of the properly has been dispossessed.

(8) This Article 14 will apply in the present case. The plaintiffs are suing not because of title but because of their right as tenants being legal heirs of person who was earlier the tenant, and, thus, had a right to possession of the property. Cause of action will be the same as arising from the time when right to sue accrued to the predecessor of the plaintiffs. If we accept the version of the defendants .the right to sue accrued to Mohd. Aqil in 1959.but according to the plaintiffs it arose in March 1963 when the defendants took possession of the shop. As to how the defendants came to take possession of the shop in March 1963 when two years earlier Mohd. Aqil had died. the plaintiffs had nothing to say. Closely connected with this. the question was if Mohd. Aqil was tenant of two shops No. 660 and 661 why the plaintiffs did not sue for possession of shop No. 661 which was now with the present owner Bhola Nath. The fourth respondent. For this The plaintiffs had Explanation and that was that if were they who surrendered the tenancy rights of shop No. 661 to Bhola Nath. but when and in what circumstances. again the plaintiffs have no Explanation to offer. The defendants, on the other hand. had brought on record two documents Exts. D-1 and D-2 executed by Bhola Nath whereby defendants 1 and 2 surrendered possession of shop No. 661 to Bhola Nath and also paid him all the arrears of rent respecting both the shops and it was agreed between them and Bhola Nath that defendants 1 and 2 would continue to be tenants in shop No. 660 at a monthly rent of Rs-6.50 per month. These documents were executed on 1 August 1966. Learned Sub Judge has held that there was no doubt that there was clear evidence on record on behalf of defendants 1 and 2 that defendant No.4 executed Exts. D-1 and D-2. but then he said that defendant No.4 had right to transfer the tenancy to defendants 1 and 2. It is submitted before us that execution of documents Exts. D-1 and D-2 had not been proved. We do not agree. These documents were executed by defendant No.4 who was admittedly supporting the case of the plaintiffs. and defendants 1 and 2 are right when they say that defendant No.4 was even colluding with the plaintiffs to get defendants 1 and 2 evicted from the shop for the benefit of defendant No.4 himself. We are inclined to agree with defendants 1 and 2. Defendant No.4 did not appear as a witness to contradict the execution of documents Exts. D-1 and D-2. nor the plaintiffs made any attempt to have defendant No. 4 examined. Under these circumstances it was no duty of defendants 1 and 2 to produce defendant No.4. We agree with the learned Sub Judge that execution of documents Exts. D-1 and

D"-2 stood proved. That being so. it gives a complete lie to the case of the plaintiffs that it were they who surrendered the tenancy, rights of shop No. 661 to defendant No. 4. When the plaintiffs can concoct a story on such a vital point, we have to scrutinise their evidence with caution. As to when Mohd. Aqil was dispossessed, we have two versions, both sought to be proved only with oral evidence. Defendants I and 2. however, brought on record various receipts right from 1959 issued from the office of Additional Regional Resettlement Commissioner/Additional Custodian of Evacuee Property showing payment of license fee in respect of shops No. 660 and 661 at the rate of Rs. 13.00 per month. Earlier the receipts were being issued in the name of Mohd. Aqil, but the receipts for the period subsequent to 1963 are in the name of defendants I and 2.. That these receipts should come from the possession of defendants I and 2 would lend credence to their version that Mohd. Aqil abandoned the shops in January 1959 due to his illness and that defendants 1 and 2 have been in continuous possession thereof since then. We may also note that defendants 1 and 2 did write to the Managing Officer for transfer of the tenancy rights in the two shops to them and there is a letter Ext.DW3/11 dated 6 March 1964 of the Managing Officer of the office of Regional Resettlement Commissioner. Department of Rehabilitation, requiring defendants 1 and 2 to appear before him along with all the rent receipts/claim papers in respect of these two shops. Keeping in view that the plaintiffs should set up a case regarding surrender of shop No. 661. which is not true. and there being no Explanation as to how defendants 1 and 2 came to possess shop No. 660 in March 1963. and that the receipts for payment of license fee in respect of both The shops from 1959 onward came from the possession of defendants 1 and 2. we would rather accept their version that they are in possession of the shops since 1959. That being so, the suit filed in January 1973 is barred by limitation. This issue (additional issue) we hold in favor of defendants 1 and 2.

(9) ADMILLCDLY.MOHD.AQIL was lawful occupant of both the shops 660 and 661. We have already held above that he abandoned the shops to defendants 1 and 2. These defendants have brought on record various receipts showing payment of license fee in respect of these two shops. One of these receipts(Ext.DW3/1) is of the year 1954. and other receipts Exts. DW3/2 to DW3/9 are of the years 1959 to 1963. and all are issued in the name of Mohd. Aqil and pertain to the two shops. Then comes the receipt Ext.DW3/10 dated 27 June 1963 which is in the name of defendants 1 and 2 and reference has been made therein to a previous receipt of the date 19 April 1963. The receipt Ext. DW3/10 is on account of rent and earlier ones are of license fee. Reference at this stage may be made to the statement of Mr. S.B.Lal (DW-3). Head Clerk of the Office of Chief Settlement Commissioner, with reference to the E.P.R. Register maintained in his office. He had to say as under :-

(10) At page 114 of E.P.R. Register which I have brought there is an entry in the Remarks Column as under :-

"MOHD.Aqil has died. Now Mohd. Elias and Mohd. Ghias .are in occupation. Occupation confirmed by the order of A.C. (Assessor and Custodian) dated 24.4.63. This entry is initialled dated 29.4.63."

(11) It would, thus, appear that occupation of defendants I and 2 was accepted by the department and thereafter we find all communications have been addressed to them and these two defendants have been paying the rent all through. These defendants had been representing to the department for transferring the two shops in their names after the death of Mohd. Aqil. and this would appear to have been done. There is a letter (Ext. DW3/14) dated 10 July 1964 from the Assistant Collector Grade I in the office of the Regional Settlement Commissioner/Custodian of Evacuee Properly. New Delhi, to defendants I and 2 requiring them to pay a sum of Rs 398.00 on account of rent, etc.. from 1 March 1958 to 29 February 1963 at the rate of Rs.13.00 per month. Then there is a letter dated 23 June 1966 (Ext.DW3/13) from the Managing Officer-cum-Assistant Custodian (Rent) to defendants 1 and 2 to meet him in connection with the recovery of arrears of rent/license fee/ damages. Again there is a letter dated 9 August 1966(Ext.DW3/J2)from the Managing Officer-cum-Assistant Custodian (Rent) to defendants 1 and 2 requiring them to pay Rs.191.22 as recoverable from them on account of arrears of rent/license fee/damages in respect of two shops for the period up to 29 April 1963. Thereafter, we find that the property was sold to BholaNath and execution of documents Exis.D-1.and D-2.as we have seen above, by Bhola Nath whereby defendants 1 and 2 were accepted to be his tenants in respect of shop No. 660 while these two defendants surrendered the shop No. 661 to Bhola Nath. It is undisputed that defendants 1 and 2 have been in continuous possession of shop No. 661 having electric connection therein in their own name and running their business there. The case of the plaintiff is. however, based on a letter dated 25 June 1963(Ext. PW6/1) issued by the Competent Officer. Government of India, Ministry of Works. Housing and Rehabilitation (Department of Rehabilitation). informing Mohd. Aqil. among others, that the property hearing No. 659-66 (which included the two shops) had been sold to Bhola Nath w.e.f.30 April 1963. Mohd. Aqil is shown as one of the occupants of the property sold. This letter had been issued on a request made by Bhola Nath by his letter dated 6 June 1963(Ext.DW6/2)lhal at torment letters might be issued to the occupants of the property purchased by him. Earlier to this Bhola Nath was informed by the Assistant Custodian(Composite)by his letter dated 28 May 1963 (Ext. Public Witness 7/1) that there were seven authorised occupancies of the property sold to him which included Mohd. Aqil as well. Bhola Nath has not come forward to explain his conduct as to how he got shop No. 661 surrendered from defendants 1and 2 and also accepted them as tenants of shop No. 660 when authorised occupant was Mohd. Aqil as per these three letters. It seems to us that after getting possession of one shop he produced the plaintiffs to file this suit. Conduct of the plaintiffs as to how they made a false claim of having surrendered shop No. 661. we have already seen above. We do not think that letter dated 25 June 1963

(Ext.DW6/I) from the Competent Officer to Mohd. Aqil requiring him to attorn to Bhola Nath is of any consequence in the facts and circumstances of the present case. It is a matter of common knowledge that various departments in one Ministry have different functions to perform respecting one properly. While one department may be managing it, the other department maybe selling it. Otherwise, no explanation is forth comm gas to why entry was machine the E.P.R. Register which we have reproduced above. To attorn merely means to agree to become a tenant of one as owner, or landlord of a property previously owned or held by another, or to agree to recognise a new owner of a property or estate and promise to payment often to him (Black's Law Dictionary). Legal Glossary (1988Edition) issued by the Ministry of Law & Justice defines "attorney" as "to agree to become tenant to one as owner or landlord of any estate previously held by another." In the Concise Oxford Dictionary the word "attorney" means "transfer: make legal acknowledgment of new land- lord." Thus, "to attorney" merely means to acknowledge the relation of a tenant to a new landlord. Therefore, "attornment" by the tenant would mean acceptance of the new owner as landlord and stopping the tenant to dispute the landlord's title thereafter. Of course, attornment had to be in good faith and not on account of any deception caused on the tenant. Payment or non-payment to a new landlord does not affect the relationship created by attornment attornment also implies continuity of tenancy, though landlord might change when title of the property passes by sale or otherwise. There is no document on record from where it can be inferred that plaintiffs did attorn to Bhola Nath or Bhola Nath wrote any letter to the plaintiffs requiring them to allow to him. Rather, there is a notice dated 20 April 1966 (Ext.DW5/I) sent by Bhola Nath through his Advocate to defendants I and 2 telling them that they were in unauthorised occupation of two shops, and that Mohd. Aqil was licensee of these two shops and he had died and his license had terminated. It was thereafter that documents Ext.D-1 and D-2 were executed on 1 August 1966 when Bhola Nath accepted defendants I and 2 as his tenants of shop No. 660. We, therefore, hold both issues 2 and 4 in favor of defendants I and 2 and against the plaintiffs.

(12) Accordingly, appellants succeed. The impugned judgment and decree are set aside and the suit of the plaintiffs dismissed. Appellants will bear costs throughout.