

(2014) 09 DEL CK 0393

In the Delhi High Court

Case No : W.P. (C) Nos. 13695-13706/2005

Praveen Bansal and Others

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 9 Rule 13, 151
Delhi Land Reforms Act, 1954 — Section 187, 4, 6, 84, 84(1)(a)
Penal Code, 1860 (IPC) — Section 441

Citation : (2014) 09 DEL CK 0393

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Jeevesh Nagrath, Nitish K. Sharma and Vaibhav Kashyap, Advocates for the Appellant; Yogesh Saini, Advocates for the Respondent

Judgement

Suresh Kait, J.—The present petition has been initially filed by twelve petitioners, however, except petitioner No. 8, all other petitioners have compromised and stopped appearing in the Court.

2. Vide the present petition, petitioner seeks directions to quash the impugned ex parte order dated 28.05.1992 and order dated 12.04.2001, both passed by the Revenue Assistant/respondent No. 2 and the impugned order dated 13.05.2003 passed by the Financial Commissioner/respondent No. 1, whereby the petitioner's application filed under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter to be referred as "of the Code") was dismissed.

3. As averred in the present petition, petitioner is the owner/Bhumidar of the agricultural land comprised in Khasra Nos. 123, 128 and part of Khasra No. 124, total measuring 4 Bighas 6 Biswas and another part of Khasra No. 124 measuring 1 Bigha 10 Biswas situated in Village Kishangarh, Tehsil Mehrauli, New Delhi, with respect to his share as per the revenue records.

4. The respondent No. 3 filed a suit bearing No. 2888/1991 before this Court,

wherein stated that the aforesaid land was purchased by the respondent No. 3/ plaintiff and defendant No. 13 (therein) from defendant Nos. 1 to 11, (the petitioner was defendant No. 6 therein), through their attorney Ashok Kumar Khanna, defendant No. 12 (therein). For which a sum of Rs.5.65 lacs towards consideration was paid to the aforementioned defendants. Accordingly, defendants Nos. 1 to 11 (therein) had agreed to execute a Sale Deed in favour of the plaintiff/respondent No. 3 after obtaining a "No Objection Certificate" (NOC) from Delhi Administration. The actual physical possession of land measuring 4 Bighas 6 Biswas situated in Village Kishangarh, Mehrauli, New Delhi, was handed over. However, the defendants (therein) failed to get NOC. The defendant No. 13 and the plaintiff (therein) filed a petition bearing W.P.(C) No. 2626/1989 and in CMP No. 4015/1989, accordingly, the Division Bench of this Court directed Sale Deed to be registered between the parties without NOC as same was not required. It was further averred in the said suit that defendant Nos. 1 to 11 through attorney Ashok Kumar Khanna (therein) were trying to negotiate the land with some unknown parties and were also threatening the plaintiffs to dispossess them from the suit land.

5. In the said suit, the plaintiff/respondent No. 3 sought relief as under:-

"(a) Pass a decree of declaration in favour of the plaintiffs and against the defendants No. 1 to 12 declaring that the plaintiffs being rightfully purchasers of the suit land khasra No. 123, 128 124 (Part) in village Kishangarh Mehrauli, New Delhi, are entitled to execution of the sale deed by Defendants No. 1 to 12.

(b) To pass a decree of perpetual injunction in favour of the plaintiffs and against the defendants No. 1 to 12 restraining the defendants No. 1 to 12 and their servants, agents, attorneys from disposing or negotiating for sale in any manner or dispossessing the plaintiffs from the suit land 4 Bighas and 5 Biswas bearing khasra No. 123, 124 (part) and 128 village Mehrauli, Kishangarh, Tehsil Mehrauli, New Delhi."

6. Mr. Jeevesh Nagrath, Learned counsel appearing on behalf of the petitioner submitted that an I.A. No. 7920/1997 under Order VII Rule 11 read with Section 151 of the Code was filed on behalf of the respondent Nos. 1, 3 and 6 (therein) for rejection of the plaint. Thereafter, the respondent No. 3 filed I.A. No. 45/1999 under Section 151 of the Code, wherein stated that the plaintiff/respondent No. 3 (herein) had been in actual, physical and legal possession of the entire land in question and had been cultivating the same. The plaintiffs (therein) made the entire payment to the defendants but the defendants had been disturbing the peaceful possession of the plaintiffs.

7. Vide the said application, it was prayed that keeping in view the mutation and title documents filed by the plaintiffs along with the application, order ought to have been passed that the plaintiffs were the rightful owners of the suit property.

8. Learned counsel appearing on behalf of the petitioner submitted that copy of the aforesaid application was served upon the petitioner on 12.01.2000. Thus,

the respondents have concealed this fact from the petitioners and did not approach this Court with clean hands.

9. However, vide order dated 28.05.1992, the Revenue Assistant/respondent No. 2, recorded that notices were issued to the said respondents/petitioner, who did not appear and the notices issued against them for 16.03.1992 received back with the remarks of refusal to receive the same. On the said date, the respondents were proceeded ex parte and the case was fixed for the evidence of the petitioner/respondent No. 3. The Revenue Assistant allowed the application under Section 84 of the Act in favour of the applicant/respondent No. 3 declaring him Bhumidar of the land comprised in Khasra No. 123 min measuring 1 Bigha and 8 Biswas in Village Kishangarh, Mehrauli, New Delhi.

10. Being aggrieved, the petitioner filed an application under Order IX Rule 13 read with Section 151 of the Code for setting aside the aforesaid ex parte order dated 28.05.1992 passed by the Revenue Assistant/respondent No. 2. The said application was filed on the ground that the petitioners/ respondents never knew about the pendency and ex parte disposal of case bearing Nos. 131/RA/92, 132/RA/92 and 133/RA/92 by Revenue Assistant/respondent No. 2 prior to 12.01.2000, when the notice of aforesaid orders were served upon them. Similarly, the petitioners/respondents were never served with summons or notice of the suit. Thus, the respondents never refused to receive any notice or summons issued by the Revenue Assistant.

11. Further averred that the report with remark of refusal of notice/summons was absolutely false, baseless and collusive as the same was procured by the respondent No. 3 in collusion and conspiracy with the Process Server or Postman. Also averred that the impugned order was neither disclosed nor relied upon by the respondent No. 3 in the case bearing Suit No. 2888/1991 pending in this Court since 1991. Since the impugned order was willfully suppressed and kept secretly closed and was only disclosed for the first time on 12.01.2000, it clearly exposes and demonstrates the fraud and deceit practiced by the respondent No. 3. However, vide order dated 12.04.2001, SDM/Revenue Assistant (Hauz Khas) dismissed the application filed by the petitioner being barred by time.

12. Being aggrieved, the petitioner filed a revision petition before the Financial Commissioner/respondent No. 1, however, while dismissing the same vide order dated 13.05.2003, it was recorded as under:-

"There is considerable substance in this contention. Considering the long history of litigation it is difficult to believe that the petitioner was unaware of the order dated 28.05.1992. Even if for the sake of argument, it is admitted that he indeed came to know about the order dated 28.05.1992 on 09.02.2000 only even then he did not file the appeal within the period of limitation. His statement before the Revenue Assistant that the appeal is within time is not correct as the period of limitation in such cases is 15 days not 30 days. Therefore, the Sub- Divisional Magistrate Revenue Assistant very correctly dismissed the application of the

petitioner.

The revision can lie only on a legal point and the order of Revenue Assistant does not suffer from any legal infirmity and therefore cannot be disturbed in the revision proceedings."

13. Mr. Nagrath, Learned counsel for the petitioners submitted that the respondent No. 3 has been changing his stand time to time as stated by respondent no. 4 in his affidavit which has been adopted by respondent No. 3 and the same is as under:-

"That pursuant to an Agreement to Sell in respect of agricultural land bearing Khasra No. 123, 124 and 128 situated in the Revenue Estate of Village Mehrauli, the petitioners were required to obtain NOC for the registration of Sale Deed as required. After having failed to obtain the same and when the authority refused to register the Sale Deeds without No Objection Certificate being issued by the competent authority, the parties hereto arrived at a settlement and in compliance thereof in May 1989, on receipt of full consideration amount actual physical possession of the land was handed over to the answering Respondents (Respondent Nos. 3 to 6 herein) and General Power of Attorney, Agreement to Sell and Will were executed in their favour."

14. It is further submitted that the petitioner's Attorney Ashok Kumar Khanna was the Attorney only during the time of sale of land and for that purpose only. Therefore, refusal of the service by the said Attorney shall not amount to service effected upon the petitioners.

15. Section 84(1)(a) of the Act prescribes as follows:-

"84. Ejectment of persons occupying land without title - [(1) (Note: Renumbered by Act 38 of 1965) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and

(a) Where the land forms part of the holding of a Bhumidhar or Asami Shall be liable to ejectment on the suit of the Bhumidhar, Asami or Gaon Sabha, as the case may be and shall also be liable to pay damages."

16. Section 85(i) of the Act prescribes as follows:-

"85. Failure to file suit under section 84 or to execute decree obtained thereunder. - If a suit is not brought under [(Note: Substituted by Act 38 of 1965) Sub-section (1) of section 84] or a decree obtained in any such suit is not executed within the period of limitation provided for the filing of the suit or the execution of the decree, the person taking or retaining possession shall"

(i) Where the land forms part of the holding of a Bhumidhar, become a Bhumidhar thereof;"

17. To strengthen his arguments on the issues raised above, learned counsel for the petitioner has relied upon the judgment of Jawahar Singh and Others Vs.

Financial Commissioner and Others, , wherein this Court observed as under:-

"27. Sections 84 and 85 of the DLRA read as under:

84 - Ejectment of persons occupying land without title. A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and-

(a) where the land forms part of the holding of a Bhumidhar or Asami without the consent of such Bhumidhar or Asami, or

(b) where the land does not form part of the holding of a Bhumidhar or Asami without the consent of the Gaon Sabha, shall be liable to ejectment on the suit of the Bhumidhar, Asami or Gaon Sabha, as the case may be and shall also be liable to pay damages.

(2) Where any person against whom a decree for ejectment from any land has been executed in pursuance of a suit under Sub-section (1) re-enters or attempts to re-enter upon such land otherwise than under authority of law, he shall be presumed to have done so with intent to intimidate or annoy the person in possession or the Gaon Sabha as the case may be, within the meaning of Section 441 of the Indian Penal Code (45 of 1860).

85 - Failure to file suit under Section 84 or to execute decree obtained there under-

If a suit is not brought under Sub-section (1) of Section 84 or a decree obtained in any such suit is not executed within the period of limitation provided for the filing of the suit or the execution of the decree, the person taking or retaining possession shall-

(i) where the land forms part of the holding of a Bhumidhar, become a Bhumidhar thereof;

(ii) where the land forms part of the holding of an Asami on behalf of the Gaon Sabha, become an Asami thereof;

(iii) in any case to which the provisions of Clause (b) of [Sub- section (1) of Section 84] apply, become a Bhumidhar or Asami as if he had been admitted to the possession of the land by the Gaon Sabha:

Provided that if in the revenue records of the fasli year ending on the 30th June, 1954, the land referred to in Clause (iii) was not included in the holding of the person taking or retaining possession or his predecessor-in-interest, then, notwithstanding the expiry of the aforesaid period of limitation for such suit or decree, the suit may be filed or the decree obtained in such suit may be executed within a period of three years from the date of passing of the Delhi Land Reforms (Amendment) Act, 1965:

Provided further that the benefit of the extension of the period of limitation under the preceding proviso shall not be availed of in any case where a person who has

become a Bhumidhar in respect of any land under Clause (iii) has transferred such land to another person for valuable consideration before 10th May, 1965.

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31. Further the Hon"ble Supreme Court has in Hatti v. Sunder Singh laid down that the DLRA is a complete code it itself and all disputes concerning holdings have to be decided within the provisions of DLRA itself. The twin objective was to ensure that the land is used for agricultural purposes and that the right in respect of the land should go to the tiller. In the same judgment, the Hon"ble Supreme Court explained that the only person who could institute a suit under Section 84 DLRA was either the bhumidar or the assami or the Gaon Sabha. Section 85 enlists the consequences of the failure to file a suit against "such bhumidar". The expression "such" in Section 84 should be understood as denoting that bhumidar against whom the person filing the suit is claiming adverse possession.

32. Respondent No. 3 has in his application under Section 85 set up a case that on the date of filing of the application i.e. 28.10.1980, he was in exclusive actual and cultivatory possession for over 10 years. In other words, he claimed that at least 1970 onwards he had been in actual and cultivatory possession of the land in question. The petitioners, admittedly, have purchased the land in question through sale deed dated 18.9.1979. On that there is absolutely no dispute. The agreement to sell was executed on 27.8.1979. There is no question of the petitioners claiming possession from any earlier date. Therefore, as far as the period from 1970 to 1979 is concerned, the claim of Shri Jai Pal as regards adverse possession can only be vis-a-vis predecessors-in-interest of the petitioners here who are their vendors, Shri Haranand and Smt. Ramanandi. They were bhumidars from 1974 onwards till 1979. From 1970 to 1974, it was Shri Satya Dev.

33. For proceeding under Section 85 DLRA, three essential features have to exist: (i) the person claiming bhumidari rights should not be a bhumidar in his own right, but must be claiming adverse possession (ii) the adverse possession should be continuous for a period of three years prior to the filing of the application; and (iii) it must be adverse for a continuous period of three years against the person who is shown as bhumidar in the records on the date of filing the application. In the instant case even the respondent do not deny that the recorded bhumidar on the date of filing the application by Shri Jai Pal were the petitioners. If in fact Shri Jawahar Singh and the petitioners were not the recorded bhumidars, there is no reason for respondent No. 3 to be seeking any relief against them. But the essential requirement of three years having to elapse prior to the filing of the application during which the claimant Shri Jai Pal Singh can be said to have been in adverse possession vis-?-vis the petitioner is absent.

Since the latter's possession commenced only on 18.9.1979 and not prior to that date, the essential requirement of Section 85 DLRA is not met. On this short ground the application filed by Respondent No. 3 under Section 85 ought to have been dismissed as being premature.

34. As regards the adverse possession against Smt. Ramanandi and Shri Haranand, it appears from the orders of the Additional Collector read with order dated 11.11.1988, that it was agreed that proceedings will continue only against the petitioners here. In other words, if Shri Jai Pal had any claim of adverse possession vis-?-vis Shri Haranand and Smt. Ramanandi then clearly Shri Jai Pal had given up his right in that regard when order of remand was passed. Therefore, in order to succeed in the remanded proceedings under Section 85 vis-?-vis the petitioners, Shri Jai Pal would have to show that he had adverse possession for over three years continuously vis-a-vis the petitioners here on the date of filing the application under Section 85. This is an inescapable position. It is simply not fulfilled in the instant case."

18. Also relied upon the judgment of this Court titled Sh. Satish Chand Kapoor (Deceased) Through LRs. Vs. The Financial Commissioner, Delhi & Anr. bearing W.P.(C) No. 2037/1992 decided on 20.09.2010, wherein held as under:-

"15. The counsel for the petitioner has argued that the respondent no.2 had in fact sold the land aforesaid. On being asked to show the sale deed, it was told that the sale was by way of Agreement to Sell, original whereof have been filed before this Court and kept in a sealed cover. The said sealed cover was called for and opened. The documents therein besides the Agreement to Sell also contain Registered Receipts. All documents purport to bear the thumb impression of the respondent no.2. Besides the said Agreement to Sell, the documents also comprise of affidavit and General Power of Attorney. It is contended that the said documents were nowhere challenged by the respondent no.2. It is further argued that the respondent no.2 was a resident of the same village and after the ex parte order dated 15th January, 1985, the petitioner had made improvement on the said land by raising construction, installing tube-well and planting eucalyptus trees thereon and without any objection from the respondent no.2 or any other person. It is urged that the respondent no.2 being a resident of the same village was aware of the said activities and is thus deemed to have been aware of the ex parte order dated 15th January, 1985.

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18. The counsel for the respondent no.2 on the contrary contends that the respondent no.2 had never sold or agreed to sell the land to the petitioner. It is stated that the petitioner obtained the ex parte order dated 15th January, 1985 from the SDM/Revenue Assistant as a device to dispossess the respondent no.2 from the land. It is stated that till the ex parte order dated 15th January, 1985 the petitioner was not in possession of the land and armed with the said order

dispossessed the respondent no.2 from the land and entered into unauthorized possession thereof. It is further argued that with this intent only the petitioner filed a false FIR against the respondent no.2 of having trespassed on the said land and in prosecution whereunder the respondent no.2 was acquitted. It is stated that since the present proceedings have been pending, there was no occasion for the respondent no.2 to file any other proceedings for possession or otherwise against the petitioner. It is also argued that the case, of the respondent no.2 having sold/agreed to sell the land to the petitioner has been set up for the first time in the present petition and was not the case of the petitioner at any earlier point of time. It is urged that in fact the case of Agreement to Sell is contrary to the case in the application under Section 85 of the DLR Act. It is stated that Section 85 of the DLR Act could not have been invoked if the petitioner was claiming title to the land under Agreement to Sell. It is stated that the Agreement to Sell was not produced before the SDM/Revenue Assistant or the Financial Commissioner also. It is stated that it is for this reason only that the file culminating in the ex parte order dated 15th January, 1985 has been got misplaced.

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21. On perusal of the order sheet of the SDM/Revenue Assistant in the proceedings for setting aside of the ex parte order, I also do not find any error in the reasoning of the Financial Commissioner of proper opportunity having not been given to the respondent no.2 to meet the case set up by the petitioner on the basis of document dated 18th March, 1985. Though it is correct that the respondent no.2 had failed to file the rejoinder by/on the date given therefore and had also failed to appear on that date but the SDM/Revenue Assistant showed undue haste in disposing of the application. The application was decided on the very same day when the same was listed next for filing of rejoinder. There is also merit in the reasoning of the Financial Commissioner of there being no occasion for execution of the document dated 18th March, 1985. If the version of the petitioner of being in unauthorized occupation of the land was correct, the petitioner after having got himself declared as the Bhoomidar had no occasion to approach the respondent no.2 for executing the declaration document. Similarly, if the version now of the petitioner of being agreement purchaser of the land is correct, then also the document dated 18th March, 1985 does not give reference to the Agreement to Sell. The document dated 18th March, 1985 appears to have been produced only for decision of the application for setting aside of the ex parte order even in the absence of the file in which the respondent no.2 was proceeded against ex parte and in which file only the report of refusal on the basis of which respondent no.2 was proceeded against ex parte existed. Else in the absence of the file, the application for setting aside ex parte order was bound to be allowed."

19. On the issue of adverse possession, learned counsel for the petitioner has

relied upon the case of L.N. Aswathama and Another Vs. P. Prakash, , wherein the Apex Court held as under:-

"17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide : P. Periasami (Dead) by Lrs. Vs. P. Periathambi and Others, , Md. Mohammad Ali (Dead) by Lrs. Vs. Sri Jagadish Kalita and Others, and P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, ."

20. Learned counsel for the petitioners submitted that delay was only of fifteen days, which ought to have been condoned by the Assistant Commissioner and the Financial Commissioner keeping in view the decision taken by this Court in the case of Gati Ltd Vs. Gaon Sabha Samalkha, , wherein held as under:-

"11. The impact of setting aside of aforesaid impugned order of 19th August, 2011 upon the order (Annexure P-22) is direct i.e., it reduces the period of delay to merely 13 days. The explanation offered for the delay occasioned has to be considered while keeping in mind that the express "sufficient cause" is to be liberally construed and not in a pedantic manner as has been done in the impugned order (Annexure P-22). When petitioner asserts that under the bona fide impression period of limitation was understood to be 30 days as provided under Article 123 of the Limitation Act, it would certainly provide a sufficient cause for condoning the delay of 13 days."

21. On this point, learned counsel also relied upon the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, .

22. Learned counsel for the petitioner submitted that the respondent No. 3 had played fraud by concealing the factual position from the petitioners. Therefore, the petitioner should be allowed to place on record the material documents before the Revenue Assistant and the Financial Assistant and thereafter, the said authorities may pass the order on merits.

23. On this issue, learned counsel has relied upon the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , wherein the Apex Court held that:-

"4. The High Court reversed the findings of the trial court on the following reasonings:-

"Let us assume for the purpose of argument that this document, Exhibit B-15, was of the latter category and the plaintiff, the benamidar, had completely divested himself of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Exhibit B-15 would amount to collateral or extrinsic fraud. The utmost that can be said in favour of the defendants is that a plaintiff who had no title (at the time when the suit was filed) to the properties, has falsely asserted title and one of the questions that would arise either expressly or by necessary implication is whether the plaintiff had a subsisting title to the properties. It was up to the defendants, to plead and establish by gathering all the necessary materials, oral and documentary, that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length and it is the duty of each to traverse or question the allegations made by the other and to adduce all available evidence regarding the basis of the plaintiff's claim or the defence of the defendants and the truth or falsehood concerning the same. A party litigant cannot be indifferent, and negligent in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the Court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified registration copy of Exhibit B-15 and non-suited the plaintiff; and, it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence."

24. On the other hand, learned counsel appearing on behalf of the respondents submitted that initially the present petition was filed by twelve persons. All have withdrawn from the proceedings except petitioner No. 8, who has not come with clean hands before this Court.

25. The land in question was sold by the petitioners through Attorney Ashok Kumar Khanna. Thereafter, the said Attorney was supposed to take NOC from the competent authority and get the documents registered in the name of respondent No. 3. Meanwhile, land in question was notified under Sections 4 and 6 of the Act, therefore, NOC could not be issued.

26. He submitted that the petitioner admitted in para 2 of the petition that vide Agreement to Sell dated 20.03.1989, petitioners through their Attorney Ashok Kumar Khanna agreed to sell the aforesaid agricultural lands to the respondent

Nos. 3, 4 and Omprakash (now deceased) for a total sale consideration of Rs.23,20,000/-. In said Agreement to Sell, it was admitted that the petitioners had received the consideration amount and physical possession of the land was also handed over to the respondent No. 3. It was further stated that the petitioners have no right or interest or lien on the said land henceforth the respondent No. 3 shall be the sole owner for all intents and purposes and shall be liable and responsible for all the dues and demands in respect thereof from the date of execution of the Agreement.

27. In the counter-affidavit filed by the respondent No. 4, it is stated that in the present petition, disputed question of facts have been involved, which cannot be decided in the writ petition. Besides, the petitioners filed a suit bearing No. 1863/2001 which is pending for adjudication.

28. In the counter-affidavit, respondent No. 4 stated as under:-

"a) Declaration that the Plaintiffs are the bhumidars owners in actual, physical and vacant possession of the land bearing Khasra Nos. 123, 128 and a part of Khasra No. 124 measuring 4 Bighas 6 Biswas and a part of Khasra No. 124 measuring 1 Bigha 10 Biswas situated in Village Kishan Garh, Tehsil Mehrauli, Delhi.

b) Declaration that the ex-parte order dated 28th May 1992 passed by the Revenue Assistant, Delhi in Case No. 131/RA/92 titled "Shri Hira Nand Ram Vs. R. Mittal & Ors.- Case No. 132/RA/92 titled "Shri Om Prakash through his LR's. Vs. Smt. Prabha Pahuja & Shri Rajesh Verma & Ors.- and Case No. 133/RA/92 titled "Shri Shyam Lal Vs. Praveen Bansal & Ors.-, by the Court of Revenue Assistant (South) Delhi being vitiated by fraud, deceit, perjury and collusion are non-est, null and void and without jurisdiction and of no consequence and do not affect the rights, title and interest of the Plaintiffs as bhumidars, owners in possession of the aforesaid suit land and do not vest the Defendants with any right, title or interest of any nature whatsoever in the suit land."

29. Further stated that:-

"III. as agreed upon General Power of Attorney and will in respect of the land under sale were executed and registered before the registering authority at NOIDA in favour of the purchasers herein. Copy of Agreement to Sell executed by the Petitioners through their attorney is already on record. Admittedly, Shri Ashok Khanna is the constituted general attorney of the Petitioners, inter alia entitled to sell the property in question. The said power of Shri Khanna was never withdrawn."

30. Learned counsel submitted that all the documents were transferred in the name of respondent Nos. 3 and 4 and the petitioners had already received the sale consideration of the entire land and accordingly transferred the possession.

31. Learned counsel further submitted that there was inter se dispute between the petitioners. Therefore, the petitioner is raising all these issues dishonestly

after taking the total consideration amount of the entire land. Accordingly, the present petition may be dismissed being devoid of merit.

32. I have heard learned counsels for the parties at length.

33. It is pertinent to mention here that the present petition was initially filed by 12 petitioners. All of them have withdrawn from the proceedings, except petitioner no.8.

34. In the present petition certain facts are not disputed. With respect to the property in question, there was an agreement to sell dated 15th may of 1989, between the petitioner and respondents, whereas the petitioner is the first party and the respondents are the second party. It is also mentioned in the aforesaid agreement that the first party is having the ownership and possession over the property, by virtue of the same the petitioner has agreed to transfer and convey the title and interest to respondents. In order to execute the sale deeds on the basis of agreement to sell, the petitioner could not obtain the no- objection certificate from the concerned authorities and therefore the parties approached this court by filing writ petition 2626/1989 and the same has been disposed off.

35. Significantly, It is also not disputed that the respondents have filed the suit for declaration and perpetual injunction in respect of the property bearing Khasra no 123 and 128 and part of 124 in village Kishangarh, Tehsil Mehrauli New Delhi. The said suit has been filed on 19th September 1991 and the same has been numbered as suit no 2888 of 1991. The cause of action for the said suit has been arisen on 18.09.1991 on the basis that the petitioners were not willing to execute the sale deeds in respect of the said property and the suit is pending before this court for adjudication.

36. Being the admitted facts as narrated above, the respondents herein have filed an application under section 85 of the Delhi Land Reforms Act, 1954 before the Court of Revenue Assistant. The respondents have claimed and sought declaration of the Bhumidhari rights in respect of the same property on the strength of adverse cultivatory possession. On the application, the notice has been issued to the petitioner on 16.03.1992 and the petitioner did not appear on the date and proceeded ex-parte. Thereafter, the Court of Revenue Assistant passed the impugned order dated 28.05.1992. After a period of eight years, the petitioner has filed an application for setting aside the ex-parte order and the same has been dismissed on 12.4.2001 on the aspect of limitation. Being aggrieved, the petitioner preferred a revision petition under section 187 of Delhi Land Reforms Act 1954, before the Financial Commissioner and the same has been dismissed on the aspect of limitation.

37. The perusal of the impugned orders shows that the matter has not been adjudicated on the merits whereas the procedural lapses came in the way of the petitioner. It is also true that the delay has not been explained in a proper manner and the application has not been filed within the time frame. However, the subject matter pertains to the proprietary rights of the petitioner. This Court

note, the respondents claiming the rights over the property on the strength of adverse possession and filed application under section 84 of the Delhi Land Reforms Act 1954, whereas, prior to the institution of the proceedings under the Delhi Land Reforms Act, 1954, the suit for perpetual injunction in respect of the same property has been pending before this court for adjudication. It is here necessary to remark whether the particular fact has been disclosed to the Court of Revenue Assistant, while adjudicating the application under section 84 of the Delhi Land Reforms Act, 1954 because of the reason that the respondents were claiming the ownership right and interest over the property on the strength of agreement to sell and instituted the suit for perpetual injunction. Being the two pleas mutually inconsistent, a person cannot claim simultaneously the ownership right on the basis of title documents and on the basis of adverse possession in respect of the same property. The right over the property can be effectively and indefeasibly acquired by some act amounting to alienation or forfeiture by the owner or his representatives .

38. In view of above, the orders dated 28th May, 1992 and 12th April 2001 passed by respondent no2 and the order dated 13th May, 2003 passed by the Financial commissioner are set aside.

39. Consequently, the matter is remanded back for fresh adjudication before the Court of Revenue Assistant. The Court of Revenue Assistant shall give the parties sufficient opportunity for adducing the evidence and shall decide application under section 84 of the Delhi Land Reforms Act, 1954, on merits.

40. I hereby make it clear that the Court of Revenue Assistant shall not be influenced by the observations and opinions of this Court in this judgment while adjudicating the matter.

41. Accordingly, the petition is allowed on the above terms with no order as to costs.