

(2012) 08 RAJ CK 0041
In the Rajasthan High Court
Case No : Civil First Appeal No. 46 of 1992

Ram Singh and Others

APPELLANT

Vs

Jodhpur Zila Maheshwari Samaj and Another

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Evidence Act, 1872 — Section 110, 90

Citation : (2013) 2 RLW 1076

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : M.C. Bhoot, Assisted by Arpit Bhoot, for the Appellant; R.R. Nagori Assisted by Alkesh Agarwal, for the Respondent

Judgement

Vineet Kothari, J.—The defendant Ram Singh s/o Poona Ram Tak, who is now represented by his legal representatives after his death during the pendency of this appeal by Shri Ghanshyam Singh & others had filed the present first appeal u/s 96 CPC in this Court on 1/4/1992 being aggrieved by the judgment and decree of eviction and ejectment dated 29.2.1992 passed in civil suit No. 283/85 filed by Jodhpur Zila Maheshwari Samaj, registered society through its President Shri Shanker Lal Soni S/o Heeralal ji by caste Soni Maheshwari against the defendant Uda Ram S/o Poona Ram - brother of present appellant-defendant - Ram Singh s/o Poona Ram & defendant appellant himself in respect of suit premises, a plot of land with construction of a room and "Saal". The learned trial Court in said suit after framing 18 issues initially on 8.1.1987 and additional three issues on 11.2.1988 decreed the suit against the defendant No. 1 Udaram on the ground of default in payment of rent and against defendant No. 2 - Ram Singh on the basis of title of the suit property for ejectment by the impugned judgment and decree dated 29.2.1992 and being aggrieved by the said judgment, the defendant No. 2 - Ram Singh alone filed the present appeal, whereas, the defendant No. 1 Uda Ram did not file any appeal and he also remained ex-parte before the learned trial Court after filing his written statement

to the suit. The plaintiff set up its case before the learned trial court that the suit property in question shown in the map produced with the plaint as Ex. 5 measuring 1355.33 sq. yds. was purchased by Shri Shanker Lal Soni from Manohar Singh as Managing Director of Jodhana Real Estate Development Company owned by the erstwhile Royal family of Jodhpur by registered sale deed dated 26.4.1972, Ex. 3, and thereafter by relinquishment deed dated 23.12.1972 Ex. 4, said Shri Shanker Lal gave the said property to the plaintiff-Jodhpur Zila Maheshwari Samaj for the purpose of constructing a school. In the said sale deed dated 26.4.1972 itself, it was mentioned that on the portion of said property there were four tenants and one of them was defendant No. 1, Uda Ram on a monthly rent of Rs. 8/- p.m. and in old "Tabelas" three tenants; Shri Prithvi Singh, Shri Bhawani Singh and Shri Deep Singh were tenants at Rs. 4/- p.m. The plaintiff further averred in the plaint that defendant No. 1- Uda Ram gave rent for the portion of the plot of land in question as a tenant at the rate of Rs. 8/- p.m. upto December, 1980 to the Secretary of the plaintiff Society, Shri Damodar Lal Bang and, thereafter, he did not pay any rent and sublet the same to his brother Ram Singh - present appellant. The plaintiff, therefore, claimed possession of the suit land from the defendant No. 2 - Ram Singh on the basis of title and on the basis default in payment of rent, bona-fide need and subletting from defendant No. 1 Uda Ram.

2. The defendant No. 1 - Uda Ram admitted in his written statement that he was tenant of the said plot of land of Ex. Ruler, Maharaja Gaj Singh Ji but he denied purchase of the property by the plaintiff Society. He also claimed adverse possession on the said plot of land and claimed that it was in his possession for more than 12 years without any disturbance. Defendant No. 2, Ram Singh, the present appellant, who is now represented by his legal representatives, denied the factum of purchase of property by Shanker Lal and Its further relinquishment in favour of plaintiff Society on 23.12.1972 and claimed that the said property was infact purchased by his father Poona Ram in his name for Rs. 199/- by a sale deed dated 9.2.1931, which was given by Will by one Jubeda on 20.1.1931 in favour of Anwar Ali Khan & Faijyaab Khan and, therefore, defendant No. 2 was in possession of the suit land ever since then in 1931 when he was nine years of age.

3. In the alternatively, he also claimed adverse possession over the said suit land and he submitted before the learned trial court that on account of dispute between the two brothers, both the defendants, the defendant No. 1 had deliberately given written statement admitting himself to be the tenant of Maharaja Gaj Singh Ji.

4. On the basis of said pleadings of the parties, the learned trial court framed various issues as aforesaid. The plaintiff produced before the learned trial court PW.1 Shanker Lal, PW.2 - Damodar Lal Bang, P.W. 3 - Bhawani Singh, PW.4 Laxmi Narayan, PW. 5 - Udai Kishan, PW.6 - Hari Singh, whereas, in defence, the defendant Ram Singh himself appeared as DW.1 and produced DW 2 - Shri

Gangadhar, DW-3 - Hukam Singh, D.W. 4- Purushottam, DW. 5 - Inder Singh and in rebuttal plaintiff also produced PW.7 - Kanhaiya Lal. On the basis of said documentary and oral evidence the learned trial court decided all the issues in favour of plaintiff and decreed the suit as aforesaid against which the defendant No. 2 - Ram Singh has preferred this appeal.

5. Mr. M.C. Bhoot, Sr. Advocate assisted by Mr. Arpit Bhoot submitted on behalf of defendant appellant- Ram Singh as under:-

(i) That the learned trial court has not gone beyond examination-in-chief of the various witnesses and has wrongly ignored the title of the defendant No. 2 on the basis of sale deed dated 9.2.1931, Ex. A-8/1, and also the fact that the defendant Ram Singh had let out portion of the said suit land also to other tenants vide Ex. A/4, A/5, A/6 and A/7 from time to time during the period 1938 to 1946 and, therefore, the defendant was in possession of the said suit land on the basis of his own title and according to the Section 110 of the Evidence Act, heavy burden lied upon the plaintiff to not only prove their title but also to prove that the defendant was not in possession on the basis of title, otherwise, the decree of eviction and ejectment cannot be granted against him.

(ii) That the plaintiff has failed to prove its title over the suit property under the sale deed Ex. 3 dated 26.4.1972 and relinquishment deed by Shanker Lal, Ex. 4 dated 23.12.1972 and the suit property itself was not known as Rajmata Ji Ka Nohra" but was known as "Miyon Ki Haveli" and plaintiff had failed to prove the sale deed, even though a registered document, as some of the listed witnesses like Ex-Ruler Maharaja Gaj Singh Ji or Rajmata were produced before the learned trial court and only PW.6 - Hari Singh, Private Secretary of Rajmata had appeared, who also could not identify the suit property and, therefore, the plaintiff was not entitled to the decree of eviction and ejectment.

(iii) Mr. M.C. Bhoot also urged that both the defendants, Uda Ram and Ram Singh, brothers, were not at good terms and, therefore, defendant No.1 - Uda Ram deliberately filed the collusive written statement admitting himself to be a tenant at the rate of Rs. 8/- p.m. of Ex-Ruler, Maharaja Gaj Singh Ji and there was no subletting by him in favour of present appellant Ram Singh and, therefore, the decree against defendant No. 1 on this ground for ejectment of defendant No. 2, Ram Singh on the ground of subletting is also not sustainable.

(iv) Mr. M.C. Bhoot also urged that the original covenant and list of properties of the Ex-Ruler was not produced before the court below by the plaintiff and the suit property, which was claimed to be one out of "nine Nohras" did not identify the said property and in Schedule I at Clause "C" of letter Ex. 14-A dtd 24.3.1949 in the list of personal properties handed over to Ex-Ruler family after independence, are the properties which are the absolute properties of His Highness with full rights of disposal, and in clause "C" "nine Nohras" for the use of ladies of the Royal family could not include the present suit land as none of the ladies of Royal family even visited the said place and, therefore, the ownership

and title of the same could not be claimed by the Ex-Ruler, their Company and consequently by the present plaintiff.

6. On the other hand, Mr. R.R. Nagori, Sr. Advocate assisted by Mr. Alkesh Agarwal vehemently submitted as under:-

(i) That by registered sale-deed Ex. 3 dt. 26.4.1972 executed by Jodhana Real Estate Development Company of the Royal family through its duly authorised and appointed Managing Director, Shri Manohar Singh had sold the land in question to Shri Shanker Lal Soni, who in turn by relinquishment deed, Ex. 4 dated 23.12.1972 had made over the said property to plaintiff Society, a registered society under the Act, for the purpose of setting up the school and land in question measuring 1355.33 sq. yds (3x3 ft.) described in the schedule and map attached with the said sale deed was duly registered with the Sub-Registrar on 26.6.1972 and, therefore, there was a strong presumption of not only the identity of the suit land in question but possession of the same being handed over to the purchaser and consequently to the plaintiff Society and as against this, the claim of the defendant No. 2 - Ram Singh that he was the owner of the suit property under the purported sale deed dated 9.2.1931 for Rs. 199/-, which was not a registered document and from the said document along with rent notes Ex. A/4 to A/7, relied upon by the opposite counsel Mr. M.C. Bhoot, the neighbourhood of said documents would clearly establish that same pertained to a different property and not to the present suit land and, therefore, the learned trial court was justified in decreeing the suit for eviction and ejectment against both the defendants.

(ii) Mr. Nagori also urged that the plaintiff Maheshwari Samaj had also proved the chain of title in its favour with the documentary as well as oral evidence, like Ex. 11-A letter dated 15.11.1954 of Deputy Secretary to the Government of Rajasthan, Jaipur to the Commissioner, Jodhpur Division, Jodhpur to the effect that the Govt. had approved "nine Nohras" to be transferred to His Highness Maharaja of Jodhpur as his private properties, which also included the property at serial No. 4-Rajmata Ji Ka Nohra" hear Fateh Sagar which included the suit land. He also urged that Schedule I of immovable property in Ex. 15/A, letter dated 24.3.1949- Ex. 14-A giving schedule of various immovable properties under part "C" clause "D" the said "nine Nohras" were handed over to Royal family which incorporated a limited Company known as Jodhana Real Estate Development Company and through its Managing Director, Manohar Singh, who also held Power of Attorney of Maharaja Gaj Singh Ji, sold the said land to Shri Shanker Lal Soni, who relinquished his rights in favour of plaintiff-registered Society, Jodhpur Zila Maheshwari Samaj.

(iii) Mr. Nagori also submitted that PW.1 Shanker Lal, PW.2- Damodar Lal Bang, President and Secretary of plaintiff Society as well as Udai Kishan - PW. 5, who was Office Superintendent in the Household of His Highness of Jodhpur and PW.6- Hari Singh, who was working as Private Secretary to Rajmata, had also clearly proved the said sale and various documents which established the chain

of title in favour of plaintiff and consequently the learned trial Court was perfectly justified in believing the title of plaintiff beyond doubt as against the flimsy and false evidence led by the defendant No. 2- Ram Singh and learned trial court had clearly found that in the alleged sale deed in favour of defendant No. 2- Ram Singh and his father Poonam Ram, there were interpolations of measurements given in the map under the said one page sale deed dated 9.2.1931- Ex. A/8 and neighbourhood in the said sale deed which was an unregistered document and was not admissible in evidence and comparison of the neighbourhood given in various rent notes x, A/4 to A/7 produced by defendant purportedly for establishing his rights over the suit land, the neighbourhood simply did not tally at all and this clearly established that the defendant, who was only 09 years of age in 1931, admittedly could not claim independent title & possession and giving of said property on rent to various persons. He also drew the attention of the Court towards Ex. 11, reply dated 29.8.1985 to notice by Shri Amrit Lal Chopra, Advocate on behalf of defendant No. 2, Ram Singh in which at page 2 of said reply the defendant deliberately struck off the name of his father and inserted his own name in the purported sale deed dated 9.2.1931 and in which he had also admitted that the plot in question was in possession and tenancy of his brother Uda Ram but stated that the same was on the western side of the suit land. He also did not produce any purported Will by Mst. Jubeda Begum in favour of Anwar Ali Khan and Faijyaab Khan even though it was claimed to be in her possession in the said reply notice. This all goes to show that the defendant-Ram Singh had deliberately produced false evidence before the court below & by producing the documents which related to some other property tried to establish his title over the present suit land. The defendant had tried to illegally retain his possession over the said plot of land which was not sustainable in law.

(iv) Mr. Nagori also submitted that if the defendant-Ram Singh had any title over the plot of land in question under the alleged sale deed dated 9.2.1931, he was required to obtain a fresh "Patta" of the same as per the provisions of Section 17 of the Marwar Registration Act, 1934, which required that a non-testamentary instrument, which purport or operate to create, declare or assign any right, title or interest of the value of one hundred rupees and upward in any immovable property, said document is required to be compulsorily registered under the said Act. Even otherwise, the defendant had never requested the trial court by moving u/s 90 of the Evidence Act to draw any presumption as to its correctness and, therefore, no such presumption could be drawn in favour of defendant.

7. He relied upon the decision of this Court in the case of Gulam Rasool and Others Vs. Abdul Gaffar and Others, to support this connection. Other case laws cited by him will also be dealt with hereinafter while dealing with case laws relied upon by learned counsel for the appellant defendant, Mr. M.C. Bhoot.

8. I have heard learned counsels at length and perused the judgment under appeal and reasons given therein and also perused the statements of witnesses and documentary evidence on record and the judgments cited at the bar and

upon a careful analysis of the material before this Court, this Court is of the clear and firm opinion that the present appeal of the defendant-tenant No. 2, Ram Singh, who is now represented by his legal representatives, is devoid of any merit and same deserves to be dismissed. The reasons are as follows:-

(i) The title of the plaintiff- Jodhpur Maheshwari Samaj, a registered society represented by its President, Mr. Shanker Lal Soni (Maheshwari), who relinquished his rights in the present suit property in favour of plaintiff society has been proved by the plaintiff beyond pale of doubt. The chain of title of suit property which was not only identified by the purchaser and office bearers of the plaintiff society like PW.1 - Shanker Lal himself, PW.2- Damodar Lal Bang, & PW.5- Udai Kishan & PW.6- Hari Singh, persons working in the Household of His Highness Maharaja Gaj Singh Ji and thus, title of the suit property has been proved beyond pale of doubt and possession having been handed over to the purchaser, the plaintiff has been rightly held entitled to the decree of ejectment against the defendant- Ram Singh. The defendant set up by the defendant No. 2, Ram Singh, was not only weak and flimsy but appears to be mischievous & false defence also. He claimed ownership over the suit land on the basis of document Ex. A/8, purported sale deed dated 9.2.1931 when he was only 9 years of age, without establishing the identity of the suit land with such document but also miserably failed to explain the interpolations and overwritings in the measurement of plot shown in the map appended below to the said one page unregistered document of which no official translation was produced before the learned trial court nor any oral evidence was led to prove the said document. The said document purportedly being dated 9.2.1931, therefore, presumption u/s 90 of the Act, could be claimed if conditions of Section 90 were satisfied but nothing of this sort was done & therefore said Ex. A/8 has been rightly rejected by the learned trial Court. The neighbourhood given in the alleged rent notes were compared with the neighbourhood given in the registered sale deed of plaintiff and they do not match. The property of the plaintiff was shown to be known as "Rajmata Ji ka Nohra", whereas, the defendant claimed it to be known as "Miyon Ki Haveli". The two are apparently different properties. Though the defendant miserably failed to lead any evidence to show any chain of title in his favour except banking upon the unregistered and unproved document Ex. A/8, therefore, no title set up against title of the plaintiff could be believed in the face of these documents and the court below was justified in arriving at the conclusion that the title of the suit property in question was rightly & fully proved by the plaintiff & his burden as per Section 110 of Evidence Act was absolutely discharged by the plaintiff and they were entitled to the decree of eviction & ejectment against the defendants.

(ii) While defendant No. 1 - Uda Ram admitted his tenancy over the portion of the suit land, the mention of which was included in the registered sale deed dated 26.4.1972- Ex. 3 itself and PW. 5 and PW.6 have also stated that he used to deposit rent at the rate of 8/- per month in the Household of the Royal family on various occasions and after having filed such written statement and

admission, he remained ex-parte before the learned trial Court, therefore, eviction decree against him as tenant on the ground of default in payment of rent after 1980 and bonafide need of the landlord for setting up a school as proved by PW.1, Shanker Lal and PW.2, Damodar Lal Bang in their statements was also justified. It may be stated here that defendant No. 1 has not been preferred any appeal before this Court and, therefore, decree under appeal to that extent, as far as defendant No. 1 is concerned, has become final.

(iii) The defence of defendant No. 2 - Ram Singh, the present appellant, who is now represented by his legal representatives after his death, has also not been rightly believed by the learned trial court. The map annexed with the sale deed dated 26.4.1972 as well as various documents produced by plaintiff like letter of 1949, the list of properties with covenant produced by PW. 6- Hari Singh and proved by him clearly includes the "nine Nohras" including the "Rajmata Ji Ka Nohra" in which the suit land is situated has been proved by the plaintiff. None of the defence witnesses has been able to dislodge that the suit property was not known and identified as "Rajmata Ji ka Nohra" near Fateh Sagar. The contention of learned counsel for the appellant, Mr. M.C. Bhoot, that the same was for specific purpose namely for use by ladies of the Royal family and it was not so used, is of no relevance here and Said argument does not cast any cloud or shadow over the title of plaintiff. The registered sale deed (Ex. 3) and subsequent relinquishment deed (Ex. 4) are sufficient to raise presumption of title and possession, at least legal possession, in favour of plaintiff. Since defendant No. 2 encroached over the said plot of land, who in his statement has himself admitted as D.W. 1 that property which he purchased was part of "Miyon Ki Haveli" and the place where "Maheshwari Nyati Nohra" is situated, his brother Uda Ram was tenant but whose tenant he was, he did not know.

This admission in his cross examination at page 7 of his statement is very important. He has also admitted existence of "Jaal" tree on the suit land in question which is also shown to the in map annexed with the registered sale deed Ex. 3). Thus, the defendant No. 2 himself identified the property purchased by Shanker Lal Soni (Maheshwari) and made over to plaintiff society. In his statement, the learned court below has also made a note regarding Ex. A/8, purported sale deed in favour of defendant No. 2, that there was interpolation and overwriting in the map shown in x. A/8 and since the defendant No. 2 did not produce any witness to prove the said document and claimed that both Faijyaab Ali and Anwar Ali Khan had died and he did not have any Will of Jubeda in favour of these persons and, therefore, could not produce the same. Even otherwise, from the reading of some portions of Ex. A-8/1, though no official translation of the same was produced by the defendant before the Court, the neighbourhood shown in the said sale deed purportedly of 1931 shows "Rajpath (means public road) of "Athoon" (west) side, whereas, on the western side of the suit property there is no public way. On the southern side is the land of Hari Singh and on the western side, after the constructed portion of various "Ohras" and Verandas shown as portion "A" in the said map, is the way to Nagori Gate,

whereas, disputed portion on which defendant No. 2 is shown to be possession is the area marked as "Y" with "Jaal" tree in the said plot in the middle portion marked as "Z". The plaintiff Maheshwari Samaj had already constructed a community building, the existence of which has been admitted by the defendant Ram Singh in his cross examination. Thus, the neighbourhood shown in the documentary evidence led by the defendant falsifies his own stand and his claim over the disputed land in question on the basis of title has rightly not been believed by the learned trial court.

9. The brief discussion of case laws relied upon by both the sides may now be made.

10. Firstly, the case laws relied upon by learned counsel for the appellant, Mr. M.C. Bhoot are dealt with hereunder:-

(i) Mr. M.C. Bhoot relied upon Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jumayath Palli Dharas Committee and Others, to the effect that the plaintiff can only succeed on the strength of its case and not on the weaknesses found in the case of defendant, if any, when the title is based on the deed, it could succeed only on the basis of validity of that document. The said judgment and ratio relied upon by the learned counsel for the defendant appellant, Mr. M.C. Bhoot, as a matter of fact, helps the case of respondent plaintiff in the present case. As already held above, the plaintiff had proved the chain of his title with registered sale deed dated 26.4.1972 (Ex. 3) and other oral witnesses, PW.1, PW.2, PW.5 and PW.6 and, therefore, the plaintiff has stood at his own strength established in the present case and not on the weakness of the defence of the defendant, which has been found to be a flimsy and fake evidence in his support.

(ii) By relying on Smt. Prem Kanwar Vs. Chand Singh, , learned counsel for the appellant, Mr. M.C. Bhoot submitted that if the claim of possession is made on the basis of title and if question of title is decided against the plaintiff, then he is not entitled to claim possession. There is no dispute about this proposition of law but as aforesaid, this proposition also helps the plaintiff respondent in the present case. The plaintiff has not only proved his title in the present case & legal possession also, as against which the defendant has failed to prove his title over the suit land, therefore, his possession over the suit land is merely as a trespasser and encroachee.

(iii) Judgment in the case of Shantilal Kesharmal Gandhi Vs. Prabhakar Balkrishna Mahanubhav, has been relied upon by the learned counsel for the defendant-appellants to submit that the first appellate court should discuss all the relevant material and make proper reappraisal of pleadings and evidence. The said ratio has been followed in the present case and this Court has perused the entire evidence on record and gone through the statements of various plaintiff's and defendant's witnesses and has, thereafter, come to the conclusion that the plaintiff is entitled to the decree of ejectment against defendant No. 2- Ram Singh as well.

(iv) The judgment in the case of Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Others, has been relied upon by learned counsel for the appellant in support of his submission that mere marking of a document as exhibit does not dispense with the requirement of same being proved. True it is, but as held above by this Court and as held by the trial Court also that plaintiff's documents have not only been proved with oral evidence but the registered document on the basis of their own presumptive value have been rightly believed by this Court as well as learned trial court.

(v) The next case relied upon by learned counsel for the appellant is Ambika Prasad Thakur Ors. vs. Ram Ekbal Rai- AIR 1966 SC 605 in support of his submission that presumption of continuance can be for a period backward also and how far the presumption may be drawn backward or forward depends upon the nature of the thing and the surrounding circumstances. This judgment was relied by the learned counsel for the appellant in the context of his submission that since the defendant No. 2 had rented out portion of the suit land to other tenants vide Rent Notes, A/4 to A/7, therefore, presumption about his possession over the suit land for a backward period since 1931 should also be drawn in his favour. Like all presumptions, this presumption is also rebuttable and, therefore, since this Court as well as learned court below has found that the neighborhood given in the rent notes, Ex. A/4 to Ex. A/7, did not tally with the 1931 sale deed, Ex. 8, which is an unregistered document, though required to be registered under the law, therefore, there is no question of drawing backward presumption in favour of defendant-Ram Singh in the present case.

(vi) The last judgment relied upon by the learned counsel for the appellant with regard to Section 90 of the Evidence Act is in the case of Kanhaiya and Others Vs. The Civil Judge, Junior Division and Others, . The said case is also not of any avail to the learned counsel for the appellant since never any presumption was sought to be drawn u/s 90 by the defendant by an appropriate application before the trial Court nor the requirements of Section 90 were satisfied in the present case.

11. Now coming to the judgments relied upon by the learned counsel Mr. R.R. Nagori, Sr. Advocate for the plaintiff-respondent.

(i) Mr. R.R. Nagori has relied upon the judgment of this Court in the case of Gulam Rasool and Others Vs. Abdul Gaffar and Others, to the effect that where plaintiff did not request the court to draw presumption at the initial stage and execution of rent deed was not proved, the presumption about genuineness of rent deed being 30 years old cannot be drawn. In the present case also, as stated above, the defendant-Ram Singh never moved the trial court for drawing any such presumption showing that requirement of Section 90 of the Act were established.

(ii) Full Bench of this Court in the case of Smt. Pushpa Sharma Vs. Gopal Lal Rawat, held that in a suit for eviction filed u/s 13 of the Rajasthan Rent Control

Act, 1950 where the relationship of landlord and tenant is denied by the tenant and the plaintiff also claimed on the basis of title and by evidence led by parties, the title of plaintiff was proved, the decree of possession could also be granted to the plaintiff in such circumstances. This judgment is helpful in the present case because decree has been granted against both the defendants, namely of eviction against defendant No. 1- Uda Ram and that of possession and ejectment against defendant No. 2-Ram Singh on the basis of title of plaintiff being proved.

(iii) In Mohd. Ibrahim and Another Vs. The Secretary to the Government of India, Ministry of Defence and Others, , the Andhra Pradesh High Court held that plea of adverse possession cannot be taken by the defendants, who do not admit prior title of plaintiff to assert their own title, therefore, they cannot take plea of adverse possession in the face of their own title claim. In the present case also, the defendant No. 2 has claimed title by way of adverse possession without any notice to the owner thereof while claiming title also & has denied the title of the plaintiff, therefore, in the light of aforesaid judgment, he cannot claim both the pleas for title simultaneously, one on the basis of alleged sale deed dated 9.2.1931- Ex. 8 & another on the basis of adverse possession.

(iv) In Rama Kanta Jain Vs. M.S. Jain and others, , the learned Single Judge of Delhi High Court held to the same effect that a person who traces his possession to a lawful title can never become an owner by adverse possession and, therefore, these two mutually exclusive & contradictory pleas cannot be taken by the defendant. This judgment also supports the contention of learned counsel for the respondent plaintiff.

12. Thus, on the comparative study of the judgments cited at the bar, this Court is of the clear opinion that while propositions of law cited by the learned counsel for the appellant defendant in the facts of the present case help the case of the plaintiff, the judgments relied upon by the learned counsel for the plaintiff respondent clearly support the contentions raised by Mr. R.R. Nagori.

13. Thus, on an over all view of the evidence led by the parties, this Court is of the clear & firm opinion that the court below was justified in decreeing the suit in favour of the plaintiff and the present appeal filed by the defendant No. 2 - Ram Singh, who is now represented by his legal representatives, is devoid of any merit and same deserves to be dismissed and the same is accordingly dismissed with costs of Rs. 5000/-. The appellant defendants-L.Rs. of Ram Singh/Uda Ram shall hand over the peaceful and vacant possession of the suit property to the plaintiff within three months from today and shall pay mesne profit to the plaintiff at the rate of Rs. 1000/- p.m. commencing from August, 2012 to the plaintiff respondent and will further continue to pay the mesne profit each month by 15th day of the next succeeding month or in advance to the respondent-plaintiff till the vacant possession is handed over to the plaintiff and in case there is any default in payment of mesne profit, the period of six months for eviction shall stand reduced and the decree of eviction would become executable forthwith. The defendant-tenant shall also not sub-let, assign or part with the

possession of the suit premises or any part thereof in favour of any one else and would not create any third party interest in the same and the same would be treated as void. The appellant-defendants shall furnish a written undertaking incorporating the aforesaid conditions in the trial court within one month and one copy thereof along with affidavit, in this Court. It is made clear that if the peaceful and vacant possession of the suit property is not handed over or mesne profits are not paid to the respondent-plaintiff a period of three months from today, besides expeditious execution of the decree in normal course, the respondent-plaintiff shall also be entitled to invoke the contempt jurisdiction of this Court. A copy of this judgment be sent to both the parties and learned courts below forthwith.