
(2011) 09 DEL CK 0532

In the Delhi High Court

Case No : Regular First Appeal No. 385 of 2002

Tek Ram (deceased) through LRs. and Others

APPELLANT

Vs

Shri Prehlad Singh and Others

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, Order 8 Rule 5, 96
Limitation Act, 1963 — Article 65, 27

Citation : (2011) 09 DEL CK 0532

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sajjan K. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal u/s 96 CPC is to the impugned judgment and decree dated 18.3.2002, and by which judgment and decree, the court below decreed the suit of the Respondents/ Plaintiffs declaring them to be the owners of the property being H. No 5797/XI situated in Basti, New Chandrawal, Near Subzi Mandi, Delhi.

2. The claim for declaration of ownership was on the ground of law of prescription contained in Section 27 of the Limitation Act, 1963, read with Article 65 of the Schedule of the Act on the ground that the Respondents/Plaintiffs were in open, continuous and hostile possession of the property since 1910 and therefore, were bound to be declared as owners of the property.

3. Thus, the only issue was as to whether the Respondents/Plaintiffs to the knowledge of the owners had declared themselves to be the owners of the suit property and were in actual physical possession thereof for 12 years, inasmuch as after the expiry of a period of 12 years specified in Article 65 of the Schedule of the Act, the ownership interest in the property itself gets extinguished by virtue of law of prescription contained in Section 27 of the Act, thereby, making

the persons in actual physical possession the owners of the property.

4. The relevant issue framed by the trial court in this regard was issue No. 2 and with respect to which the relevant observations of the trial court are contained in paras 13 to 15 of the impugned judgment which read as under:

13. Before appreciating the evidence of the parties, for the purpose of determining certain facts as alleged in the plaint, it is necessary to go to the pleadings of the parties. In the plaint the Plaintiffs in para 3 had specifically pleaded that in or about 1959, the Defendants and their seven associates tried to interfere in the enjoyment of the suit property of the Plaintiff and Sh. Hukam Singh father of the Plaintiffs No. 2 to 4 and grand-father of Defendants No. 5 to 9 and wanted to take forcible possession from them whereupon Plaintiff No. 1 and Sh. Hukam Singh filed a civil suit for injunction against the Defendants and their seven associates, registered as 224/1959 in the Court of Sh. Shiv Dass Tyagi, the then Id. SJIC, Delhi; that in the suit the Defendants had claimed to be the owner of the site of the suit property but admitted the possession of the Plaintiffs; that the trial court found that the suit property was in possession of the Plaintiff and passed a decree restraining the Defendants from interfering with the enjoyment of the Plaintiffs, physical possession of the suit property and from dispossessing them. It has also been pleaded that the Defendants filed an appeal against the said decree, which was dismissed and the decree of the trial Court was maintained. In para 3 of the WS on merit, the Defendants had neither denied nor disputed these facts pleaded in para 3 and therefore, in the absence of any denial much less than specific denial whatever has been pleaded by the Plaintiffs in para 3 are deemed to be admitted by the Defendants by the provision contained Under Order 8 Rule 5 Code of Civil Procedure. On the other hand in the testimony of D.W.s, filing of the suit for injunction by the Plaintiffs was admitted and granting of the decree against the Defendants was also admitted and at the same time filing of appeal and dismissal of the same is also admitted on evidence. Accordingly, it is proved beyond all disputes that in 1959 in a suit for permanent injunction filed by the Plaintiffs, the Defendants had taken a plea that they were owner of the said property and that they had admitted the possession of the Plaintiffs in respect of the suit property. Accordingly, I find that the possession of the suit property with the Plaintiffs had been admitted by the Defendants specifically in the pleadings in 1959.

14. In addition to them the Plaintiffs in their suit has also pleaded that they are in possession of the suit property since 1910. This factum of possession since 1910 has been pleaded by the Plaintiffs in para 1 & 4. In response to these facts the Defendants had disputed the possession of the Plaintiffs since 1910, but has admitted that they had occupied the possession of the said property in the year 1947-48, when the Plaintiff No. 1 and Sh. Hukam Singh constructed the structure. Accordingly, in view of this pleading of the Defendants, I find that the possession of the Plaintiffs in respect of the suit property has been admitted since 1947-48 and that the Plaintiff No. 1 and Sh. Hukam Singh had raised the

structure on such property somewhere in that year. Accordingly, by the pleadings of the Defendants it is admitted fact that the Plaintiffs are in possession of the suit property since 1947-48, if not from 1910, as pleaded by the Plaintiffs. On evidence, the Defendants had also deposed such facts and they had deposed that in a suit of 1951, the Plaintiffs were not the party to that suit in which the partition of property had allegedly taken place by which the Defendants have allegedly acquired the ownership of the property. On evidence also the possession of the Plaintiffs have been undisputably proved as admitted by the Defendants in their testimony themselves. Therefore, I find that the Plaintiffs have proved their possession since 1947-48, in respect of the suit property.

15. The Defendants had challenged the possession of the Plaintiffs by filing the suit for recovery of the possession somewhere in 1992 and that suit had been dismissed and the copy of the same has been proved on record by filing the certified copy and proving the same as Ex. PWA/B alongwith the pleadings thereof. Once the Plaintiffs are admittedly in possession w.e.f. 1947-48 and at no point of time, the Defendants had taken over the possession of the said property for any period, I find that the Plaintiffs are continuously in occupation and possession of the said property till the filing of the suit. The suit has been filed on 25.5.76 and more than 12 years have passed before filing the suit with a continuous possession against the Defendants and the Defendants had also challenged their possession during the course of pendency of the suit filed by the Plaintiffs for injunction as well as by filing the suit for possession but the same remained intact and accordingly, in those circumstances, the Plaintiffs had also proved the possession of the suit property in their hands adverse to the Defendants, since the Defendants had also claimed their ownership in respect of the suit property somewhere in 1959, when the Plaintiffs had filed a suit for injunction and therefore, after 1959, when the Defendants had come forward in the Court claiming to be the owner of the suit property and continuously more than 12 years had passed till filing of the suit, I find that the Plaintiffs for more than 12 years. In view of my findings on the basis of admission made by the Defendants in the WS as well as in evidence the contentions raised by the Id. counsel for the Defendants do not appear to have any merit or substance to oust the claim of the Plaintiffs for such declaration and accordingly, the law cited by the Id. counsels for the Defendants in cases *Ngasepam Ibotombi Singh v. Wahengbam Ibohah Singh* AIR 1960 Manipur 16 . *Manmohan Service Station Vs. Mohd. Haroon Japanwala and Others*, , *Wg. Cdr. (Retd.) R.N. Dawar Vs. Shri Ganga Saran Dhama*, , *Smt. Gauran Devi and Others Vs. Durga Dass*, and *Jamarathbee and Others Vs. Pralhad Dattatraya Dadpe and Others*, , do not appear to be helpful to the case of the Defendants, since the facts of the present case are substantially different from the facts of the cases relied by the Id. counsel for the Defendants. Therefore, the contentions raised by the Id. counsel for the Defendants are rejected. So, this issue stands decided in favour of the Plaintiffs and against the Defendants.

(underlining added)

5. A reading of the aforesaid paragraphs show that though the Respondents/Plaintiffs had claimed to be the owners in possession since 1910, it was proved that at least from 1959 the same was in the knowledge of the Appellants/Defendants, inasmuch as in 1959 the predecessor-in-interest of the Plaintiffs i.e., their father Sh. Hukam Singh had filed a suit for injunction against these very Appellants/Defendants and in which, it was claimed that Sh. Hukam Singh was the owner in possession of the suit property. Plaint in the civil suit No. 224/1959 was exhibited before the trial court as Ex. P/W. This suit was contested by the present Appellants/Defendants and was decreed in favour of the predecessor-in-interest of the Respondents/Plaintiffs thereby granting a decree of injunction in favour of Sh. Hukam Singh and restraining the Appellants from in any manner dispossessing them without due process of law. An appeal filed against this judgment of the trial court Ex. P/W dated 1.10.1960 was dismissed by the Appellate Court vide its judgment exhibited in the trial court as Ex. DW1/2. There is, therefore, no manner of doubt that the Respondents/Plaintiffs became owners by law of prescription inasmuch as, the subject suit was filed in 1974 and the period of limitation of 12 years from filing of the plaint in 1959 had expired in the year 1971. In fact, the Appellants/Defendants only filed a suit for possession against the Respondents/Plaintiffs in the year 1992 and which suit was also dismissed. I also take note of subsequent events as per Order 7 Rule 7 CPC and the factual position today is that till the year 2011, no suit for possession has been filed against the Respondents/Plaintiffs with respect to the suit property.

6. I, therefore, agree with the conclusions and findings of the court below that the Respondents/Plaintiffs were entitled to be declared owners by virtue of law of prescription. The reasoning of the trial court contained in paras 13 to 15 is categorical and correct, and I agree with the same.

7. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed leaving parties to bear their own costs.