

(2006) 05 DEL CK 0186
In the Delhi High Court
Case No : CS (OS) No. 823 of 2006

Vishal Builders Pvt. Ltd.

APPELLANT

Vs

DDA and Others

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Delhi Development Act, 1957 — Section 22
Evidence Act, 1872 — Section 116
Limitation Act, 1963 — Article 111

Citation : (2006) 130 DLT 667 : (2006) 90 DRJ 470

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : S. Balakrishnan, Ghanshyam Vashisht and Om Prakash, for the Appellant;

Final Decision : Dismissed

Judgement

Manju Goel, J.—Briefly stated the case of the plaintiff is as under:

The plaintiff is a private limited company engaged in the business of construction of buildings. On 28.11.1972 lot No. 95, District Centre, Nehru Place, New Delhi (hereinafter referred to as the suit property) was put to auction by defendant No. 1 (DDA) and the plaintiff offered a premium of Rs. 16,06,000/- for the suit property measuring 743.22 sq. mts. The plaintiff was declared the successful bidder. The bid was accepted by defendant No. 1 and the possession of the suit property was delivered to the plaintiff on 5.3.1973. A building thereon was constructed. The plaintiff is in continuous peaceful possession of the suit property. The plaintiff is not in possession of the conditions of auction. The plaintiff believes that the conditions were the same as was for a property in respect of which another suit being Suit No. 409/1973; Vishal Builders (P) Ltd. v. DDA was filed. In the suit one of the questions for determination was what the nature of the land for which the bids were invited by auction was and if it was Nazul land whether DDA had right to sell. It was held by the High Court that the

auction by the DDA was illegal as DDA could not have sold the property till the rules had not been framed u/s 22 of the The Delhi Development Act, 1957 (in short 'DD Act') and the Delhi Development Authority had not obtained any directions from the Central Government. This decision was rendered on 23.3.1977. The appeal preferred over the judgment of the Single Judge (RFA (OS) No. 15/77) was dismissed. All lands placed at the disposal of the DDA by the Central Government throughout the Union Territory of Delhi were held to be Nazul lands placed at its disposal u/s 22 of the DD Act. Pursuant to the judgment and decree in Suit No. 409/73, the Central Government framed rules in 1981. The plaintiff paid the bid money in 1973. Since the DDA was incompetent to dispose of the plot, auction held by the DDA in which the plaintiff obtained the possession of the suit property was null and void. Till date no lease deed has been executed by defendant No. 1 in favor of the plaintiff in respect of the suit property. Thus, the possession of the plaintiff qua defendant No. 1 is adverse. The period of limitation prescribed for perfecting title by adverse possession against the State is 30 years as per Article 111 of the Limitation Act. The plaintiff has, thus, perfected his title by adverse possession. The possession of the plaintiff is open and hostile qua the Union of India as well as of the DDA. The plaintiff received demand notice dated 29.11.2001 from defendant No. 2, acting on behalf of defendant No. 1, demanding a sum of Rs. 10,35,090/- as amount outstanding towards arrears of ground rent up to 14.1.2002 with 10% interest thereon from the due date of appointment till actual date of payment. The plaintiff has been receiving such notices over the years in the past but has never paid the ground rent because there was no valid contract between the parties to pay ground rent. As such the plaintiff being the bona fide purchaser having purchased the land for consideration and having been delivered possession by defendant No. 1 on 5.3.1973 is holding the land as owner without any conditions having been attached thereto by defendant No. 1, within the knowledge of Union of India (defendant No. 3). The plaintiff is, Therefore, in possession of freehold plot as a legal consequence of normal sale purchase. Since no lease deed was ever executed there was no liability on the part of the plaintiff to pay any ground rent or arrears thereof. The notice dated 29.11.2001 threatening to recover the ground rent under Punjab Land Revenue Act is illegal and is an attempt to re-enter the suit property. The plaintiff is being threatened of dispossession by defendant No. 4, which is an agency of defendant No. 1, for recovering the dues. The plaintiff accordingly claims a decree for permanent injunction to restrain the defendants from interfering in the peaceful possession and enjoyment of the suit property, a decree of declaration that the suit property was placed at the hands of defendant No. 1 u/s 22 of the DD Act as Nazul land, a decree of declaration that the defendants were legally incompetent to hold auction of the suit property on 28.11.1972, a decree of declaration that the plaintiff is in adverse possession ever since 5.3.1973, a decree of declaration that since no ground rent was paid despite bills having been raised by the defendants the possession is open and hostile, a decree of declaration that the plaintiff is a bona fide purchaser for consideration free of all encumbrances, a decree of declaration that the plaintiff

has perfected his title on 4.3.2003, a decree for declaration that the plaintiff is not liable to pay any ground rent and a decree of declaration that defendant No. 1 is not competent to re-enter the suit property.

2. The plaintiff has also filed an interim application seeking interim reliefs. The learned Counsel for the plaintiff has been heard in detail about the maintainability of plaintiff's suit and plaintiff's claim. Analysis of the claim of the plaintiff

3. The claim of the plaintiff is self-contradictory which is clear from the prayer clauses themselves. The plaintiff has not placed on the record the terms of the auction, following which he came into possession but it is clear that the auction was only of leasehold right as the plaintiff himself says that every year the plaintiff has been receiving the demand for ground rent. On the one hand, the plaintiff claims that he is bona fide purchaser and on the other hand he claims that he is in adverse possession. If he is a bona fide purchase of the leasehold title over the suit property his status of a tenant/lessee in respect of the suit property is admitted. He having admitted his position of a lessee cannot dispute the title of the DDA and the Union of India who are nothing other than the agents and the principal. Section 116 of the Evidence Act bars a tenant from denying the title of the landlord. Similarly, no person who comes into possession of an immovable property on the basis of license or permission of the person in possession thereof cannot be permitted to deny that such person had a title to such property when such license was given. Section 116 is reproduced below:

116. Estoppel of tenant; and of licensee of person in possession.- No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

4. Whatever may have the authority of the DDA and whatever may have been the invalidity in the deal or the auction, the plaintiff can assume no position other than that of a tenant under the DDA/Union of India, defendants Nos.1 & 3. The plaintiff is, Therefore, liable to pay ground rent. If the plaintiff is a defaulter in payment of ground rent, defendant Nos.1 & 3 have right to recover it according to the procedure laid down under the law.

5. The plaintiff does not deny the title of the DDA and the Union of India, defendant Nos.1 & 3, but says that defendant No. 1 (DDA) was not entitled to sell the Nazul land. This, however, cannot make the possession of the plaintiff adverse to that of defendant No. 1. At best this could be a matter of dispute between defendant Nos.1 and 3. So far as the plaintiff is concerned, he is in possession through defendant Nos.1 & 3 and not independent of defendant Nos.1 & 3. Despite such failure, if any, the plaintiff's title cannot become adverse to

defendant Nos.1 and 3.

6. The plaintiff has not paid the rent. This is a default on the part of the plaintiff. By not paying the rent a tenant does not become a person in adverse possession. It was held in *Thakur Kishan Singh (dead) Vs. Arvind Kumar*, that mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession.

7. The plaintiff has raised another plea that since no lease deed has been executed, he has become a person in adverse possession. It does not deny, however, that his entry in the land was consequent on the auction by DDA. It was held in *Thakur Kishan Singh's* case (Supra) that if the possession was initially permissive it was a heavy burden on the appellant to show that it had become adverse at any subsequent point of time. The development of hostility at any subsequent point of time had to be proved by cogent evidence. In the present case the plaintiff does say that initially he entered with permission of defendant Nos.1 and 3 but at no subsequent point of time his animus for the possession had become hostile to defendant Nos.1 and 3. The animus with which he entered the land continues till date and, Therefore, till date his possession can be nothing other than possession of a tenant.

8. The plaintiff's counsel has tried to take shelter under the Supreme Court judgment in the case of *State of West Bengal Vs. The Dalhousie Institute Society*, in which the respondent society had obtained a grant in respect of a land from the Government and the appellant-Government wanted to acquire the land without paying compensation on the ground that the grant was no nest because the documents required for such a grant had not been executed. The Supreme Court held that the respondent was either in possession under the grant or in case such a grant is denied, then his title had been perfected by possession which, in the absence of the grant, could only be adverse. The plaintiff cannot take advantage of this judgment for the simple reason that the plaintiff's case is entirely reverse of the case before the Supreme Court. The respondent in that case, namely, *The Dalhousie Institute*, who was in possession of the land did not deny the grant. It admitted the grant and claimed that in view of the grant the Government could not have acquired the land without paying him the compensation. Since the appellant, *State of West Bengal*, was interested in denying the grant it was held that if the State was denying the grant, the possession of the respondent would be nothing other than adverse. The respondent was in possession for over 60 years and had built on it without any objection from the Government/State of West Bengal. In the present case the petitioner is saying that the auction was bad and the lease was bad. This he cannot do in view of Section 116 of the Evidence Act. The Lesser in this case is not denying the lease. The plaintiff, Therefore, cannot say that his possession has become adverse because of non-execution of any lease deed or on account of any defect in the lease.

9. It was held in *Brij Lal v. Ram Saran* (1970) 72 P.L.R. 8 that where a person

entrees into possession lawfully, he cannot, by pretending to have no title at all, divest himself of the lawful title and assume the character of an adverse possessor in order to mature his title through the process of hidden wrongful intentions. Decision

10. The plaintiff's case is entirely frivolous. His case has no merit. He is not entitled to any of the reliefs claimed in the suit. The suit is accordingly dismissed in liming.