

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.314/1997**

% **Reserved on : 6th August, 2018**
Pronounced on :17th August, 2018

RAM CHANDER Appellant

Through: Mr. Anuj Aggarwal, Advocate
with Mr. Kshitij Arora,
Advocate.

versus

BISANIA & ORS. Respondents

Through: Mr. Manoj Kumar Sahu,
Advocate for respondent Nos.1
& 2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 24.4.1997 by which the trial court dismissed the suit for recovery of possession and *mesne* profits filed by the appellant/plaintiff with respect to part of the subject property being House No. 289, Krishna Gali, Chhota Bazar,

Kashmere Gate, Delhi. The suit property comprises of one room, open courtyard and latrine on the first floor of the subject property. Trial court held that appellant's/plaintiff's father was the owner of the suit property in terms of the registered Sale Deed dated 27.6.1962/Ex. PW-3/1 (Also Ex.AW-2/1) and the appellant/plaintiff/son of the original owner became the owner of the suit property on the death of the father of the appellant/plaintiff Sh. Sukh Lal, but, the suit was dismissed by holding respondents/defendants were in adverse possession of the suit property.

2. The facts of the case are that a suit for possession was filed by the appellant/plaintiff with respect to the suit property pleading that the original owner of the suit property was Sh. Sukh Lal, the father of the appellant/plaintiff. Sh. Sukh Lal had died on 31.10.1979 leaving behind appellant/plaintiff and respondent no. 4/defendant no. 4 (daughter of Sh. Sukh Lal) as the only legal heirs and representatives. By virtue of the Will dated 10.5.1979 (Ex. PW5/1) the suit property was bequeathed to appellant/plaintiff and respondent no. 4/defendant no. 4 in equal shares. It was pleaded that by virtue of the oral partition between the respondent no. 4/defendant no. 4 and the

appellant/plaintiff, the suit property has fallen to the share of the appellant/plaintiff. One Sh. Bansi Lal was inducted in the suit property as a tenant by Sh. Sukh Lal. After the death of Sh. Bansi Lal, the defendant nos. 1 to 3 who are the widow and sons of Sh. Bansi Lal, stepped into the shoes of Sh. Bansi Lal. On account of non-payment of rent by the respondents/defendants, an eviction petition was filed in the court of Ld. Rent Controller of Delhi which was dismissed by Sh. V.K. Jain, Additional Rent Controller vide order dated 6.7.1988 holding that appellant/plaintiff failed to prove that there was a relationship of landlord and tenant between the parties. Therefore, appellant/plaintiff had no option but to file the subject suit in the civil court for possession of the suit property against the respondents/defendants pleading the respondents/defendants as trespassers. *Mesne* profits were also claimed.

3. Respondent nos. 1 to 3/defendant nos. 1 to 3 contested the suit by filing their written statement. It was pleaded by respondents/defendants that they were equal owners of the suit property as the suit property was the ancestral property purchased by the joint funds of Sh. Sukh Lal and Sh. Bansi Lal who were brothers

and also from the funds of their father. Respondents/defendants alternatively pleaded to be in adverse possession of the suit property. It was denied that Sh. Bansi Lal paid any rent to Sh. Sukh Lal or that respondents/defendants stepped into the shoes of the tenant Sh. Bansi Lal after the death of Sh. Bansi Lal. Suit was therefore prayed to be dismissed.

4. After pleadings were complete, trial court framed the following issues:

- “1. Whether the suit is barred by time? OPD
2. Whether the suit is not maintainable as alleged? OPD
3. Whether the defendants are co-sharer of the suit premises? OPD
4. Whether the defendants 1 and 2 have acquired ownership right in the premises in suit by adverse possession as alleged in para No.6 of the preliminary objection of the WS? OPD
5. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD
6. Whether the plaintiff is entitled to recover the possession of the suit premises from defendants 1,2 and 3? OPP

5. The main issue which has been argued before this Court is as to whether the trial court was justified in dismissing the suit by holding the respondents/defendants to be in adverse possession

although ownership of the suit property was found to be of the appellant/plaintiff in terms of the Sale Deed dated 27.6.1962/Ex.PW3/1. Respondents/defendants have also argued that the appellant/plaintiff is not entitled to possession of the suit property as Sh. Sukh Lal and Sh. Bansi Lal were co-owners and suit property was purchased from the ancestral funds.

6. Let us first take the aspect of the claim that the suit property was not solely owned by Sh. Sukh Lal, the father of the appellant/plaintiff, but that it was jointly owned by Sh. Sukh Lal and Sh. Bansi Lal who were brothers as the subject property was purchased from 'ancestral funds'. How Sh. Sukh Lal and Sh. Bansi Lal were pleaded to be brothers have come in evidence that both of them have a common mother namely Smt. Saraswati. Smt. Saraswati was first married to Sh. Babu Ram and from which marriage Sh. Sukh Lal, father of the appellant/plaintiff was born. Smt. Saraswati thereafter remarried Sh. Chhote Lal and from which marriage Sh. Bansi Lal was born. Therefore in the opinion of this Court once these are the facts which have come on record that Sh. Sukh Lal and Sh. Bansi Lal were not sons of the same father, there would not arise any issue of the suit

property having been purchased by the ancestral funds or being actually an HUF property. Except oral self-serving statements, there is no other evidence by the respondents/ defendants, that Sh. Sukh Lal and Sh. Bansi Lal are brothers, and therefore it cannot be held that Sh. Sukh Lal and Sh. Bansi Lal are brothers, and this is especially so because respondent no.1/defendant no.1 who appeared as DW-3 admitted that her father-in-law (her husband Sh. Bansi Lal's father) was Sh. Chote Lal and mother-in-law was Smt. Sarswati. In fact, the stand of the respondents/defendants is incongruous because on the one hand it is stated that the suit property was purchased out of the ancestral funds of both Sh. Sukh Lal and Sh. Bansi Lal and their father, but on the other hand in the evidence of defendant no.1/widow of Sh. Bansi Lal who deposed as DW-3, she stated that she had sold her jewellery to the extent of Rs.3,000/- and which amount was given to Sh. Sukh Lal for purchase of the subject property. Really therefore the case of the respondents/defendants is of co-ownership on account of the contribution by Sh. Bansi Lal to purchase the suit property of an amount of Rs.3,000/-. However, admittedly besides making self-serving statement in deposition of payment of Rs.3,000/- by selling of

the jewellery, no credible evidence which can be believed by the courts, has come on record for this Court to hold that Sh. Sukh Lal and Sh. Bansi Lal were co-owners of the suit property allegedly on account of Rs.3000/- being paid by Sh. Bansilal at the time of purchase of the subject property by the Sale Deed Ex.PW3/1. If such oral depositions are believed, then no owner of an immovable property will be safe and simply on oral averments a person can claim to be an owner of a property on account of allegedly having paid part of the consideration. Once the sale deed of subject property was in the name of Sh. Sukh Lal heavy onus lay on respondents/defendants to claim co-ownership of Sh. Bansi Lal, and such heavy onus cannot be held to be discharged by self-serving oral depositions given on behalf of respondents/defendants. I therefore hold that the trial court has rightly held that Sh. Sukh Lal was the sole owner of the property and thereafter the appellant/plaintiff being his son became the owner of the suit property on account of the Will Ex.PW5/1 of Sh. Sukh Lal bequeathing the suit property to the appellant/plaintiff and his sister, and whereafter the appellant/plaintiff became sole owner of the suit property on account of oral partition between the appellant/plaintiff

and his sister/respondent no.4/defendant no.4. It is noted that defendant no.4/sister did not contest the suit by denying the title of appellant/plaintiff in the suit property.

7. As regards the factum of whether respondents/defendants can be said to be in adverse possession of the suit property, in my opinion, the trial court has committed a grave error because trial court has wrongly held respondents/defendants to be owners by adverse possession simply on account of respondents/defendants being in continuous and uninterrupted possession but without any finding with respect to assertion of the hostile title. Trial court has held respondents/defendants as owners by holding 'respondents/defendants were openly and continuously without interruption' in possession of the suit property, and which in law is not sufficient because not only the possession has to be open and continuous but the possession has to be hostile to the true owner and there has to be an assertion of ownership title in the person who claim adverse possession to the knowledge of the true owner and the world at large, and which is clearly as per the evidence led by the respondents/defendants missing in the present case. In fact even for the sake of arguments if we take

that there is a plea or assertion of hostile title, with respect to this aspect there is no credible evidence at all as there is no mutation of the suit property in the name of Sh. Bansi Lal as the respondents/defendants in the municipal records, nor are any public documents or tax returns etc filed and proved by respondents/defendants to show assertion of title, and therefore, once there is no assertion and proof of hostile title made known to the owner of the suit property by the respondents/defendants or their father/husband Sh. Bansi Lal, it cannot be held that respondents/defendants are owners of the suit property. It is pertinent to note that merely having electricity or water meters in name of Sh. Bansi Lal is not assertion of hostile title as even tenants or licensees can take electricity and water connections in their names. Therefore it is held that appellant/plaintiff is the owner of the suit property and respondents/defendants are not owners by adverse possession, and therefore subject suit for possession has to be and is accordingly decreed.

8. On the aspect of *mesne* profits, this Court observe that the appellant/plaintiff as claimed in the plaint, rent at the rate of Rs. 25/-

per month. Appellant/plaintiff as PW-2 has also deposed in his evidence with respect to the same rate at Rs.25/- per month. Arrears for past three years prior to the suit are claimed at a total of Rs. 900. Therefore the appellant/plaintiff will be entitled to *pendente lite* and future *mesne* profits till appellant/plaintiff receives possession at Rs.25/- per month, and which shall be increased by 15% on the last rate of *mesne* profits paid every three years in terms of the ratio of the judgment of this Court in the case of ***M.C. Aggarwal vs. M/s Sahara India & Ors. 2011 (183) DLT 105.*** Appellant/plaintiff will also be entitled to interest @ 6% per annum simple on the *mesne* profits from the end of the month for which *mesne* profits are payable and till payment of *mesne* profits to the appellant/plaintiff. Money decree is accordingly passed and in favour of the appellant/plaintiff and against the respondents/defendants for arrears at Rs.900, *pendente lite* and future *mesne* profits at the rate of Rs. 25 per month, to be increased cumulatively by 15% every year and these amounts will be chargeable at 6% per annum simple.

9. In view of the aforesaid discussion, this appeal is allowed. Impugned judgment of the trial court is set aside. Suit for

possession of the appellant/plaintiff is decreed with respect to part of the property being House No. 289, Krishna Gali, Chhota Bazar, Kashmere Gate, Delhi which comprises of one room, open courtyard and latrine on the first floor of the subject property as shown in red in the site plan Ex. PW2/1. Appellant/plaintiff is also held entitled to *mesne* profits at Rs.1,000/- per month from the date of filing of the suit for the period of three years and thereafter the *mesne* profits will be increased by 15% over the last rent every three years. Appellant/plaintiff will also be entitled to interest @ 6% per annum on the *mesne* profits payable till payment of the *mesne* profits to the appellant/plaintiff is made. Money decree is accordingly passed in favour of the appellant/plaintiff and against the respondents/defendants. Parties are left to bear their own costs. Decree sheet be prepared.

AUGUST, 17 2018

VALMIKI J. MEHTA, J