

Before Ajay Kumar Mittal, J.

NANU KHAN AND OTHERS,—Appellants

versus

M/S ORIENTAL SPUN PIPE COMPANY LTD,—Respondents

R.S.A. No. 607 of 1985

14th March, 2008

Land Acquisition Act, 1994—Ss. 4 & 6—Land of appellants acquired for setting up factory by respondent—Possession delivered, conveyance deed executed—Dispute regarding some land which was neither acquired by State nor figured in notifications u/ss 4 & 6—Suit for possession—Whether respondent has become owner by adverse possession of land when they have raised construction on same—Held, no—Respondent did not hold property denying title of true owner and possession of respondent could not be said to be hostile to that of appellants—Appellants held entitled to possession of suit land which is wrongful and illegal possession of respondent.

Held,—that the State Government had executed a deed of conveyance in 1971 in respect of the land in dispute to which the State had no legal title as the same was never acquired by it. The defendant, thus, did not hold the property denying the title of the true owner and the possession of the defendant could not be said to be hostile to that of the plaintiffs. In view of the above, it cannot be held that the defendant had become owner by way of adverse possession. Once that is so, the plaintiffs are entitled to the possession of the suit land. The first appellate Court was, thus, not right in reversing the judgment and decree of the trial Court granting a decree for possession to the plaintiff-appellants.

(Paras 14 & 15)

Jaspal Singh, Advocate *for the appellants.*

R.S. Mittal, Senior Advocate with Atul Gaur, Advocate *for the respondent.*

AJAY KUMAR MITTAL, J.

(1) This is second appeal at the instance of the plaintiffs-Nanu Khan and others, whose suit for possession had been decreed by the trial court but on appeal by the defendant, the trial court decree was set aside by the first appellate court and consequently the plaintiffs' suit stood dismissed.

(2) A suit for possession was filed on the averments that the plaintiffs were owners of land measuring 5 kanals and 12 marlas comprised in khasra No. 20/1 of Rectangle No. 26 situated in the revenue estate of village Ranhera Khera, Tehsil Ballabgarh, District Faridabad. Nearly in the year 1960, the State acquired certain land for setting up a factory for the respondent. The possession of the land acquired by the State including that of the one of the present appellant-plaintiffs was delivered to the defendant on 31st March, 1961 and an entry (Exhibit D-2) evidencing that fact came to be made in the record of the Patwari. A conveyance deed dated 22nd November, 1971 was also executed by the State in favour of the defendant. The defendant raised buildings on the land including the land of the appellants. It was about 18 years after the delivery of possession of the land, i.e. in the year 1979 when the plaintiffs made an application for payment of the enhanced amount of compensation in terms of this Court's judgment dated 5th January, 1978, it was revealed that land measuring 5 Kanals 12 Marlas comprised in Khasra No. 20/1 of Rectangle No. 26 had not been acquired nor did this land figure in the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 issued for the aforesaid purpose. It was found that some other land measuring 4 Kanals 2 Marlas comprised in Khasra No. 26 of Rectangle No. 36 had been acquired. The possession, however, was delivered by the State to the defendant of land of Khasra No. 20/1 of Rectangle No. 26 and the possession of land of Khasra No. 26/1 of Rectangle No. 36 was not taken. It is only on this mistake found to have crept in that the whole dispute arose. This important aspect of the dispute finds elaborate mention in the order of the Additional District Judge, Gurgaon, dated 7th June, 1979 (Exhibit P-1) who dealt with the application of the plaintiffs for payment of enhanced compensation. the pleas of the plaintiffs were contested by the defendant. While raising various preliminary objections to be

referred to wherever the context would henceforth require, it was stated in the written statement that the defendant had acquired ownership and possession of the land by means of the conveyance deed dated 22nd November, 1971 which had been acquired by the State on or before 25th October, 1960. A specific plea was thus taken that the defendant became owner of the land in dispute by adverse possession as well. It was further stated that since the defendant had developed the land and raised buildings thereon for the factory, the same is indivisible also.

(3) The above pleas of the parties were put to trial on the following issues :—

1. Whether the defendant has wrongfully and illegally occupied the land in dispute, as alleged ? OPP
2. Whether the plaintiff came to know regarding the illegal and wrongful occupation of the land in dispute after the order dated 26th May, 1981 as alleged ? OPP
3. Whether the plaintiff is entitled to decree for possession of the land in dispute, as alleged ? OPP
4. Whether the land in question was also acquired by the State of Haryana for the defendant on or about 25th October, 1960, as alleged ? OPD
5. Whether the land vested in the State of Haryana and was transferred in favour of defendant *vide* conveyance deed dated 22nd January, 1971, as alleged ? OPD
6. Whether the plaintiffs have no locus standi to file the present suit ? OPD
7. Whether the defendant has become owner of the suit land by adverse possession ? OPD
8. Whether the suit is barred by limitation ? OPD
9. Whether the plaint does not disclose any cause of action against the defendant ? OPD

10. Whether the suit land has lost its original character and entity and is no longer agriculture land as pleaded ? OPD

11. Relief.

(4) The trial court, on appreciation of evidence recorded a finding that the defendant was in wrongful and illegal possession of the property in dispute. Plea of the plaintiffs about knowledge of the suit land being not included in the land acquired for the purpose mentioned above, covered under issue No. 2, was accepted, and it was held that they could come to know about the wrongful and illegal possession of the defendant only on the date of the order of the Additional District Judge, Gurgaon passed on the application of the plaintiffs for payment of the enhanced amount of compensation in terms of this Court's judgment. The trial court returned a firm finding that the land in dispute was never acquired by the State. Issue No. 4 framed in this behalf was answered accordingly in favour of the plaintiffs. As regards issue No. 5, it was found that since the State of Haryana was having no interest in the land, the conveyance deed in favour of the defendant did not give to it any right, title or interest in the said property. Under issue No. 7 about which only the primary dispute is said to be surviving, the trial court held that the plea raised by the defendant in that context was not tenable as in order to prove adverse possession, the party claiming it has to establish that the possession was continuous, hostile and notorious to the knowledge of the owner. If it is to be put exactly in the words of the trial court, a verbatim quotation of the finding in that behalf under issue No. 7 is needed here, which read thus :

“In the present case, as discussed above it can in no way be inferred that the defendant is in adverse possession of the premises in dispute to the knowledge of the owner and his possession is in no way hostile to that of the plaintiffs. Mere divesting of possession under the *bona fide* belief of acquisition of the property in dispute cannot be said that the possession is adverse to that of the owner. As a result, this issue is decided in favour of the plaintiff but against the defendant.”

(5) Holding ultimately, that the property in dispute was never acquired by the State Government and the defendant was in wrongful and illegal possession of the same, the trial court decreed the suit of the plaintiff.

(6) The defendant took up the matter in appeal before the District Judge. Before the first appellate court, it deserves to be noticed in the first instance that the defendant-appellant confined its submission only on the point of adverse possession. Since the dispute that is alive between the parties as on now, centers around the only one controversy i.e. the adverse possession, the finding returned by the first appellate court reversing the trial court finding in the context is noticed as under :

“The short and simple question for determination is whether the facts show that the appellants’ possession ripened into ownership. In my opinion, the appellants have a fool-proof case. Under Article 65 of the Limitation Act, the period of limitation provided for a suit for possession of immovable property based on title is 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. The possession of the land was delivered to the appellant on 31st March, 1961 where after they remained in possession of it openly and to the knowledge of every body including the respondents, the owners of the land. It is equally true that the land in question was not a part of the acquired land. It is therefore, a case where the appellants entered into possession of the property under an invalid transaction. It is elementary that where a person takes possession of property under colour of a transfer which is inoperative, such possession is adverse to the true owner, because a transferee in such cases gets no title under the transfer and his possession, therefore, is without title and in contravention of the title of the true owner. If any authority be needed, reference may be made to **State of West Bengal versus The Delhausie Institute Society** A.I.R. 1970 Supreme Court 1778. The contention that respondents believed *bona fide* that the land had not been acquired and consequently

the possession would become hostile only after they became aware of that mistaken belief, is wholly without substance and it did not stop the possession of the appellants becoming adverse and hostile. I reverse the finding of the trial court on issue No. 7.”

(7) Accepting the appeal, the first appellate court set aside the judgment and decree of the trial court,—*vide* judgment and decree 6th November, 1984 and consequently dismissed the plaintiffs’ suit as well.

(8) This is how the plaintiffs are in second appeal before this Court.

(9) I have heard learned counsel for the parties and with their assistance perused the record.

(10) Learned counsel for the appellants urged that when the plaintiff- appellants made an application for release of payment of the enhanced amount of compensation in terms of this Court’s judgment dated 5th January, 1978 they acquired knowledge that the land measuring 5 Kanals 12 Marlas comprised in Kharsa No. 20/1 of Rectangle No. 26, had not been acquired by the State and they were still the owners of the same. It was, thereupon that the present suit for possession had been filed. According to the learned counsel, the State had delivered possession of the said land but that would not take away the ownership of the plaintiff-appellants and that the defendant-respondent would not become owner by adverse possession as the essential ingredients for being owner by adverse possession i.e. open and hostile possession to the knowledge of the true owner was not there and, therefore, they could not be held to be owners by adverse possession. The counsel placed reliance on the Apex Court decision reported in **T. Anjanappa and others versus Somalingappa and another, (1)** in support of his contention and submitted that the following substantial question of law arises in this appeal for the consideration of this Court :

“Whether in the facts and circumstances of the case, the plea of adverse possession was available to the defendant-

(1) (2006)7 Supreme Court Cases 570

respondent without denying the title of the original owners i.e. the plaintiff-appellants and in the light of the same, the lower appellate court was justified in dismissing the suit for possession filed by the plaintiff-appellants.”

(11) On the other hand, learned counsel appearing for the respondent supported the judgment and decree of the lower appellate court.

(12) In view of the submission of the learned counsel for the parties, I find that the substantial question of law as formulated/raised by the plaintiff-appellants does arise and accordingly the appeal is taken up for deciding the said question.

(13) In order to appreciate the controversy involved between the parties, it would be essential to refer to certain evidence and facts available on the record. The State had acquired certain land for setting up of the factory by the defendant-respondent in the year 1960 and delivered possession thereof to them on 31st March, 1961. The State had also executed a conveyance deed in respect of the said land in 1971. However, in the year 1979, the plaintiffs came to know that 5 Kanal and 12 Marlas of land comprised in Khasra No. 20/1 of Rectangle No. 26 had not been acquired by the State of which possession had been delivered to the defendant-respondent even without issuing any notifications under Sections 4 and 6 of the Land Acquisition Act, 1984 acquiring the same. Now the controversy which is to be resolved, centers around the question, whether the defendant-respondent after execution of conveyance deed dated 22nd November, 1971 have become owners by adverse possession of the same when they have raised constructions on the same. The Apex Court in **T. Anjanappa and other's case** (*supra*) had in para 12 of the judgment categorically laid down as under :

“The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle

of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property".

(14) The Supreme Court further observed that if the defendants are not sure who is the true owner, the question of their being in hostile possession and the question of denying title of true owner do not arise. Applying the aforesaid principles to the facts of the present case, it may be noticed that the State Government had executed a deed of conveyance in 1971 in respect of the land in dispute to which the State had no legal title as the same was never acquired by it. The defendant, thus, did not hold the property denying the title of the true owner and the possession of the defendant could not be said to be hostile to that of the plaintiffs.

(15) In view of the above, it cannot be held that the defendant had become owner by way of adverse possession. Once that is so, the plaintiffs are entitled to the possession of the suit land. The first appellate court was thus, not right in reversing the judgment and decree of the trial court granting a decree for possession to the plaintiff-appellants.

(16) Reference made to the decision of the Apex Court in **the Delhausie Institute's case** (*supra*), on which reliance was placed by the lower appellate court while reversing the judgment and decree of the trial court, is also of no advantage to the respondent because the facts in the reported case were that a Society was holding the land though on invalid grant and was in possession, adverse to the Government who was the owner of the property for over 60 years and the Apex

Court in the facts and circumstances of that case came to the conclusion that the Institute had become owner by adverse possession. However, that is not the position in the present case. Accordingly, the substantial question of law, as formulated, is answered in favour of the plaintiffs.

(17) In view of the above, the appeal succeeds and is allowed. Accordingly, the judgment and decree dated 6th November, 1984 passed by the first appellate court is set aside and a decree is passed in favour of the plaintiffs and against the defendant holding that they shall be entitled to the possession of the land in question which is presently in wrongful and illegal possession of the defendant. No costs.

R.N.R.

Before Surya Kant, J.

SHRI RAM AVTAR,—*Petitioner*

versus

**CHANDIGARH ADMINISTRATION AND OTHERS,—
*Respondents***

C.W.P. No. 5244 of 1990

27th February, 2008

***Capital of Punjab (Development and Regulation) Act, 1952—
S. 8-A—Punjab Capital (Development and Regulation) Building
Rules, 1952—Rl.2—Allotment letter indicating trade for booth as
'fruit and vegetable'—In Conveyance deed that followed it was
stipulated that transferee shall not use said site for a purpose other
than that for 'Commercial purpose'—Terms of Conveyance deed
override unilateral conditions of allotment letter—'Commercial
purpose'— defined in Cl.(xvi) of Rl.2—No violation of terms and
conditions by not using booth for trade of fruit and vegetable
only—Action of respondents in resuming booth for using same as
a 'jewellery shop' not sustainable in law—Petition allowed, orders
of resumption quashed.***