

Laxman Singh and ors Vs. Urmila Devi and ors

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Court : Delhi

Decided On : Mar-28-2014

Judge : Jayant Nath

Appellant : Laxman Singh and ors

Respondent : Urmila Devi and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

08. 11.2013 Decided on :

28. 03.2014 + CS(OS) 3275/2012 Plaintiff LAXMAN SINGH & ORS Through Mr.Saurabh Tiwari, Advocate versus URMILA DEVI & ORS Through Defendants Mr. Raman Gandhi, Advocate CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

1. The plaintiffs have filed the present suit for possession, damages and mesne profits. Plaintiff No.2 is the mother and plaintiff No.1 is her son. They claim to be the absolute owners of property being plot No.323/1-A, Block-D (Old No.229/1-A), Sangam Vihar, New Delhi-110062 measuring 200 sq.yards. The said suit property was purchased by plaintiff No.1 along with his late brother Bhagat Ram whereby each was owner of 100 square yards respectively. It is stated that the seller executed a general power of attorney dated 12.04.1985, an agreement to sell dated 12.04.1985 and a receipt for consideration of `40,000/-. The property is said

to be built up having eight rooms, a store room and two wash rooms.

2. The brother of plaintiff No.1 late Bhagat Ram is said to have died a bachelor and issueless about 20 years ago. Hence, it is submitted that his mother, plaintiff No.2 inherited his share to the said property and accordingly, the plaintiffs are the absolute owners.

3. It is stated that about 14 years ago defendants approached the father of plaintiff No.1 late Sh.Ganpat Ram and sought permission to take shelter in the suit property for a few months. Late Sh.Ganpat Ram is stated to have given the said approval inasmuch as he permitted the defendants to reside in one of the rooms in the suit property for some time. On the request of the defendants the duration of stay kept extending. In July 2010 the plaintiffs along with the other family members asked the defendants to vacate the only room in the possession of the defendants as the plaintiffs required the suit property for the purpose of wedding in the family. Sh.Ganpat Ram, the father of plaintiff No.1 died on 20.08.2010. It is further stated that instead of vacating the suit property as requested by the plaintiffs, the defendants sometime after February 2011 filed a suit in the District Court for permanent injunction. The Civil Judge vide order dated 31.05.2012 dismissed the suit. On 18.10.2012 the appeal along with application under Section 5 of the Limitation Act was dismissed by the Additional District Judge. It is urged that the defendants are licencees and cannot continue to retain possession. Hence, the present suit has been filed.

4. The defendants in their written statement have stated that the plaintiffs have no title in the suit property inasmuch as the documents produced by the plaintiffs are merely a general power of attorney, agreement to sell, etc. and in accordance with the judgment of the Supreme Court in the case of Suraj Lamp and Industries Pvt.Ltd. vs. State of Haryana and Anr., (2012)1 SCC656 the plaintiffs cannot claim to be the owners of the suit property. It is further stated that the property was purchased benami by late Sh.Ganpat Ram in the name of his two minor sons inasmuch as the said brothers were minors when the property was bought. It is next stated that Sh.Ganpat Ram was also a trespasser on the property inasmuch as the property is located in an unauthorised colony and the ownership of the

property vests with the Government. It is further stated that the defendants were residing with Sh.Ganpat Ram in joint possession of the property with the permission of Sh.Ganpat Ram to the exclusion of the plaintiffs. The plaintiffs were never in possession of the property for the last 18 years. It is admitted that Ganpat Ram permitted/inducted the defendants to reside in the suit property. The defendants also claim that they were taking care of the day to day needs of Late Sh.Ganpat Ram and looking after all aspects of his life.

5. On 25.04.2013 the present suit came up for framing of issues. The court on the said date passed the following order.

1. The suit is ripe for framing of issues.

2. The counsel for the defendants has handed over proposed issues which are taken on record.

3. The counsel for the plaintiffs states that no issue arises since there are no material pleas in the written statement and the suit insofar as for the relief of possession is liable to be decreed forthwith. It is argued that some of the pleas in the written statement in this suit are contrary to the pleadings by the defendant no.2 who is the wife of the defendant no.1 in the earlier suit and the orders and the proceedings therein.

4. The counsels have been heard for some time.

5. It is deemed expedient to record the statement of both the defendants under Order 10 read with Section 165 of the Evidence Act.

6. On enquiry, it is informed that neither of the defendants are present in the Court today.

7. Both the defendants are directed to personally appear before this Court on 24th May, 2013.

6. Thereafter on 28.05.2013 and 13.08.2013 the defendants did not appear in person. They appeared on 05.09.2013 but sought an adjournment as their counsel was not available. The matter was adjourned to 09.10.2013. On that date counsel

for the defendants stated that defendant No.2 is hospitalized and defendant No.1 is with him. Another opportunity was given to the defendants to appear in court to record their statements under Order 10 CPC and the matter was renotified for 08.11.2013. On 08.11.2013 again the defendants did not appear in person. Arguments were heard on the contention of the learned counsel for the plaintiffs that no issue arises as there are no material pleas in the written statement and the suit as far as the relief of possession is concerned is liable to be decreed. Judgment was reserved.

7. Learned counsel appearing for the plaintiffs submits that the defendants, on a plain reading of the pleadings are licencees. They were inducted for temporary purposes with the permission of the father of plaintiff No.1 and were paying no consideration. The license having been terminated, the defendants have no locus standi to continue to remain in possession.

8. Learned counsel relies upon judgments of this Court in the case of Vishal Builders Pvt. Ltd. vs. Delhi Development Authority & Ors., 2006(130) DLT667 and Desh Raj Singh vs. Triveni Engineering & Industries Ltd & Anr., 2006 (130) DLT120 which hold that no person who comes into possession of an immovable property on the basis of license or permission of the person in possession can be permitted to deny that such a person had a title to the suit property when the license was given.

9. Learned counsel for the defendants submitted that the suit of the plaintiffs has to succeed on the strength of its own title and possession. Hence, the claim of the plaintiffs based on unregistered documents cannot succeed. It is further submitted that between two individuals both of whom do not have title, the person in possession would be entitled to retain possession. Reliance for this proposition is made on the judgment of the Supreme Court in the case of Brahma Nand Puri vs Neki Puri, AIR 1965 SC1506. It is further submitted that the plaintiffs have to also prove that they were in possession for a period of 12 years prior to filing of the suit. It is further stated that the defendants had exclusive possession of the property with their father and they are also entitled to claim adverse possession. They have also relied upon a Will of Late Sh. Ganpat Ram, according to which they claim that

the property has been bequeathed to defendant No.2. The last submission that is made is that the suit land is a Government land and the plaintiffs and Late Ganpat Ram had no title to the same.

10. The first aspect is the status of the defendants vis--vis the suit property. It is admitted by the defendants in the written statement that they were in occupation with the permission of Ganpat Ram. Relevant portion of the written statement reads as follows:

3. As aforesaid, the defendants were in exclusive possession of the entire suit property though in occupation with the permission of the said Ganpat Ram. It was the said late Shri Ganpat Ram who had permitted or inducted the defendants to reside with him in the suit property. The defendants were also taking care of not only the day to day needs of the said late Ganpat Ram but also looking after him in all other aspects of life. ...

11. As far as the rights of the plaintiff to the suit property are concerned, the defendants along with their written statement themselves have filed photocopy of documents being General Power of Attorney executed by Sohan Dutt Gupta in favour of Bhagat Ram and Laxman Singh (plaintiff No.1) (Ex.D-1), Agreement dated 12.04.1985 between Sohan Dutt Gupta and the said Bhagat Ram and Laxman Singh (Ex.D-2), cash received for a sum of Rs.40,000/- executed by Sohan Dutt Gupta in favour of Bhagat Ram and Laxman Singh (Ex.D-3) and affidavit of Sohan Dutt Gupta dated 12.04.1985 stating that possession of the suit property has been handed over to the said Shri Bhagat Ram and Shri Ganpat Ram (Ex.D-4). In the course of admission/denial the plaintiffs have admitted the said documents which were hence marked accordingly.

12. It would follow that as per documents executed in favour of the plaintiff filed by the defendant himself, which have been admitted by the plaintiff, plaintiffs, namely, Laxman Singh and Late Bhagat Ram (LR being plaintiff No.2) have legally, after passing due consideration to the original owner entered into possession of the suit property way back in 1985. Their father Shri Ganpat Ram had thereafter been residing in the suit property with the consent and permission of his sons Laxman Singh and Bhagat Ram. As per the written statement, the said Ganpat Ram, the

father permitted the defendants to reside in the suit property. Based on these admitted facts, it unequivocally follows that the possession of the defendants was permissive possession without any payment. The defendants were hence licensee. They have permissive possession of the suit property which was permitted by late Shri Ganpat Ram.

13. Section 52 of the Indian Easement Act reads as follows:

52. Licence defined.-Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

14. To elaborate the requirements of the above Statutory provision, reference may be had to the Full Bench judgment of the Bombay High Court in the case of Prabhudas Damodar Kotecha and Anr v. Smt. Manharbala Jeram Damodar and Ors. MANU/MH/0692/2007 where the Court elaborated on the expression Licensee as follows:

43. As opposed to this, the expression "license", as defined under Section 52 of the Indian Easement Act, provides that where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to easement or an interest in the property, the right is called a license. Section 52 does not require any consideration, material or non-material, to be an element of the definition of license, nor does it require that the right under the license must arise by way of contract or as a result of a mutual promise. Thus, license as defined in Section 52 of the Indian Easement Act can be a unilateral grant and unsupported by any consideration. The Supreme Court in State of Punjab v. Brig. Sukhjit Singh MANU/SC/0540/1993: [1993].3SCR944 has observed that, "payment of license fee is not an essential attribute for subsistence of license".

44. Let us see as to how the expressions "license" and "licensee" are understood, used and spoken in common parlance. It is often said that a word, apart from having the meaning as defined under different statutes, has ordinary or popular meaning and that a word of everyday usage it must be construed in its popular sense, meaning that sense which people conversant with the subject matter with which the statute is dealing would attribute to it. A "license" is a power or authority to do some act, which, without such authority, could not lawfully be done. In the context of an immovable property a "license" is an authority to do an act which would otherwise be a trespass. It passes no interest, and does not amount to a demise, nor does it give the licensee an exclusive right to use the property. [See *Puran Singh Sahani v. Sundari Bhagwandas Kriplani* MANU/SC/0541/1991: [1991].1SCR592]. Barron's Law Dictionary has given the meaning of word "licensee" to mean "the one to whom a license has been granted; in property, one whose presence on the premises is not invited but tolerated. Thus, a licensee is a person who is neither a customer, nor a servant, nor a trespasser, and does not stand in any contractual relation with the owner of the premises, and who is permitted expressly or impliedly to go thereon usually for his own interest, convenience, or gratification". Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition, Vol.2, provides the meaning of word "licensee" to mean "a licensee is a person who has permission to do an act which without such permission would be unlawful. [See *Vaughan C.J.*, in *Thomas v. Sewell* *Vaugh* at page 330 at page 351, quoted by *Romour, J.*, in *Frank Warr and Co. v. London County Council* (1940) 1 K.B. 713."

In Black's Law Dictionary, Seventh Edition, the word "license" means "a revocable permission to commit some act that would otherwise be unlawful" and the word "licensee" means "one to whom a license is granted or one who has permission to enter or use another's premises, but only for one's own purposes and not for the occupier's benefit."

Thus, it is seen that even in popular sense the word "license" is not understood to mean it should be on payment of license fee for subsistence of license. It also covers a "gratuitous licensee", that is, a person who is permitted, although not invited, to enter another's property and who provides no consideration in exchange

for such permission.

15. As admittedly, the defendants came into possession on permission granted by the father of the plaintiffs who permitted them to enter/use the premises for a limited period, the defendants were using the premises as Licensee as elaborated above.

16. I now deal with the argument about title of the plaintiff to the suit property. Section 116 of the Evidence Act reads as follows:

116. Estoppel of tenant; and of license 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 license was given.

17. In *Bansraj Laltaprasad Mishra v. Stanley Parker Jones* AIR 2006 SC3569 the Honble Supreme Court in paragraphs 14 and 15 held as under:

14. The possession in the instant case relates to second limb of the Section. It is couched in negative terms and mandates that a person who comes upon any immoveable property by the license of the person in possession thereof, shall not be permitted to deny that such person had title to such possession at the time when such license was given.

15. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppels has been incorporated by the legislature in the said section.

15. Similar is the view taken by the Honble Supreme Court in the case of *Sri S.K. Sarma vs. Mahesh Kumar Verma* AIR 2002 SC3294 16. In *Vishal Builders Pvt.*

Ltd. vs. Delhi Development Authority (supra), this court held that no person who comes into possession of an immovable property on the basis of license or permission of the person in possession thereof can be permitted to deny that such person had a title to such property when such license was given. Similar is the view of the judgment of this Court in the case of Desh Raj Singh vs. Triveni Engineering & Industries Ltd.(supra).

17. In view of the above legal position, it would follow that the defendant admittedly as per the written statement was inducted in the suit property as a licensee. Shri Ganpat Ram has now died on 20.08.2010. Their license has been terminated. He cannot challenge the title of the licensor now at this stage after 14 years. The reliance of the defendant on the judgment of Suraj Lamps (supra) is clearly misplaced. Even otherwise, the judgment of the Honble Supreme Court in Suraj Lamps (supra) has prospective effect and would not affect the transactions that have already been effected.

18. There is another defence now raised in the written statement by the defendant, namely, an alleged Will dated 4.1.2010 allegedly issued by Shri Ganpat Ram in favour of defendant No.2. As per the said Will, the said Shri Ganpat Ram is stated to be the owner in possession of the property in question measuring 100 sq.yds. out of 200 sq.yds. The will states that the property was purchased in the name of the two sons, namely, Shri Laxman and Shri Bhagat. The will further states that Shri Bhagat died without any surviving legal heir and hence the testator, namely, Ganpat Ram became the absolute owner of the said portion of the suit property measuring 100 sq.yds and that the testator has now become the absolute owner of the said 100 sq.yds of the suit property. The said will allegedly bequeaths the half share of the suit property to defendant No.2.

19. Even if for the sake of arguments it is presumed that the will was genuinely executed by the testator late Shri Ganpat Ram who excluded his natural heirs from the will, on the face of it no title flows to defendant No.2. The will itself accepts that the property was originally owned by the said late son of Shri Ganpat Ram, namely, Mr.Bhagat who died. Admittedly, the mother of Mr.Bhagat, namely, plaintiff No.2 is alive. Under Section 8 of the Hindu Succession Act, 1956 the

mother is a Class-I heir. Being the only surviving Class-I heir she would succeed to the properties left behind by Mr. Bhagat on his death. Father is not a Class-I heir. It is obvious that the propounders of the Will forgot the provisions of the Hindu Succession Act. Hence no title, as claimed, can pass to defendant No.2.

20. The rights of a licensee to stay in possession of the property have been dealt by the Division Bench of this High Court in the case of Chandu Lal vs. Municipal Corporation of Delhi AIR1978 Del 174. Relevant portion of paragraph 26 of which is reproduced as under:

26..... A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a decree of the Court to obtain the right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser.....

21. Reference may also be had to the judgment in the case of Sant Lal Jain vs. Avtar Singh (1985) 2 SCC332 where the Honble Supreme held as follows:

6. In Milkha Singh v. Diana, it has been observed that the principle once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence is terminated, the licensee's possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J.

as he then was) speaking for the Division Bench has observed: After the termination of licence, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under s. 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable.

In view of the above, it is clear that the defendants are licensees. The license has been terminated. The written statement fails to bring out any title or right in the defendants to continue to retain possession.

22. It is also noteworthy that in 2010 the defendants had filed a suit in the Court of Senior Civil Judge, Saket for permanent injunction to restrain the legal heirs of Shri Ganpat Ram including the plaintiffs from selling or transferring part of the suit property measuring 100 sq.yds. The said suit was dismissed by the trial court on 31.05.2012 holding that the defendants herein have admitted the possession as a licensee and the threats of the plaintiffs herein is a deemed revocation of the license and hence the defendants herein cannot seek protection of their possession by permanent injunction. The suit was dismissed under Order VII Rule 11 CPC. Against the said order the defendant had filed an appeal in the Court of ADJ, Saket, alongwith an application under Section 5 of the Limitation Act. On 18.10.2012 the application under Section 5 of the Limitation Act was dismissed alongwith the appeal.

23. A perusal of the plaint filed in the Saket Court would show that in the said plaint there is no averment made regarding execution of any will by late Mr.Ganpat Ram in favour of defendant No.2. The plaint there stated that late Ganpat Ram donated mutually, expressly and openly and in the knowledge of his family members half share in the said property in favour of the defendants.

24. It is but obvious that the defendants are taking up frivolous and vexatious defence for the purpose of prolonging their illegal possession of the suit property. They cannot be permitted to misuse the process of law in this manner.

25. It may also be noted that on 25.4.2013 the defendants were directed to personally appear before the Court on 24.5.2013 for the purpose of recording of their statement under Order X CPC read with Section 165 of the Indian Evidence Act. The defendants appeared on 24.5.2013 but as the Court did not assemble the matter was adjourned to 28.5.2013. On 28.5.2013 the defendants did not appear in person. The matter was deferred to 13.8.2013. On 13.8.2013 again the defendants were not present and the matter was adjourned to 5.9.2013. On 5.9.2013 though defendants No.1 and 2 were present in person they requested for

an adjournment as their counsel was in difficulty and unable to appear. On their request and subject to their appearance in person on the next date the case was adjourned to 9.10.2013. Again, they were not present in person on 9.10.2013 and another opportunity was given and the case was adjourned to 8.11.2013. On 8.11.2013 again the defendants did not appear. In the interest of justice, arguments were heard and order was reserved.

26. In terms of Order X Rule 4(2) of CPC, if a party fails to appear in person the Court may pronounce judgment against such party or make such order in relation to the suit as it thinks fit. Normally the present suit was liable to be decreed against the defendants on the issue of possession under the said provision.

27. I have in any case considered the submissions of the defendants on merits. I find that there is no merit in the contentions of the defendant. Accordingly, no material issues arise in the case. The present suit is decreed in terms of prayer (a) of the plaint.

28. The issue of mesne profit and damages would survive. The matter may be listed before the Joint Registrar on 28.5.2014 for further proceedings in this regard. JAYANT NATH (JUDGE) MARCH28 2014/rb/n

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