

Sunil Kumar Rajput and anr. Vs. Smt. Bhagwan Devi and anr.

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Court : Delhi

Decided On : Jan-12-2011

Judge : Indermeet Kaur, J.

Acts : Code of Civil Procedure (CPC) - Section 96; Delhi Rent Control Act - Section 14(1)(b)

Appeal No. : RSA No.267-68/2006 & CM APPL. No.10919/2006

Appellant : Sunil Kumar Rajput and anr.

Respondent : Smt. Bhagwan Devi and anr.

Advocate for Def. : Mr.R.K. Shukla, Adv.

Advocate for Pet/Ap. : Mr.G.K. Sharma; Mr.Amit Chawla, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

1. This appeal has been directed against the impugned judgment and decree dated 20.04.2006 which had allowed the appeal and set aside the order of the executing court dated 30.8.2005. Vide judgment dated 30.8.2005, the objections of Smt. Bhagwan Devi filed in the course of the execution proceedings had been

dismissed. The impugned judgment dated 20.04.2006 had allowed the objections of the objector Bhagwan Devi thereby dismissing the execution petition. This judgment is now in appeal before this Court.

2. Briefly stated the factual matrix is as follows:-

(i) Plaintiff Faqir Chand had purchased the suit property being No.33/27, Vishwas Nagar, Shahdara, Delhi as an evacuee property on 23.12.1958. Allegation was that in 1971 Devi Sahai (husband of objector Bhagwan Devi) took illegal possession of the suit property. Suit for possession was filed on 17.02.1972.

(ii) Suit was decreed on 27.11.1975.

(iii) First appeal under Section 96 of the Code of Civil Procedure (hereinafter referred to as the Code) was dismissed on 16.2.1976.

(iv) Second appeal was dismissed on 27.5.1976.

(v) In the course of these proceedings, the original plaintiff Faqir Chand died on 6.10.1985 leaving behind 3 daughters. They in turn transferred their share in the said property to Virender Singh, Mahesh Chand and Anil Kumar on 5.2.1988, who on 19.9.1994 sold the property to Sunil Kumar Rajput who is now the appellant before this Court.

(vi) Execution petition had been filed by Faqir Chand in his lifetime. The objector was Bhagwan Devi. The objections raised by Bhagwan Devi were that she is in independent possession of the suit property and not through her husband Devi Sahai. On the pleadings of the parties in the execution petition the following issue was framed:-

(1) Whether the objector is in possession of the plot in suit in her own independent right? If so, its effect? OPO

(a) The objector examined 4 witnesses in evidence. The House Tax Inspector from the Municipal Corporation of Delhi (MCD) was examined as OW1 who had proved OW1/1 to OW1/4. OW1/1 is a demand notice of the MCD dated 6.1.1970 issued in the name of Bhagwan Devi. OW1/2 is a house tax bill for the year 1971-72 in the

name of the objector. OW1/3 is a notice dated 8.12.1969 issued by the MCD in the name of the objector. OW1/4 dated 1.11.1976 is the bill evidencing payment of property tax by Bhagwan Devi qua the suit property.

(b) Second witness examined was OW2. He had produced the postal cards OW2/1 OW2/2 dt. 11.1.1960 and 22.1.1960 purportedly sent by him to Bhagwan Devi. OW2/3 is a receipt dated 4.2.60 for Rs.400/- evidencing the sale of buffalo in favour of the objector.

(c) The objector was examined as OW3.

(d) OW4 had proved Ex. OW4/1 which is a complaint dated 13.4.1951 bearing thumb impression of the objector addressed to the Managing Officer, Custodian of Evacuee Property, Jam Nagar, New Delhi.

(e) OW5/4, OW5/5 and OW5/6 were documents produced by the objector purporting to evidence that Devi Sahai, her husband was not residing with her in the suit premises; Devi Sahai living at House No. V-49, Village Ghonda, Silampur, Shahdara, Delhi.

(f) Per Contra the decree holder had produced the the electoral rolls for the years 1971; 1975 and 1980 (Exhbits DHW3/1 to DHW3/3) evidencing the same address of the objector Bhagwan Devi and her husband Devi Sahai, i.e. in the suit property.

(g) Judgment dated 30.8.2005 dismissed the objections of Bhagwan Devi.

(h) The impugned judgment had reversed this finding holding that the executing court had not appreciated the evidence produced by the objector in its correct perspective. The objections of the objector having been allowed the execution petition was dismissed.

(vii) In another round of litigation, Bhagwan Devi had filed a suit for injunction claiming herself to be in adverse possession of the suit property which was also the defence set up by her husband Devi Sahai in the written statement which had filed in the present suit proceedings. On 21.8.2002 this suit was dismissed

permitting the parties to raise these objections before the executing court.

(viii) The present suit property is suit property bearing No. 27/33 Vishwas Nagar, Shahdara, Delhi which had admittedly been purchased in the name of Faqir Chand; his brother Amir Chand was the owner of adjoining property i.e. property bearing No. 27/34 Vishwas Nagar, Shahdara. Bhagwan Devi had also claimed adverse possession of this property in proceedings before the SDM, which plea had been dismissed on 27.7.1989. Her criminal revision filed against the order of the S.D.M. had been dismissed on 28.8.1989.

3. On behalf of the appellant, it has been urged that the impugned judgment is clearly an illegality and calls for interference; Appellant/Plaintiff (claiming through Faqir Chand) had got a decree in his favour for possession which had been upheld not only by the first appellate court but also by the second appellate court. The objections filed in the executing court by Bhagwan Devi had been rightly dismissed as the documents which had been filed by her were held to be manipulative; the court had appreciated the fact that it is difficult to believe that Bhagwan Devi did not know of the case which has been filed against her husband Devi Sahai and, which he has been contesting continuously.

4. Arguments have been countered. It is submitted that the impugned judgment had correctly appreciated the documentary evidence led by the objector Bhagwan Devi and which findings call for no interference.

5. This is a second appeal. After its admission, the following substantial question of law had arisen: "Whether the finding in the impugned judgment dated 20.4.2006 reversing the finding of the Executing Court dated 30.8.2005 are perverse? If so, its effect?"

6. Record has been perused. The plaintiff through his predecessor had filed a suit for possession against Devi Sahai who is the husband of Bhagwan Devi. There is no dispute to this relationship. In the written statement which had been filed by the defendant, i.e. Bhagwan Sahai, he had set up the plea of adverse possession claiming to be in possession of the suit property openly and in hostility to its true owner twelve years prior to the date of filing of the suit. Six issues had been

framed by the Trial Court. The title in the suit property qua plaintiff was proved through the sale certificate Ex. PW2/1 dated 30.01.1961. The mutation was proved through the testimony of PW-1 Hari Singh who had deposed that on the strength of this sale certificate the mutation had been effected in favour of the plaintiff Faqir Chand (predecessor of the appellant). PW-2, the official from the Regional Settlement Commissioner had corroborated the version of PW-1 endorsing the sale certificate Ex. PW2/1 in favour of the plaintiff. So also was the testimony of PW-4. Ex. PW2/1 dated 23.01.1959 was a letter issued by the Settlement Commissioner to Faqir Chand confirming his sale. PW-6, the Patwari had produced the summoned record wherein he had deposed that upto 20.07.1962 the plot was entered as a vacant plot in their record. In defence the defendant Devi Sahai had produced the document Ex. D-1 evidencing purchase of bricks on 28.12.1959 through the version of DW-1 which version the Court found dissatisfactory and was rejected. Suit of the plaintiff was decreed.

7. This evidence was re-appreciated and confirmed in appeal.

8. The objector Bhagwan Devi had filed her affidavit in the High Court in Civil Revision dated 13.09.1985 wherein she had averred that she is aged 88 years , R/o House No.27/33-34, Vishwas Nagar, Shahdara and the wife of Devi Sahai. Contention before the Court today is that Bhagwan Sahai is living separately from her husband and her husband resides in a separate property, i.e., in Village Ghonda, Seelampur. On a specific query put to learned counsel for the parties as to since when the parties are living separately and not in the company of one another, there is no answer. The courts below had correctly noted that it was a contentious litigation which was being perused by Devi Sahai, the husband of Bhagwan Devi for the last more than two decades. There being no evidence on record to show that Bhagwan Devi in this intervening period was living away from her husband, it is difficult to believe that Bhagwan Devi was not aware of these proceedings. In fact, in the facts noted supra even in the year 1985, objector had reiterated the averment that she is the wife of Devi Sahai and living at the suit property. If she was an estranged wife, she would not have described herself as the wife of Devi Sahai. The objections filed before the Executing Court in the year 1977 setting up the same plea, i.e. of adverse possession which was the plea

taken by her husband in the written statement is merely an attempt to over- reach the orders of the Court and to prolong the litigation. These objections had been filed by her before the Executing Court on 29.01.1977. Bhagwan Devi overlooked the fact that even in the year 1985 when she filed her affidavit she described herself as the wife of Devi Sahai. The summon sent to Devi Sahai at the suit property i.e. to Plot No.33, Block-27, Vishwas Nagar, Shahdara had been returned unserved. The report of the process server is relevant; it states that on 22.4.1972 Devi Sahai was not available but his wife met him at the address and stated that her husband had gone to village; it was not contended by the wife that her husband was not a resident of this house. This was in the year 1972 (page 329 of the paper book). These documents clearly establish that Bhagwan Devi and Devi Sahai up to year 1972 were living together. In the proceedings before the trial court also the defendant Devi Sahai had never taken the plea that he was not living at this suit property; his defence being that he was in adverse possession of the suit property.

9. This Court has examined the documents which had been set up by Bhagwan Devi in the objections filed by her in the Executing Court. OW-1 was Aman Singh, the House Tax Inspector from the MCD. He has proved four documents all from the house tax department of the MCD; demand notice is dated 06.1.1970, house tax bill is for the year 1971-72; another notice of demand is dated 08.12.1969 and the bill dated 01.11.1976 is the payment of property tax by Bhagwan Devi qua the suit property. These documents are Ex.OW-1/1 to Ex.OW-1/4. In his cross-examination OW-1 has stated that as per the record the notice for demand of house tax was being issued in the name of objector since the year 1968; he admitted that the documents produced by him are not paginated; he denied the suggestion that these documents had been manipulated or that they are forged.

10. This version of OW-1 has to be examined in the light of the evidence which had been led before the trial court. Before the trial judge the husband of the objector Devi Sahai had produced DW-3 in defence who was also a witness from the house tax department of the MCD. He had produced notice Ex.DW-3/2 dated 31.3.1972 and the receipt Ex.DW3-/1 dated 29.6.1972 evidencing payment of house tax by Devi Sahai of this suit property. The suit property has been described

by him as property having Municipal No.500/18A, Vishwas Nagar, Shahdara and on oath he stated that the record produced by him (Ex.DW-3/1 and Ex.DW-3/2) pertains to this suit property. For the same property and for the same period i.e. from 1969-72, both the objectors Bhagwan Devi and her husband Devi Sahai had paid house tax. Obviously one or the other or both were lying. In this bargain both had played a fraud upon the court.

11. PW-1 had proved the mutation of this plot in favour of Faqir Chand. PW-6 had deposed that this plot up to 20.7.1972 was lying vacant. The versions of these witnesses show that up to 1972 the plot was lying vacant. How could property tax be paid for a vacant plot is also not explained.

12. OW-2 Ram Singh had written postcards dated 11.1.1960 and 22.1.1960 to Bhagwan Devi; he had also sold a buffalo to her vide Ex. OW-2/3 on 04.2.1960. This witness had come into the witness box on 14.8.1981 i.e. after a lapse of 21 years of the execution of the aforementioned documents. It is unimaginable that such innocuous documents having no bearing whatsoever would be retained by the parties for two decades only to be produced in the court 21 years later to set up a case which is nothing but false. In his cross-examination, OW2 admitted that he was not a summoned witness. He denied the suggestion that he is deposing falsely at the behest of the object Bhagwan Devi.

13. Bhagwan Devi, the objector, had come into witness box as OW-3; she had stated that she is the owner of the house; she had constructed it 22 years ago. This witness had come into witness box on 22.1.1982; as per her deposition she had built this house 22 years ago i.e. sometime in the year 1960. This is contrary to the record of the Patwari whereas upto 20.7.1962 the suit property i.e. Plot No.33, Block 27, Vishwas Nagar, Shahdara was entered as a vacant plot. Version of OW-3 is again contradicted by the document dated 13.5.1959 Ex. OW-4/1 purportedly written by Bhagwan Devi to the Managing Officer of the Rehabilitation Department wherein she had stated that she is residing here since 1957; in this letter she has described this property as her house meaning thereby it already stood constructed in the year 1957. This document again throws negative light on the credibility of OW-3. Deposition of Bhagwan Devi that she had constructed the

house in 1960 was falsified. She had further deposed that her husband was living with his son. In her cross-examination she had admitted that she has one daughter and seven sons. Before this Court two of the sons of the Bhagwan Devi had appeared; the younger son admitted that he was born in the year 1970. To a specific query put by the Court as to since when his parents i.e. Bhagwan Devi and Devi Sahai were living separately in separate residence, he had no answer; he was evasive and in fact did not want to answer any query put to him by the Court. On oath OW-3 (Bhagwan Devi) had admitted that she has not brought her ration card; she denied the suggestion that the ration card had deliberately been withheld as it bore the name of Devi Sahai.

14. OW-4 had produced this document Ex.OW4/1. In his cross- examination he had admitted that there is no paging in the file which he has produced. There is no further note of the office on this noting; he could not identify the writing and signature of the official on this document.

15. OW-5 was again a false witness. He had produced documents Ex. OW-5/A to Ex. OW-5/5 purporting to evidence that he had given a loan to Devi Sahi who was living in Village Ghonda, Seelampur and not at the present address. Ex.OW-5/2 is dated 12.8.1971; Ex.OW-5/4 is dated 07.4.1971 addressed to Devi Sahai at Village Ghonda. Falsity of this witness is clear from the fact that when Devi Sahai had filed his written statement in the suit proceedings on 12.7.1972, he had been served in the suit on the suit property address i.e. House No.33, Block 27, Viswash Nagar, Shahadara; it was never his contention that he was not living in the suit property. The decree holder i.e. the plaintiff had produced the electoral roll for the year 1971, 1975 and 1980 through DHW-3 i.e. Ex. DHW-3/1 to DHW-3/3 showing that the residence of Bhagwan Devi and Devi Sahai was in the suit property in the aforementioned years.

16. All contentions raised by the objector must necessarily fail. The reliance by the learned counsel for the respondent on the judgment reported in 1970 RCR 1977 Brij Mohan v. Krishna Wanti and 1870 RCR 71 Revti Devi v. Kishan Lal are both misplaced. Both these judgments were rendered under the Delhi Rent Control Act; whereas in the first case in proceedings under Section 14(1)(b) of the Delhi Rent

Control Act (hereinafter referred to as the DRC Act) it was held that the husband may be entitled to live with his wife but the property acquired by the wife cannot be said to be property acquired by the husband as the legal entity of the two were different. In the second judgment, the question which had arisen for decision was whether the acquisition of a separate residence by the wife of the tenant is sufficient ground for eviction of the tenant by the landlord under Section 14(1)(h) of the DRCA. In no manner can the ratio of the said judgments be made applicable to the present scenario.

17. This court is sitting in second appeal and can re-appreciate facts only if the findings are perverse. The instant case is a fit case where the Court is of the view that the findings in the impugned judgment are perverse. There was no evidence before the Court to draw a conclusion that the husband at any point of time was living separately from his wife as was contended by the objector Bhagwan Devi for the first time when she filed her objection in the executing Court. In fact the defence of adverse possession set up by her was verbatim the same defence which had been set up by her husband in the trial proceedings. Her claim that she was living separately and was separate from her husband was not proved. The documents on record had held otherwise. The summons sent to the husband in the year 1972 had been received by her wherein the process server had noted her statement that her husband was not in town; it was never contended by her that her husband was not living at this address. The house land was vacant up to 1962 is clear from the version of the Patwari PW6. Yet Bhagwan Devi on oath deposed that she had constructed this suit land in the year 1960; her documentary evidence (OW-4/1 dated 13.5.1959) stated that she was living in this house since 1957; she was not clear as to when the house was constructed and since when she was in occupation of the same. It is relevant to note that in the same periods i.e. 1971-72 both Bhagwan Devi and Devi Sahai i.e. the wife and the husband had independently paid property tax for the same property for the same period. The malafides and falsity of these pleas were writ large in the versions of the witnesses adduced by both of them. They were nothing but set-up and introduced witnesses.

18. The parties have been relegated to a long drawn litigation. In spite of the first round of litigation which had culminated in the second appeal of Bhagwan Sahai

having been dismissed, the objections propounded by the Bhagwan Devi have continued right up to 2010; litigation had commenced between the parties in 1972 i.e three decades ago. This case is a classical example of how the litigants can misuse the process of law and prolong the suffering of the other for decades together. The impugned judgment has upset the findings of the trial court without any basis; it had relied upon the documents set up by the objector without delving into background and the details of the proceedings which were held in the trial court and which had culminated in the present proceedings. This was an illegal and perverse approach. Findings in the impugned are liable to be set aside. Objections of the objector Bhagwan Devi are dismissed.

19. Appeal is disposed of in the above terms.

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