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

% **Pronounced on: 30th November, 2021**

\+ CS(OS) 194/2020, I.As.6205/2020 (by the plaintiff under Order XXXIX Rules 1 & 2 read with Section 151 CPC for injunction), 8493/2020 (by the plaintiff under Section 151 CPC for urgent hearing and interim relief), 9994/2020 (by the Defendant No.1/DDA under Order XI Rules 14 & 15 read with Section 151 CPC for production of documents (directing the plaintiff to produce documents) & 11419/2020 (under Order VII Rule 11 of CPC for dismissal of the suit read with Order VI and VII and section 151 CPC on behalf of the DDA)

SH. RAUNAK SINGH ..... Plaintiff

Through: Mr. Sunny Arora, Advocate

Versus

DELHI DEVELOPMENT AUTHORITY AND ORS

..... Defendants

Through: Mr. Dhanesh Relan with Ms. Sagrika Wadhwa and Mr. Paritosh Dhawan, Advocates for D-1.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

I.A.11419/2020 (by the DDA under Order VII Rule 11 read with Orders VI and VII read with Section 151 CPC for dismissal of the suit)

1. This order shall dispose of an application moved by the defendant No.1/Delhi Development Authority (DDA) seeking rejection of the suit

under Order VII Rule 11 read with Orders VI and VII read with Section 151 CPC.

2. The plaintiff has filed this suit for declaration, permanent and mandatory injunction against 17 defendants. Defendant No.1 is the DDA, defendant No.2 is New Delhi Municipal Corporation (NDMC), defendants No.3 & 4 are the deceased brothers of plaintiff (through L.Rs.) and defendants No.5 to 16 are private defendants, and defendant No.17 is the Union of India through Ministry of Rehabilitation Department.

3. The "suit property" is a plot bearing No.3400, Ranjeet Nagar, New Delhi admeasuring 695 sq. yds. (approximately) and consists of built up shops and rooms upto the First Floor as depicted in the annexed site plan. The private defendants are stated to be the tenants inducted into the premises by the father of the plaintiff. The declaration sought by the plaintiff is to the following effect :

> *"A) Decree of declaration may please be passed in favor of the plaintiff and against the defendant no.1 and 17 thereby declaring that plaintiff have right, title and interest in the plot bearing no.3400, Ranjit Nagar, New Delhi -110008 admeasuring 695 square yard as shown in the site plan by adverse possession as father of plaintiff had already acquired the title in the above said plot and after his death plaintiff is entitled for the same."*

4. The injunctions sought are to restrain defendant No.1/DDA and the defendant No.17 to not take coercive action to dispossess the plaintiff or interfere with his possession of the suit premises, with further directions

to remove the locks from the portion of the suit property which have been placed by the defendant No.1/DDA.

5. In the application, the Defendant No.1/DDA has contended that the plaint is liable to be rejected on three grounds viz., that the essential ingredients for a claim of adverse possession have not even been pleaded in the plaint and therefore, no cause of action has been disclosed; that the claim of the plaintiff was barred by time and finally, that requisite court fees has not been paid. Rejection has also been sought on the ground that the plaint has not been properly filed as it incorporates within itself the law laid down in various decisions of the Supreme Court, which was against the provisions of Order VI Rule 7 CPC.

ARGUMENTS

6. Mr. Dhanesh Relan, learned counsel appearing for defendant No.1/DDA, has relied on the following judgments of the Supreme Court :

(i) ***Karnataka Board of Wakf vs. Government of India and Ors.***(2004) SCC OnLine SC 505 **-** Para 11;

(ii) ***T. Anjanappa & ors. Vs. Somalingappa & Ors.,*** (2006) 7 SCC 550: Paras 12, 13,14,15,16,17,18 19 and 20

(iii) ***Annakili Vs. A. Vedanayagam & others;*** (2007) 14 SCC 308: paras 24; 25 and 26

(iv) ***L.N. Aswathama and Ors. vs. P.*****;** (2009) SCC OnLine SC 844**:** Para 17

(v) ***Chatti Konati Rao & Ors, Vs. Palle Venkata Subba Rao;*** (2010) 14 SCC 316: Paras 12, 13

(vi) ***M. Venkatesh and Others Vs. Commissioner, Bangalore Development Authority*** **-** (2015) 17 SCC 1 **:** Paras 14, 18,19,20,21,22

(vii) ***Dagadabai (dead) by Legal Representatives Vs. Abbas alias Gulab Rustum Pinjari;*** (2017) 13 SCC 705 **:** paras 16, 17, 18 and 19

(viii) ***Ravinder Kaur Grewal and Ors. vs. Manjit Kaur and Ors***. (2019) SCC OnLine SC 975**:** Para 56

(ix) ***Uttam Chand v. Nathu Ram,*** (2020) 11 SCC 263

7. According to the learned counsel for the defendant No.1/DDA, when a plea of adverse possession was set up, it was necessary to first disclose who the true owner was, since the plea of adverse possession can be set up only against the true owner. It has been submitted, relying on ***T. Anjanappa*** **(supra)** and other decisions, that possession of whatsoever length could not be understood to be adverse possession unless there was a denial of title of the true owner which must be hostile, peaceful, continuous and open. It has been submitted by learned counsel for the defendant No.1/DDA that in the entire plaint, there is no whisper as to who was the true owner of the suit property. Rather a reading of the plaint would suggest that the property had no owner and the plaintiff's father had just entered into possession, and on the basis of which possession, the plaintiff was claiming a title by adverse possession.

8. Relying on the judgment of the Supreme Court in ***Karnataka Board of Wakf*** **(supra),** it was contended that a person claiming adverse possession had to also show in what circumstances he had come into possession and what was the nature of the said possession and at what point of time this fact of his hostile possession was made known to the true owner and others. Without clear pleadings in respect of these facts, the case was not maintainable. Learned counsel submitted that rather, the plaint itself discloses that there was litigation pending between the

plaintiff's father/plaintiff and the defendant No.2/NDMC, which showed that the possession was never hostile, continuous and peaceful.

9. It was further argued by learned counsel for the defendant No.1/DDA that unless the claimant was in an actual physical possession of the suit property, he could not set up a claim for title through adverse possession. It is contended by him that from the averments in the plaint, it was clear that neither the plaintiff nor his father had ever remained in actual physical possession of the property, which had been in the possession of the defendants No.5 to 16 and against whom the defendant No.1/DDA had initiated eviction proceedings. The portions that had come into the possession of the plaintiff had come to him in the year 2014. Therefore, he could not set up a claim of adverse possession.

10. With regard to the question of limitation, the learned counsel submitted that when the defendant No.1/DDA had in the writ petition bearing CWP 16/2009 claimed that the property belonged to it and which fact had been duly recorded by the court in its order dated 20th October, 2009, the period of limitation would have commenced at least since that date and would have come to an end on 20th October, 2012, since a suit for declaration had to be filed within three years from the date of accrual of the cause of action. Thus, this suit filed on 27th July, 2020 was hopelessly barred by limitation. According to the learned counsel, the claim that the cause of action arose also on 10th July, 2020, was a red herring as the learned District Judge had permitted the defendant No.1/DDA to take possession of the suit premises from the defendants No.3 to 14 vide order dated 3rd July, 2020, which order was uploaded on

10th July, 2020. The uploading of the order of 10th July, 2020 could furnish no cause of action to the plaintiff. It was also inconceivable that the defendant No.1/ DDA would have immediately taken action after the order was uploaded to furnish such a cause of action to the plaintiff.

11. In reply, Mr. Sunny Arora, learned counsel for the plaintiff submitted written arguments to contend that the application was a frivolous one and a gross abuse of the process of law. It was submitted that the grounds taken up by defendant No.1/DDA was a matter of trial. It was submitted that the cause of action arose on 10th July, 2020 when the plaintiff came to know from reliable sources that the defendant No.1/DDA was going to take coercive action and there was a strong apprehension that the defendant No.1/DDA would dispossess the plaintiff. This cause of action was a continuing one. Furthermore, learned counsel has submitted that the suit premises were in the possession of the father of the plaintiff since 1961 and after his death, the plaintiff has been enjoying the continuous possession of the suit property. The house tax receipts of the year 1976 reflected the possession of the plaintiff's father. Orders of the Estate Officer of MCD dated 14th July, 1987 and 23rd October, 1990 reflected that the suit property was not public premises. Therefore the assertions of the defendant nos.1&2 of ownership of the suit property were untenable and such litigation was irrelevant. The plaintiff has also relied on the decisions in the eviction suits and rent recovery suits filed by him against defendants 5 to 16, which established *prima facie* the possession of the plaintiff over the suit property and his open and public assertion of ownership rights in respect of the same.

12. It was also submitted that the application was only reiterating the contents of the written statement, which written statement was totally irrelevant for disposal of an application under Order VII Rule 11 CPC. It was affirmed that the suit was within limitation and the various judgments relied upon by defendant No.1/DDA were totally inapplicable to the facts of the present case. It was stated that earlier, till 2003, it was the defendant No.2/NDMC that was claiming ownership of the suit premises and since 2009, the defendant No.1/DDA had started claiming ownership and that too since 1982, thus contradicting each other and rendering the pleas taken by defendant No.1/DDA as totally bogus. It was submitted that the plaintiff had never been served in CWP 16/2009 and limitation could not run against him from the date of the judgment disposing of the said Writ petition. Thus, it was submitted that the application be dismissed with costs.

DISCUSSION

13. It is trite that the court while considering an application under Order VII Rule 11 CPC is required to consider the contents of the plaint and the documents relied upon by the plaintiff whereas the defence disclosed in the written statement is irrelevant. Nothing in the written statement reflecting on the merits of the claim can be considered.

14. No doubt, the Supreme Court has held that the plea of adverse possession need not work only as a shield and could also be wielded as a sword, but a plaintiff must aver the essential facts, which when proved through evidence, would establish his claim to title through adverse

possession. As has been held by the Supreme Court in a catena of judgments, every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms in the plaint. In the absence of pleadings, there would also be no occasion for evidence to establish facts not pleaded.

15. As observed by the Supreme Court in ***Karnataka Board of Wakf (supra)***, certain facts relating to adverse possession have to be clearly pleaded. It would be apposite to reproduce the observations below :

> ***11.*** *In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina [AIR 1964 SC 1254] , Parsinni v. Sukhi [(1993) 4 SCC 375] and D.N. Venkatarayappa v. State of Karnataka [(1997) 7 SCC 567] .) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted*

> *in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma [(1996) 8 SCC 128].]*
>
> ***(emphasis added)***

16. Thus in the light of the decision in ***Karnataka Board of Wakf (*supra*)***, we may turn to the averments in the plaint to see if the pleadings meet the requirements, and the plaint discloses a cause of action. It would also reveal whether the case needs to go to trial or not.

(a) With regard to the date when the plaintiff came in possession, the plaintiff has pleaded that his father had come into possession in 1961 and the plaintiff himself, after the demise of his father in 1981.

(b) There is no averment as to the nature of the possession of the father of the plaintiff. There are no facts that have been elucidated setting out the circumstances in which the plaintiff's father had come into possession of the premises, to enable the court to infer as to the nature of the father's possession.

(c) With regard to the identity of the true owner, the plaintiff states that the plaintiff's father "believed" and "knew" that the land which was "occupied" by him belonged to Govt. of India at least from the year 1970 when the land was acquired by the Ministry of Rehabilitation.

(d) As to whether the factum of hostile possession was known to other parties, what is averred qua defendants No.5 to 16 is that they had been inducted as tenants by the father of the plaintiff. The plaintiff has listed out several cases in which eviction orders have been passed in favour of the plaintiff and against the defendants No.5 to 16 and during the period between 2012 to 2014. Additionally it is stated that the father had been subjected to property tax and the rent of the premises attached for its recovery establishing possession in 1976.

(e) As regard hostile possession qua the true owner, it is pleaded that in the year 1966, the father of the plaintiff had filed a suit against the defendant No.2/MCD (now NDMC) and the defendant No.2/NDMC assured the court that it would not interfere in the possession of the suit land by the father, except under due process of law.

(f) Though not mentioned in the plaint, it has been submitted in the written arguments by the learned counsel for the plaintiff, that, vide the orders of the Estate Officer of the defendant no.2/NDMC dated 14th July, 1987 & 23rd October, 1990, the suit property was found to be not "public premises". To clarify, these are statements made in the replication to the written statement of the defendant no.1/DDA.

It is evident that the necessary averments have been pleaded in the plaint.

17. Be that as it may, it is the argument of the defendant no.1/DDA that the pleadings do not disclose a cause of action and the plaint has to be rejected under Order 7 Rule 11(a) CPC. This plea may now be considered. Cause of action means every fact which the plaintiff would have to prove to entitle him to a decree. It consists of a bundle of material facts to be proved before the plaintiff becomes entitled to the relief claimed. It must include some act of the defendant since in the absence of such an act, no cause of action accrues for the plaintiff to seek a remedy against the defendant.

18. While it is true that the merits of the case cannot determine the question as to whether a cause of action has been disclosed or not, the Supreme Court has in ***T. Arivandandam v. T.V. Satyapal***, (1977) 4 SCC 467 held that while considering an application under Order VII Rule 11 CPC, what is required to be decided is whether the plaint discloses a "real cause of action" or something "purely illusory". If on a meaningful and not a mere formal reading of the plaint, it appears to be manifestly vexatious and meritless and fails to disclose a clear right to sue, but through clever drafting creates an illusion of a cause of action, the court being guided by the mandatory provisions of Order VII Rule 11 CPC should not hesitate to exercise powers vested in it to "nip it in the bud".

19. In the present matter, the relief sought is a declaration of title on the basis of adverse possession. The plaintiff has to establish *nec vi, nec*

clam, nec precario. There must be a recognized "true owner" whose rights are being sought to be extinguished. Mere length of possession will not result in acquisition of title by adverse possession. The plaint must state explicitly as to who is the true owner, and since when the plaintiff has asserted hostile title to the property. The only plea of the plaintiff in this regard is that his father "believed" and "knew" that the Ministry of Rehabilitation was the true owner. At the same time, he does not admit any of the defendants No.1, 2 or 17 as the true owner of the property. He rather relates facts that contest their claim of ownership of the land. As to evidence, how is the belief to be proved? Since the father has expired, how is his personal "knowledge" to be proved? The averment is clearly "illusory".

20. The principle of law is, that a person who bases his title on adverse possession, must show that his possession was hostile to the "real owner" and was a clear denial of the title of such owner. The plaintiff has nowhere stated in his plaint that he had accepted the defendants No.1, 2 or 17 as the true owner, but had, since a particular year, stopped acknowledging their rights, to their knowledge and they had not interfered with such assertion of rights by the plaintiff, tending to extinguish their rights in the suit property. As observed by the Supreme Court in ***Uttam Chand (*****supra*****)***, if the defendants (in that case) were unsure as to who the true owner was, the question of them being in hostile possession and denying the title of the true owner cannot arise. In the present case, the plaintiff has never recognized the defendants as the true owners nor has he named anyone as the true owner.

21. It was in 1961 that allegedly the plaintiff's father came into possession of the property. The admitted case of the plaintiff is that his father had sued the then MCD for injunction in 1966 to prevent them from interfering with his possession. It means that at least before the lapse of 5 years, leave alone 12 years, the MCD had started asserting rights, interfering in the possession of the plaintiff's father. Litigation continued in the 1970s, with the MCD/defendant no.2/NDMC when they claimed the property belonged to them. After the land stood transferred to defendant No.17, it too asserted rights of ownership against the plaintiff's father. And subsequently when the suit property stood transferred to the defendant no.1/ DDA, it moved for the eviction of the defendants 5-16, who are described by the plaintiff as his tenants. Such litigation has actually culminated in eviction orders against defendants No.5 to 16. So the averments in the plaint do not establish peaceful possession. At best, it could be said that there may have been long possession. But that possession, as is apparent from the plaint, has been far from peaceful and any attempt to assert hostile title by the plaintiff and his father, assuming there had been such assertion, has met with stiff opposition from the defendants No.1, 2 or 17. Rather, the plaint itself establishes that defendant No.2/NDMC and then defendant No.1/DDA had since 1966, repeatedly asserted their claims in respect of the suit property.

22. The decision of the Supreme Court in ***Uttam Chand*** **(supra)** applies on all fours to this case. There has been no peaceful and continuous, hostile possession disclosed. The observations of the Supreme Court are as follows :

> *"16. In the present case, the defendants have not admitted the vesting of the suit property with the Managing Officer and the factum of its transfer in favour of the plaintiff. The defendants have denied the title not only of the Managing Officer but also of the plaintiff. The plea of the defendants is one of continuous possession but there is no plea that such possession was hostile to the true owner of the suit property. The evidence of the defendants is that of continuous possession. Some of the receipts pertain to 1963 but possession since November 1963 till the filing of the suit will not ripe into title as the defendants never admitted the appellant-plaintiff to be the owner or that the land ever vested with the Managing Officer. In view of the judgments referred to above, we find that the findings recorded by the High Court that the defendants have perfected their title by adverse possession are not legally sustainable. Consequently, the judgment and decree passed by the High Court is set aside and the suit is decreed. The appeal is allowed."*
>
> *(emphasis added)*

23. Clever drafting is unable to come to the aid of the plaintiff who has claimed that his father acquired title by way of adverse possession in 1973, while admitting to the various litigation and legal proceedings between the father and the defendants even at that time.

24. The cause of action, as stated by the plaintiff in para 27 of his plaint, arose on 10th July 2020, when he came to know that "some coercive action to dispossess the plaintiff" was contemplated by the defendant no.1/DDA. This averment is extremely vague. It is nowhere pleaded how this information came to the plaintiff. Rather, he admits in

his plaint that he had been made a party in CWP No.16/2009 which was filed by the defendants 5-16 ,but claims he had never been served. It was before this court that the defendant No.1/DDA had in those proceedings asserted their rights to the suit property. As rightly pointed out by the learned counsel for the defendant no. 1/DDA, the plaintiff knew at least in 2009 that the defendant No.1/DDA was asserting title to the suit property. Yet he has waited till 2020 to file a suit for declaration. The mere uploading of the order of eviction dated 3rd July, 2020 passed by the learned District Judge, on 10th July, 2020, can by no stretch of imagination provide a cause of action to the plaintiff to seek declaration. That relief he could have claimed within three years from 2009, at best. The suit is barred by limitation too, though an effort has been made to bring it within limitation.

25. The only question that remains is whether this suit should be nipped in the bud. A Co-ordinate Bench of this Court in ***Asha V. Wadhwani v. Arun Jethmalani***, 2020 SCC OnLine Del 480, has made the following observations :

> *"**17.** (O) It is quite obvious that the defendants are insisting upon recording of evidence, to defer the evil day of a decree for recovery of possession being passed against them. However, the Court has to cut through the web of pleas spun in the written statement of the defendants and if finds the plea of adverse possession on which emphasis is laid today, to be without any substance, on account of other pleas in the written statement, is not to pedantically and mechanically order evidence to be recorded and allow its process being abused.*

The time and resources of the Court can be utilised for appropriate cases indeed requiring recording of evidence and trial and in which findings cannot be returned, without such trial. If the Court finds that findings on the defence raised by the defendants of adverse possession can be returned even without trial, the Court would definitely be within its powers to do so." (emphasis added)

26. In the present case, though the plaintiff is asserting adverse possession, the plea is a mere smoke screen and is completely unsubstantiated. The time and resources of the court need not be spent on such an undeserving case.

27. In the light of the afore-going discussions, therefore, the application is allowed. The suit is accordingly rejected. Interim order dated 23rd September, 2020 stands vacated. All the pending applications stand disposed of.

28. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

NOVEMBER 30, 2021
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