

IN THE COURT OF SH. VIKAS GARG, DISTRICT JUDGE-05
(EAST DISTRICT),
KARKARDOOMA COURTS, DELHI.

Suit No. 1771/16

CNR No. DLET01-005338-2015

Ram Naresh Yadav (Deceased) Through LRs

1- A. Ramsewak S/o Late Ram Naresh Yadav,
R/o H.NO. 21/235, 1st Floor Trilokpuri Delhi 91.
And also at 100 Madauli Sangrampur, Distt. Amethi U.P.

1-B. Smt. Rajkali D/o Late Ram Naresh Yadav,
w/o Sh. Babulal, R/o village Gulra,
P.O Gauri Ganj, Distt. Amethi (U.P) 227409.

..... Plaintiff

Versus

1. Smt. Shivkali
W/o Late Ram Samujh

2. Ram Sanjeevan
S/o Late Ram Samujh

3. Mrs. Renu
W/o Desh Raj
D/o Late Ram Samujh

All R/o H. No. 21/235, Ground Floor,
Trilokpuri, Delhi-91.

4. Smt. Jagpati, W/o Ram Pher
R/o Village Dhanapur, Tehsil Amethi
District Sultanpur, U.P.

.....Defendants

Date of Institution : 14.01.2015
Date of Final Arguments : 22.03.2025
Date of Decision : 17.05.2025
Final Decision : Preliminary Decree

**SUIT FOR PARTITION, PERMANENT INJUNCTION AND
MESNE PROFIT**

J U D G M E N T

1. This judgment adjudicates the plaintiff's suit for partition, permanent injunction, and mesne profits.

2. Defendant No. 3 has appeared but has not contested the suit and has chosen not to file the written statement. The original plaintiff, Sh. Ram Naresh Yadav, passed away during the pendency of the suit, and his legal heirs were brought on record vide order dated 01.08.2019.

CASE OF THE PLAINTIFF (AS PER THE PLAINT):-

The essential facts and averments necessary for a fair adjudication of the present suit, as presented in the plaint, are as follows:

3. The late Shriram Yadav, father of the plaintiff, was allotted property number 21/235 (hereinafter called as suit property), measuring 25 sq. yards, situated at Trilokpuri in Delhi by DDA. Shriram Yadav died intestate in 1978 leaving behind his wife Smt. Bachawan Devi, his sons namely Ram Naresh Yadav i.e. plaintiff, Ram Samujh and daughter namely Smt. Jagpati i.e.

defendant no. 4. Smt. Bachawan Devi expired intestate in 1993. Shriram Yadav gave the suit property to plaintiff and late Ram Samujh Yadav. He gave the entire first floor to the plaintiff and the entire ground floor to Ram Samujh Yadav. Ram Samujh Yadav expired in 1984. In 1986 the plaintiff's sons, namely Ram Sewak came to Delhi and started residing at the first floor of the suit property. On 28.11.2014 the plaintiff and his family member had gone to his native place and when Ram Sewak came to Delhi on 05.12.2014, he found that defendant no. 1, 2 and 3 had forcibly occupied the first floor of the suit property and when he tried to enter the suit property, he was beaten by defendant no. 1, 2, 3 and their associates and he was not allowed to enter into the suit property. The plaintiff claimed 1/3 share in partition and also prayed for decree of permanent injunction and decree of mesne profits.

CASE OF THE DEFENDANT No. 1 to 3 (AS PER THE WRITTEN STATEMENT):-

Briefly, the essential facts and averments required for a fair adjudication of the present suit, as presented in the Written Statement, are as follows:

4. The present suit is not maintainable, plaintiff has no locus standi. No requisite court fee has been paid and the plaintiff has not approached the court with clean hands. Defendant no. 1 constructed the suit property in 1993 with her own funds and before 1993 the suit property was jhuggi only and after removal of that jhuggi, the defendant no. 1 built the suit property and she

is residing there for the last 22 years since 1993 and prior to that she along with her husband and family members were residing at that jhuggi and thus she became owner by adverse possession of law and plaintiff has no right title or interest of any nature in the suit property. Defendant no. 1 got an electricity connection in her name in 1993. She has also obtained other documents in respect of the suit property and she is paying house tax. Defendant no. 1 to 3 prayed for dismissal of the suit.

Issues:-

5. The following issues were framed for trial on 31.08.2015:

- 1. Whether the plaintiff is entitled for the relief of partition of suit property no. 21/235, measuring 25 square yards, situated at Trilokpuri, Delhi 92, shown red in colour in the site plan be metes and bounds for his 1/3rd share? OPP.*
- 2. Whether the plaintiff is entitled for the relief of permanent injunction in his favour and against the defendants?OPP.*
- 3. Whether the plaintiff is entitled for the relief of mesne profit @ Rs. 10,000/- per month from the date of filing the suit till its realization?OPP.*
- 4. Whether the plaintiff has no locus standie to file the present suit?OPD.*
- 5. Whether the defendant no.1 has become the owner of the suit property by way of adverse possession? OPD1.*

6. Relief.

Plaintiff's Evidence:-

6. Sh. Virender Kumar testified as PW-1. He presented the original summoned record of possession slip bearing No.2194 dated 20.02.1976 in the name of Sri Ram S/o Sh. Ram Nand, issued by DDA, JJ Cell in respect of Plot No.21/235, Trilokpuri, Delhi, which was given against the demolition of Jhuggi. He proved photocopy of the same as Ex.PW1/1. He also presented the original record of demolition slip bearing No.6804 dated 19.02.2076 issued in favour of Sh. Ram Nand by DDA. He proved photocopy of the same as Ex.PW1/2. He also presented the original affidavit of Siri Ram dated 22.11.1976. He proved photocopy of the same as Ex.PW1/3. PW-1 was cross-examined by the defendants' counsel.

Plaintiff Sh. Ramsewak testified as PW-2 and submitted his affidavit, Ex. PW2/A, during his examination-in-chief, wherein he reiterated the contents of the plaint. He also relied on the following documents:

1. Site plan as Ex. PW-2/1.
2. Copy of Ration Card as Ex. PW-2/2.
3. Copy of I Card as Mark-A.
4. Copy of Adhar Card as Ex. PW-2/4.
5. Copy of DL as Mark-B.
6. Copy of LIC as Mark-C.
7. Copy of passbook as Ex. PW-2/7.
8. Copy of complaint as Mark-D.
9. Copy of postal receipt as Mark-E.

10. Copy of notice as Mark-F.
11. Copy of reminder notice as Mark-G.
12. Copy of postal receipts as Mark-H.
13. Copy of adhar card of Rajkali as Mark-I.
14. Copy of death certificate as PW-2/14.
15. Copy of Jothbai as Mark-J.

Defendants's Evidence:-

7. Smt. Shivkali appeared as DW-1 and tendered her affidavit in evidence, which was marked as Ex. DW1/A during her examination-in-chief. In her affidavit, she reiterated the contents of the written statement with certain additions. She also relied upon the following documents:

- 1) Original DDA Receipt no. 179925 (Jhuggi Jhopri) dated 20.02.1979 as Ex. DW1/1.
- 2) Original electricity bill dated 21.10.1990 as Ex. DW1/2.
- 3) Original death certificate of Sh. Ram Samujh dated 13.02.1985 as Ex. DW1/4.
- 4) Original electricity bill dated 08.10.1993 as Ex. DW1/5.
- 5) Original water bill dated 14.12.1988 as Ex. DW1/6.
- 6) Original water bill dated 14.12.1988 to 30.09.1997 as Ex. DW1/7.
- 7) Original house Tax receipt dated 19.06.2013 as Ex. DW1/8.
- 8) Photocopy of Ration card issued on 17.06.2005 in the name of deponent as Mark A.

9) Photocopy of service identity card issued by BSES Rajdhani Power Ltd. In favour of deponent as Mark B.

10) Photocopy of voter identity card of deponent as Mark C.

DW-1 was cross-examined at length by the learned counsel for the plaintiff.

Sh. Kumar Chanchal appeared as DW-2. He proved the death certificate of Ram Samujh as Ex. DW-2/1. He further proved a certified copy of the register containing the record of death of Ram Samujh as Ex. DW-2/2.

DW-2 was cross-examined by the learned counsel for the plaintiff.

Sh. Chandra Prakash appeared as DW-3. He presented the certified copy of the water bill dated 20.12.2023 along with the water bill summary. He proved the same as Ex. DW-3/1. He also proved copy of the letter dated 27.02.2024 as Ex. DW-3/2.

DW-3 was cross-examined by the learned counsel for the plaintiff.

Sh. Arun Dutt appeared as DW-4. He presented a certified copy of Ration Card bearing new RC no. 077000455236 (Old RC No. APL37280028). He proved the same as Ex. DW-4/1.

DW-4 was cross-examined by the learned counsel for the plaintiff.

Arguments:-

8. Arguments on behalf of the plaintiff:

Learned counsel for the plaintiff argued in line with the plaint, asserting that Shriram Yadav owned the suit property through a possession slip. He contended that partition is a personal right, and there was no need to include DUSIB as a party, noting that no issue was framed regarding DUSIB's non-joinder and no objection was raised in the written statement. He argued that the plea of adverse possession is unsustainable under the present facts, highlighting contradictions in paragraphs 2 and 6 of defendant no. 1's evidential affidavit (Ex. DW-1/A). He further submitted that defendant no. 1's alleged construction does not confer any rights over the suit property. On the question of court fee, it is noted that no issue was framed. He relied on the judgment of the Hon'ble Delhi High Court in *Ram Lal Sachdev Vs. Smt. Sneh Sinha*, AIR 2000 Delhi 92.

Arguments on behalf of the defendants:

Learned counsel for the defendants argued in line with the written statement, asserting that defendant no. 1 acquired ownership through adverse possession due to uninterrupted and hostile possession for 22 years. He claimed that defendant no. 1 exclusively constructed the suit property with her own funds. He argued that the property belongs to DUSIB, which was a necessary party but not included. He further contended that there was no cause of action, no basis for mesne profits as the plaintiff has no rights over the property, and that the requisite ad valorem

court fee was not paid, as the plaintiff admitted to being out of possession.

9. I have attentively heard the rival contentions of both parties, meticulously examined the record, and carefully considered the relevant legal provisions and applicable judicial precedents.

Analysis and Issue-wise Findings:-

10. All the issues are closely interconnected and, therefore, are being addressed together.

The plaintiff claims that the suit property was allotted to his father, the late Shriram Yadav, who died intestate, entitling the plaintiff, as a legal heir, to a 1/3 share. The relevant paragraphs no. 1 and 2 of the plaint, which form the basis of the plaintiff's case, are reproduced as follows:

“1. That late Shriram Yadav, father of the plaintiff was allotted the plot/property No.21/235, measuring 25 sq. yards, situated at Trilokpuri in Delhi-110091 by DDA (Slum Deptt.) in the year of 1976 in lieu of the Jhuggi as per the settlement and rehabilitation scheme of the Government which is specifically shown as red in the site plan annexed. After the allotment of the said suit property to late Shriram Yadav, he constructed ground floor, first floor therein.

2. That late Shriram Yadav died intestate in the year 1978. It is pertinent to mention here that Shri Ram Yadav died intestate leaving behind his wife

Smt. Bachawan Devi, his sons namely Ram Naresh Yadav, i.e. plaintiff, Ram Samujh and the daughter namely Smt. Jagpati i.e. defendant no.4.”

Defendant no. 1 to 3 responded to these paragraphs in their written statement as follows:

“1. That the averments contained in para no.1 of the plaint under reply are not denied being matter of record.

2. That the averments contained in para no.2 of the plaint under reply are wrong and denied, as alleged. It is denied that Late Shriram Yadav died intestate in the year, 1978, as alleged. Rest averments are matter of record. It is submitted that the defendant no.1 became absolute owner of the suit property by adverse possession of law and she is in exclusive occupation and possession of the suit property.”

From these pleadings, it is undisputed that the property was allotted to Shriram Yadav. The defendants deny that he died intestate in 1978, but it is unclear whether they dispute the date of death or his intestate status. The defendants did not contest Shriram Yadav’s death during the trial; in fact, defendant no. 1 (DW-1, Smt. Shivkali) confirmed during cross-examination that her father-in-law had died, stating:

“ My husband resided in his native place and after the death of my father-in-law, he came to Delhi and started residing in the suit property.”

No evidence or averments suggest a will or other disposition of

the property by Shriram Yadav. The defendants also did not dispute their familial relation to Shriram Yadav. The defendants resisted the plaintiff's claim on grounds of adverse possession, construction by defendant no. 1, and technical issues such as deficient court fee, non-joinder of DUSIB, and the property belonging to DUSIB. These grounds are addressed below.

Adverse Possession:

Defendant no. 1 to 3 repeatedly claimed that defendant no. 1 has resided in the suit property since 1993, asserting ownership by adverse possession. The Hon'ble Supreme Court in **M. Radheshyamlal Vs. Sandhya and Anr.**, 2024 LiveLaw (SC) 245, clarified the requirements for adverse possession, stating:

“9. As far as the suit filed by the plaintiff for the declaration of ownership based on adverse possession is concerned, the plaintiff can never succeed unless he proves the plea of adverse possession. There is a concurrent finding of fact on this issue against the plaintiff.

10. As far as the plea of adverse possession is concerned, a Constitution Bench of this Court in the case of **M. Siddiq (Ram Janmabhumi Temple-J.) v. Suresh Das**, in paragraph 1142 and 1143 has held thus:

“1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person

against whom it is claimed. Evidently, therefore, the plaintiffs in Suit No. 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec claim and nec precario. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading Para 11(a), it

becomes evident that beyond stating that the Muslims have been in long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence.”

11. In the case of **Karnataka Board of Wakf v. Govt. of India and Ors.**, in paragraph 11, this Court has laid down the law regarding the plea of adverse possession. Paragraph 11 reads thus:

“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]]”

12. Therefore, to prove the plea of adverse possession :-

- (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;
- (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;
- (c) The plaintiff must also plead and establish when he came into possession; and
- (d) The plaintiff must establish that his possession was open and undisturbed.

It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.”

In this case, the defendants’ pleadings lack specificity beyond asserting adverse possession and claiming 22 years of possession. There is no mention of when or how possession became hostile or evidence of such hostility. Mere use of the term “adverse possession” does not establish any right. Notably, paragraph 6 of defendant no. 1’s evidential affidavit (Ex. DW1/A) states:

“That the deponent says that the entire suit property was given by Late Sh. Ram Yadav to the deponent and her husband Sh. Ram Samujh, but the plaintiff is trying to make his false claim over the suit property. It is further states that after getting the service on compassionate ground, the deponent has got built-up the suit property upto First Floor with her own funds and earnings”

This claim of the property being given by Shriram Yadav

contradicts the plea of adverse possession, as the two are mutually exclusive. The Hon'ble Supreme Court in **Narasamma & Ors. vs. A. Krishnappa (Dead) Through LRs**, AIR 2020 SC 4178, observed:

“31. The question which confronts us is not the aforesaid, but whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas. In this behalf, we may refer to the four judgments cited by learned counsel for the respondent herein, which succinctly set forth the legal position.

32. In **Karnataka Board of Wakf** case, it has been clearly set out that a plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that

“....the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced....”

33. The aforesaid judgment in turn relied upon the judgment in **Mohan Lal (Deceased) Thr. LRs.**, which observed in para 4 as under:

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile

adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.”””

DUSIB (Delhi Urban Shelter Improvement Board) Property:

The defendants did not raise during the trial that the suit property cannot be partitioned because it belongs to DUSIB. However, during the course of arguments, their counsel contended that the property belongs to DUSIB, is not divisible, and that DUSIB has not been impleaded as a party to the present case.

The Hon’ble Supreme Court in **Trinity Infraventures Ltd. v. M.S. Murthy**, 2023 SCC OnLine SC 738, observed:

“113. In the case on hand, the obstructionists do not claim title under any one of the parties to the litigation. They set up independent title in themselves. What was filed by Dildar-Un-Nissa Begum was only a suit for partition. In a suit for partition, the Civil Court cannot go into the question of title, unless the same is incidental to the fundamental premise of the claim.

114. Take for instance a suit filed for partition by a member of the Hindu Undivided Family. If one of the coparceners or an alienee from such coparcener, claims independent title to one of the properties bought in his individual name, it may be open to the Court while trying the suit for partition to decide whether such a property belongs exclusively to the defendant. To this limited extent, examining the title of a party to the suit schedule property is permissible even in a suit for partition.

115. But in a simple suit for partition, the parties cannot assert title against strangers, even by impleading them as proforma respondents. The strangers who are impleaded in a partition suit, may have nothing to say about the claim to partition. But they may have a claim to title to the property and such a claim cannot be decided in a partition suit.”

As held in the *Trinity Infraventures case*, a suit for partition cannot be employed to adjudicate questions of title against third parties such as DUSIB. Accordingly, this Court cannot determine the ownership claim of Shriram Yadav vis-à-vis DUSIB in the present partition suit. However, the built-up superstructure can be partitioned among the parties to the suit without affecting the rights of DUSIB. Therefore, DUSIB is not a necessary party to these proceedings.

Construction of the Property:

Defendant no. 1 to 3 claimed that defendant no. 1 constructed the suit property. However, no law grants ownership based on

construction alone, and there is no substantive evidence proving defendant no. 1's exclusive contribution to the construction.

Mesne Profits:

The plaintiff claimed mesne profits at Rs. 10,000/- per month but provided no evidence to support this rate. The Delhi High Court in *MC Aggarwal Vs. Sahara India & Ors.*, 183 (2011) DLT 105, held that mesne profits claims require evidence of comparable market rent rates. The plaintiff failed to discharge this onus, and the claim is rejected.

Court Fee:

No issue was framed regarding court fee, and the defendants raised no objections during the trial or sought to amend the issues. Thus, this plea cannot be entertained at this stage.

Relief:-

11. Based on the above analysis, the plaintiff's suit is decreed as follows:

A) preliminary decree of partition is hereby passed in respect of the built-up property located at 21/235, Trilokpuri, Delhi-110092. The shares in the property shall be allocated as follows:

(i) Sh. Ramsewak and Smt. Rajkali (legal representatives of the plaintiff): 1/3 share

(ii) Smt. Shivkali (Defendant No. 1), Sh. Ram Sanjeevan (Defendant No. 2), and Mrs. Renu (Defendant No. 3): 1/3

share

(iii) Smt. Jagpati (Defendant No. 4): 1/3 share

B) All parties are restrained from transferring, selling, mortgaging, leasing, or otherwise encumbering the suit property until the final resolution of the case.

12. A Preliminary Decree Sheet shall be prepared accordingly.

13. Parties are directed to propose methods for partitioning the suit property by metes and bounds as per the shares specified in the preliminary decree.

14. It is clarified that this judgment does not bind DUSIB, which retains the right to take lawful actions.

15. Put up further proceedings on **14.08.2025**.

**Pronounced in the open court
on 17th May, 2025**

**(Vikas Garg)
District Judge-05 /EAST
KKD, Delhi-17.05.2025**