

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6497 OF 2009

KEWAL KRISHAN KHURANA (D) THR. LRS. Appellant(s)

Versus

SITA RAM (D) THR. LEGAL HEIRS Respondent(s)

W I T H

CIVIL APPEAL NO. 6498 OF 2009

SITA RAM (D) THR. LEGAL HEIRS Appellant(s)

Versus

KEWAL KRISHAN KHURANA (D) THR. LRS. Respondent(s)

O R D E R

1. Heard learned counsel for both the parties.
2. Civil Appeal No. 6498 of 2009 is filed by the defendants whereas the Civil Appeal No. 6497 of 2009 is filed by the plaintiffs.
3. The brief facts leading to these appeals are that the plaintiff filed a suit for possession based on title in respect of the suit property. According to plaintiff, the defendant is in permissive possession of the suit property. Despite making number of requests, the defendant has not vacated the suit property.

The case of the defendant is that Mr. Hari Chand (Father of the Plaintiff) handed over the suit property to him and that he is in possession of the property since 30 years. In the alternate, he has pleaded that he has perfected his title by adverse possession.

4. The trial Court decreed the suit for possession, which is confirmed by the High Court. While confirming the judgment of the trial Court, the High Court did not grant decree in favour of the plaintiff in respect of mesne profits.

Thus, the plaintiff has filed Civil Appeal No. 6497 of 2009 praying for mesne profits, whereas Civil Appeal No. 6498 of 2009 filed by the defendant, who has lost in both the Courts, with prayer to dismiss the suit.

5. The trial Court as well as the High Court has concurrently concluded that the suit property was allotted to Smt. Krishan Kaur and she bequeathed all her rights, title and interests in the suit property by virtue of a Will dated 02.07.1965 in favour of the plaintiff. M/s Kewal and Company is a proprietary concern of plaintiff's family. The Will was duly registered before the Sub-Registrar, Delhi. Thus, the plaintiff became the owner of the property by way of the said Will. However, as mentioned *supra*, the

defendant tried to set up title in himself, has failed. Though he has pleaded that the suit property was given by one Mr. Hari Chand, he has failed to prove such transfer in his favour.

During the course of deposition, D.W-1 and D.W-2 (Sons of defendant) have stated that the defendant's father handed over possession in favour of the defendant and that defendant was the employee of M/s Kewal & Company. There is no evidence to prove that defendant's father was the owner of the suit property.

6. The facts on record clearly reveal that the defendant used to work in M/s Kewal and Company and his father used to deal with Shyam Sunder. K.K. Khurana and Shyam Sunder were partners of M/s Kewal and Company. Since the defendant was employee of M/s Kewal and Company, he was allowed to use the suit premises for residential purpose. There was a family settlement between the plaintiff's family including the firm - M/s. Kewal and Company. In the said family settlement, M/s. Kewal and Company had come to the share of the brothers of the plaintiff along with all its assets and liabilities. The plaintiff did not object to the defendant living in the suit premises till 1995. Thereafter, in the year 1995, the plaintiff demanded possession from the defendant.

Though, the defendant retired in the meanwhile

from M/s Kewal and Company, he was allowed to stay in the suit premises on humanitarian grounds. It is only after the defendant and his family members shifted to another premises, the plaintiff demanded the possession from the defendant.

7. Both the Courts' below, as afore-mentioned, have on facts, concluded that the plaintiff is the owner of the property and that he permitted the defendants to be in possession of the suit property. So also, it is held that the defendant has failed to prove the ownership of the property as well as failed to prove the adverse possession. On the other hand, it is proved by the plaintiff that the defendant was in permissive possession.

8. In view of the above, the suit is rightly decreed by the trial Court and the same is confirmed by the High Court.

9. There is no sufficient material to prove the plaintiff's prayer relating to mesne profits. Since the litigation is pending for a long time, we do not propose to direct further inquiry into the mesne profits. Be that as it may, the fact remains that the defendant was permitted to continue in the suit premises at least, till 1995 voluntarily. There is nothing to show that the defendant was paying rent etc. or that some amount was fixed for user. It appears that the defendant was permitted to use as an

employee free of cost. In view of the above, the High Court, on facts, is justified in negating the prayer for mesne profits.

10. Accordingly, both the appeals are liable to be dismissed and the same stand dismissed.

11. As a sequel to the above, pending applications, if any, shall stand disposed of.

.....J.
(N.V. RAMANA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

New Delhi,
July 10, 2018

ITEM NO.101 COURT NO.7 REVISED
SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s). 6497/2009

KEWAL KRISHAN KHURANA (D) THR. LRS. Appellant(s)

VERSUS

SITA RAM (D) THR. LEGAL HEIRS Respondent(s)

WITH

C.A. No. 6498/2009 (XIV)

(WITH IA No.21665/2018-UNDER SECTION 151 OF CPC)

Date : 10-07-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s)

Mr. Nitin Sangra, Adv.
Mr. Gaurav Agrawal, AOR

Mr. Dalip Kumar Malhotra, AOR
Mr. Rajesh Kumar Malhotra, Adv.

For Respondent(s)

Mr. Dalip Kumar Malhotra, AOR
Mr. Rajesh Kumar Malhotra, Adv.

Mr. Nitin Sangra, Adv.
Mr. Gaurav Agrawal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay, if any, is condoned.

The application for bringing on record the legal representatives is allowed.

Abatement, if any, is set aside.

The appeals are dismissed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(SUKHBIR PAUL KAUR)
AR CUM PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

ITEM NO.101

COURT NO.7

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6497/2009

KEWAL KRISHAN KHURANA (D) THR. LRS.

Appellant(s)

VERSUS

SITA RAM (D) THR. LEGAL HEIRS

Respondent(s)

WITH

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For Respondent(s)

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Mr. Rajesh Kumar Malhotra, Adv.

Mr. Nitin Sangra, Adv.

Mr. Gaurav Agrawal, AOR

UPON hearing the counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(SUKHBIR PAUL KAUR)

AR CUM PS

(RAJ RANI NEGI)

ASSISTANT REGISTRAR

(Signed order is placed on the file)