

7

*

HIGH COURT OF DELHI AT NEW DELHI

+

**RSA 308/2007 & CM Nos. 8235/2008,
16990/2007, 16992/2007 & 16993/2007**

Date of decision : August 24, 2009

SHRI GOPAL RAM Appellant
Through : Ms. Meena Chaudhary, Adv.

Versus

OM PRAKASH KHURANA Respondent
Through : Mr. Astander Kumar, Adv.

%

**CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Appellant is the owner in possession of property No.8-A, Ground Floor, Sheikh Sarai-II, New Delhi, being allottee by the DDA. Respondent is the power of attorney holder of the property No.8C, First Floor, Sheikh Sarai, New Delhi. Respondent made an

RSA 308/2007

Page 1 of 5

Signature Not Verified

Signing Date:24.07.2024 17:12:49
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

illegal construction above the property of the appellant which resulted into various complaints with the police as well as to the Lt. Governor. The appellant also made complaints to MCD and other concerned authorities etc. against the unauthorized construction raised by the respondent. Appellant also claimed easmentry rights of light and air which according to him were blocked by the respondent because of the said construction raised by him.

2. Appellant filed a suit for permanent and mandatory injunction against the respondent claiming perpetual injunction against the respondent to restrain them from making any further construction and mandatory injunction for directing him to demolish the illegal construction raised by him till the date of filing of the suit.
3. The said suit of the appellant was decreed by the trial court vide its judgment and decree dated 22.8.2005. Respondent, aggrieved by the said judgment and decree, filed appeal before the Additional District Judge being RCA No.41/2006. The appellate court set aside the judgment and

decree of the trial court. It accepted the appeal and dismissed the suit of the appellant.

4. Assailing the judgment and decree of the appellate court, this appeal has been filed.
5. Learned counsel for the appellant Ms. Meena Chaudhary has submitted that the appellate court was not correct when it held that appellant had suppressed the construction of room by converting the open space into room and mis-appreciated the statement of the appellant. He further argued that the appellate court did not properly appreciate the evidence of the appellant regarding filing of site plan. The appellate court incorrectly ignored the admission of the respondent that he had made illegal construction without prior approval of the DDA and that there was substantial cause for the appellant to file the suit as his representations to various authorities had not yielded results. It is also argued that appellate court incorrectly presumed that no construction was made in April-May 1992. He has highlighted various portions of the evidence of the witnesses, to attack the legality

and validity of the appellate court's judgment.

6. Thus, it is clear that in this appeal, the appellant has challenged the fact findings of the appellate court in variance to the findings of the trial court. This Court in second appeal has no power to interfere with the fact findings of the courts below. This Court can entertain an appeal only if a substantial question of law is involved. In this case, there is none.
7. The suggested substantial questions of law in the appeal indicate that it is the fact finding of the appellate court based on analysis of the evidence of the parties contrary to the findings of the trial court, which is under challenge in this appeal.
8. Hence, no question of law as suggested can be formulated. It is significant that in para 21 of the impugned judgment, the appellate court made the following observations:

“21. It is difficult to believe, on one hand plaintiff is alleging that by making the lintel roof construction the defendant had violated his right of air and light but at the same time his version is that he is enjoying the room constructed by the defendant for his own use and he has also admitted that there is a window and door in the same. In case the plaintiff had the

10

grievance he should have asked for demolition of his portion also. It is also difficult to assume that the defendant will construct a portion for the benefit of the plaintiff which the plaintiff is enjoying, unless and until there is some agreement between the plaintiff and the defendant and there was a consent of the plaintiff that the defendant may also construct the specific portion which has been constructed for the benefit of the plaintiff. Not only this fact has been suppressed but it is also evident that the plaintiff has not come to the courts with clean hands."

9. Even the trial court had held that the appellant had not come to the court with clean hands and had suppressed the material facts and even enjoyed the illegal construction in his possession.
10. Since the appellant himself is the beneficiary of the alleged illegal construction, he was rightly declined the relief of injunction as prayed by him by the appellate court. No substantial question of law arises in this appeal.
11. Hence, I find no merits in the appeal and the same is accordingly dismissed.


(ARUNA SURESH)
JUDGE

August 24, 2009
jk