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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.465/2002

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1st November, 2011

SMT. MURTI DEVI

..... Appellant

Through: Mr. J.P.Sengh, Sr. Adv, with Mr. Amit Singh
& Mr. Sumeet Batra, Adv.

VERSUS

SH. KAMAL KISHORE SEHGAL & ORS.

..... Respondents

Through: Mr. S.K.Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 is to the impugned judgment of the Trial Court dated 22.2.2002. The impugned judgment dismissed the suit of the appellant/plaintiff in which reliefs of injunctions were prayed.
2. The appellant/plaintiff in the suit prayed for the following reliefs:-

“i)restraining the defendants, their agents, servants and workers from putting up or constructing any Ramp at the gate of the property facing Battery Lane at 8-C/1, Rajpur Road, Civil Lines, Delhi;

ii) restraining the defendants from causing any hindrance or interference in the quiet, peaceful and beneficial enjoyment of the entire common passage, shown in green colour in the plan, leading from the gate of the plaintiff facing the Battery Lane to the rear boundary of the property up to the entire depth of 214 ft.

iii)restraining the defendants from bringing their vehicles in and upon the common passage and use the said passage as a drive-way for vehicle or as parking place for their vehicles, or to use the said passage for any purpose other than or having access to their portion-B and from having ingress and egress thereto.

iv)issuing a mandatory injunction directing the defendants to remove the gate put up by them in the middle of the common passage at point-X and also remove the annexation of the rear portion of the common passage measuring about 11'-0"x 15'-0" and to make the entire common passage available for free, unobstructed and unfettered common use of the plaintiff.”

3. The basic dispute between the parties is as to whether the passage which adjoins the two plots of the respective parties is a common passage or that the portion of the passage which adjoins the portion of the defendants/respondents is in their exclusive ownership and not a commonly owned passage with the appellant/plaintiff. On a decision of this issue as to whether the complete passage is or is not the common passage, other reliefs whether the same be with regard to putting a ramp from the main road to come to this passage or for putting

up a gate by the respondents/defendants in roughly around the middle of the common passage or the entitlement/disentitlement of the respondents/defendants to take their vehicles in the passage, will stand automatically decided. I say so that the same will be consequentially and automatically decided because if the passage is a common passage in common ownership of both the parties, then the appellant/plaintiff is not entitled to prevent making of the ramp or for preventing the vehicles of the respondents/defendants from using the passage, and similarly, the respondents/defendants will not be entitled to claim the passage adjoining their portion as being exclusively owned by them and they will also not be entitled to put a gate in the middle of the passage that is at the point of the passage where their property begins or prevent the appellant/plaintiff from using that portion of the passage which adjoins the property of the respondents/defendants.

4. The facts of the case are that both the plots of 699 square yards each, which are owned by the appellant/plaintiff and the respondents/defendants respectively, were part and parcel of a larger plot of 1398 square yards (699 + 699 square yards) bearing municipal No.8-C/1, Rajpur Road, Civil Lines, New Delhi. This plot of 1398 square yards was sold by the original owner/seller/Sh.Jaspal Singh by means of two sale deeds of the same date, i.e. 12.4.1974 simultaneously to the

appellant/plaintiff and the respondents/defendants. It is not disputed between the parties that both the sale deeds, one in favour of the appellant/plaintiff, and another in favour of the respondents/defendants were simultaneously executed by the original owner-Sh.Jaspal Singh in their favour, as part and parcel of the transaction of selling the larger plot of 1398 square yards. I am stating this because the original plot of 1398 square yards was broken up in two parts of 699 square yards as part and parcel of the same transaction of sale of the original plot of 1398 square yards in favour of the respective parties to this litigation. It is also undisputed that both the parties were fully aware of the respective contents of the respective sale deeds which were simultaneously executed by the original seller-Sh.Jaspal Singh in favour of the respective parties to this litigation.

5. The only issue therefore which is called for decision in this appeal is as to whether the passage which adjoins the two plots towards the right side of the plot, when the entire plot of 1398 square yards is looked at from the Battery Lane, is a common passage or not.

6. In order to determine the issue in question, it is necessary at this stage to refer to the relevant clauses of the sale deeds dated 12.4.1974 executed in favour of the respective parties along with the site plans attached to those sale deeds. The sale deed executed in favour of

the appellant/plaintiff has been exhibited in the Court below as Ex.DW1/P1, and the plan attached thereto has been exhibited as Ex.DW1/P1. The sale deed in favour of the respondents/defendants has been exhibited as Ex.P2 and the site plan attached to this sale deed has been exhibited as Ex.P1.

7. The relevant clauses of the sale deed, Ex.DW1/P1 in favour of the appellant/plaintiff read as under:

“6. The seller has agreed to sell his 699/3116 share in plot No.8-C, measuring 3116 square yards i.e. 699 square yards out of 3116 square yards more specifically shown in the plan enclosed unto the purchaser for a total sale price of Rs.98,000/- (Rupees ninety eight thousand only) and the purchaser agreed to purchase the same on 11-6-1973 vide terms and conditions in the agreement of sale registered as No.1218 in Addl. Book No.I, Vol.3084 on pages 50 to 53 in the office of the Sub-Registrar, Delhi on 28-3-1974.

1. That in pursuance of the said agreement and in consideration of the said sum of Rs.98,000/- (Rupees ninety eight thousand only) out of which a sum of Rs.5,000/- has already been paid by the purchaser to the seller as earnest money at the time of agreement of sale made on 11-6-1973 as embodied in the agreement of sale in writing and registered as No.1218 in Addl. Book No.I, Vol.3084 on pages 50 to 53 in the office of the Sub-Registrar, Delhi on 28-3-1974, receipt of which is hereby acknowledged by the seller and the balance of Rs.93,000/- (Rupees ninety three thousand only) will be paid by the purchaser to the seller at the time of the presentation of the sale deed for registration before the Sub-Registrar, Delhi in the manner indicated in this sale deed. The said seller do thereby sell, convey, transfer and assign by way of absolute sale his share to

8. The corresponding site plan with respect to the sale deed of the appellant/plaintiff is reproduced below:



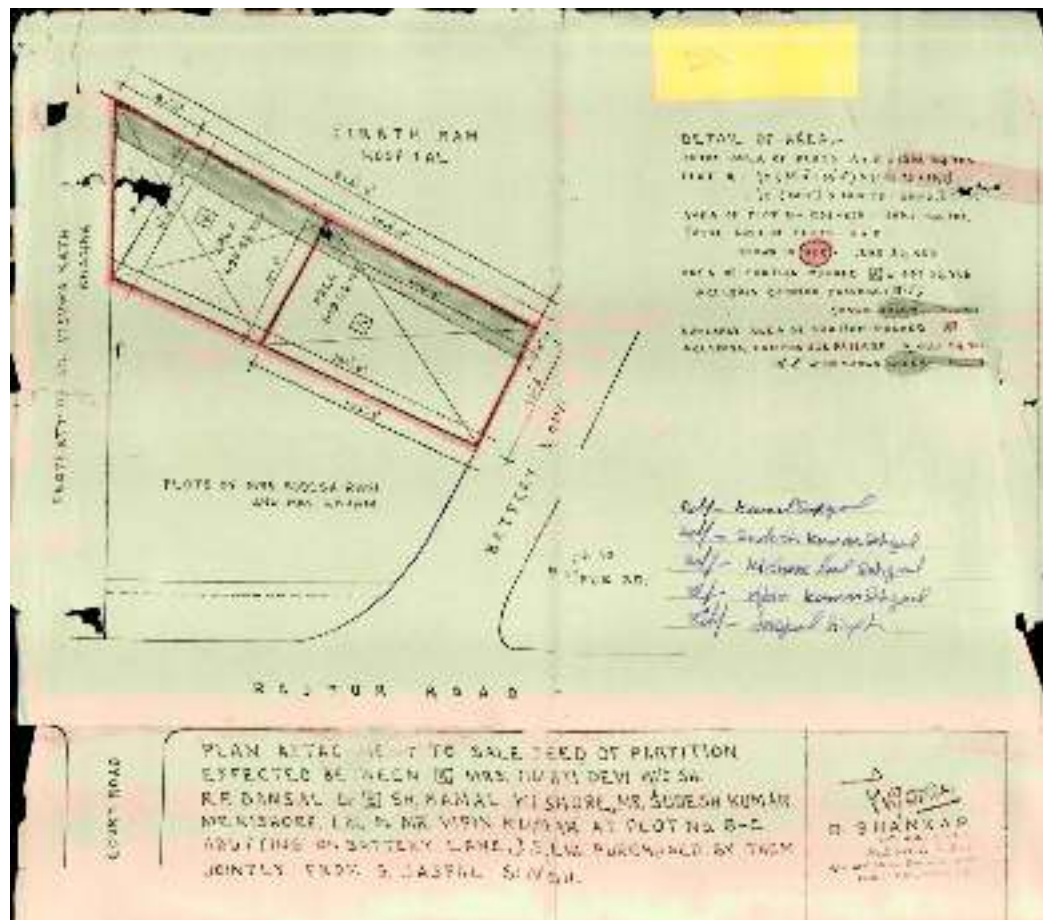
9. The relevant clauses of the sale deed in favour of the respondents/defendants read as under:-

“6. The seller agreed to sell his 699/3116 share in Plot No.8-C, Rajpur Road, measuring 1398/3116 square yards i.e. 699 square yards out of his 1398 square yards more specifically shown in the plan annexed i.e. being the area measuring 699 square yards with right of use of 15’ wide common passage for access thereto as left by Smt. Murti Devi for that purpose, to whom the whole of the front portion measuring 699 square yards facing Battery Lane has been sold, unto the purchasers for a total sale price of Rs.98,000/- (Rs. Ninety eight thousand) and the purchasers agreed on 6-11-1973 to purchase the same vide terms and conditions in the agreement of sale registered as No.1219 in Addl. Book No.I, Vol. No.3084 on pages 54 to 58 in the office of the Sub-Registrar, Delhi on 28-3-1974.”

“1. That in pursuance of the said agreement and in consideration of the said sum of Rs.98,000/- (Rupees ninety eight thousand only) out of which a sum of Rs.6,000/- has already been paid by the purchasers to the seller as earnest money, the receipt of which is hereby acknowledged by the seller and the balance of Rs.92,000/- (Rupees ninety two thousand only) will be paid by the purchasers to the seller at the time of the presentation of the sale deed for registration before the Sub-Registrar, Delhi, the said seller do thereby sell, convey, transfer and assign by way of absolute sale his share to the extent of 699/3116 in Plot No.8-C, Rajpur Road, Delhi i.e. 699 square yards out of his own 1398 square yards area together with right of use of 15’ wide common passage for access to the portion sold herein as left by Smt. Murti Devi to whom the whole of the front portion facing Battery Lane, measuring 699 square yards has been sold, unto the purchasers along with all his

rights, title, interest, option and privileges. The vacant possession in respect of the demised property has already been given to the purchasers on spot.”(underlining added).

10. The corresponding plan with respect to this sale deed is as under:



11. So far as the law with respect to interpretation of documents is concerned, it is not disputed between either of the parties that in order to understand the document, firstly only the express and clear words of the documents must be looked at.

The issue with regard to looking at the surrounding
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circumstances to determine what was intended can only arise, if there is an ambiguity in the language of the document. Learned counsel for the respondents relied upon the decision of the Supreme Court in the case of ***Pandit Chunchun Jha vs. Sheikh Ebadat Ali & Anr. AIR 1954 SC 345*** and paras 5 and 6 of the judgment read as under:

“5. The question whether a given transaction is a mortgage by conditional sale or a sale outright with a condition of repurchase is a vexed one which invariably gives rise to trouble and litigation. There are numerous decision on the point and much industry has been expended in some of the High Courts in collating and analyzing them. We think that is a fruitless task because two documents are seldom expressed in identical terms and when it is necessary to consider the attendant circumstances the imponderable variables which that brings in its train make it impossible to compare one case with another. Each must be decided on its own facts. But certain broad principles remain.

6. The first is that the intention of the parties is the determining factor : see *Balkrishen Das vs. Legge* 27 I.A. 58. But there is nothing special about that in this class of cases and here, as in every other case where a document has to be construed, the intention must be gathered in the first place, from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If, however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine that was intended. As Lord Cranworth said in *Alderson v. White* 44 E.R. 924 :

“The rule of law on this subject is one dictated by commonsense; that prima facie an absolute conveyance, containing nothing to show that the

relation of debtor and creditor is to exist between the parties, does not cease to be an absolute conveyance and become a mortgage merely because the vendor stipulates that he shall have a right to repurchase In every such case the question is, what, upon a fair construction, is the meaning of the instruments ?”

12. There is no quarrel to this proposition of law that a literal construction must first be preferred because the literal construction shows the intention of the parties. Courts cannot presume an intention dehors the express language as found in the document. In this view of the matter let us now examine the language which is used in two documents, being the two sale deeds, which are basically part and parcel of the same transaction of sale of the entire plot of 1398 square yards into two plots of 699 square yards each in favour of the appellant/plaintiff and the respondents/defendants by the original owner-Sh.Jaspal Singh. Before proceeding further, I must mention that the passage which is adjacent to the right side of the plots in fact has been carved out of both the plots of 699 square yards, i.e., though each of the parties have purchased a plot of 699 square yards each, however the actual area of 699 square yards is reduced by the passage in question which adjoins the respective plots.

13. A reference to the relevant clauses of the sale deed executed in favour of the appellant/plaintiff and as reproduced above shows that

besides mentioning the area which is sold, it is categorically mentioned that the area which is sold is more specifically delineated in the plan attached to the sale deed. Para 1 of the operative part of the sale deed in form of the appellant/plaintiff categorically states that what is sold is the portion mark 'A' of 699 square yards of which a portion of 15 feet wide would be a **common** passage. This common passage has been shown in green colour in the plan annexed to this sale deed. When we look at the green colour in the plan attached to the sale deed, and which, as per the sale deed is the common passage, we find that this green marked portion being the passage runs right from the beginning of the property to the end of the property, i.e. this common passage adjoins not only the portion of the appellant/plaintiff, but it also adjoins the portion of the respondents/defendants. A literal construction therefore leaves no manner of doubt that what is stated is a common passage in the sale deed is the green colour portion shown in the plan annexed to the sale deed and which green colour portion runs right adjacent to both the portions of the appellant/plaintiff and the respondents/defendants. On a literal construction therefore there is no scope to reduce this green colour passage as shown in the plan only to half of its size as is being sought to be contended on behalf of the respondents/defendants.

14. The matter, however, does not stop over here because

besides looking at the plan annexed with the sale deed in favour of the appellant/plaintiff, we will also have to look into the sale deed and the plan annexed in favour of the respondents/defendants by the original owner-Sh. Jaspal Singh. A reading of the relevant clauses of the sale deed in favour of the respondents/defendants show that again what is sold is 699 square yards which is more specifically shown in the plan annexed, with the right of use of 15 feet wide **common** passage for access thereto as left by Smt. Murti Devi/appellant/plaintiff. Para 1 of the operative part of the sale deed again specifically states that what is sold is the 699 square yards with right to use of 15 feet wide **common** passage for access to the portion sold to the respondents/defendants as left by Smt. Murti Devi/appellant/plaintiff. Again the sale deed specifically mentions the 15 feet wide **common** passage. This common passage is again shown in an identical manner in the site plan attached to the sale deed of the respondents/defendants. I have already scanned above the site plans attached to the sale deeds of both the parties, and which plans form part of the sale deeds and are duly exhibited before the Trial Court.

15. There is hardly any ambiguity to the word “common” when the same is used in the expression ‘common passage’. Common passage therefore is common to owners of both the plots of 699 square yards, i.e.

common to both the plaintiff and the defendants. The argument of the respondents/defendants that the passage adjoining their portion is not a common passage defeats the whole intention of the entire 15 feet wide passage being a common passage. I also do not place any importance to the argument raised by the learned counsel for the respondents that why should a portion of the passage which adjoins the property of the respondents/defendants be treated as common when the appellant/plaintiff would have no use of the same, because once the passage is common, both the parties can use it in different ways for common purposes whether they be for parking of cars or in any other manner, and it is not therefore permissible for any one party to exclusively appropriate any portion of this common passage as belonging only to them, as is contended by the respondents/defendants. It is not unknown as to many areas in a property which form part of the larger plot may be left as a common for joint benefit of the parties, and therefore, to introduce logic as to what right an opposite party will have to a common passage which adjoins a portion of the opposite party, is a self-defeating argument inasmuch as once a passage is common if the appellant/plaintiff wants she can use the same for any purposes including for parking of her cars. The entire object of a common portion is joint and common user thereof by the parties and it is an antithesis of the

word common for the same being used as being exclusively appropriated by any one person. I have already stated in the beginning of this judgment, that both the documents/sale deeds are part and parcel of the same transaction of sale of the larger plot of 1398 square yards and therefore it is necessary that both the parties who were well aware of the respective sale deeds, should be held bound by totality of all the aforesaid relevant clauses in both the sale deeds along with the accompanying site plans. To do otherwise will be to allow one party to steal a march over another which is not permissible.

16. Once there is a joint reading of the respective clauses of both the sale deeds and taken together with the respective plans, the passage which is carved out from each of the owners' portion of 699 square yards has necessarily to be taken as a common passage to be jointly used by both the parties. This is the categorical intention of the parties on a literal construction of both the sale deeds taken together.

17. The issue then arises is whether the appellant/plaintiff is entitled to all the reliefs as claimed in the plaint. I have already reproduced the prayer clauses of the plaint above. So far as the prayer no. (i), i.e. to restrain the defendant from putting a ramp is concerned, the same cannot be granted. The ramp is only a means of access to this common passage, but for which, the common passage cannot be

effectively used and therefore prayer (i) is declined. Same is the position with respect to prayer (iii) inasmuch as once the passage is a common passage the appellant/plaintiff cannot prevent the defendants/respondents from bringing their vehicles in the common passage including for reasonable parking of the vehicles. I must hasten to add that nothing in this judgment should be taken as a license for any of the parties to cause parking of their vehicles in such a way in this common passage that another person is prevented from effectively using common passage. Of course, for the period of the night hours, and which would be depending upon the season, the parties would be entitled to park their respective vehicles in this common passage in such a way that none of the parties prevents user of the passage by the other and the passage is used equally by both the parties for parking of their vehicles. I would further add that it would be advisable for the appellant/plaintiff not to object to parking of the vehicles by the respondents/defendants on the portion of the common passage which adjoins their plots, unless and until the appellant/plaintiff really has any need to go to that portion of the common passage which adjoins the portion of the respondents/defendants, and in which case the respondents/defendants will not cause any obstruction for the necessary or immediate use of that common passage adjoining the portion of the respondents/defendants.

The appellant/plaintiff will however be entitled to the reliefs prayed for in prayers (ii) and (iv).

18. While therefore accepting the appeal and setting aside the impugned judgment dated 22.2.2002, it is directed that the respondents/defendants are restrained from, in any manner, preventing the appellant/plaintiff from use of the entire common passage which runs right from the beginning of the plot to the end of the plot, i.e. the passage adjoining not only the portion of the appellant/plaintiff but also the passage adjoining the portion of the respondents/defendants. Since the putting of the gate by the respondents at a point 'X' shown in the respective site plans amounts to prevention of access to the portion of the common passage adjoining the portion of the respondents/defendants to the appellant/plaintiff, such gate would ordinarily be liable to be removed. Counsel for the respondents/defendants has however contended that the gate had been put because passage was used as ingress and egress by some persons of the public inasmuch as the properties of the parties adjoin the famous Tirath Ram hospital, therefore, I modulate the relief prayed for by the appellant/plaintiff with respect to removal of the gate to allow the gate to remain, however, whenever the same is locked for a reasonable time, the respondents/defendants will give one key of the lock to the

appellant/plaintiff.

19. As an epilogue, I must mention that earnest endeavors were made by Advocates of both the parties to bring about a re-conciliation and various alternative positions were discussed, however, no concrete result came about and therefore this judgment had to be passed on merits. Actually, it would be advisable for the parties to sit across the table, inasmuch as, being neighbors, litigation is not preferable when a compromise solution would surely be a better way out. One of the better suggestions, which in my opinion, ought to have prevailed was that a twenty four hour guard should be put at the gate at the beginning of the passage on the main road so that there is no unnecessary entry of unknown persons /public in this passage and which would have thereafter removed any issues with respect to apprehension of the respondents/defendants, however, nothing came out of the suggestion. This suggestion was also feasible because practically, I do not expect that the appellant/plaintiff would or ought to park their vehicles in the common passage which adjoins the portion of the respondents/defendants or use that portion in any other manner except for genuine needs. The said passage will only be used in case of a genuine, urgent or necessary need or some other pressing need of the appellant/plaintiff. As already stated however it seems that the ego

battle will have to carry on and therefore is the present judgment.

21. In view of the above, the appeal is accepted to the extent as stated above in paras 17 and 18. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

NOVEMBER 01, 2011

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