

* **HIGH COURT OF DELHI: NEW DELHI**

% Judgment pronounced on: 31.10.2011

+ **CS(OS) No.891/2009**

SUMITRA DEVI MONGA Plaintiff
Through Mr. Deepak Bashta & Mr. Dinesh
Monga, Advs. for Mr. M.S.Vinaik,
Adv.

Versus

SHAM MONGA AND ANR Defendants
Through None (defendants already *ex parte*)

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MANMOHAN SINGH, J. (ORAL)

1. The plaintiff, Smt. Sumitra Devi Monga has filed the present suit
for perpetual injunction with the following prayer:-

“A. Pass a decree of mandatory injunction directing the
defendants to withdraw from the public land in the vicinity of
the plaintiff’s residential house.

B. Decree of perpetual injunction restraining the
defendants from occupying the public land just outside the
door of the plaintiff and from hindering and preventing the free

use and enjoyment of the suit property of the plaintiff and her family members.”

2. The case of the plaintiff is that the plaintiff is the sole owner of the plot of land with bungalow constructed thereof, bearing No.B-62B, Kalkaji, New Delhi. Defendant No.1 is the son of the plaintiff and defendant No.2 is her daughter-in-law. It is averred in the plaint that the said property was purchased by the late husband of the plaintiff, Shri Ram Lal Monga from out of his self-acquired funds by virtue of sale deed dated 22.10.1975. Shri Ram Lal Monga expired on 23.09.1981 inte-state leaving behind the following legal heirs:-

- | | | | |
|-------|--------------------|---|----------|
| (i) | Sumitra Devi Monga | - | wife |
| (ii) | Sham Monga | - | Son |
| (iii) | Gulshan Monga | - | Son |
| (iv) | Sudha Diwan | - | Daughter |
| (v) | Kamal Monga | - | Daughter |

Thereafter, all the legal heirs of late Shri Ram Lal Monga relinquished their share in favour of their mother, i.e. the plaintiff. The said Relinquishment Deed was executed and duly registered on 25.03.1986. The title of the property in question was also transferred in the name of the plaintiff and entries in this regard were recorded by virtue of communication issued on 07.08.1986. All the legal heirs including defendant No.1 gave their express consent to have the plaintiff being recorded as the owner of the suit property.

3. It is further averred in the plaint that by virtue of the family settlement dated 30.08.1990, the defendants vacated the suit property and in consideration of giving up all rights in the suit property, the other son of the plaintiff, namely, Mr. Gulshan Rai Monga agreed to sell a plot of land owned by him, bearing No.757, Sector-21, Faridabad (Haryana) and use the sale proceeds in purchasing a residential premises for the benefit of the defendants. Mr. Gulshan Rai Monga, the other son of the plaintiff, kept his promise of selling the said plot of land at Faridabad and utilizing the sale proceeds for purchasing a residential apartment for his brother, i.e. defendant No.1 who then along with defendant No.2 began to reside in the said residential apartment. A further sum of Rs.3 lac was paid to defendant No.1 by Mr. Gulshan Rai Monga from the business known as Monga Paint House, HS 23, Kailash Colony, New Delhi and thereafter, in the year 1996 the said firm was dissolved and defendant No.1 ceased to have any right, title or interest in the said firm.

4. The case of the plaintiff against the defendants is that despite of above, the defendants are still demanding for a share in the suit property, and the defendants along with their two minor children, moved some household goods on to a public road and started blocking the rear entrance of the house where the plaintiff resides along with her younger son and his family. With effect from 30.04.2009, the defendants started camping on the

road and just outside the road leading to the plaintiff's house. Not only that, they also started shouting and abusing the plaintiff in foul language while sitting at the front side of the home of the plaintiff. This led to the plaintiff to file the present suit. However, prior to the filing of the present suit, the plaintiff had also lodged a complaint to the concerned police station on 02.05.2009.

5. Along with the suit, the plaintiff filed an interim application bearing I.A. No.6499/2009 and the Court after considering the contention of the plaintiff, passed an *ex parte* ad-interim order restraining thereby the defendants from causing obstruction to the ingress and egress of the plaintiff and her family members. The said interim order is still continuing.

6. It appears from the record that despite of service of summons and notice and also having sought the time to file the written statement, the defendants neither filed the written statement, nor appeared subsequently before the Court after the hearing of 04.02.2011. Hence, they were proceeded *ex parte* vide order dated 18.08.2011.

7. The plaintiff, in support of her case, has adduced evidence by way of three affidavits, namely, the plaintiff herself as PW-1, Mr. Gulshan Rai Monga as PW-2 and Mr. Pawan Goswami who is the neighbour of the plaintiff as PW-3.

8. The statements made in the affidavits filed in terms of the evidence are almost the same as the contentions raised in the plaint. The plaintiff herself appeared as PW-1 and has proved on record the sale deed dated 22.10.1975 which is Ex.PW1/A, copy of the Relinquishment Deed as Ex.PW1/B, the family arrangement/settlement which is marked as Ex.PW1/C, copy of dissolution of Partnership Deed as Ex.PW1/D which bears the signatures of both of her sons, copy of complaint filed before the police authorities as Ex.PW1/E and the mutation document in respect of the suit property as Ex.PW1/F. Similarly, PW-2 has also confirmed the statement made by PW-1. PW-3 who is the neighbour of the plaintiff has also stated that he has seen/witnessed the obstruction created by the defendant for user and ingress and egress of the plaintiff in the suit property. He also deposed that on 30.04.2009 the defendants along with their children began to camp just outside the door of the plaintiff on public land along with their luggage into the said public land. It is also stated that the defendants were using abusive language outside the suit property which was causing nuisance in the said locality.

9. It appears from the record that the evidence produced by the plaintiff has gone unrebutted as the defendants failed to cross-examine the witness. No written statement has been filed by the defendant. The learned counsel for the plaintiff also submits that at present the defendants are

residing in a DDA Flat at Kalkaji. Under these circumstances, the plaintiff has been able to make out a case against the defendants and is entitled for a decree of mandatory injunction. Hence, it is directed that the defendants are restrained permanently from occupying the public land just outside the door of the house of the plaintiff and from hindering and preventing the free use and enjoyment of the suit property of the plaintiff and her family members. The suit of the plaintiff is accordingly decreed. However, there is no order as to costs. A decree be drawn accordingly.

MANMOHAN SINGH, J.

OCTOBER 31, 2011/ka