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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No.154/2011

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20th September, 2011

SMT. NEERJA CHAWLA

..... Appellant

Through: Mr. Dinesh Agnani, Sr. Adv. with
Ms. Leena Tuteja &
Mr. Rahul Arora, Advs.

VERSUS

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: None.

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?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular Second Appeal is to the two concurrent judgments of the Courts below, the first of the Original Court dated 7.1.2011, the second of the Appellate Court dated 22.7.2011, and by which judgments the suit of the appellant/plaintiff for permanent injunction against the respondent/DDA seeking restraint against making of a wall was dismissed.

2. The appellant/plaintiff laid out a case that the construction of the wall by the DDA on its land will close the access of the appellant/plaintiff to her property bearing no.A-49, Rajeev Nagar, Phase-II, Village Karala, Delhi

and therefore the suit for injunction was filed stating that the appellant/plaintiff would have no ingress and egress to her property as the ingress and egress to the property was from the road on the side of which wall was being constructed and thereby allegedly closing the entry points to the property of the appellant/plaintiff. The appellant/plaintiff claimed that there was a road adjoining her property to the east for last 40 years and construction of the wall by the respondent/DDA would result in closing of the access to this road which was in existence for 40 years and therefore injunction was prayed.

3. Indubitably the subject property is situated in an urban village in Delhi. In none of the urbanized villages in Delhi, there has been proper plotted development by a proper lay out plan, and village Karala where the subject property is situated is one such example.

4. The Courts below have dismissed the suit by holding that by construction of the wall, it cannot be said that the appellant/plaintiff will have no access at all to her property inasmuch as to the south side of her property, there is a road. The Courts below have further found that the respondent/ DDA is fully entitled to construct the wall in its own property and it is not open to the appellant/plaintiff to prevent the respondent/DDA to construct the wall.

5. Learned senior counsel for the appellant/plaintiff invited the attention of this Court to a site plan prepared by the Local Commissioner who was appointed before the Trial Court and which site plan is exhibited as

Ex.P2. On the basis of this site plan, it was argued that the road to the east shown therein is existing since 40 years and this was the only road for entry and exit to the property.

6. I am unable to agree with the argument as advanced by the learned senior counsel for the appellant. Firstly, the Appellate Court has referred to the sale deed by which the appellant/plaintiff purchased the subject property bearing no.A-49, Rajeev Nagar, Phase-II, Village Karala, Delhi and the bounding of the property of the appellant/plaintiff is shown as under:-

“North :	Plot No. A-47	South :	Road 20 ft.
East :	DDA Land	West :	Plot No. A-48”

Two important aspects arise from this location of the property. Though, the appellant/plaintiff claimed that there is only a gali, really there is a road 20 feet wide to the south of the suit property from which the appellant/plaintiff has ingress and egress to her property. Of course, this road may be narrow, which is the position in most of the urban villages in Delhi on account of construction without any lay out plan of the colony, however, that cannot mean that there would be stopped all ingress and egress to the property of the appellant/plaintiff if the DDA constructs the wall to the eastern side of the property of the appellant/plaintiff. Secondly, the description stated above shows that to the east of the property of the appellant/plaintiff, what is shown to be existing is DDA land and no metalled road is shown as abutting east of the property as is the case being argued by

the appellant. Therefore, the sale deed of the appellant negates two very important aspects of her case that it was not as if by making of the wall by DDA there would be no entry and exit to the property as there is very much a road 20 feet wide for entry and exit to the property of the appellant/plaintiff and that to the east of the property of the appellant/plaintiff, existence of a road not shown but existence of the land of the DDA/respondent has been shown. I therefore reject the argument as advanced on behalf of the appellant/plaintiff that by making of the wall by respondent/DDA, the appellant/plaintiff would have no point of entry and exit to her property. While on this aspect, I must note that the Appellate Court has also relied upon the fact that in the site plan relied upon by the appellant/plaintiff herself, there is not shown any opening to the eastern side, and which would have been if really on the eastern side, immediately abutting the property of the appellant/plaintiff there was a road.

7. The Appellate Court has referred to an additional fact to hold that the appellant/plaintiff is dis-entitled to the relief of the injunction and which is that the existence of a road could have been established by the appellant/plaintiff by summoning the witness from the Municipal Corporation of Delhi (in short 'MCD') to show that it was the MCD who had in fact constructed this road. No witness was summoned on behalf of the appellant/plaintiff from the MCD to show existence of the road, and therefore, unless the road is shown to be an actually sanctioned and built-up road as a metalled road, the appellant/plaintiff cannot rely upon any road to

say that through that road there is an automatic right to enter and exit her property, which in any case has another road of a 20 feet for entry and exit to the property.

8. Learned senior counsel for the appellant sought to rely upon two judgments, one of the Supreme Court in the case of ***The Municipal Board, Manglaur vs. Mahadeoji Maharaj AIR 1965 SC 1147***, and other of a learned single Judge of the Madras High Court in the case of ***Damodara Naidu & Ors. vs. Thirupurasundari Ammal & Anr. AIR 1972 Madras 386*** to argue that there is a right of easement from a road maintained by a municipality. There is no dispute to the proposition with respect to a right of easement from a road built by municipality, however, the existence of this road and abutting of the same to the property of the appellant/plaintiff was an issue of fact, and which issue of fact has not been established by the appellant/plaintiff in the present case inasmuch as both the Courts below have rightly held that not only no road is proved of the MCD to the east of the property and there is in fact a road 20 feet to the south of the property of the appellant from which she has an entry and exit to her property. Therefore since the appellant/plaintiff failed to prove the existence of a duly sanctioned road because no person was called for from the MCD to prove the construction of the road, the judgments as relied upon by learned senior counsel for the appellant cannot have any application in the facts of the present case.

9. Before a Second Appeal is entertained under Section 100 CPC, it is necessary that a substantial question of law must arise. Findings of facts, and that two concurrent findings of facts showing entry and exit to the property of the appellant from a road of 20 feet and that there was no road as existing abutting east to the property of the appellant/plaintiff duly constructed by the MCD, and therefore, I do not find that any substantial question of law arises for this Court to interfere with the impugned judgment under Section 100 CPC. Dismissed.

SEPTEMBER 20, 2011
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VALMIKI J. MEHTA, J.