

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.64/2011**

% **31st January, 2014**

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Ms. Shobha Gupta, Advocate.

VERSUS

SH. NIHAL CHAND (DECEASED) THROUGH LEGAL HEIR
..... Respondent
Through: Mr. Manjit Singh Ahluwalia,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.7261/2011 (condonation of delay)

1. Delay of 527 days in filing the appeal is condoned only for the reason that the main appeal has been heard.

C.M. stands disposed of.

+ RSA No.64/2011 and C.M. No.7260/2011 (stay)

2. Some litigations are tragedy. Tragedy is not because of facts of a case, but the tragedy, as the present judgment will show, arises on account

of sheer lack of competence of Advocates. How this lack of competence of
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Advocates has caused huge expenses to the respondent/plaintiff who has filed the subject suit and from which this Regular Second Appeal of the defendant arises, is narrated hereinafter.

3. The subject suit was filed by the respondent/plaintiff claiming the following reliefs:-

“It is, therefore, respectfully prayed that this Hon’ble court be please to pass a decree of declaration to the effect that plot no.209 wherever written in plaint, replication, judgment and decree and elsewhere in suit no.127 of 1974 decided on 7.8.76 by Shri V.B. Gupta and in grounds of appeal, judgment and decree in R.C.A. appeal No.197 of 1978 and other record of appeal decided by Shri M.K. Chawla, Addl. Distret Judge, Delhi Plot no.290 situated at Abadi Patel Block, Gandhi Nagar, in area of village Seelampur Illaqua Shahdra, Delhi. Any other relief which this Hon’ble court deems fit and proper in the circumstances of the case be also granted.”

4. The above relief which was sought indicated that the respondent/plaintiff had succeeded in the earlier round of litigations against the appellant-defendant, except that the plot number which was mentioned in the earlier proceedings was wrongly mentioned as 209 instead of 290. The fact that plot number was wrongly mentioned as 209 instead of 290 becomes clear from the fact that in the earlier suit the respondent/plaintiff had relied upon a registered sale deed dated 28.2.1972 in his favour with respect to the suit property, which was exhibited as Ex.PW2/A in the present proceedings, which showed that the property purchased was bearing plot No.290. The

exhibit number of the same sale deed in the earlier suit was Ex.P1. Respondent/plaintiff has/had only claimed ownership by means of this sale deed with respect to the suit plot admeasuring 262 sq yds. The present suit went to trial and the respondent/plaintiff succeeded as the trial Court decreed the suit vide judgment dated 9.2.2004. First appeal of the appellant/defendant was dismissed by the impugned judgment dated 21.7.2009. I may note that the appellant/Municipal Corporation of Delhi (MCD) does not claim title to this property either by way of acquisition or by way of purchase, and this finding has been given by the trial Court in para12 of the judgment and which reads as under:-

“Issue No.1

12. The onus to prove this issue was on the plaintiff. As per statement of PW2, Halqua Patwari, Tehsil Vivek Vihar, who had brought the record pertaining to mutation No.3209, the property No. Khasra No.631/395/61/2/2/12/2. (0-5) biswas was sold by one Chaman Lal to Nihal Chand. The registry No.376 dated 28.2.72 is the same as per the original record of sale deed exhibited Ex.PW2/A. The mutation was done on 29.6.72 as per record. Further as narrated by PW3, Darshan Lal son of Late Shri Nihal Chand, his father had purchased plot No.290 Gandhi Nagar. The sale deed was in favour of his favour exhibited PW2/A. Mutation was also effected in his father's favour, for the said plot. His father had filed a suit against MCD regarding the said plot wherein the plot No. was wrongly given 209 instead of 290. His father had bequeathed the said plot in favour of D.S.G.M. Committee. The said will is exhibited as Ex.PW3/A. The defendant did not cross examine PW1, PW2 and PW3 despite opportunity and the statement in evidence given by the plaintiff thus remained proved as the same were not controverted or rebutted. Again as narrated by PW4 Shamsher Singh an employee of D.S.G.C

at Gurdwara Rakab Ganj, who deposed that under D.S.G. Act D.S.G. committee is constituted and his section looks after the property of Delhi Gurdwara Management Committee. The said Nihal Chand was the owner of the said plot vide sale deed already exhibited, the will executed in his favour will also executed in his favour. Nihal Chand's death certificate exhibited as Ex.PW4/A. Even he narrated the similar facts as narrated by earlier witnesses and proved the certified copy of judgment in suit No.127/74 exhibited as Ex.PW4/D, decree sheet in that suit exhibited as Ex.PW4/E, the application form copying agency as marked X-1. In its cross-examination PW4 reaffirmed his deposition. DW1 narrated that land belongs to MCD and was earmarked as a park in layout plan and is in physical possession of MCD since very long back but nothing could be shown through any record or document by him regarding any title or right that there is any such park allotted or acquired by MCD. He could not tell the position of said plot prior to 1993. DW2 V.S. Harit, Deputy Director, Horticulture, MCD exhibited the site plan pertaining to 29.5.81 as Ex.DW2/1 but he could not show any document/record to show that MCD is the owner of the property in question. He also had no knowledge if the property in question at any time was acquired by MCD. Defendants have nowhere in its evidence disputed or contraverted about the said typed error i.e., plot No.209 instead of 290. Except for PW4, no other witness has been cross examined by defendant despite giving them opportunity. Plaintiff on whom the onus was to prove the first issue gets proved and confirmed as it is neither controverted nor rebutted by defendants at any stage. Defendants also could not prove their contention that the suit was filed with mala fide intention of grabbing the said land illegally with the help of Anti social elements. Defendants has miserably failed to show that the land belongs to MCD whereas all the documentary evidence as well as record affirmed plaintiff's stand. Therefore, this issue is decided in favour of plaintiff and against the defendant." (underlining added)

5. Surely, there is no illegality whatsoever in the impugned judgments because it is quite clear that the respondent/plaintiff had made an

error and which was to be corrected. The tragedy against the

respondent/plaintiff being that all that was to be done was that on coming to know of the mistake being made in the earlier proceedings, only an application had to be moved in the earlier proceedings under Section 152 CPC instead of filing the present suit. For whatsoever reason, the respondent's lawyers advised him to file the subject suit, which was filed way back in the year 1993, and today we are in the year 2014 in this unnecessary litigation.

6. Counsel for the appellant argued before this Court that appellant has a right to claim adverse possession of the suit land, however, I find that the issue of the ownership claim of the appellant on the basis of adverse possession was not at all raised before the Courts below, and the Courts below have therefore not addressed this aspect. If the appellant has a claim of adverse possession, and which plea in my opinion is probably inappropriate for a municipal body like MCD to raise, in any case that will be a subject matter when the respondent may want to take possession of the suit property. In the present case, the issue is only of correction of the plot number from 209 to 290, and which correction has rightly been allowed by the impugned judgments.

7. Counsel for the appellant also argued that there was a delay of 14 years in seeking correction, but in my opinion, in the facts of the case

such as the present limitation arises on each date till the mistake remains and really therefore there is no period of limitation unless and until there was a refusal by the appellant herein to agree to the correct plot number. That being so, I also fail to understand as to how the suit can be said to be delayed on account of having been filed after 14 years. I also note that no such issue of limitation was raised before the trial Court by the appellant-defendant.

8. In view of the above, this appeal is not only unnecessarily filed by the municipal authority whose officers ought to have acted in a more sanguine fashion, but also the appeal is really a sheer harassment of the respondent/plaintiff; and which is also clear from the fact that though the appeal had been filed with delay of 527 days, I have condoned the delay in the interest of justice as the main appeal was preferable for being argued instead of raising technical aspect of delay in filing the appeal. The appeal is therefore dismissed with costs of Rs.25,000/- and which costs shall be paid within eight weeks from today.

JANUARY 31, 2014
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VALMIKI J. MEHTA, J.