

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

Judgment Reserved on: April 25, 2014

Judgment Delivered on: May 08, 2014

+ **RFA(OS) 75/2014**

ASHA JOHRI

.... Appellant

Represented by: Mr.Sandeep Sethi, Sr.Advocate
instructed by Ms.Esha Mazumdar and
Mr.Setu Nickel, Advocates

versus

NEERJA RAJPUT & ANR

..... Respondents

Represented by: Mr.S.K.Sharma, Advocate with
Mr.Puneet Relan and Mr.Rahul
Sharma, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J.

1. The present appeal lays a challenge to the order dated February 28, 2014 passed by a learned Single Judge of this Court in CS(OS) No.930/2011 rejecting the appellant's prayer for a declaration of title to the terrace of the property bearing No.L-18, Kailash Colony, New Delhi.
2. A plot of land bearing Municipal No.L-18, Kailash Colony, New Delhi was sold by Navin Co-operative Development and House Building Society to one Smt.Kesra Devi under a registered sale-deed dated December 18, 1954. The operative part of the sale-deed reads as under:-

"...VENDOR doth hereby grant, convey, transfer, assign and assure unto the said VENDEE all that the piece of land on ground and the premises in the said plot of land described in the Schedule hereunder written together with all ways, paths, passages, rights, liberties, privileges, easements, benefits and

advantages of lights, appendages and appurtenances, whatsoever to the said plot of land, belonging or anywise appertaining or therewith usually held or reported as part and parcel thereof and all the estate, right, title and interest whatsoever of the VENDOR into or upon the said plot of land...”

3. Under a registered sale-deed dated January 20, 1960 Smt.Kesra Devi transferred her entire right, title and interest in the plot in question to one Smt.Mira Ajwani who constructed a residential building comprising a ground floor, a first floor and a barsati floor above. She did so after obtaining a sanction from the Municipal Corporation of Delhi. Though not pleaded by any party, relevant would it be to note that when Smt.Mira Ajwani constructed the building the applicable municipal bye-laws permitted a ground floor, a first floor and a barsati floor having 25% covered area of the ground floor which could be increased to 50% by paying a penalty. In other words the barsati floor had an open terrace in front of it and an open terrace above the roof of the barsati floor.

4. Under a registered sale-deed dated June 21, 1963, Smt.Mira Ajwani sold the first floor and the barsati floor to one Sh.Shabu Prem Chand Bhagwanani. The operative part of the sale-deed reads as under:-

“...the said Vendor does hereby sell, convey, transfer and assign by way of absolute sale the said first floor flat including Barsati with fittings and fixtures and with all rights, title, interests, access, easements, privileges and appurtenances thereto unto the Vendee, who has now become absolute owner of the same and the Vendor has now no claim, title, interest of concern in, upon or with the property hereby conveyed.”

5. Under a sale-deed dated May 05, 1975, Sh.Shabu Prem Chand Bhagwanani sold the first floor and the barsati floor to the appellant Smt.Asha Johri. The operative part of the sale-deed reads as under:-

“1. That in consideration of Rs.50,000/- the Vendor hereby transfers by way of sale to the Vendee all that property described in the Schedule hereto, TO HOLD the same as absolute owner.”

6. The Schedule referred to in the operative part of the sale-deed as recorded therein reads as under:

*“SCHEDULE OF PROPERTY SOLD CARPET AREA OF THE
PROPERTY FIRST FLOOR*

FIRST FLOOR

<i>a) Drawing cum dining room</i>	<i>19"-1½" x 10"-11" = 210 sq. feet.</i>
<i>b) Bed Room</i>	<i>9"-5¼" x 12"-1" = 114.41 sq.feet.</i>
<i>c) Bed Room</i>	<i>-do-</i>
<i>d) Kitchen</i>	<i>8"-7 ½" x 7" = 60.33 sq. feet.</i>
<i>e) Bath Room</i>	<i>4"-0" x 6" = 24 sq. feet.</i>
<i>f) Water closet</i>	<i>3"-6" x 6" = 21 sq. feet.</i>
<i>g) Front Varandah</i>	<i>8"-0" x 10"-11" = 87.33 sq.feet.</i>
<i>h) Back Varandah</i>	<i>8"-0" x 8" = 64 sq. feet.</i>

Total : 695.48 sq. feet.

Or Say 695.5 sq. feet.

<i>Stair case Area</i>	<i>9"-5 ¼" x 12"-1" = 114.41 sq. feet.</i>
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BARSATI

<i>a) Room</i>	<i>11"8" x 12" = 140 sq. feet.</i>
<i>b) Store room cum kitchen</i>	<i>(73"x59")</i>

(42"x39")

c) Bath

47"x76" (AC sheet roof cover)

d) W.C.

76"x44" (" ")

7. After a lapse of around forty years, vide a registered sale-deed dated November 06, 2006 the appellant sold the first floor to one Smt.Promila Gulati and one Smt.Kailash Kheterpal. Lest there be an issue with respect to the open terrace above the roof of the first floor i.e. said part of the roof of the first floor above which no further construction in the form of a barsati floor was made, in the sale-deed dated November 06, 2006 it was explicitly provided that the appellant was not transferring her right in the open terrace above the roof of the second floor, evidenced by clause 3 and 4 of the sale-deed which read as under:-

"3. That now the Vendor hereby sells, conveys, grants, transfers and assigns all her rights, titles, interests, claims, benefits in the said portion except the terrace rights preserved above the second floor by the Vendor, with super-structure standing therein, along with proportionate, undivided, indivisible and impartible share of ownership rights in the land beneath the same, including easements and appurtenances, whatsoever, pertaining to the said Portion TO HAVE AND TO HOLD THE SAME unto the Vendees, ABSOLUTELY & FOREVER.

4. That the Vendor admits that except for the terrace rights reserved above the Second Floor, she has been left with no rights, title, interest, claim or lien of any nature whatsoever in the said portion and the same has become the absolute property of the Vendees, with the right to use, enjoy, sell and transfer the same..."

8. On the same day the appellant executed another sale-deed in favour of one Smt.Neerja Mehta selling her the barsati floor, described in the sale-

deed as the second floor. In a recital to the sale-deed it has been recorded as under:-

“AND WHEREAS the Vendor for her bonafide needs and requirements, has agreed to sell the Entire Second Floor only, only barsati const on second floor with terrace right reserved by the Vendor, with super-structure standing therein, fittings and fixtures, with water and electric connection therein, of the property bearing No.L-18, situated at Kailash Colony, New Delhi, measuring 200 sq.Yds., together with proportionate, undivided, indivisible and impartible share of ownership right in the land underneath as per law of the land, (hereinafter collectively referred to as “The said portion”, unto the Vendee, for a total sum of Rs.20,00,000/- (Rupees Twenty Lacs only), and the Vendee has agreed to purchase the same from the Vendor, for the same amount.”

9. The operative part of the sale-deed, as per clause 3 and 4 thereof reads as under:-

“3. That now the Vendor hereby sells, conveys, grants, transfers and assigns all her rights, titles, interests, claims, benefits in the said portion except the terrace rights preserved above the second floor by the Vendor, with super-structure standing therein, along with proportionate, undivided, indivisible and impartible share of ownership rights in the land beneath the same, including easements and appurtenances, whatsoever, pertaining to the said Portion TO HAVE AND TO HOLD THE SAME unto the Vendees, ABSOLUTELY & FOREVER.

4. That the Vendor admits that except for the terrace rights reserved above the Second Floor, she has been left with no rights, title, interest, claim or lien of any nature whatsoever in the said portion and the same has become the absolute property of the Vendees, with the right to use, enjoy, sell and transfer the same...”

10. On June 07, 2010, Smt.Neerja Mehta executed a registered sale-deed and sold the second floor (barsati floor) to the respondent No.1, Smt.Neerja Rajput. The recital in the sale-deed reads as under:-

“ AND WHEREAS the Vendor...has agreed to sell the Entire Floor, including Open Terrace in Front, [without terrace rights above Second Floor] with super-structure standing therein, fittings & fixture, with water and electric connections therein, of the property...”

11. The operative part of the sale-deed, as per clause 3 and 4 thereof reads under:-

“3. That now the Vendor hereby sells, conveys, grants, transfers and assigns all her rights, titles, interests, claims, benefits in the said portion of the said property...”

4. That the Vendor admits that she has been left with no rights, title, interest, claim or lien of any nature whatsoever in the said portion of the said property and the same has become the absolute property of the Vendee, with the right to use, enjoy, sell and transfer the same...”

12. Respondent No.2, Dushyant Ajwani who is the grandson of Mira Ajwani claims that on May 14, 2002 his grandmother had executed a will in his favour as under:-

“I, Mira Ajwani aged about 81 years, wife of late Shri Lachhman Das, Ajwani resident of L-18, Kailash Colony, New Delhi-110048, do hereby execute this my last WILL in a sound disposing state of mind and hereby revoke and cancel all testamentary dispositions made by me hereto before.

I hereby appoint Sh.Krishan Kumar Arora, S/o Sh Hari Dev Arora R/o C-85, Greater Kailash – I, New Delhi-110049 as executor of my will.

I am the absolute owner of immovable property bearing House No.L-18, Kailash Colony, New Delhi-110048 Ground Floor

and 2nd floor terrace rights other than area under barsati and access thereto which I have already sold.

Whereas I am fully competent to dispose of the aforesaid property in any manner I like.

AND WHEREAS with a view to avoid any possible dispute amongst my legal heirs.

NOW, THEREFORE, of my own free will and without any pressure whatsoever from any quarter.

I hereby bequeath the aforementioned share in the property viz L-18 Kailash Colony, New Delhi-110048 as detailed above to my grandson Sh. Dushyant Ajwani S/o Sh Rajan Ajwani.

IN WITNESS WHEREOF I have signed this WILL of my own free will on 14th day of May, 2002 in the presence of the witnesses whose signatures appear hereunder

*(MIRA AJWANI)
TESTATOR”*

13. Respondent No.1 and 2 acting jointly started demolishing the existing building on February 01, 2011.

14. Appellant instituted the suit of which instant appeal arises seeking a declaration that she was the lawful owner of the terrace above the existing barsati floor (second floor) and thus the building could not be demolished. She sought a decree of permanent injunction restraining the respondents from constructing a third floor.

15. To appreciate the claim of the appellant it needs to be noted that as of the year 2011 the building bye-laws in Delhi has stood amended. Not only was a complete second floor having built up area equivalent to the ground floor permitted to be built but even a third floor was permitted to be built. In other words the terrace above the roof of the second floor could be built upon.

16. From the narratives of the fact above it would be apparent that the claim of the plaintiff/appellant was premised on the fact that Mira Ajwani sold to Shabu Prem Chand Bhagwanani the entire first floor and the barsati floor without reserving any right above the terrace of the roof of the barsati floor and thus she was left with title only to the ground floor. The right in the terrace above the existing barsati floor belonged to Shabu Prem Chand Bhagwanani. He in turn sold all his rights to the appellant. Under the sale-deed executed by her of the first floor in favour of Promila Gulati and Kailash Kheterpal she sold the first floor expressly recording that she was reserving her right in the second floor and the terrace above. On the same day when she sold the second floor to Neerja Mehta she expressly reserved her right in the terrace of the second floor. In the operative part of the sale-deed she clearly mentions that sale of the second floor by her would exclude the terrace right above the roof.

17. The response of the respondent was that when Mira Ajwani sold the first floor and the barsati floor to Sh.Shabu Prem Chand Bhagwanani she did not sell the terrace rights of the barsati floor to him and that she was the owner of the said terrace rights which she willed to her grandson Dushyant Ajwani. Smt.Mira Ajwani never sold the ground floor to anybody which she willed to the Dushyant Ajwani. Being the owner of the ground floor and the owner of the terrace above the barsati floor, Dushyant Ajwani could collaborate with Neerja Rajput, the owner of the barsati floor/second floor to reconstruct the barsati floor and raise further construction of a third floor thereon.

18. The learned Single Judge has returned a finding against Asha Johri and in favour of Neerja Rajput and Dushyant Ajwani. The reasoning of the learned Single Judge is that when Mira Ajwani sold the first floor and the barsati floor to Shabu Prem Chand Bhagwanani she did not sell the terrace

above the barsati floor and similarly when Shabu Prem Chand Bhagwanani sold the first floor and the barsati floor to Asha Johri he did not sell the terrace. With reference to the sale-deed dated May 05, 1975 where the built up property sold has been detailed in the schedule, noting the same in paragraph 11 of the decision, the learned Single Judge has opined in the next paragraph i.e. paragraph 12 of the decision, that while giving a complete description of the property sold there is an omission to make a mention of the terrace floor.

19. The issue raised in the instant lis between the parties brings into focus an interesting legal issue concerning immovable property. The law relating to property has an unenviable reputation for its complexity. The problem is not with property, but with conveyancing, since the latter is concerned with how rights in property are created and transferred.

20. The largest estate in land is absolute ownership, but in today's world, due to town planning and building bye-laws, since all urban land is held on certain conditions, the maxim : *cujus est solum, ejus est usque est ad coelum et ad inferos*, meaning that the owner of the soil is presumed to own everything up to the sky and down to the center of the earth, has become redundant; to be kept in the legal archives.

21. It is settled law that ownership is a bundle of rights and denotes the relation between a person and an object forming the subject matter of his ownership. It consists of a complex mass of rights, all of which are rights *in rem*, being good against all the world. Conventionally, 5 incidents of ownership are recognized. The first is the owner's right to possess the thing which he owns. The second is the owner's right to use and enjoy the thing owned. The third is the owner's right to consume, destroy or alienate the thing owned. Fourthly the duration for which the thing owned may be owned. Lastly and fifthly, the residual character of the thing owned.

22. In THE LAW OF REAL PROPERTY (6th Edition) by Megarry & Wade as edited by Charles Harpum, in para 3.049, the learned author has observed that the last century has seen much legislation, imposing on landowners, restrictions and liabilities in public interest, subjecting them to interference by public authorities. The learned author has observed that these statutes are of great importance, but they do not, generally speaking affect the principles of the law of real property. They restrict the liberties of landowners and so may affect, amongst other things, the price at which they can sell their land and the terms of sale. But the substance of the various possible transactions in land is not thereby altered: sales, settlements, leases, mortgages, and so on, continue as before.

23. Concept of avulsion or diluvion are not unknown to law. In the revenue laws their application is found in abundance. As observed by the learned author Charles Harpum, in para 3.045, the owner of every land is also entitled to land added by gradual accretion, as where his territory is extended by deposits caused by currents in the sea or in a lake or by the action of winds, or even by human action, provided that it is not the deliberate action of the claimant himself. Conversely the owner may lose part of his land from erosion, sometimes called avulsion or diluvion, brought about by similar causes. Where the land affected is subject to a lease, the tenant obtains the benefit of the accretion and the terms of the lease apply to it. But a conveyance or lease of land may be so worded as to exclude accretions or movements of boundaries altogether.

24. Change of FAR due to a town planning legislation would be akin to accretion or avulsion occasioned due to deposit or erosion. Existing rights to construct upon a plot of land conceived as a single entity plot by a town planning legislation get varied due to change in the town planning laws and

the benefit of additional FAR goes to the owner of the land. But what happens where different interests are created in the land?

25. Law recognizes fragmentation of ownership. Possession may be owned by one, the corpus by the other. Various rights of ownership can be distributed amongst different persons. Charles Harpum, the learned editor of the 6th Edition of THE LAW OF REAL PROPERTY, in para 3.046 has observed:-

“An owner can, if he wishes, divide his land horizontally or in any other way. He can dispose of minerals under the surface, or the top floor of a building, so as to make them separate properties.”

26. Immovable property is defined by Section 3 of the General Clauses Act, 1897 as including land, benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth. ‘Attached to earth’ is defined in Section 3 of the Transfer of Property Act as meaning (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

27. Where a ‘realty’ is transferred the law shall assume that everything appurtenant to, attached to and arising out of such realty is also transferred unless and express intent to the contrary is provided for in the sale-deed or ought to be necessarily implied.

28. The interplay of jurisprudence and current realities regulating space above land has been pithily brought out in the decision of the Gujarat High Court reported as (1988) 1 GLR 1 Indrachand Jaju v The Sub-Divisional Officer & Anr., wherein it was held : “*Legally speaking a piece of land,*

includes the following, elements: (1) A determinate portion of the earth's surface; (2) The ground beneath the surface down to the centre of the world. In this sense all the pieces of land in the Country meet together in one terminable point at the earth's centre; (3) The ground column of space above the surface ad infinitum. 'The earth' has, in law, a great extent upwards, not only of water, but of air and all other things even upto heaven; for cuius est solum ejus est usque est ad coelum. Whose is the soil, his it is up to the sky. He who owns the soil or surface of the ground, owns or has exclusive right to everything which is upon or above it to an indefinite height. Cuius est solum ejus est usque est ad coelum et ad inferos. To whomever the soil belongs, he owns also the sky and to the depths. The authenticity of this doctrine, however, is not wholly beyond dispute. It would prohibit as an actionable trespass all use of the air space above the appropriated surface of the earth, at whatever height this use took place, and however little it could affect the interests of the land owner. It may be that the law recognises no right of ownership in the distant airspace at all or at least no right of exclusive use but merely prohibits all acts which by their nature or their proximity interfere with the full enjoyment and use of the surface. Every unlawful entry by one person on land in the possession of another is a trespass and every expansion of one's land above another will amount to encroachment. Insofar as land is concerned a person trespasses upon land if he wrongfully sets foot on, or rides or drives over it, or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it. Though one is the owner of the air space over his land interference with the air-space over land by things other than air-craft will be regarded as trespass and as an encroachment. The slightest entry into air-space over one's land would be trespass. It

means if one owns a portion of the earth's surface, one also owns anything below or above that portion which is capable of being reduced into private ownership. A distinction has to be made between infusion into the air-space by things other than aircraft. Insofar as aircraft is concerned the intrusion is regulated by statute. If the injury is direct and immediate and the air space is in the Plaintiff's possession the question arises how much of the air space is capable of ownership or possession. Several theories have been advanced. If, A projects anything into B's area of ordinary user that will amount to encroachment."

29. As very lucidly explained by Wall Ulah, J. (concurring) in the decision reported as AIR 1951 All 867 Municipal Board v. Manohar Lal, it was observed as under:-

*"I desire, however, to guard against a possible misapprehension. In my view, the general rule embodied in the maxim, *cujus est solum, ejus est usque ad coelum et ad inferos* (whose is the soil, his it is even to the skies and to the depths below) has been considerably curtailed and qualified in recent times. This has been principally due to the development of aeronautics and consequently of the aeronautical law during the past few years. Speaking about the maxim Prof. Winfield in his well known 'Text-book of the Law of Torts' (1948) Edn. 4. P.318 says :*

'It is one of those unfortunate scraps of Latin that has become nothing but a clog round the neck of development of our law. If it were anything like the truth, the law would be simple enough for the slightest entry into the air-space over one's land would be trespass, whatever other tort it might or might not be. But it is almost certainly too wide. It has been grievously misunderstood and misapplied so far as the upward limit is concerned. All that it means is that if one owns a portion of the earth's surface, one also owns anything below or above that

portion which is capable of being reduced into private owners.'

Again, Sir Arnold McNair, in his book on the Law of the Air (The Tagore Law Lectures of 1931), chap. II, has summarised the researches made by him on the question how much of the air space is capable of ownership of possession. He has suggested two theories: (i) prima facie a surface owner has ownership of the fixed contents of the air-space and the exclusive right of filling the air-space with contents, and alter, natively (ii) prima facie a surface owner has ownership of the fixed contents of air space and the exclusive right of filling the air space with contents and ownership of the air space within the limits of an 'area of ordinary user' surrounding and attendant on the surface and any erections upon it. Of these, he prefers the first. As Prof. Winfield in his book referred to above points out, however, the second theory appears to be preferable to the first. What is the area of ordinary user will naturally very largely depend upon the facts of the individual case which comes up for decision before a Court of law."

30. The same limitation was explained by the Queens Bench in the decision reported as [1978] Q.B. 479 Bernstein of Leigh (Baron) v Skyviews & General Ltd, *"The problem is to balance the rights of an owner to enjoy the use of his land against the rights of the general public to take advantage of all that science now offers in the use of air space. This balance is in my judgment best struck in our present society by restricting the rights of an owner in the air space above his land to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it, and declaring that above that height he has no greater rights in the air space than any other member of the public."*

31. The above view has also been subscribed in many other judicial pronouncements in common law such as [2013] UKUT 214 (LC) Stynes v Western Power (East Midlands) Plc and [1997] A.C. 655 Hunter v. Canary Wharf Ltd.

32. The Supreme Court of United States in the landmark judgment reported as 328 U.S. (1946) United States v. Causby held, “*It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe—Cujus est solum ejus est usque ad coelum. But that doctrine has no place in the modern world.*”

33. The said judgments evince that the owner of a property is entitled to the ‘space’ on either direction of his immovable property to the extent that it does not encroach upon the rights of any other person. Thus, a person is entitled to dig a hole in his ceiling to fix a fan. However, he is estopped by law from piercing a hole deep enough to penetrate the floor above his ceiling because in doing so he would be contravening the rights of the person who owns the floor above. Similarly, a person in ownership of the ground floor in a building would have a right to construct a basement beneath the existing ground floor and a right to raise a construction vests in the person who enjoys ownership of the floor right below the roof.

34. Moving on, it is pertinent to discuss whether the sale of a floor property would also encompass the transfer of ownership of a terrace above.

35. As held in the decision reported as AIR 1954 Ajmer 63 Makhanlal & Ors. V. Lala Laksmi Chand & Ors., wherein it was observed: “*I agree that ordinarily the roof goes along with the room, being treated as a part of it and in view of the general law that any person owning a piece of ground owns all the space over it.*” it would be apparent that a terrace goes along with the roof and does not require any express covenant so stating.

36. In the decision reported as 2012 GLH (2) 654 Vrajmoti Corporation v. Ambawadi Apartments Owners Association & Ors. the High Court of Gujarat held as under:-

“It is required to be mentioned that learned Counsel, Mr. Soni has referred to the Oxford Dictionary for the purpose of meaning of terrace, which reads

Terrace. 1. Raised level place, natural or artificial, esp. raised walk in garden or level space in front of building on sloping ground; (geol) horizontal shelf or beach bordering river, lake, or sea.

2. Row of houses on raised site or on face of rising ground; row of houses of uniform style built in one block. ~ v.t. Form into, furnish with, terrace(s).

14. Again, the word 'roof is defined as upper covering the use of the building. Meaning thereby, when the flat or the unit is constructed, obviously it need to have roof as a ceiling. In multistoried building like the flats consisting of more than two levels, a ceiling or roof of one unit or the flat would be a flooring for the flat or the unit at the next higher level”

As stated above, the portion or the roof is ceiling to the building and it would be forming a ceiling of the flat at the last floor, which cannot be claimed as an exclusive property or exclusive right for use by anybody either members or the even Organizer or such association like the appellant-plaintiff that they have right to use make such right of terrace or building for their own commercial purpose and the right is denied to the independent flat holder. If that is permitted, it would also amount to negating the right of flat or unit holder to enjoy the amenities and facilities, which is allotted to them in as much as if the terrace is permitted to be used, it could be used for the commercial purpose like restaurant or any other purpose where there is in grace or out grace of the people, which in turn would create nuisance for the allottees of the flats and it would affect their right of peaceful enjoyment of the flat or the unit allotted to them.

15. The word roof as discussed above is a ceiling and it would be covered by definition of common areas and facilities and, therefore, the terrace would certainly form a part of the flat, which is allotted and sold to the respective flat holders or unit holders on ownership basis”

37. It is thus apparent that the view taken by the learned Single Judge overlooks the jurisprudence on the subject and the case law.

38. The appeal is allowed. The impugned order dated February 28, 2014 is set aside. Suit filed by the appellant is decreed declaring that the appellant is the lawful owner of the terrace above the barsati floor of property No.L-18, Kailash Colony, New Delhi – 110048 and that the Will dated May 14, 2002 executed by Mira Ajwani in favour of Dushyant Ajwani is void. It is declared that Mira Ajwani had no right, title or interest in the terrace above the barsati floor on the date when she died.

39. Noting that the respondents have already demolished the barsati floor and probably the existing first floor it is decreed that said respondents would have no right to construct above the second floor and that the terrace above the roof of the second floor shall be the property of the appellant who would have a right to construct thereon as per the Municipal Bye-laws.

40. Parties shall bear their own costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

CHIEF JUSTICE

MAY 08, 2014
Mamta/Skb