

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

% **Date of decision: 10th October, 2018.**

+ **RSA 36/2018 & CM No.7634/2018 (for condonation of 80 days delay in re-filing the appeal)**

SAROJ AGGARWAL **Appellant**

Through: Mr. Praveen Suri, Adv.

Versus

MEHAR SINGH & ORS **Respondents**

Through: Mr. Yogendra Kumar Dwivedi, Adv.
for R-1&2.

Mr. Nirmal Kumar Agarwal, Adv. for
R-3.

Mr. Dhanesh Relan, Ms. Komal
Sarout and Ms. Mrinalini Sharma,
Adv. for SDMC.

Mr. P. Raman Kumar Singh, Addl.
SHO, Uttam Nagar.

Mr. Jai Kishan Gautam, R-6 in person.
Mr. Amarjeet Kumar, Adv. for R-7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 5th August, 2017 in RCA No.325/2016 of the Court of Additional Senior Civil Judge (West)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 12th July, 2013 in Suit No.221/2010 of the Court of Civil Judge (Central)-05] of dismissal of the suit filed by the appellant/plaintiff for permanent and mandatory injunction.

2. This appeal came up first before this Court on 26th February, 2018 when, without expressing any satisfaction of the appeal entailing any substantial question of law and without framing substantial question of law, notice of the appeal was ordered to be issued. In the order dated 10th July, 2018, it was recorded, that respondents/defendants No.1 to 3 and 6 to 9 were reported to be served and the notice issued to respondents No.4&5 remained unserved; the counsels for respondent No.7 Mukesh Sharma, respondent No.6 Jai Kishan Gautam and respondent/defendant No.2 Laik Ram appeared. The counsel for the appellant/plaintiff, on that date was unable to satisfy this Court that the appeal entails any substantial question of law. Finding that the respondent/defendant No.4 Master Rajesh had not contested the suit, his service was dispensed with and subject to the appellant/plaintiff depositing costs of Rs.10,000/-, the hearing was adjourned to today for service of respondent/defendants No.5.

3. The counsel for the appellant/plaintiff states that costs have been deposited and has furnished the proof thereof to the Court Master, who confirms.

4. Though the report of summons issued to respondent/defendants No.5 is that he is unserved and with the further endorsement that he has sold the property but the counsel for the appellant/plaintiff states that the appellant/plaintiff has filed affidavit of service of respondent/defendant No.5 Parveen.

5. Today, only the counsel for respondent/defendant No.3 Vinod Sharma, respondent No.7 Mukesh Sharma, respondent No.6 Jai Kishan Gautam in person, counsel for the respondents/defendants No.1&2 Mehar Singh and

Laik Ram and the counsel for the respondent/defendant No.8 Municipal Corporation of Delhi (MCD) appear.

6. The unrepresented respondents are proceeded against *ex-parte*.

7. The counsel for the respondent No.8 MCD states that respondents No.6&7 Jai Kishan Gautam and Mukesh Sharma were not parties to the suit or the first appeal and have been impleaded for the first time in this Regular Second Appeal.

8. The counsel for the appellant/plaintiff admits his mistake and states that the respondents No.6&7 be deleted from the array of respondents. It is explained that they were parties to a contempt petition filed in the suit and have been erroneously made parties in this appeal.

9. The names of respondents No.6&7 Jai Kishan Gautam and Mukesh Sharma are deleted from the array of respondents.

10. The Court Master to make an endorsement on the memorandum of parties under his signatures to the said effect in today's date.

11. The appellant/plaintiff, in the suit claimed the reliefs of (i) permanent injunction restraining the respondents/defendants from interfering in peaceful use and occupation and enjoyment of the appellant/plaintiff and the residents of Aggarwal Apartments of land admeasuring 4 bighas 15 biswas in Khasra No.319 of Village Nawada, New Delhi; (ii) permanent injunction restraining the respondents/defendants from causing any damage to the gate installed at the said Aggarwal Apartments; (iii) permanent injunction restraining the respondents/defendants from illegally colonising or carrying on unauthorised construction in agricultural land adjacent to the land of

Aggarwal Apartments; and, (iv) mandatory injunction directing the respondents/defendants to provide electricity, water, sewerage and road facilities and other amenities to Aggarwal Apartments.

12. The Suit Court dismissed the suit *inter alia* reasoning that the appellant/plaintiff claimed only an agreement to sell, power of attorney, affidavits, receipts, Will etc. with respect to the said property in his favour and which documents did not constitute valid documents of transfer and thus the appellant/plaintiff could not be said to be the owner of the land and the appellant/plaintiff was thus not entitled to any relief.

13. The First Appellate Court has agreed with the reasoning of the Suit Court.

14. Before this Court also, on 10th July, 2018, it was the contention of the counsel for the appellant/plaintiff that ***Suraj Lamps & Industries Private Limited Vs. State of Haryana*** (2012) 1 SCC 656, relying whereupon the Suit Court and the First Appellate Court have declined the relief to the appellant/plaintiff, is prospective only and has no retrospective operation.

15. The counsel for the appellant/plaintiff has today referred to ***Maya Devi Vs. Lalta Prasad*** (2015) 5 SCC 588 to buttress his contention.

16. I am unable to read ***Maya Devi*** supra as confirming the contention of the counsel for the appellant/plaintiff. The observations of ***Maya Devi*** supra relied upon are in entirely different context. I have in ***Bishan Chand Vs. Ved Prakash*** 2018 SCC OnLine Del 11408, ***Chanchal Devi Vs. DDA*** 2018 SCC OnLine Del 11068 and ***DDA Vs. Kumud Makhija*** 2018 SCC OnLine Del 11075 dealt in detail with the said aspect.

17. However, the need to go into the said aspect is not felt, as the counsel for the respondent//defendant No.3 Vinod Sharma states that the respondent/defendant No.3 has filed a reply to this Regular Second Appeal stating that the respondent/defendant No.3 will not interfere with the property claimed by the appellant/plaintiff.

18. The counsel for the appellant/plaintiff states that before the Suit Court, only the respondents/defendants No.3&5 Vinod Sharma and Parveen, besides respondent/defendant No.8 MCD, had contested the suit. The counsel further states that of all the reliefs claimed, he is seeking only the relief of permanent injunction restraining the private respondents from interfering with the property as described in the plaint and is not pressing for the other reliefs claimed in the plaint and if entitled to, will seek a separate remedy therefor.

19. As aforesaid, respondent/defendant No.5 Parveen inspite of service, has failed to appear and has been proceeded against *ex-parte*.

20. The counsel for the respondents/defendants No.1&2 Mehar Singh and Laik Ram also, on enquiry states that the said respondents/defendants will not interfere with the property subject matter of the suit.

21. In view of the aforesaid, this appeal is disposed of binding the respondents/defendants No.1 to 3 with their statements aforesaid and restraining the respondents/defendants No.4&5 Master Rajesh and Parveen from interfering with the property subject matter of the suit. It is however made clear that the fact that this Court has so bound/injuncted the respondents/defendants No.1 to 5, will not be any reflection on the title, if any claimed by the appellant/plaintiff to the property and the

governmental/municipal authorities concerned shall remain entitled to take all actions in accordance with law with respect to the property as they may be entitled to.

RAJIV SAHAI ENDLAW, J.

OCTOBER 10, 2018

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