

*

HIGH COURT OF DELHI AT NEW DELHI

+

R.S.A. No.193/2007 & C.M. No.1354/2015

Decided on : 23rd February, 2015

ANGURI DEVI

..... Appellant

Through: Mr. Rahul Srivastava & Mr. Kumar
Harsh, Advocates.

Versus

RAM CHANDER & ORS

..... Respondents

Through: Mr. Hamilton Simpsor, Adv. for R-1 & 2.
Mr. Kumar Rajesh Singh, SC for EDMC
for R-3.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 24.1.2007 passed by the learned Additional District Judge allowing the appeal of the respondents/defendants.

2. On 28.10.2010, my learned predecessor had framed the following substantial question of law :-

“Whether the impugned judgment dated 24.1.2007 had misconstrued and misread the document, i.e., the sale deed exhibited as Ex. PW 1/1 and the rectification deed exhibited as Ex. PW 1/1A? If so, its effect?”

3. Before dealing with the aforesaid question, so-called substantial question of law, it may be pertinent here to give brief background of the case. The present appellant filed a suit for permanent injunction against the respondents/defendants. The case which was setup in the plaint was that she was the owner of a parcel of land bearing No.148, Gurhai Mohalla, Circular Road, Shahdara, Delhi-110032. It has been averred that she has purchased the aforesaid property from her father-in-law one Bhagwan Dass vide sale deed dated 16.7.1997 registered on 29.9.1997. It was alleged that premises bearing No.146 has a four feet lane at the back of the house of the plaintiff and in front of the defendant's house No.148. It was alleged that in or about September, 1997, the defendant was collecting material for construction by way of cement, bricks, etc. and engaging labour for the purpose of opening a door at the back of property No.146 and thereby seeking to convert a window into a door which would fall on the front side of the house of the plaintiff. On the basis of this cause of action the suit is purported to have been filed on 4.9.2001 and accordingly, a restraint order was sought against the respondent/defendant on permanent basis seeking removal of the gate and replacement of the same by way of a window and further seeking a

restraint that he should not open the gate at the back of property No.146 and in front of property No.148. The suit was defended by the defendant/respondent. On the pleadings of the parties, following issues were framed:-

- “1. Whether plaintiff is entitled to relief of permanent injunction as claimed? OPP*
- 2. Whether plaintiff is entitled to relief of mandatory injunction as claimed? OPP*
- 3. Relief.”*

4. The parties adduced their respective evidence and the suit for permanent injunction was decreed in favour of the present appellant/plaintiff. The respondent/defendant feeling aggrieved by the said judgment and decree passed by the trial court on 6.12.2005 preferred an appeal before the court of learned Additional District Judge. The court of the learned Additional District Judge reversed the finding by observing as under :-

“11. The respondent No.1 in her plaint has also mentioned that she got sanctioned the site plan from MCD vide sanction resolution No.2 (iii) dated 18.12.1956. Photocopy of this sanctioned site plan was filed alongwith the plaint and later on exhibited as Ex.

PW-1/5. The copy of the same site plan Ex. PW-1/5 has been annexed with partition deed dated 4.10.1956 which has been mentioned in report dated 4.9.2006 filed on 9.9.2002 on behalf of the MCD. The site plan annexed with the Partition Deed is on page 374 of the trial court record. The translation of the Partition Deed is on paged 375 to 381 of the trial court record. As per the report dated 4.9.2002 the Partition Deed was provided to MCD official by Smt. Anguri Devi the plaintiff in the main suit and respondent No.1 in this appeal. The sanctioned plan Ex. PW-1/5 is in Urdu, however, this is the same plan which is annexed with the Partition Deed provided by Smt. Anguri Devi plaintiff in the main suit as mentioned earlier it is at page No.374 of the judicial file, it is only the photocopy after reduction. In this Partition Deed as well as the site plan shows chabootra in north of the property No.148. In the main property it has been shown in north as door of the house and chabootra and gali it has been mentioned as “north – door, house and chabootra and gali” for the portion of Sh. Bhagwan Dass in the north it has been mentioned as the door of the house and chabutra and gali and passage, house of Sh. Jamna Dass.

12. This is the site plan which shows chabootra in north of the property. These documents show that chabootra was never part of property no.148. The Sale deed Ex.PW1/1 is in favour of Smt. Anguri devi. It has been executed by Sh. Bhagwan Dass father-in-law of Smt. Anguri Devi. It is also in respect of property no.148 Guryahi Mohalla, Circular Road, Shahdara, Delhi-110032. IN this Sale deed the area of property has been mentioned as 42 square yards approximately. In the north of this property gali has been shown. This Sale Deed dated 16.7.1997 also mentions regarding Partition Deed registered on 08.05.1957. The Rectification Deed is dated 28.03.2000 which is Ex.PW1/1A. In this

Rectification Deed Sh. Bhagwan Dass has mentioned regarding the Sale Deed Ex.PW1/1 dated 16.07.1997. It has been mentioned on page 2 of this Rectification Deed regarding open space (chabootra). Sh. Hari Shankar, Advocate who had been representing the plaintiff and also her husband is also one of the witnesses to the Rectification Deed Ex.PW1/1A. He has also drafted this Rectification Deed dated 28.03.2000. This Rectification Deed is after withdrawal of suit filed by Sh. Ram Chander which has also been mentioned on page 2 para 4 of the plaint. Para 4 has again been numbered at page 4 of the plaint. This suit was withdrawn on 14.01.2000. It is the admitted case of the parties that in that suit which was withdrawn on 14.01.2000 nothing was mentioned regarding chabootra. That was the best available opportunity for Smt. Anguri Devi. It appears that after withdrawal of the case filed by Sh. Ram Chander, Anguri Devi got this document i.e. Rectification deed Ex.PW1/1A fabricated in order to show chabootra. Even though it is clear that the sanctioned plan Ex.PW1/65 and the Partition Deed provided by Smt. Agnuri Devi to the MCD official as referred above does not mention about the same to be part of the property no.148 i.e. of Smt. Anguri Devi. The whole case revolves around the dispute regarding chabootra. The plaintiff Smt. Anguri Devi has averred in her plaint especially page 3 para 4, para 7, para 13 of the plaint etc. regarding chabootra as if chabootra is of plaintiff.

13. Regarding the iron gate etc. and the door it is the admitted case that prior to filing of the suit no.30/05 titled Anguri Devi v. Ram Chander etc. these were in existence.

14. The plea of learned counsel for the respondent No.1 regarding site plan filed along with the appeal has due force. It cannot be considered at this stage. However,

regarding arguments that since the appeal has been withdrawn against respondent no.3 to 14, therefore, judgment is enforceable against them is not tenable as per the well settled proposition of law.”

5. The contention of the learned counsel for the appellant is that the learned first appellate court's finding is suffering from perversity on account of the fact that it has failed to take note of the fact that not only the appellant had purchased originally the property in question bearing No.148 measuring 42 square yards but the same was rectified by way of a document of rectification exhibit PW 1/1A which was showing that *chabutra* was forming part of the original sale deed executed by Bhagwan Dass in favour of the appellant which was inadvertently omitted. It has also been contended that the aforesaid *chabutra* had fallen to the share of Bhagwan Dass in pursuance to the partition which was effected in the year 1956 and there was documentary evidence on record brought from the MCD that the *chabutra* was not a part of the *gali* which was at the back of the property No.146 and in front of the property No.148 and, therefore, the reasoning on the basis of which the first appellate court has overturned the finding of the trial court is bereft of any logic, merit and suffers from perversity as it has failed to take into consideration the

documents relied upon by the appellant. This is precisely stated to be a substantial question of law.

6. I have considered the submission made by the learned counsel for the appellant and have gone through the record especially the documents exhibit PW 1/1 and PW 1/1A. The first document is a document of sale deed purported to have been executed by Bhagwan Dass in favour of the present appellant in respect of suit property bearing No.148. The sale deed shows that what was purchased by the present appellant was a parcel of land measuring 42 square yard and the built-up structure thereon. The nature of properties appearing on the different directions of the suit property was also given in the sale deed as well as in the site plan annexed to the plaint which was duly proved. The rectification deed, which has been executed in the year 2001 shows that the *chabutra*, which was at the back of property No.146 and in front of property No.148, was also part of the sale transaction between the present appellant and her father-in-law, Bhagwan Dass. If that is taken, so then the total area of the plot of land which is purported to have been sold by Bhagwan Dass to the appellant gets increased to approximately 51.6 square yards. But

curiously this area with regard to the two transactions has not at all been mentioned in the plaint.

7. In addition to this, the learned counsel has also brought to the notice of the court that prior to filing of a suit by the appellant, the respondent had also initiated an action against the appellant when no rectification deed was executed by Bhagwan Dass in favour of the appellant. At that point of time also, the bone of contention between the parties was *chabutra*. The respondents/defendants had filed a suit for injunction against the present appellant stating that she should not stop their easementary right of light and air. The suit was dismissed as not pressed on account of the statement purported to have been made by the present appellant stating that she will not raise any construction so as to stop their air and light. It is after this suit was filed that the present appellant decided to have an in-house rectification deed from Bhagwan Dass in favour of his daughter-in-law so as to overcome this problem. It is in this context that the first appellate court has observed that the document is only an afterthought.

8. Curiously enough, in the plaint also, the appellant does not give the area of her plot of land in terms of both the original sale deed and the rectification deed. In the light of the aforesaid defects and mismatch in the pleadings and the evidence produced by her, I find that there is no perversity in the finding returned by the first appellate court. Consequently, in my considered opinion, there is no substantial question of law involved in the matter. Therefore, the question framed by the learned predecessor is answered accordingly and the present appeal is dismissed.

V.K. SHALI, J.

FEBRUARY 23, 2015
‘AA’