

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

+ **RSA No.34/2015**

Decided on : 21st January, 2015

RAM KISHAN Appellant

Through: Mr.Manoranjan, Adv.

versus

RAMESH KUMAR & ORS Respondent

Through

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI
V.K. SHALI, J. (ORAL)

C.M. No.1164/2015

1. Allowed subject to deficiency being rectified.
2. The application stands disposed of.

C.M. No.1165/2015

1. This is an application seeking condonation of delay of 10 days in refilling the appeal.
2. For the reasons stated in the application, as sufficient cause has been shown, the delay as prayed for is condoned and the application is allowed.

R.S.A. No.34/2015

1. I have heard the learned counsel for the appellant. It has been contended by the learned counsel for the appellant that the learned trial court as well as the first appellate court have fallen into an error by directing the MCD to take such appropriate action as may be deemed fit with respect to the encroachment/unauthorized construction on public land. It has been contended that instead of passing such a direction, a mandate ought to have been issued to the MCD to remove the encroachment/unauthorized construction on the public land.

2. The appellant/plaintiff had filed a suit for mandatory and permanent injunction against the private respondents and the MCD. The private respondents (respondent Nos.1 & 2 herein) happened to be his cousins and co-owners of the suit property. The allegation made in the plaint was that the respondent Nos.1& 2 had allegedly made unauthorized construction on the property in question and, therefore, a direction be given to the respondent No.3 that is MCD to remove the unauthorized construction as well as also pass a decree of permanent injunction against respondent Nos.1 & 2 from raising any

further construction.

3. The suit of the plaintiff/appellant was contested by all the respondents.

4. After completion of pleadings, issues were framed, which are as under:

- i) Whether the plaintiff is entitled to the relief of permanent injunction? OPP.
- ii) Whether the plaintiff is entitled to the relief of mandatory injunction? OPP.
- iii) Relief.

5. Issue No.1 is with regard to the fact that as to whether the appellant/plaintiff was entitled to grant of permanent injunction and as to whether the plaintiff was entitled to mandatory injunction. The trial court, after analyzing the evidence came to the finding that the plaintiff is not entitled to permanent injunction as he has not been able to establish as to when the unauthorized construction was raised. It was also commented upon by the learned trial court that the appellant/plaintiff was guilty of concealment of material information inasmuch as he himself was co-owner of the property and they (appellant/plaintiff and respondent Nos.1 & 2) had encroached on the

public land and, therefore, the court did not exercise discretionary jurisdiction in favour of the appellant/plaintiff. The prayer for grant of mandatory injunction in favour of the appellant was also denied to the appellant/plaintiff observing that he was not able to establish his case. However, an opportunity was given to the MCD (respondent No.3 before the trial court) that in case it feels it appropriate to remove the unauthorized construction/encroachment on public land, it may do so in accordance with law.

6. The present appellant feeling aggrieved preferred first appeal. The first appellate court after hearing the learned counsel for the appellant/plaintiff visited the entire evidence afresh and agreed with the findings of the trial court and dismissed the appeal. Thus, there was a concurrent finding recorded by the two courts below with regard to the rights to which the appellant/plaintiff was entitled to.

7. Still not feeling satisfied, the present regular second appeal has been filed by the appellant/plaintiff. It has been contended that the evidence is overwhelming to show that the plaintiff was entitled to permanent injunction as well as mandatory injunction. The learned counsel has taken the court through some portion of the evidence

recorded by the trial court to canvass his point.

8. I have considered the submissions made by the learned counsel for the appellant.

9. I do not find any fault with the findings returned by the two courts below with regard to the appreciation of evidence produced by the appellant in order to prove his claim for permanent injunction. Rather, it has taken note of the fact that appellant has not been truthful in telling the facts. As regards mandatory injunction, it has directed the MCD to remove unauthorized construction or encroachment on public land which is perfectly valid. Apart from that, there is no question of law involved in the matter much less a substantial question of law.

10. Accordingly, the present appeal does not merit any consideration and the same is dismissed.

V.K. SHALI, J

JANUARY 21, 2015/dm