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

+ **Date of Decision: 23.11.2015**

% **RSA 383/2015 and C.M. No.26099/2015**

RAVINDER SINGH & ORS Appellants
Through: Mr. Harcharan Singh, appellant No.2
in person.

versus

BHAGWAN SINGH & ANR Respondents
Through: Mr. Pankaj Vivek & Ms. Anupriya
Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. It has been brought to the notice of Mr. Arvind Kumar Sharma, learned counsel for the appellants that the appellants have made a complaint against the undersigned making several personal allegations therein. On this being brought to the notice of learned counsel, he submits that the said communication was sent by the appellants on their own and he is not aware of this action of theirs. He seeks discharge in the matter. Accordingly, he is discharged.

2. Mr. Harcharan Singh, appellant No.2 is present in Court and he has chosen to advance his submissions on the appeal, which have been heard. Accordingly, I proceed to dispose of the appeal.

3. The present second appeal is directed against the judgment and decree dated 28.09.2015 passed by the Additional District Judge-01, New Delhi District, Patiala House Courts, New Delhi in RCA No.9/2014, whereby the said first appeal preferred by the appellants/ defendants against the judgment and decree dated 31.07.2014 passed by the Trial Court, namely the SCJ/ RC, South West, Dwarka Delhi in Civil Suit No.88/2014 – in the suit of the respondents/ plaintiffs, has been dismissed.

4. The respondents/ plaintiffs had preferred the civil suit for permanent injunction on the premise that the plaintiffs and defendants are related, as they hail from common ancestors and are permanent residents of village Rajokari, New Delhi. The plaintiffs claimed that their grandfather, namely Sh. Duli Chand was co-Bhumidhar of the land situated within the revenue estate of village Rajokari, New Delhi. Late Sh. Duli Chand had three sons namely Sh.Mewa Ram, Sh. Raghubir Singh and Sh. Om Prakash. Late Sh. Raghubir Singh was the father of the plaintiffs and Sh. Om Prakash/ defendant No.4 is the father of defendants No.1, 2 & 3. Late Sh. Mewa Ram was the father of defendants No.6 & 7. Defendant No.5 – a brother of the plaintiffs was impleaded as a proforma defendant along with defendants No.6 & 7, against whom no relief was sought.

5. The plaintiffs claimed that their grandfather, namely Late Sh. Duli Chand got his share admeasuring 8 bighas and 2 biswas comprising in Khasra No.1023/1 (1-9), 1022 (4-16), 1021 (5-6), 1015 (1-5) and 1016 (4-16) in the Village Rajokari, New Delhi. After the demise of late Sh. Duli Chand, his three sons, namely Sh. Mewa Ram, Sh. Raghubir Singh and Sh. Om Prakash came into joint possession of the suit property. Subsequently,

Sh. Mewa Ram and Sh. Raghubir Singh also expired and their successors came into joint possession of the suit property. The plaintiffs further averred that the parties had constructed their independent three separate houses in the front portion of the said property for their use and occupation and the back portion has been used for traditional cultivation and other agricultural purposes jointly by all the parties.

6. The plaintiffs further stated that there is a passage of about 15 feet left in between the houses of the plaintiffs and defendants No.1 to 4 for ingress and egress from the land/ field situated in the back portion of the said property. A site plan showing the same was also filed by the plaintiffs. The plaintiffs stated that they had been using the said passage since 1983-84, i.e. since the construction of the houses in the suit property for the last about more than 25 years without any hindrance.

7. The plaintiffs alleged that on 04.08.2008, defendants No.1 to 4 installed an iron bar in between the common passage in the absence of the plaintiffs, thereby causing hindrance in the movement of tractor, bullock cart, etc. The plaintiffs also alleged that on 16.04.2009, the defendants No. 1 to 4 dumped 3-4 trucks of malba in the field in an illegal manner, causing soil destruction so as to make the land uncultivable. With this grievance, the plaintiffs filed the said suit seeking a decree of permanent injunction against defendants No.1 to 4 to restrain them from making the aforesaid land admeasuring 8 bighas and 2 biswas uncultivable by dumping any malba. They also sought a decree of mandatory injunction against the defendants No.1 to 4 to seek a direction that they remove the iron bar/ angle installed in the middle of the abovesaid common passage. They also sought a

mandatory injunction against the defendants, to remove the malba dumped in the above said land.

8. Common written statement was filed by defendants No.1 to 6 admitting that there was a passage of 15-feet in between the houses of the plaintiffs on the one hand and defendants No.1 to 4 on the other hand, and that the defendants had ingress and egress to the back side of the property from the said passage, and it was being used by all the parties for approaching the rear portion. On account of the defence raised by the defendants, the Trial Court framed the issues on 08.11.2010 as follows:

- (i) Whether the plaintiff is entitled for a decree of permanent injunction as prayed for in the plaint? OPP
- (ii) Whether the plaintiff is entitled for a decree of mandatory injunction as prayed for in the plaint? OPP
- (iii) Relief.

9. The parties led their respective evidence. Vide judgment and decree dated 13.01.2014, the Trial Court decreed the suit of the respondents/ plaintiffs against the defendants No.1 to 4 directing the said defendants to remove the iron bar/ angle installed in the middle of the common passage shown in the site plan Ex.PW-1/D-1 and also directed the said defendants to remove malba, if any, dumped in the said common passage between the houses of the plaintiffs and the defendants No.1 to 4.

10. The defendants herein preferred the first appeal. The First Appellate Court vide order dated 03.04.2015 set aside the judgment dated 13.01.2014

to the limited extent that issue No.3 in the suit had not been adjudicated which was: “*Whether by filing the present suit, the plaintiff is misusing the process of law?*”. The suit was remitted back for adjudication in the light of the said order. The Trial Court vide judgment & decree dated 31.07.2014 again passed a detailed judgment & decree, decreeing the suit of the respondents/ plaintiffs. The relief granted to the respondents/ plaintiffs earlier vide judgment and decree dated 13.01.2014 was maintained. Consequently, the appellants/ defendants preferred the regular first appeal being RCA No.9/2014 which, as aforesaid, has been dismissed by the First Appellate Court with a slight modification. Hence, the present appeal.

11. The submission of the appellant No.2 is that the respondents/ plaintiffs are in use and occupation of the area which would fall to their share on a partition of the suit property, and that they have no right to access or use any portion of the rear open area behind the constructed houses of the parties. He submits that by seeking access to the rear open portion, the respondents/ plaintiffs are seeking to use and occupy the area which would be in excess of the area which would fall to their share, and thereby use and occupy the portion which would fall to the share of the appellants. He further submits that the appellants, in their evidence, have not admitted to have either raised the iron bar, or to the fact that the open land falling on the rear portion belongs to the plaintiffs as their share.

12. On the other hand, learned counsel for the respondents has drawn the attention of the Court to the averments made by the contesting defendants/appellants in their written statement, and in particular, to the averments made in paragraphs 6, 8 & 12 of the written statement as also to

the evidence of Sh.Om Prakash/ defendant No.4 during his cross-examination.

13. Having heard the appellant No.2 and learned counsel for the respondents, I am of the view that there is no merit in the present second appeal. The appellants have failed to raise any substantial question of law which requires consideration, and there is no reason to interfere with the concurrent findings of fact returned both by the Trial Court and the First Appellate Court, on which the impugned judgment & decree are premised.

14. It is pertinent to note that in their written statement, the defendants No.1 to 6 have, *inter alia*, stated that:

“6. It is submitted that there is a passage of 15’ between the houses of plaintiffs and defendants for ingress and egress to the back side of chunk and being used by all parties for approaching the alleged fields”

15. Thus, the appellants/ defendants do not deny existence of 15-feet wide passage in between the houses of the plaintiffs and the defendants for ingress and egress to back side of the chunk. It is also admitted that the said chunk on the back side was being used by all the parties for approaching the fields.

16. In paragraph 8 of the written statement, the defendants specifically denied that on 04.08.2008 defendants No.1 to 4 had installed an iron bar in between the common passage in the absence of the plaintiffs. Thus, if the defence of the defendants was that they have not so installed the iron bar, they possibly could not have any objection to the removal of the same.

17. In paragraph 12 of the written statement, the defendants, *inter alia*, admitted:

“12. The alleged iron rod has been placed to restrict the movement of un-wanted elements. It is specifically denied that iron rod has been installed in the common passage”

18. Thus, contrary to their earlier statement, the defendants admitted to have placed/ installed the iron bar so as to restrict the movement of the unwanted elements. This was also admitted by DW1 – Om Prakash in his cross examination.

19. The real grievance of the appellants appears to be that the area already in occupation of the plaintiffs, is the area to which they would be entitled in case partition of the suit property were to take place. This is the basis for claiming that the plaintiffs have no right to access the rear open chunk which, admittedly, was jointly being used by the parties. The appellants have no right to take law into their hands and to physically prevent/obstruct the plaintiffs from accessing the rear portion which they were so accessing and using prior to the installation of the iron bar. In case the appellants have a grievance with regard to the shares of the parties in suit property, it is for them to take appropriate action in that regard.

20. In view of the aforesaid observations, I find absolutely no merit in the present appeal and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J

NOVEMBER 23, 2015

B.S. Rohella