

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

+ **RSA No.69/2015 & CM No.2766/2015**

% **3rd August, 2016**

SMT. FATIMA BEGUM & ORS.

..... Appellants

Through: Mr. Pardeep Gupta with Mr. Parinav Gupta
and Ms. Manshi Gupta, Advocates.

versus

SHRI TANVIR & ORS.

..... Respondents

Through: Mr. Ajjay Arora with Mr. D.K. Puchnanda,
Advocates for NDMC.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the concurrent Judgments of courts below; of the Trial Court dated 06.09.2013 and the First Appellate Court dated 19.11.2014; by which the courts below have disposed of the suit on the preliminary issue holding that whether the suit is no longer maintainable on account of regularisation of the property by the Municipal Corporation of Delhi (MCD)/defendant no.3.

2. Appellant/plaintiff filed the subject suit for permanent and mandatory injunction against a total of four defendants. Defendant no.1 Sh. Tanvir and defendant no.2 Sh. Rehmat are private persons and defendant nos.3 and 4 are public authorities being MCD and SHO, Police Station Lahori Gate respectively. The relief clauses of the plaint read as under:-

“a) pass a decree of permanent injunction in favour of the plaintiffs and against the defendants thereby restraining the defendants no.1 and 2 from carrying out the illegal and unauthorised construction at the property No.1164, Gali Samosan, Farash Khana, Delhi-110006 as shown in the site plan attached without getting due permission from the defendant no.3 and without getting the site plan sanctioned;

b) pass a decree of permanent injunction in favour of the plaintiffs and against the defendants thereby directing the defendants no.3 and 4 to take action against the defendants no.1 and 2 and to demolish the illegal and unauthorised construction at the property No.1164, Gali Samosan, Farash Khana, Delhi-110006 and remove the encroachment at point ‘B’ as shown in the site plan attached;

c) Pass any other further order, which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case in favour of the plaintiffs and against the defendants.” (underlining added)

3. The relief clauses of the plaint are based on the cause of action stated in para 3 and 6 of the plaint and which read as under:-

“3. That the property of the plaintiffs is a very old construction and there are two passages to the property of the plaintiff and the defendants no.1 and 2 as shown at Point ‘A’ and at Point ‘B’ in the site plan attached with the plaint and the occupants of both the properties have been having easementary rights in both these passages and since the passage shown at Point ‘A’ is very narrow, the passage shown at Point ‘B’ is more commonly used by the occupants of both the properties as the passage shown at Point ‘A’ is only 2’9” wide and only one person can go through the same at a time.

XXXXX

XXXXX

6. That the defendant no.1 and 2 are not only carrying out the illegal and unauthorised construction at the site, they have also encroached upon the common passage shown at Point 'B' in the site plan attached and have also put a gate by covering the passage shown at Point 'B', which is evident by the photographs attached herewith the plaint and by that encroachment, the defendants no.1 and 2 are depriving the plaintiffs from their valuable easementary right of the passage shown at Point 'B'." (underlining added)

4. Admittedly the concurrent judgments of the courts below disposed of the suit only on the ground that the illegally constructed portion of the property of defendant nos.1 and 2 has been demolished and the balance of the property stands regularised by defendant no.3/MCD. That part of relief clause (b) as to the entitlement of the appellants/plaintiffs of passage from point B, which is the subject matter of relief clause (b) and cause of action in paras 3 and 6, have not been decided.

5. It is trite that a suit cannot be disposed of, much less under Order VII Rule 11 CPC, without deciding one main cause of action and one important relief claimed in the suit. Since the concurrent judgments of the courts below do not deal with the relief of access and passage from point B, hence disposing of the suit without deciding this aspect, more so by deciding an unrelated preliminary issue, is clearly illegal.

6. In view of the above, the substantial question of law which arises for the second appeal is as under: -

“Whether a civil suit can be disposed of without deciding one main cause of action and one main relief in the suit?”

7. In view of the above discussion, the substantial question of law is answered in favour of the appellants/plaintiffs and against respondents by holding that since the cause of action stated in paras 3 and 6 of the plaint and relief clause (b) being the entitlement of the appellants/plaintiffs from point B, does not stand decided by the impugned judgments, hence the impugned judgments are set aside thereby restoring the suit to the extent of cause of action of paras 3 and 6 of the plaint and relief clause (b) of entitlement of passage from point ‘B’. The suit is remanded for decision on this cause of relief of entitlement of appellants/plaintiffs of entry from point B as per relief clause (b) based on cause of action paras 3 and 6 with the other related facts.

8. The second appeal is allowed and the parties are directed to appear before the District and Sessions Judge (Central), Tis Hazari Courts, Delhi on 31.08.2016 and the District and Sessions Judge (Central) will mark the suit for disposal in terms of the present judgment to a competent court.

AUGUST 03, 2016
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VALMIKI J. MEHTA, J