

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

+ **RSA No. 137/2012**

% **19th October, 2016**

SMT. MAHARANI DEVI Appellant

Through: None.

versus

MUNICIPAL CORPORATION OF DELHI AND ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This matter is on the Regular Board of this Court since 7.7.2016. No one appears for the parties although it is 12.40 P.M. I have therefore perused the record on my own and am proceeding to dispose of this second appeal.

2. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) was admitted by the Order dated 12.12.2013. Substantial question of law was framed by an earlier Order dated 13.2.2013 as under:-

“Whether the finding of fact with regard to the alleged encroachment by the appellant in respect of the road in question is perverse, keeping in view the evidence which has been adduced by the parties?”

3. The issue which is called for decision is as to whether the appellant/plaintiff is entitled to relief of injunction prayed in the suit against the Municipal Corporation Delhi/respondent no.1/defendant no.1 whereby injunction was sought against demolishing any part of property of 200 sq yds owned by the appellant/plaintiff bearing no.RZ-48, Village Nangloi Sayed, New Delhi-110041. The appellant/plaintiff claimed to be the owner of the suit land having purchased the same from Smt. Shanti Devi. Smt. Shanti Devi herself had purchased 100 sq yds from one Sh. Uday and another 100 sq yds from Sh. Dalip by registered Sale Deeds dated 18.6.1970. Therefore, Sh. Uday and Sh. Dalip were said to be the original owners on account of 100 sq yds allotted to each of these persons by Harijan Welfare Officer, Delhi Administration.

4. The respondents/defendants contested the suit and pleaded that the appellant/plaintiff, in fact, had encroached upon the 33.92 sq yds of the municipal land which was part of 80 feet road in front of the suit property. The respondent no.1/defendant no.1/Municipal Corporation of Delhi therefore prayed that the suit was liable to be dismissed and in fact no notice was required to be given for removal of encroachment in view of Section 322 of the Delhi Municipal Corporation Act, 1957.

5. After pleadings were complete, the trial court framed one issue that whether the plaintiff was entitled to the relief of permanent injunction, as claimed.

6. Both the parties led evidence and proved documents and which evidence and documents are referred to in paras 10 to 14 of the judgment of the trial court and which paras 10 to 14 read as under:-

“10. In the evidence, the plaintiff examined officials from the office of Sub-Registrar – II, Kashmere Gate, Delhi (PW-1 and PW-4), Sh. Raj Pal Singh, plaintiff’s husband/Attorney (PW-2), Smt. Shanti Devi/previous owner of the suit property (PW-3) and an official from the office of Assessor and Collector Department, House Tax, Zone Najafgarh, New Delhi (PW-5) whereas the defendant examined Sh. S. K. Mittal, Exe. Er. (M-II), West Zone as DW-1 in support of their respective case.

11. Ex.PW-1/1 (also Exhibited as Ex.PW-2/6) is copy of the registered receipt of Rs.72,250/- dated 05.12.1980 executed by Smt. Shanti Devi in favour of the plaintiff. Ex.PW-2/1 is the Special Power of Attorney executed by the plaintiff in favour of her husband Sh. Raj Pal Singh (PW-2). Ex.PW-2/2 is the Site Plan of the suit property. Ex.PW-2/3 is the Site Plan of the suit property with dimensions. Ex.PW-2/4 to Ex.PW-2/6 are copies of Agreement of Sell, Affidavit and Receipt executed by Smt. Shanti Devi in favour of the plaintiff on 05.12.1980. Ex.PW-2/7 (also exhibited as Ex.PW-4/2) is the copy of sale deed dated 12.06.1970 executed by Sh. Uday in favour of Smt. Shanti Devi. Ex.PW-2/8 (also exhibited as Ex.PW-4/1) is the copy sale deed dated 12.06.1970 executed by Sh. Dalip in favour of Smt. Shanti Devi.

12. Ex.PW-2/9 is the copy of provisional allotment order issued by the Office of Harijan Welfare Officer, Delhi Admn., Delhi in respect of the plot no.12 measuring 100 square yards in the Khasra no.86 at Village Nangloi Sayyed. Ex.PW-2/10 is the copy of provisional allotment order issued by the Office of Harijan Welfare Officer, Delhi Admn., Delhi in respect of the plot no.12 measuring 100 square yards in the Khasra no.96 at Village Nangloi Sayyed. Ex.PW-2/11 is the House Tax Assessment Notice dated 12.04.1985. Ex.PW-2/12 is the notice under Section 124 (5) of the DMC Act issued by the MCD to the plaintiff in 1989. Ex.PW-2/13 is the House Tax Bill dated 03.09.1990. Ex.PW-2/14 and Ex.PW-2/15 are the House Tax Deposit Receipts dated 14.01.1991 and 21.10.1993 respectively. Ex.PW-2/16 is the electricity bill. Ex.PW-2/17 is the letter dated 25.03.1982 issued

by the DDA to the plaintiff that the suit property is coming in the alignment of 80' road near Village Nangloi Sayad.

13. Ex.PW-5/1 is the order dated 21.12.1989 passed by the Assessment and Collection Department, MCD regarding fixation of rateable value of the suit property.

14. Ex.DW-1/A is the site plan wherein the encroachment to the extent of 33.92 square yards over the 80 feet road in front of the suit property is shown in green colour.”

7. In my opinion, both the courts below have rightly dismissed the suit because the claim of the appellant/plaintiff was of ownership of the 200 sq yds of property in two parts of 100 sq yds of each whose original owners were Sh. Uday and Sh. Dalip on account of such persons being allegedly allotted 100 sq yds plot each by the Harijan Welfare Officer. These allotment orders were proved and exhibited as Ex.PW2/9 and Ex.PW2/10, however, what was the area allotted to Sh. Uday and Sh. Dalip, i.e as to whether the same was 100 sq yds each was not found to be stated in the allotment orders and as noted by the trial court in the last line of para 29 of its judgment. Therefore, though the appellant/plaintiff may have purchased a total of 200 sq yds, however, if the original predecessors-in-interest being Sh. Uday and Sh. Dalip were themselves not the owners of 100 sq yds each, then, the appellant/plaintiff could not be the owner of total of 200 sq yds being two plots of 100 sq yds each.

8. Another important aspect to be noted is that the appellant/plaintiff admits the right of way or the road in front of the suit

property to be 80 feet and therefore once the disputed portion of 33.92 sq yds shown in green in site plan filed by MCD as Ex.DW1/A forms part of 80 feet road, then, such portion has rightly been held to be an encroached portion on the land belonging to the MCD forming part of 80 feet road, and therefore, the appellant/plaintiff was not entitled to the relief with respect to the disputed land being the encroached area of 33.92 sq yards forming part of 80 feet road.

9. So far as the aspect of non-compliance of the principles of natural justice is concerned, Section 322 of the Delhi Municipal Corporation Act makes it clear that with respect to anything whatsoever placed, projected and attached on a public street, the same can be removed by the corporation without any notice. Even if assuming that there is an issue of requirement of the compliance of the principles of natural justice, the same have now been complied with on account of complete trial taking place in the present suit after completion of pleadings. The object of complying with the principles of natural justice is to see that after parties are heard and evidence/documents perused and a reasoned decision is arrived at, and which aspect stands complied with because after completion of pleadings and evidence in the present suit, a judgment has been passed. Thus there is compliance of the principles of natural justice for holding that the appellant/plaintiff is an encroacher on public land to the extent of 33.92 sq

yds and which is in fact part of 80 feet road in front of the suit property. Accordingly, the appellant/plaintiff was not entitled to injunction as claimed for in the suit.

10. In view of the aforesaid discussion, this second appeal is without any merit. The substantial question of law is answered in favour of the respondents/defendants and against the appellant/plaintiff holding that the appellant/plaintiff is not entitled to any discretionary relief of injunction because in fact the appellant/plaintiff is found to be an encroacher of public land which forms part of the street and which is an area of 33.92 sq yds on the 80 feet wide road and shown in green colour in the site plan Ex.DW1/A filed on behalf of the respondents/defendants. This Regular Second Appeal is therefore dismissed, leaving the parties to bear their own costs.

OCTOBER 19, 2016
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VALMIKI J. MEHTA, J