

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

+ **RSA Nos.176/2014 & 48/2015**

% **13th July, 2016**

1. **RSA No.176/2014**

SMT. SANTOSH DESWAL Appellant
Through: Mr. Gagan Gupta, Advocate with Mr.
Ananta Prasad Mishra, Advocate.

versus

KRISHAN KALRA AND OTHERS Respondents
Through: Mr. Amresh Mathur, Advocate with Mr.
Dharmender Arya, Advocate and Kapil
Gupta, Advocate.

2. **RSA No.48/2015**

KRISHAN KALRA & ORS. Appellants
Through: Mr. Amresh Mathur, Advocate with Mr.
Dharmender Arya, Advocate and Kapil
Gupta, Advocate.

versus

SMT. SANTOSH DESWAL Respondent
Through: Mr. Gagan Gupta, Advocate with Mr.
Ananta Prasad Mishra, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?
VALMIKI J. MEHTA, J (ORAL)

RSA No.176/2014

1. In view of the fact that by the judgment being passed hereinafter in RSA No.48/2015 filed by the respondents in the present appeal is being dismissed, counsel for the appellant accordingly does not press the present appeal.

RSA No.48/2015

2. Challenge by this Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) is by the appellants/defendants to the concurrent Judgments of the courts below; of the Trial Court dated 14.5.2011 and the First Appellate Court dated 15.4.2014; by which the courts below have held that the passage 9 feet wide which runs adjacent to the property of both the parties in the North side will be a common passage as a whole right from the entry gate on the road to the extent of the complete passage ending at the end point of the plot of the appellants/defendants. Putting it in another words the portion of the passage adjoining the property of the appellants/defendants is a common passage for the benefit of the respondent/plaintiff also i.e the respondent/plaintiff in addition to having rights in the passage adjoining his portion of the plot also has rights in the passage which adjoins the portion of the plot with the appellants/defendants and which portion of the passage is also a common portion of the passage.

3. The crux of the matter is the interpretation of the applicable paras of the sale deeds from the original predecessor-in-interest of the entire plot which was divided into two parts and the two parts sold to the father of the appellants and the first predecessor-in-interest of the respondent. In the original sale deed by the original owner in favour of the predecessor of the appellants and the respondent the relevant clause is Clause 10. The respondent/plaintiff is a successor-in-interest through a chain of title deeds and the appellants are effectively the first purchasers

because they are the legal heirs of the first purchaser Sh. Bakshi Ram Kalra. Therefore tracing of title by sale deeds so far as the appellants/defendants are concerned, is not necessary because appellants/defendants claim under the first/original Sale Deed dated 8.1.1968 executed by the five original owners, namely Sh. Bhima, Sh. Mohinder, Sh. Savachand, Sh. Deep Chand and Sh. Hari Singh. The flow chart and flowing of title to the present respondent/plaintiff will be as under:-

- (i) Original five owners sold the property to Smt. Shashi Balla by the Sale Deed dated 8.1.1968.
- (ii) Smt. Shashi Balla sold the property to Smt. Sarla Devi by the Sale Deed dated 9.2.1972.
- (iii) Smt. Sarla Devi sold the property to Sh. Amit Kumar by the Sale Deed dated 31.10.2002.
- (iv) Sh. Amit Kumar sold the property to Smt. Santosh Deswal (respondent/plaintiff) by the Sale Deed dated 15.4.2005.

4. Clause 10 of the sale deeds dated 8.1.1968 executed by the five original owners in favour of the predecessor-in-interest of the respondent/plaintiff and also to the father of the appellants/defendants, is identical, and this Clause 10 alongwith the boundaries otherwise mentioned in these sale deeds read as under:-

“Clause 10. Shrimati Sashi Balla and Shri Bakshi Ram have purchased the said house commonly i.e. equal share and the both Vendees have agreed to leave nine feet wide passage for their own use on the side of North, the both Vendees have equal share to utilize the same passage under the said house i.e. House No.187, Ward No.2, Mehrauli, New Delhi-30.

Boundaries of Sale Deed with predecessors-in-interest of the respondent/plaintiff

North House of Shri Suban, House No.189.

South.... House of Shri Prithvi Singh House No.188 and House of Shrimati Soni Bai and Dharam Devi, House No.186.

West.... Galli.

East.... Portion of the Vendor's sold to Shri Bakshi Ram.

Boundaries of Sale Deed with predecessors-in-interest of the respondent/plaintiff

North House of Shri Suban, House No.189.

South.... House of Shrimati Soni Bai and Dharam Devi, House No.186.

West.... Remaining portion of Vendors sold to Shrimati Shashi Bhalla.

East.... House of Shri Faquir Chand Pandit and Shri Suban. (emphasis is mine)

5. It is this Clause 10 which is the contentious clause and which essentially calls for interpretation, of course with the similar clauses in the subsequent sale deeds in favour of predecessors-in-interest of the respondent/plaintiff.

6. The clauses and the boundaries of the relevant sale deeds in favour of the predecessors-in-interest of the respondent/plaintiff are as under:-

“Clause 10 and boundaries of Sale deed by Smt. Shashi Balla in favour of Smt. Sarla Devi dated 9.2.1972

10. Shrimati Sarla Devi and Shri Bakshi Ram have equal share in nine feet wide passage for their own use on the side of North and both will utilise equally that

passage under the said house i.e. house No.187, Ward No.2, Mehrauli, New Delhi-30.

Boundaries

North.... House of Shri Suban, House No.189

South.... House of Shri Prithvi Singh House No.188 and House of Shrimati Soni Bai and Dharam Devi, House No.186.

West.... Galli

East... House of Shri Bakshi Ram, house No.187/

Clause 9 and boundaries of the sale deed between Smt. Sarla Devi and Sh. Amit Kumar dated 31.10.2002

9. Shri Amit Kumar and Shri Bakshi Ram have equal share in nine feet wide passage/gali for their own use on the side of north and both will utilise that passage/gali.

Boundaries

East : Property of Shri Bakshi Ram

West : Road

North : Gali 9 Ft. wide

South : Other property

Clause 9 and boundaries of sale deed between Sh. Amit Kumar and Smt. Santosh Deswal (respondent/plaintiff) dated 15.4.2005

9. Smt. Santosh Deswal and Shri Bakshi Ram have equal share in nine feet wide passage/gali for their own use on the side of north and both will utilise equally that passage/gali.

Boundaries

East: Property of Shri Bakshi Ram

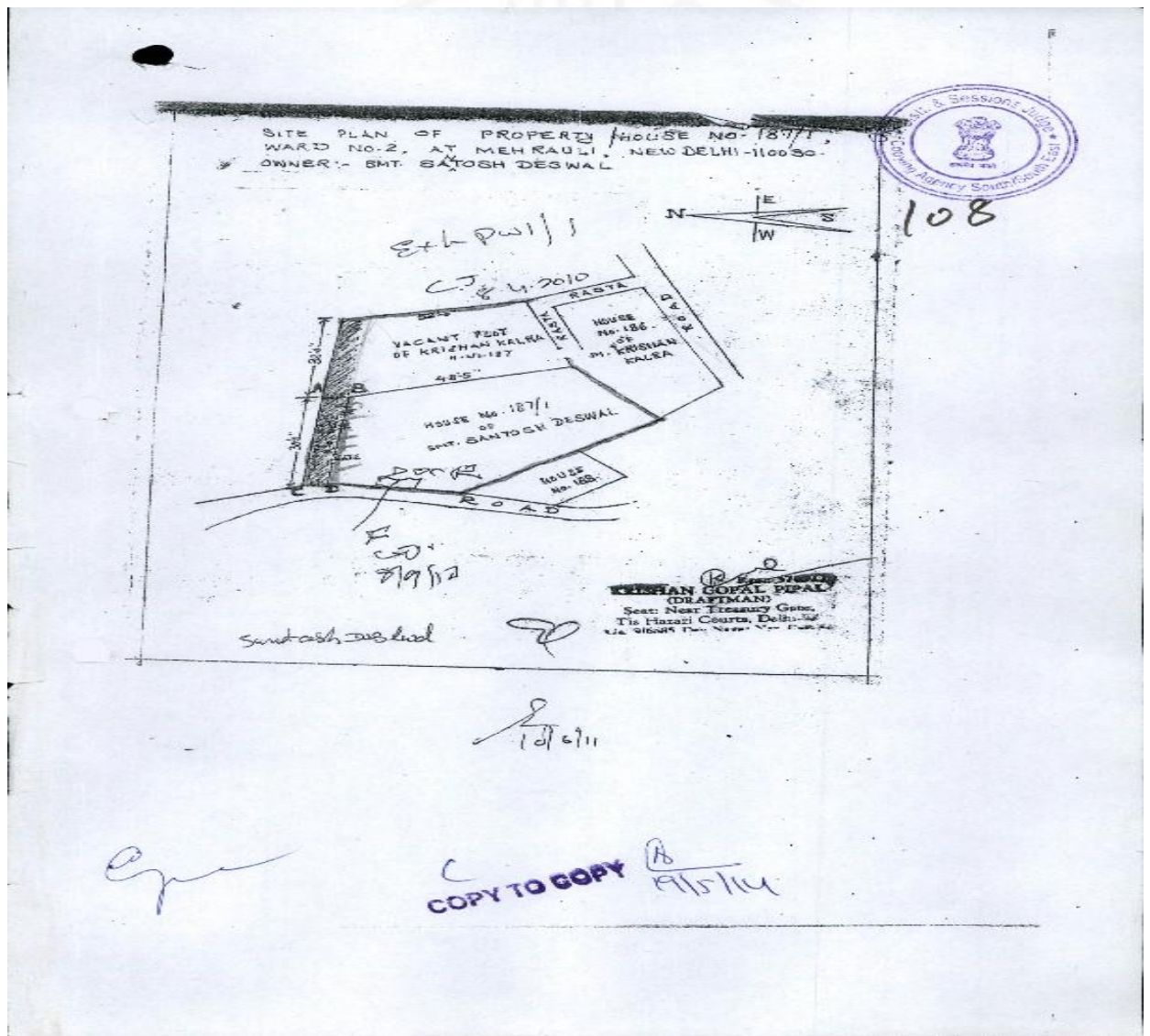
West: Road

North: Gali 9 Ft. wide

South: Others property”

7. The aforesaid paras and the boundaries are called in question so as to determine as to whether the respondent/plaintiff has a right in the passage being a
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gali of 9 feet wide right till the end of the passage running right upto the end points adjoining the plot of the appellants/defendants or the right of the respondent/plaintiff stops in the 9 feet wide gali where the plot of the respondent/plaintiff stops and the plot of the appellants/defendants begin. In order to appreciate this position, I would at this stage for a better understanding of the issue seek to reproduce the admitted site plan between the parties and which is exhibited as Ex.PW1/1. The said site plan is scanned and reproduced as under:-



8. The courts below have accepted the interpretation of the respondent/plaintiff that the common passage will run right till the end points in the passage upto and adjoining the plot of the appellants/defendants and the respondent/plaintiff will have a right in the common passage not in that portion of the passage adjoining only the property of the respondent/plaintiff but even in the passage thereafter which runs adjoining to the plot of the appellants/defendants. A reference to the aforesaid site plan would show that both the courts below have held that entitlement of the respondent/plaintiff is not only to the portion CDAB but onwards from AB to the end points in the passage at the end of the plot of the appellants/defendants i.e the respondent/plaintiff will have a right to the complete length of the passage of approximately 62 feet and not only to 30 feet passage of 9 feet width being CDAB.

9. Learned counsel for the appellants/defendants very strenuously sought to argue with reference to Clause 10 of the Sale Deeds dated 8.1.1968 reproduced above that this clause does not give right to the respondent/plaintiff till the end of the passage i.e in the passage adjoining the portion of the appellants/defendants. To buttress such argument, reference is invited to the boundaries stated in the four sale deeds in favour of the respondent/plaintiff and her predecessors-in-interest that when the earlier sale deeds, especially the Sale Deeds dated 31.10.2002 and 15.4.2005, refer to entitlement of the respondent/plaintiff, the same is to a gali of 9 feet width and that would only mean the portion of the gali falling only to the North of the plot of the respondent/plaintiff but will not continue thereafter.

10. This is a second appeal under Section 100 CPC. I can only interfere with the concurrent findings of the courts below if there arises a substantial question of law. If two views are possible on preponderance of probabilities, a substantial question of law cannot be said to arise. In my opinion, there is no perversity or in any manner absurdity in the concurrent findings of the courts below with respect to the entitlement of the respondent/plaintiff to have common rights in the complete passage having length of about 62 feet. This finding is additionally correct for the reason that when we look at the original Clause 10 in the Sale Deeds dated 8.1.1968, and which is the really operative clause, inasmuch as relevant clauses in the subsequent sale deeds necessarily and directly only can and do flow from the rights created under Clause 10 of the Sale Deeds dated 8.1.1968, and which is to be so also taken because the flow chart of narration of facts mentioned in each of the sale deeds refer to the earliest Sale Deeds dated 8.1.1968, wherein it is seen that Clause 10 makes it abundantly clear that the passage runs adjoining the entire/complete plot comprising of the entire house no.187, Ward No.2, Mehrauli, New Delhi as originally existed and thereafter sold in two parts. Whereas the portion which fell to the share of the respondent/plaintiff became 187/1 on account of the purchase by the respondent/plaintiff and her predecessors-in-interest, the portion which fell to the share of the appellants/defendants became 187/2. Therefore, once the passage is to run across the entire original house no.187, surely it has to run through the entire plot right from the road till the end of the original undivided plot and which end of the plot is

the end of the plot at the last points adjoining the ending of the plot which fell to the ownership of the appellants/defendants. I may note that Clause 10 of the Sale Deeds dated 8.1.1968 twice uses the expression 'both vendees' when reference is made to the common passage i.e the common passage is the common passage in the lands of both the vendees i.e the common passage is also out of the land which fell to the share of the appellants/defendants. In any case, whatever is the doubt gets removed from the last two lines of Clause 10 which specifies the passage to be under the said original house as a whole i.e the whole house no.187. Also, it is relevant to note that the boundaries of the plot even if there is any confusion in reading of the same, though in my opinion there is no confusion, will necessarily have to be read with the more specific language contained in Clause 10 of the Sale Deed dated 8.1.1968.

11. Clearly therefore both the courts below have arrived at correct findings and which do not call for any interference much less under Section 100 CPC as no substantial question of law arises. I therefore hold that the contentions urged on behalf of the counsel for the appellants/defendants are misconceived that respondent/plaintiff would not have right in the entire portion of the length of 62 feet and a width of 9 feet. Dismissed.

JULY 13, 2016
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VALMIKI J. MEHTA, J