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

+ RSA 202/2013

SHRI NIRANJAN SINGH Appellant

Through: Mr.M.P.Bhargava, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Rizwan, Advocate for Mr.Santosh
Kumar Tripathi, ASC with
Mr.Pradeep Kumar, Kanungo, SDM
Office, Punjabi Bagh & Mr.Pradeep
Naik, (AE-CO-XII), I & FC Deptt.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **01.12.2016**

1. Civil Suit No.320/2008 was filed by the appellant/plaintiff praying for a decree for mandatory and permanent injunction with direction to the respondents/defendants to reconstruct the broken wall towards East of the Cremation Ground and restore the same to its original height in Village Nilothi and if the respondents/defendants open or affix a gate towards East in the boundary wall of the Cremation Ground, the respondents/defendants may be directed to close the same. Prayer was also made for passing a decree for permanent injunction restraining the respondents/defendants from affixing any gate in the Eastern boundary wall of the Cremation Ground of Village Nilothi, Delhi.

2. The Civil Suit was partly decreed by the learned Trial Court. On not being satisfied with the suit being partially decree, the appellant/plaintiff

preferred RCA No.21/2012 which has been dismissed by the First Appellate Court.

3. Feeling aggrieved by the dismissal of RCA No.21/2012, the appellant/plaintiff preferred this Regular Second Appeal.

4. On January 24, 2015 this Court has issued limited notice to the respondents by passing the following order:-

“Counsel for the appellant states that appellant will not pursue the appeal if the gate which has to be fixed on the cremation ground does not open upon the appellant’s private land. It is stated that appellant really is seeking demarcation of his own property and if the appellant’s own private land on demarcation will not touch upon the eastern boundary of the cremation ground where the gate has been fixed then appellant’s reliefs in the suit will not be pressed.

Accordingly, in view of the above statement, let notice be issued to the respondents limited to this aspect at this stage both in the ordinary method as well as by registered AD post, returnable on 8th May, 2014.”

5. Thereafter on May 08, 2014 this Court appointed concerned Tehsildar as Local Commissioner to prepare a demarcation report with respect to the property of K.No.48/4/7 and as to whether this K.No.48/4/7 has a gate which opens to the land/property of the appellant in K.No.48/4/1 min West (2-01), 48/6/2 min South (2-01), 48/14(3-10) and 48/17 (3-14) situated in the revenue estate of Village Nilothe, Delhi.

6. The appeal remained pending for the demarcation report as subsequent proceedings record the submission by the SDM about the difficulty being faced in demarcation survey for the reason that Cremation Ground is situated around densely populated area and was not possible to carry out manually. The Court was also informed that it can be done only

through Total Station Method (TSM).

7. Today Mr.Pradeep Kumar, Kanungo, SDM Office, Punjabi Bagh & Mr.Pradeep Naik, (AE-CO-XII), I & FC Deptt. are present placed on record the status report signed by SDM, Punjabi Bagh along with photographs as well the copy of the demarcation report. Copy of the same has been supplied to the appellant.

8. The matter has been passed-over thrice to give an opportunity to the appellant as well counsel appearing along with him to understand the same and also take instructions. The status report reads as under:

“Brief Facts/Comments with regard to order dated 27/10/2016 passed by Hon'ble High Court of Delhi in the aforesaid matter:-

As per the demarcation carried out on 09/08/2016 with TSM of Khasra No.48/4, 7 situated at Village Nilothi, Nangloi, Delhi-110041.

The gate of cremation ground situated in Khasra No.48/4, 7 does not open on the private land of the appellant/plaintiff.

The said gate opens in the land acquired by Irrigation and flood control Departments, GNCT of Delhi. At present this is a Passage/Rasta for public use.

Accordingly, the report is submitted for filing a fresh affidavit before the Hon'ble High Court of Delhi in compliance of the order dated 27/10/2016.”

9. The opening of the gate of the cremation ground on the Eastern side made by the villagers is also shown in the photograph which as per status report is on Government land and not on private land.

10. In view of the demarcation report, which was prepared in the presence of the appellant and duly signed by him, and the photographs, learned counsel for the appellant submits that the appeal may be dismissed as not

pressed with liberty to the appellant to get it revived if at any stage it can be established by him that opening of the gate of the cremation ground on the Eastern side opens on his private land.

11. The appeal is dismissed as not pressed with liberty as prayed.

12. No costs.

CM Nos.13933 and 13934 of 2013

Dismissed as infructuous.

PRATIBHA RANI, J.

DECEMBER 01, 2016

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