

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

+ **RSA No.296/2015 & CM. No. 14452/2015**

% **3rd October, 2016**

SMT. ASHA DEVI & ORS. Appellants

Through: Mr. C.M.Sharma, Advocate.

versus

AJAY KUMAR SHARMA Respondent

Through: Mr. Arvind Chaudhary and Mr. Rajeev Hooda, Advocates.

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 by the plaintiffs in the suit against the concurrent Judgments of the courts below; of the Trial Court dated 18.11.2014 and the First Appellate Court dated 11.2.2015; by which the suit filed by the appellants/plaintiffs was dismissed. In the suit the relief clauses were as under:-

“A) Pass a decree for declaration in favour of plaintiffs and against the defendant thereby declaring to the effect that the plaintiffs are the exclusive owners of the suit property i.e open space of roof of property bearing no.5625/6, Katra Jamun, Nai Sarak, Delhi-06 as shown in colour red in the site plan attached herewith.

B) Pass a decree for permanent injunction in favour of plaintiff and against defendants thereby restraining defendants, their agents, employee, their servants, or any other person acting on their/belief from transferring or creating any right in favour of any person or using/occupying in any manner by keeping any article

or raising any illegal construction in respect of suit property i.e. open space of roof of property bearing no.5625/6, Katra Jamun, Nai Sarak, Delhi-06.

C) Costs of the suit be also allowed.

D) Any other relief or order that this Hon'ble court deems fit and proper be granted to the plaintiff and against the defendants.”

2. Counsel for the appellants/plaintiffs states that though in the relief clauses of the suit plaint exclusive right of ownership is claimed in the suit property being the open space of roof forming part of the first floor of property no. 5625/6, Katra Jamun, Nai Sarak, Delhi-110006, however the appellants/plaintiffs are toning down their prayers and are only seeking that the said suit property being the first floor portion forming part of property no. 5625/6 be treated as a common space for common use of both the appellants/plaintiffs and the respondent/defendant.

3. The issue before this Court is whether the part of the first floor portion of property no. 5625/6, Katra Jamun, Nai Sarak, Delhi-110006, the suit property, is in the exclusive ownership of the respondent/defendant and as is urged on behalf of the respondent/defendant or is this first floor open roof space forming part of property no. 5625/6 has to be taken as common area/space for being used both by the appellants/plaintiffs and the respondent/defendant.

4. Admitted facts which need to be noticed are that the common predecessors-in-interest of the adjoining properties which were purchased by the appellants/plaintiffs and the respondent/defendant is one Sh. Manohar Lal

Khurana i.e it is from Sh. Manohar Lal Khurana that the parties to the present proceedings trace their title. Whereas the appellants/plaintiffs claimed title under the Sale Deed dated 8.1.1973 registered on 15.1.1973 executed by Sh. Manohar Lal Khurana in favour of Sh. Panna Lal, predecessor-in-interest of the appellants/plaintiffs (father-in-law of appellant no.1 and grandfather of appellant nos.2 to 4), the respondent/defendant traces his title under the Sale Deed dated 15.1.1973 registered on 17.1.1973 by Sh. Manohar Lal Khurana in favour of Smt. Satyawati and who sold what she purchased from Sh. Manohar Lal Khuarna to the respondent/defendant.

5. The following substantial question of law is framed:-

“Whether both the courts below have not committed complete illegality and perversity in completely misconstruing and misinterpreting the references and the relevant portions of the two sale deeds and the attached site plans being the Sale Deeds dated 8.1.1973 by Sh. Manohar Lal Khurana in favour of Sh. Panna Lal and 15.1.1973 by Sh. Manohar Lal Khurana in favour of Smt. Satyawati, and therefore, the courts below have fallen into a clear cut illegality and perversity in dismissing the suit?

AND

Whether the courts below have committed a complete illegality and perversity in dismissing the suit of the appellants/plaintiffs on the sole ground that the sale deed Ex.PW1/2 cannot give ownership rights to the appellants/plaintiffs because Sh. Panna Lal is not traced by the appellants/plaintiffs to be their predecessor-in-interest?”

The second part of substantial question of law need not be answered because it is the undisputed position before this Court, and as conceded to by the counsel for the respondent/defendant, that the appellants/plaintiffs are tracing their title through their predecessor-in-interest Sh. Panna Lal under the Sale Deed dated 8.1.1973 executed by Sh. Manohar Lal Khurana in favour of Sh. Panna Lal and the respondent/defendant is tracing his title under the Sale Deed dated 15.1.1973 executed by Sh. Manohar Lal Khurana in favour of Smt. Satyawati.

6(i) Since the dispute is as to whether the first floor open space roof portion of the property no. 5625/6 is or is not a common space for common use as is the case of the appellants/plaintiffs, or the same is in the exclusive ownership of respondent/defendant through Smt. Satyawati, at this stage, let me refer to the relevant portions of the two sale deeds executed by the original predecessor-in-interest Sh. Mahohar Lal Khurana in favour of Sh. Panna Lal and Smt. Satyawati and these relevant portions read as under:-

“Sale Deed dated 8.1.1973 in favour of Sh. Panna Lal predecessor of the appellants/plaintiffs.”

Sale deed for	Rs.13000/-
Stamp for sale deed	Rs.390/-
Corpn. tax	Rs. 650/- Total Rs.1040/-

This sale deed is made at Delhi on this 8th day of Jany. 1973 by Shri Manohar Lal Khurana son of Shri Gian Chand R/o 4/6 W.E.A.Karol Bagh New Delhi, hereinafter called the vender in favour of Sh. Panna Lal son of Shri Jhabar Mal R/o No. 4292, Gali Bharon Wali, Nai Sarak, Delhi-6 hereinafter called the vendee.

The expressions vender and vendee shall mean and include the parties, their heirs, successors, representatives & assigns.

WHEREAS the vendor is owner of property No.VI/5626 & 5627&5625 pucca built, free-hold with the land underneath about 25 sq. yds in katra Jaman Nai Sarak, Delhi and bound as under, and Double storeyed.

East- others property owned by Hargobind Singh

West- Common court-yard

North- Common court yard ETC;

South- Common court yard and property No. 5624

The said property along with other property was purchased in open public auction by Sh. Gian Chand S/o Shri Tirath Ram (father of the vendor) on 25/4/56 and its sale certificate is duly issued on 10/8/56 by the Managing Officer, Acquired Evacuee property, New Delhi, which was pasted at the office of the Sub-Registrar, Delhi, as document No:- in supply Book I Vol. 165 page 168 dated 7/4/60.

Sale Deed dated 15.1.1973 of Smt. Satyawati, predecessor of respondent/defendant

Sale deed for Rs.13000/-

Stamp for sale deed Rs.390/-

Corpn. tax Rs. 650/-

Total Rs.1040/-

This sale deed is made at Delhi on this 15th day of Jan. 1973 by Shri Manohar Lal Khurana son of Shri Gian Chand R/o 4/6 W.E.A.Karol Bagh New Delhi hereinafter called the vendor in favour of Smt. Satya Vati Devi W/O Sh. Balkishan Dass R/o House No. 4292, Gali Bharon Wali, Nai Sarak, Delhi hereinafter called the of the Code of Civil Procedure, 1908 (CPC) Vendee.

The expressions vendor and vendee shall mean and include the parties, their heirs, successors, representatives & assigns.

WHEREAS the vendor is owner of property No.5624, 5619-5622-25 part

pucca built, free-hold with the land underneath about 30.00 sq. yds in Katra Jaman Nai Sarak, Delhi and bound as under, and Double storeyed with Barsati and Ward No:VI.

East- House of Shri Hargobind Singh

West- House No. 5624

North-Property No: 5625;

South- Property of Jangli Mal Anoop Singh

The said property along with other property was purchased in open public auction by Sh. Gian Chand S/o Shri Tirath Ram (father of the vendor) on 25/4/56 and its sale certificate is duly issued on 10/8/56 by the Managing Officer, Acquired Evacuee property, New Delhi, which was pasted at the office of the Sub-

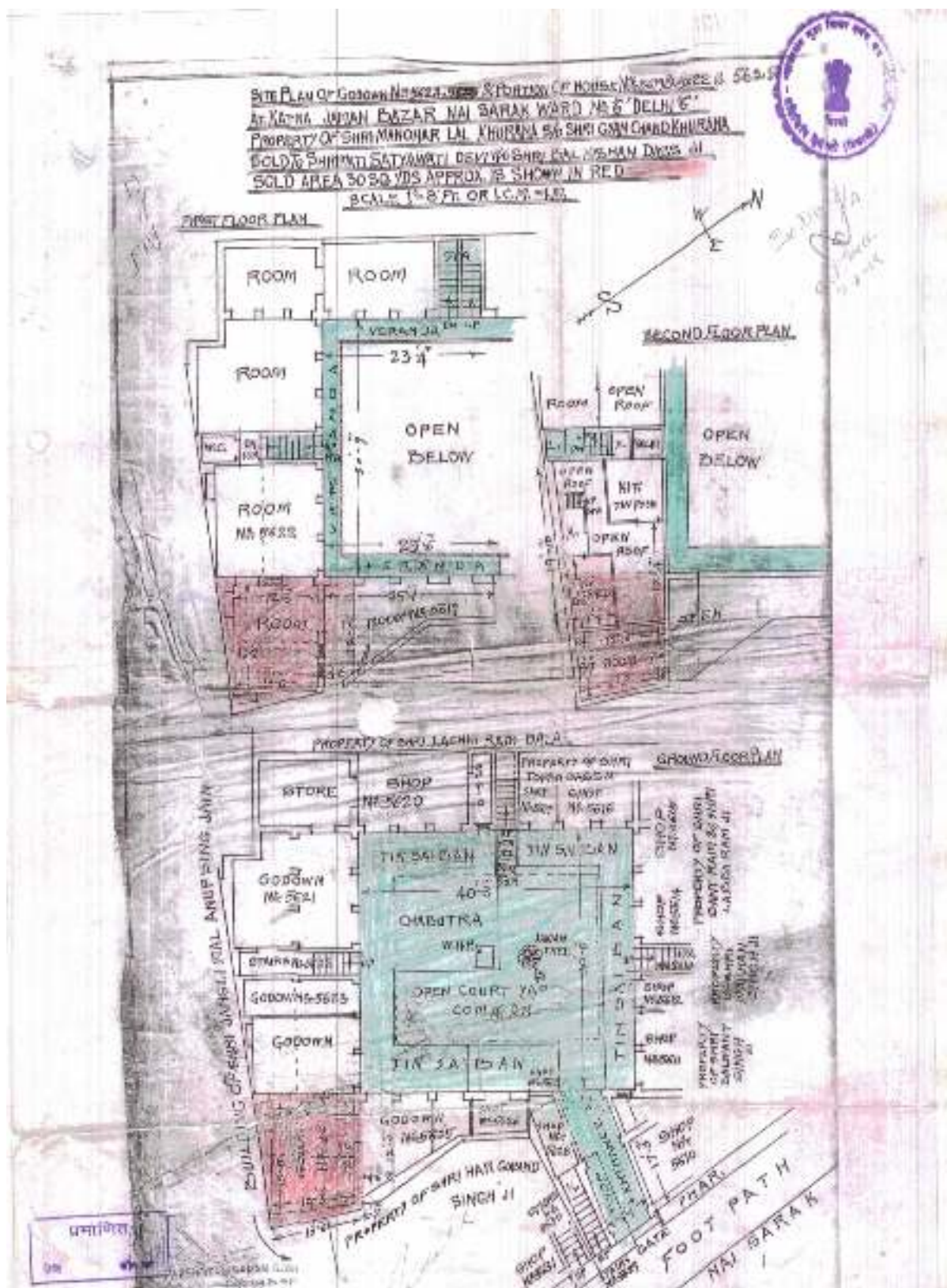
Registrar, Delhi, as document No:- in Supply Book I Volume No. 165 page 168 dated 7-4-60.”

(ii) For the sake of understanding it is noted that the constructed properties are the properties 5624 (of respondent/defendant) and 5625 to 5627 (of appellants/plaintiffs) and the other municipal numbers mentioned in the two sale deeds are the staircases having municipal numbers and which is typical municipal numbering as found in the congested areas of the old walled city area of old Delhi.

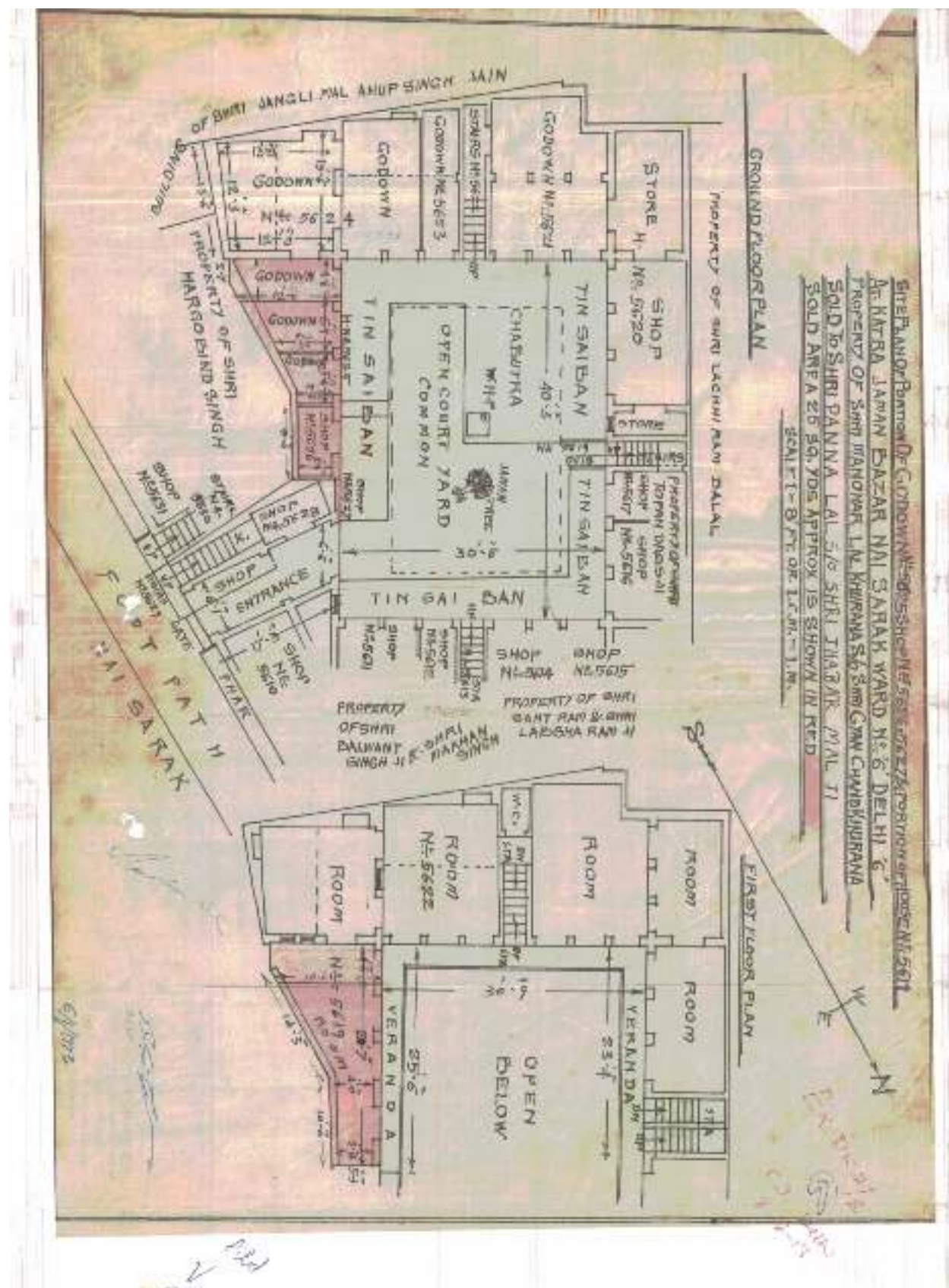
7. Before the trial court the Sale Deed dated 8.1.1973 executed by Sh. Manohar Lal Khurana in favour of Sh. Panna Lal has been proved and exhibited as Ex.PW1/2 and the Sale Deed dated 15.1.1973 executed by Sh. Manohar Lal in favour of Smt. Satyawati has been proved as Ex.DW1/1.

8. Along with the two sale deeds, there were site plans. The site plan along with the sale deed of the appellants/plaintiffs was not filed by the appellants/plaintiffs but the respondent/defendant has filed the site plan attached to the sale deed in favour of Sh. Panna Lal as also the site plan attached to the sale deed in favour of Smt. Satyawati. These site plans have been proved and exhibited as Ex.DW2/B being the site plan attached to the sale deed of the predecessor-in-interest of the appellants/plaintiffs and Ex.DW2/A being the site plan attached to the sale deed in favour of Smt. Satyawati, the predecessor-in-interest of the respondent/defendant. Both these site plans are scanned as below:

Site plan Ex.DW2/A



Site plan Ex.DW2/B



9. Besides disputes as to the site plans an argument is raised by the respondent/defendant on the area of the sale deed in favour of Sh. Panna Lal inasmuch as in the sale deed of Sh. Panna Lal the area of 25 sq. yds is found to be written by hand i.e this numerical figure of 25 is not a typed figure. It is also noted that in the sale deed in favour of Smt. Satyawati the area purchased is written as 30 sq. yds and which is a typed figure. However, before both these figures of 25 sq. yds and 30 sq. yds in the respective sale deeds the expression “about” is found ie the area mentioned in the sale deed is an approximate figure. This is because the respective properties are not exactly rectangular or square in nature because the ground area is on an uneven shape of the plots on which the construction has been made.

10. In order to determine the issue at hand, let us examine the boundaries as mentioned in the respective sale deeds pertaining to the four different directions, North, South, East and West. These have already been reproduced above and it is seen that the property which was purchased by Sh. Panna Lal, the predecessor-in-interest of the appellants/plaintiffs is to the North of the property purchased by Smt. Satyawati, predecessor-in-interest of the respondent/defendant, ie putting it in other words the property of the respondent/defendant is to the South of the property purchased by Sh. Panna Lal. Further, the sale deed executed in favour of Sh. Panna Lal by the common predecessor-in-interest of both the parties mentions that to the South of the

property purchased by Sh. Panna Lal is a common courtyard and property no. 5624 i.e property purchased by Smt. Satyawati, as per the sale deed executed by the common predecessor Sh. Manohar Lal Khurana in her favour, to the North of this property is the property no. 5625 which was purchased by Sh. Panna Lal. These boundaries of the respective properties have to be seen along with the site plan Ex.DW2/A attached to the sale deed of Smt. Satyawati and the site plan Ex.DW2/B attached with the sale deed of Sh.Panna Lal and which have shading of red as regards the portions sold to Sh. Panna Lal and Smt. Satyawati by the original common owner Sh. Manohar Lal Khurana.

11. A reference to the site plans Ex.DW2/A and Ex.DW2/B shows that under the sale deed by which Smt. Satyawati purchased the property from Sh. Manohar Lal Khurana, and which portion purchased is shown in red colour, the ground floor portion of property no. 5625 is not shown in red colour but only the first floor portion of property no. 5625 is shown in red colour ie once the expression '5625 part' is found in the sale deed in favour of Smt. Satyawati, the part of property no. 5625 sold under the Sale Deed dated 15.1.1973 to Smt. Satyawati by Sh. Manohar Lal Khurana would be only the first floor part of the property no. 5625 and not the ground floor part of the property no. 5625. I would also like to note at this stage that the ground floor part of property no. 5624 and the second floor part of property no. 5624 which were originally owned by the respondent/defendant have already been sold by the

respondent/defendant further and there is no dispute of the appellants/plaintiffs with such purchasers of the ground floor and second floor of the property no. 5624. We are therefore only concerned with the first floor portion being part of property no. 5625 and which is adjoining to the first floor portion of the property no. 5624 which continues to be exclusively owned by the respondent/defendant.

12. By a reference to the site plan Ex.DW2/B, and which is a site plan attached to the sale deed executed by Sh. Manohar Lal Khurana in favour of Sh. Panna Lal, it is seen that what is sold to Sh. Panna Lal, and depicted in red colour, the same includes not only the ground floor portion of property no. 5625 but also the first floor portion of the property no. 5625 i.e the first floor open space of property no.5625 is shown in red in site plans of both the sale deeds in favour of Sh. Panna Lal and Smt. Satyawati, and therefore the said portion sold to both Sh. Panna Lal and Smt. Satyawati will thus actually be red in both the site plans because it was intended for both the parties to have joint rights in the disputed area being the open space of the first floor portion of property no.5625. These site plans have to be read with the expression 'common courtyard and property no. 5624' said to be falling in the South of the property purchased by Sh. Panna Lal under the Sale Deed dated 8.1.1973 and the expression 'property no. 5625' falling to the North of the property purchased by Smt. Satyawati under the Sale Deed dated 15.1.1973 and which again gives the result that the

first floor portion of property no. 5625 adjoining to property no. 5624 and which was an open space, the same was to be jointly owned by the parties of the two sale deeds i.e Sh. Panna Lal and Smt. Satyawati.

13. A holistic reading of the sale deeds, the boundaries thereof with the fact that only a part of property no. 5625 has been given to Smt. Satyawati and that Sh. Panna Lal is shown to be the owner of the entire property no. 5625, with the further fact that in the North of the property sold to Smt. Satyawati the property no. 5625 as a whole is mentioned and in the property sold to Sh. Panna Lal in the South there is a mention of a common courtyard and property no. 5624, it will be seen that the first floor part of property no. 5625 will really be the portion described as '5625 part' which is sold to Smt. Satyawati by Sh. Manohar Lal under the Sale Deed dated 15.1.1973. It is reiterated that in the sale deed of the predecessor-in-interest of the respondent/defendant Smt. Satyawati the ground-floor portion of property no. 5625 is not coloured in red i.e this portion of the ground floor of property no. 5625 was not sold to Smt. Satyawati by Sh. Manohar Lal under the Sale Deed dated 15.1.1973. In fact in the site plan Ex.DW2/B even the first floor portion of property no. 5625 is coloured in red color i.e it can be argued by the appellants/plaintiffs that this first floor portion of property no. 5625 falls to the exclusive ownership of the appellants/plaintiffs, but counsel for the appellants/plaintiffs has very fairly stated that this first floor portion of property no. 5625 though shown in red

colour as falling to the share of the appellants/plaintiffs through Sh. Panna Lal the same be only taken as a common portion. In fact, this fairness, in my opinion, is correct because otherwise there was no need of mentioning existence of common courtyard to the South of the property purchased by Sh. Panna Lal being the first floor part of property no. 5625 and which is shown in red colour and this portion also being the part of portion purchased by Smt. Satyawati, the predecessor-in-interest of the respondent/defendant because even in the plan of the Sale Deed dated 15.1.1973 in favour of Smt. Satyawati, the red colour portion of the suit property is shown to be falling to Smt. Satyawati.

14. In view of the above discussion, it is held that the first floor open roof space of the property no. 5625 will be a common space and a common courtyard for use of both the appellants/plaintiffs and the respondent/defendant, and in this space the appellants/plaintiffs are entitled to build a staircase so as to approach the second floor and above portions of the property no. 5625 which is owned by appellants/plaintiffs, with the further clarification that in this staircase which will be constructed on the first floor portion of the property no. 5625, the respondent/defendant will have a right in the same to approach the second floor and above of his owned property no. 5624 as the suit property being the first floor portion of property no. 5625 is taken as a common courtyard and common open space belonging to both the appellants/plaintiffs and the respondent/defendant. It is also observed that while constructing the staircase

the same would be so done so that about two third portion of the suit property on the first floor of the property no. 5625 i.e the common courtyard on the first floor of property no. 5625, is left as vacant.

15. Nothing in my opinion will turn upon the argument of the respondent/defendant of the area of the property sold under the Sale Deed dated 8.1.1973 by Sh. Manohar Lal Khurana in favour of Sh. Panna Lal being written in hand as 25 sq. yds. This is firstly because the shape of the properties ie the ground areas of both the adjoining properties no. 5625 and 5624 of the appellants/plaintiffs and the respondent/defendant, are uneven as shown in the sale deeds executed in favour of Sh. Panna Lal as also Smt. Satyawati. The second reason is that so far as the disputed area of the first floor of the property no. 5625 is concerned, clarity is received from the site plans with their colourings forming part of Sale Deeds dated 8.1.1973 and 15.1.1973 executed in favour of Sh. Panna Lal and Smt. Satyawati respectively and that therefore, what is the specific ground area sold as written in the sale deed in favour of Sh. Panna Lal is to be taken with both the site plans. Third reason is that the issue with respect to a specific portion and the area which is disputed is only a part of the first floor open roof space of the property no. 5625 and there is no dispute as to the ground areas of the properties no. 5624 and 5625 or of any other constructed areas of properties no. 5624 and 5625 ie the issue of ground area in a sale deed would only be relevant if there is an issue of any demarcation of

ground area with the adjoining property and issue of ground area becomes irrelevant in the facts of the present case when there is only an issue and dispute with respect to a part of the two adjoining properties and which is the first floor open vacant space of property no. 5625/6, Katra Jamun, Nai Sarak, Delhi-110006.

16. In view of the above said discussion, the substantial question of law is answered in favour of the appellants/plaintiffs and against the respondent/defendant and it is held that the courts below have wrongly dismissed the suit filed by the appellants/plaintiffs and the suit of the appellants/plaintiffs will stand decreed against the respondent/defendant not in any manner claiming exclusive ownership rights to the suit property being part of the first floor portion of property no. 5625/6, Katra Jamun, Nai Sarak, Delhi-110006 and which will be treated as a common space belonging both to the appellants/plaintiffs and the respondent/defendant. The appellants/plaintiffs will be entitled to construct a staircase in this common space so as to go to the second floor and above of the property no. 5625 with the condition that this staircase will also be common for usage with the respondent/defendant and who can use the same to go to the second floor and above portions of his property no. 5624. As already stated above, staircase to be constructed will be constructed on about the one third portion of the common area and common

courtyard being the first floor portion of the property bearing no. 5625/6, Katra Jamun, Nai Sarak, Delhi-110006.

17. This Regular Second Appeal is accordingly allowed and disposed of, leaving the parties to bear their own costs.

OCTOBER 03, 2016/ib

VALMIKI J. MEHTA, J

