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

% *Date of Decision: November 29, 2016*

+ **RSA 335/2016**

JEET SINGH

..... Appellant

Through: Mr.B.S.Randhawa &
Mr.Dinesh Kothari, Advocates.

versus

RAM LAL (DECEASED) THR LRS

..... Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. This Regular Second Appeal has been preferred against the concurrent judgment/finding of the learned Trial Court and First Appellate Court in respect of the staircase situated on the left side of shop No.WZ-256, F/7, Main Market, Inderpuri, New Delhi-110012 which has been claimed by the appellant to be a common property with the owner of shop No.WZ-256, F/6, Main Market, Inderpuri, New Delhi-110012.

2. Civil Suit No.210/2000 filed by the appellant seeking the decree of permanent and mandatory injunction restraining the respondent/defendant from causing any obstruction in the common staircase as well direction to the respondent/defendant for removal of the obstruction in the staircase, has been dismissed by the learned Trial Court mainly on the ground that the

appellant/plaintiff failed to prove the same to be a common property and interest therein of the previous owner having been purchased by him. Learned Trial Court also held that the appellant/plaintiff had no easementary right in respect of the said staircase. The First Appellate Court concurred with the finding of the learned Trial Court and dismissed the appeal.

3. The subject suit was filed by the appellant/plaintiff pleading that he was initially inducted as a tenant in respect of shop No.WZ-256, F/7, Main Market, Inderpuri, New Delhi in the year 1961. The respondent/defendant Ram Lal (deceased) was the owner of shop No.-256, F/6, Main Market, Inderpuri, New Delhi. There is a staircase in between two shops leading to the first floor.

4. The appellant/plaintiff claimed to have purchased the shop No.WZ-256, F/7, Main Market, Inderpuri, New Delhi from Mr.Harmeet Singh, the previous owner on February 28, 2000. It was a Power of Attorney sale as the previous owner executed General Power of Attorney, Agreement to Sell, Receipt, Possession Letter, Indemnity Bond in his favour.

5. Though the General Power of Attorney was registered, the remaining documents pertaining to this transaction were notarized. The appellant/plaintiff claimed himself to be exclusive owner of the said property shown in red in the site plan along with the staircase which was shown in yellow in the site plan annexed with the plaint.

6. Learned counsel for the appellant submits that the instant appeal raises substantial question of law about the easementary rights of the appellant/plaintiff for use of his property. While arriving at the conclusion that staircase is not a common property the approach of the Courts below in appreciating the evidence was not correct.

7. As per the appellant/plaintiff the respondent started creating trouble in May, 2000 by putting obstacles in the common staircase as well at terrace as a result of which he was unable to use the upper floors. Thus, he filed a suit seeking decree of permanent and mandatory injunction against the respondent/defendant restraining him from creating any obstruction in use of the staircase with direction to remove the obstruction in the staircase leading to first floor and second floor.

8. In the written statement the right of the appellant/plaintiff in the common staircase was denied by the respondent/defendant claiming that he had nothing to do with the first and second floor of the property and the staircase was not meant for common use. It was also pleaded that Mr.Harmeet Singh, the previous owner on his occasional visits to the suit property was permitted by him (defendant) to use the staircase. So far as the right of the appellant/plaintiff was concerned, he was not using the staircase so long as he was a tenant in shop No.WZ-256, F/7, Main Market, Inderpuri, New Delhi. After he purchased the said shop, the respondent/defendant closed the entrance from the ground floor level to the staircase. The matter was reported to the police and a settlement was arrived on May 25, 2000 with the intervention of the Members of the Association. The agreement was to take effect from July 20, 2000 and was signed by the Members of the Association. However, instead of abiding by the terms of the agreement dated May 20, 2000 Ex.PW1/D1 he approached the Court by filing suit for permanent and mandatory injunction.

9. After the pleadings were complete the issues were settled and one of the issue was:

“Issue No.6

Whether the staircase in question is a common property of plaintiff and defendant, as claimed by the plaintiff? OPP”.

10. After considering the testimony of the witnesses examined by the parties, the documents in respect of the sale of the property in favour of the appellant/plaintiff a concurrent finding of the fact has been given by the Courts below that the staircase in question is not a common property. The First Appellate Court has also noted that without going into the legalities of the sale documents in favour of the appellant, even on the strength of these documents it cannot be held that any right was conferred on him by the previous owner in respect of the staircase. The indemnity bond Ex.PW1/4 only contains a reference regarding terrace on the left side of the roof but silent about the existence of any right in the staircase.

11. Legal position is well settled that no right in immovable property can be transferred by executing an indemnity bond. At the most on the strength of this indemnity bond the appellant/plaintiff can ask the vendor to indemnify him for the loss, if any, suffered by him.

12. The appellant is claiming his right in the staircase through Sh.Harmeet Singh – the vendor. The record of First Appellate Court contains the copy of the legal notice (at page No.321) dated June 11, 2005 sent by the appellant through Sh.Sanjeev K.Chaudhary, Advocate to Sh.Harmeet Singh from whom he claimed to have purchase property No.WZ-256-F/7, Main Bazaar, Inderpuri, New Delhi-12. In para 2 of the said notice, the appellant has alleged collusion and fraud between the vendor Harmeet Singh and the respondent Sh.Ram Lal (now through LR's). The relevant paragraphs of the

legal notice read as under:

'2. That you are also a gotra brother of one Sh.Ram Lal R/o WZ-256-F/6, Main Bazaar, Inderpuri, New Delhi with whose collusion you have fraudulently told that you have not sold the staircase portion to my client whereas if the said portion is deleted from the property of my client, it becomes less than 38 sq.yds. which proves that you have cheated my client in collusion with the said Sh.Ram Lal and other associates/accomplices.

xxx xxx xxx

4. That if the staircase portion is a part of the property of my client, only then it comes to near 38 sq.yds. which fact you could not think of while making false statement in favour of the said Sh.Ram Lal and also filing a false affidavit in the Court.

xxx xxx xxx

6. That although the suffering meted out to my client is immense, he has evaluated the damages for the same to a sum of ₹1,00,000/- which my client demands from you.....'

14. This notice was replied by the vendor Harmeet Singh as under:-

'1. Contents of para 1 of your notice are wrong and denied. I was never the owner of the stair case, as such the question of selling the same to your client does not arise. The area as mentioned in the documents and the description of the premises, clearly, find no mention of the stair case in the agreement to sell. Your client has been in occupation of the Ground Floor for the last more than 20 years, and he ought to know at the time of signing the documents the size of the premises under his occupation and which he was purchasing. The same were infact measured by him without the stair case and found to be 38 sq.yds. It is pertinent to note that the documents were got prepared by your client and even he knows very well that the stair case was never sold to him.'

15. The above legal notice and its reply by the vendor Harmeet Singh leaves nothing to speculation about the status of the staircase which the appellant claims to be common property having been purchased by him from Harmeet Singh.

16. It is relevant to record here that the agreement for sale in favour of the appellant/plaintiff does not refer to the share of the vendor in the alleged common staircase. If it is so, then there could not be transfer of any such interest in the said staircase in favour of the vendee. So far as the contention of the appellant/plaintiff of having acquired easementary right is concerned, the evidence that emerged on record was about the use of staircase by Mr.Harmeet Singh on his occasional visits to the suit property. This does not create any easementary right in favour of the appellant/plaintiff who was tenant since 1961 in respect of the shop only and purchased it in the year 2000. It may be necessary to record here that the dispute over the staircase has arisen only after he purchased the property on February 28, 2000 and the settlement before the police vide Ex.PW1/D3 which he admittedly signed in the presence of the independent persons, establish that prior to purchase of property by him he was not having any right in the said staircase which he subsequently wanted to use claiming it to be a common property as well claiming easementary right to have access to first floor or second floor.

17. In my considered opinion the arguments raised by learned counsel for the appellant are misconceived. No substantial question of law arises in the case for the reason appreciation of evidence is within the jurisdiction of the original Court and the First Appellate Court. The evidence has been correctly appreciated by the Courts below while returning a concurrent

finding about the status of the staircase on which the appellant is staking his claim.

18. In view of the above, it is held that the Trial Court as well the First Appellate Court have rightly passed the impugned judgment dismissing the suit of the appellant/plaintiff.

19. The Regular Second Appeal is dismissed inasmuch as no substantial question of law arises.

20. No costs.

NOVEMBER 29, 2016

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PRATIBHA RANI, J.

