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

% *Date of Decision: December 7, 2016*

+ **RSA 371/2016**

GIRDHARI LAL Appellant

Through: Mr.Manish Sharma, Advocate.

versus

GURBHACHAN SINGH & ORS Respondents

Through: None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.45534/2016

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM No.45533/2016 (delay)

1. For the reasons stated in the application 19 days' delay in filing the appeal is condoned.
2. The application stands disposed of.

RSA No.371/2016

1. This Second Appeal under Section 100 of the Code of Civil Procedure has been filed against the judgment dated August 01, 2016 of the learned First Appellate Court confirming the judgment dated March 23, 2012 of the

learned Trial Court.

2. Learned counsel for the appellant/plaintiff has submitted that the Courts below could not have ignored the correctness of the layout plan of Virender Nagar, Delhi which shows 4 mtr. wide road on the Southern side of the property No.79E, Virender Nagar, Delhi, owned by the plaintiff.

3. Learned counsel for the appellant has also referred to a decision of this Court in ***East Pakistant D.P. Association vs. Municipal Corporation of Delhi*** in support of his submission.

4. Civil Suit No. 385/2006 was filed by the appellant/plaintiff impleading Sh.Gurbachan Singh as defendant No.1, Municipal Corporation of Delhi as defendant No.2 and Smt.Surinder Kaur as defendant No.3. Subsequently Municipal Corporation of Delhi was deleted from the array of parties in this case.

5. The facts as pleaded by the appellant/plaintiff before the learned Trial Court are that he purchased two freehold plots adjacent to each other from two different owners vide two different sale deeds. While the plot admeasuring 100 sq. yds. was purchased from Krishna Devi, the adjoining plot admeasuring 134 sq. yds. was purchased from Ramgopal. He raised construction on the said plots which now bears No.79E, Virender Nagar, Delhi. Plot No.79D is owned by defendant No.3 and defendant No.1 was assigned the work of construction on the said plot by defendant No.1. A wall has been constructed on the southern side of the property of the appellant/plaintiff thereby blocking his door and window on that side and depriving him of his right to have natural light and air. This construction has been done by defendant No.1 and defendant No.1 by encroaching on the 4 mtrs. wide road which was on the Southern side of the property of the

appellant/plaintiff.

6. Suit was contested by defendant No.3 claiming herself to be the owner of property bearing No.F43 and not 79D-1 as claimed by the appellant/plaintiff. It was further pleaded that the plot of the appellant/plaintiff was two side open with no road on the South side as claimed by him.

7. After considering the evidence adduced by the parties, learned Trial Court held that the Sale Deed Ex.PW-1/D 5A and Ex.PW2/D 5B vide which the appellant/plaintiff claimed to have purchased the two plots, do not show existence of any 4 mtr. wide road. In paragraph 8 & 9 of the judgment learned Trial Court has given detailed reasons for not accepting the version of the appellant/plaintiff that his property was three side open having 4 mtr. wide road on the South side. Not only written statement filed by the MCD in this regard but the conduct of the appellant/plaintiff in withholding the Sale Deed from the Court has been adversely commented and contained averments on existence of any 4 mtr. wide road and the two Sale Deeds Ex.PW-1/D 5A and Ex.PW-2/D 5B could be brought on record only during his cross examination. Learned Trial Court has also noted that even as per the MCD there was only unauthorized construction and not encroachment on the road.

8. The learned Trial Court dismissed the suit observing that the case of the plaintiff is based only on the layout plan of Virender Nagar, Delhi which in the given circumstances cannot be made basis of this suit.

9. The First Appellate Court re-appreciated the entire evidence as well the lay out plan and held that the opening of door and window towards Southern side appears to be at the time when there was open space in

Southern direction of the property of the plaintiff. This does not prove existence of any road towards South of his property. Learned First Appellate Court has also examined the directions recorded in the Sale Deeds when the two plots were purchased by the appellant/plaintiff from two different persons. There was no mention of existence of any 4 mtr. wide road on the South side of the said property. The First Appellate Court has affirmed the finding of the learned Trial Court that there was no road towards the South side of the property of the appellant/plaintiff.

10. Before this Court the grievance of the appellant/plaintiff is based only on the lay out plan and submit that the lay out plan could not have been contrary to the existing situation. However, he does not dispute that Virender Nagar was unauthorized colony which was regularized subsequently. The fact that even the plaintiff has given one number i.e. 79E to his property which in fact consists of two separate plots purchased from two different persons. The manner in which part of the plot has been sold by Smt.Surinder Kaur to two separate persons Sh.Gurpreet and Sh.Inder Mohan Singh is an example in which the properties are sold and assigned numbers.

11. Reliance placed by learned counsel for the appellant on the decision of this Court in ***East Pakistant D.P. Association vs. Municipal Corporation of Delhi*** has absolutely no applicability to this case for the reason the issue involved in that writ petition was alleged misuse of the zonal park in the colony known as Chitranjan Park. But the MCD was proposing to use for teh bazari business and the proposal was contrary to the zonal plan. Herein the instant case no such issue is involved.

12. The general rule is that the Second Appeal cannot be entertained on the issues of facts. High Court cannot disturb the finding of fact given by the

Courts below, nor an appeal can be admitted unless a case is made out under Section 100 CPC and a substantial question of law is raised in the memorandum of appeal. The settled position in this regard is that the High Court should not interfere with the concurrent findings of the facts. After the amendment in the year 1976, scope of Section 100 CPC has been further curtailed. The Second Appellant Court has the jurisdiction to interfere under Section 100 CPC only where substantial question of law is involved.

13. In my considered opinion the arguments raised by the learned counsel for the appellant are misconceived inasmuch as if there was a 4 mtr. wide road on the South side of the property of the appellant/plaintiff, it should have been clearly so depicted not only in the two sale deeds vide which he purchased the property but MCD in the written statement would have taken this plea.

14. No substantial question of law therefore arises.

15. The appeal is dismissed.

16. No costs.

PRATIBHA RANI, J.

DECEMBER 07, 2016

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