

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

+ **RSA No. 33/2016**

% **2nd May, 2017**

JASWANT SINGH Appellant
Through: Mr. Madan Lal Sharma and
Mr. Amit Rana, Advocates.

versus

BIMLESH DEVI Respondent
Through: Ms. Jasbir Kaur, Mr. Manmeet
Singh and Mr. Yash Batra,
Advocates.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RSA No. 33/2016 and C.M. Appl. No. 3064/2016 (for stay)

1. This Regular Second Appeal is filed by the appellant/defendant under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugning the concurrent judgments of the courts below; of the Trial Court dated 25.11.2014 and the First Appellate Court dated 12.10.2015; by which the courts below have decreed the suit for injunction filed by the respondent/plaintiff and has restrained the appellant/defendant from in any manner interfering with the property of the respondent/plaintiff of 400 sq. yards comprised in Khasra no. 48/4, Mange Ram Park, Phase-I, Village Pooth Kalan, Delhi, and which property of 400 sq. yards includes the seven and a half feet wide

gali shown at points A, B, C and D in the site plan of the respondent/plaintiff Ex.PW1/A.

2. The facts of the case are that the respondent/plaintiff was originally the owner of 500 sq. yards of property situated in Khasra no. 48/4. Respondent/plaintiff by the set of documents dated 12.5.1998, Ex.PW1/D1 to Ex.PW1/D6, transferred rights in 100 sq. yards out of 500 sq. yards to the appellant/defendant. Appellant/defendant claims that on purchase of rights as per the documents Ex.PW1/D1 to Ex. PW1/D6, appellant/defendant also had rights in the disputed gali although the disputed gali does not form part of the 100 sq. yards transferred under the documentation dated 12.5.1998 to the appellant/defendant.

3. The sole issue calling for determination in the present regular second appeal is whether the appellant/defendant by virtue of the documents dated 12.5.1998, was given legal rights in the disputed gali.

4. The trial court by its judgment has dealt with this issue exhaustively from paras 11 to 16 and which paras show that the documents dated 12.5.1998 executed by the respondent/plaintiff in favour of the appellant/defendant did not give any rights to the

disputed gali which is beyond the area of 100 sq. yards purchased by the appellant/defendant. Also, I would like to note that at this stage itself that the case of the appellant/defendant even before this Court was that the disputed gali does not form part of the 100 sq. yards transferred under the documents dated 12.5.1998 to the appellant/defendant but what is argued is that the appellant/defendant had been given by the respondent/plaintiff the right to use the disputed gali since the beginning, and therefore the appellant/defendant has right of such user, and indication of such user is also seen from the subject documents Ex.PW1/D1 to Ex.DW1/D6 especially the bounded portion mentioned in the agreement to sell Ex.PW1/D2. The relevant paras of the trial court judgment which decide this issue against the appellant/defendant being paras 11 to 16 read as under:-

“11. In the case in hand, it is not in dispute that the defendant purchased the land measuring 100 sq. yards from the plaintiff out of the total land measuring 500 sq. yards of the plaintiff. The property documents Ex. PW1/D1 vide which the defendant purchased the property from the plaintiff nowhere reveals that the alleged 7 ¼ feet wide portion of land was a common passage or was ever purchased by the defendant. Even the defendant has admitted during his cross examination that it is nowhere mentioned in the property documents that the said passage was a common passage or that he also had the right to use that. The defendant has also admitted that he purchased the plot of 100 sq. yards enclosed within point H, H1, H2 and H3 as shown in site plan Ex. PW1/D7. Perusal of the aforesaid site plan filed by the defendant clearly reveals that the portion of land in dispute was never purchased by the defendant and the same is part and parcel of property of the plaintiff which was never sold by her.

12. Ld counsel for defendant has argued that at the time of purchase of the property by the defendant, it was a two side open plot. However, the property documents Ex. PW1/D1 vide which the defendant purchased the said property nowhere reveals that it was a two side open plot. So far as the description of property purchased by the defendant is

concerned, the gali mentioned towards Eastern side of the plot of the defendant is only for the description of the property of the plaintiff which was never sold to the defendant. The word gali was used to identify the narrow portion of land of the plaintiff and only by using the term gali, the portion of plaintiff will not become the portion of the defendant and the defendant cannot claim his right therein. Ld counsel for the defendant has also argued that the plaintiff has not pleaded that the said gali is her exclusive property. In this case, the defendant has admittedly purchased piece of 100 sq. yards land out of 500 sq. yards property of the plaintiff and it has not been alleged by the defendant that the said gali/lane is not part of 400 sq. yards of the property which remained with the plaintiff. The plaintiff has categorically pleaded that she is the owner and in possession of remaining portion of 400 sq. yards plot of land and the said gali is part and parcel of said portion of 400 sq. yards as per site plan filed by both the parties. Once the defendant has claimed his ownership only over 100 sq. yards of plot of land, the remaining portion whether narrow or wide has to belong to the plaintiff and the defendant cannot claim his right therein by claiming it as a gali. As stated above the mentioning of gali towards Eastern side of the plot of the defendant is only for the purpose of describing and differentiating the properties of the plaintiff and the defendant. Mere mentioning of gali in the property documents does not prove that the defendant has purchased the same or has a right to use that.

13. Ld counsel for the defendant has stated that PW3 Rajbir Singh has stated during his cross examination that since the day of purchase of plot by the defendant, the plaintiff and the defendant are commonly using the gali. Perusal of the affidavit of PW3 clearly reveals that he has mentioned that since the date of sale of property to the defendant, he was permitted to use the said gali out of cordial relations and friendly terms. PWs have categorically mentioned in their evidence that a 7¼ wide passage is not a common thoroughfare and is part of private property i.e 400 sq. yards land owned by the plaintiff. Therefore, if the defendant is allowed to use certain portion of property of the plaintiff, it does not create title of the said portion in favour of the defendant. It is pertinent to mention that the plaintiff was given a suggestion by ld. defence counsel that defendant was allowed to use the 7¼ wide portion i.e. gali. The aforesaid suggestion is an implied admission of the fact that the defendant did not have any title over the said portion and he was allowed by the plaintiff to use that and that the said portion belongs to the plaintiff. Had plaintiff been not the owner of the said 7¼ wide portion defendant would not have required permission from plaintiff to use that. Ld counsel has also argued that the plaintiff has installed the gate at point G and F as shown in site plan Ex. PW1/D7 which shows that the remaining 7¼ feet wide portion is meant for common use. So far as the aforesaid plea raised by Ld counsel for the defendant is concerned, I am of the opinion that it is for the plaintiff to decide as to where he wishes to install the gate in her property and the defendant cannot dictate her to install the gate at a particular point or to raise the construction in a particular manner in her property.

14. In this case, the defendant is claiming the right to use the property of the plaintiff without having purchased it and he is seeking the said right without claiming his title therein. The court cannot presume that the defendant also has a right to use the property of the plaintiff which is adjacent to his plot without having purchased it as he has purchased only 100 sq. yards plot in the property of the plaintiff.

15. Considering the evidence on record, there is no doubt that plaintiff is the owner and in possession of 400 sq. yards plot of land and the 7¼ feet wide gali as shown within the area Mark A,B,C and D of the site plan of the plaintiff is also part and parcel of said plot of land. Therefore, the plaintiff is entitled to the decree of permanent injunction as prayed for and the defendant is hereby restrained from entering the property of the plaintiff i.e. land measuring 400 sq yards in khasra no. 48/4 in abadi known as Mange Ram Park, Phase-I, Village Pooth Kalan, Delhi including the 7 ¼ feet wide gali as shown in green colour in the site plan annexed with the suit. The defendant is also restrained from restraining the plaintiff from raising the boundary wall in her abovesaid property. Accordingly, these issues are decided in favour of the plaintiff and against the defendant.

ISSUE NO. 2A

Whether the portion shown within the area Mark A,B,C and D of the site plan of the plaintiff is a common gali for the use of the plaintiff as well as the defendant? OPD.

16. The defendant has alleged that the 7 ¼ feet wide portion as shown at point A,B,C and D in the site plan of the plaintiff is a common gali for the use of the plaintiff as well as the defendant. The onus to prove this issue is conferred upon the defendant. Defendant has not disputed the fact that he has only purchased 100 sq. yards plot of land out of the total property of plaintiff measuring 500 sq. yards. He has nowhere claimed that he has also purchased the 7¼ wide passage as shown at point A,B,C and D in the site plan of the plaintiff. The property documents relied upon by the defendant vide which he purchased the 100 sq. yards plot from the plaintiff nowhere reveals or mentions that any gali or passage was ever left for common usage of the parties. To claim any right in the alleged portion/land, the defendant is required to prove his right or title therein and the defendant has miserably failed to prove the same. The defendant wishes to use the land of the plaintiff without having purchased it. The defendant has failed to prove that the 7 ¼ feet wide portion which is part and parcel of 400 sq. yards of the property of the plaintiff is a common gali for the common use of the plaintiff as well as the defendant. Accordingly, this issue is decided against the defendant and in favour of the plaintiff.” (underlining added)

5. No fault whatsoever can be found, either in fact or in law, in paras 11-16 of the judgment of the trial court because the appellant/defendant only purchased 100 sq. yards by the documentation dated 12.5.1998 and the disputed gali is not part of 100

sq. yards. Once, there are no legal rights of the appellant/defendant in the gali by virtue of any documents, then the appellant/defendant cannot claim any valid legal rights to use the gali.

6. Accordingly, in my opinion, the thorough reasoning and discussion of the courts below including of the trial court in paras 11-16, do not call for any interference by this Court.

7. Learned counsel for the appellant/defendant drew the attention of this Court to the cross-examination conducted of PW1/plaintiff/Smt. Bimlesh Kumari on 9.5.2013 as also the cross-examination of PW2/Sh. Vijay Pal Singh to argue that cross-examinations of these witnesses admit that the plot of 100 sq. yards of the appellant/defendant is two side open, however, in my opinion, the fact that the plot of 100 sq. yards of the appellant/defendant is two side open does not mean that one side of the plot which is a gali would become that of the appellant/defendant in the sense that the appellant/defendant would have right to use this gali.

8. Learned counsel for the appellant/defendant then argued that the boundaries in the agreement to sell with respect to 100 sq. yards sold show that there exists a gali in the east to the 100 sq. yards property transferred to the appellant/defendant, and therefore, the

appellant/defendant has right to use this gali, however, even this argument is misconceived because boundaries of a property does not mean that the different portions bounding the property are transferred i.e portions existing to the north, south, east and west of the property transferred also gets included in the transferred property. This argument of the appellant/defendant is also therefore rejected.

9. Learned counsel for the appellant/defendant then argued that PW1 in her cross-examination dated 9.5.2013 admits that the appellant/defendant had been allowed to use the gali by the respondent/plaintiff, however, this aspect has been rightly dealt with by the courts below by observing that allowing of a person such as the appellant/defendant to use a gali by the respondent/plaintiff who owns the gali will not create legal rights in favour of the appellant/defendant for all times to use the gali and the owner of the gali being the respondent/plaintiff could always seek stopping of the usage of the gali by the appellant/defendant and who has no legal right in the gali. This argument of the appellant/defendant is also therefore rejected.

10. The last argument urged on behalf of the appellant/defendant was that the respondent/plaintiff as PW1 in cross-examination admitted that her property came to an end at the outer gate of her property, however, reference to this property of the

respondent/plaintiff is reference to the built up property and the respondent/plaintiff saying that her property ends at the outer boundary wall does not mean that respondent/plaintiff admits that the appellant/defendant was transferred legal rights in the disputed gali. This argument of the appellant/defendant is also, therefore, rejected.

11. In view of the above, no substantial question of law arises for this regular second appeal to be entertained under Section 100 CPC and the same is hereby dismissed.

12. Interim order stands vacated. Costs already imposed by earlier orders of this Court shall be paid to the respondent/plaintiff by the appellant/defendant within a period of four weeks from today failing which respondent/plaintiff can initiate execution proceedings for recovering of the costs.

MAY 02, 2017

VALMIKI J. MEHTA, J

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