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

+ CM(M) 561/2014, CM No.8824/2014 (for stay)

UNION OF INDIA

..... Petitioner

Through: Mr. Jaswinder Singh, Advocate

Versus

PAWAN SARAF & ORS

..... Respondents

Through: Mr. Alok Kumar, Mr. Neeraj Kumar
Gupta, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

15.11.2017

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1. This petition under Article 227 of the Constitution of India impugns the order [dated 9th September, 2013 in MCA No.37/2013 of the Court of Senior Civil Judge, Tis Hazari Courts, Delhi] of dismissal of appeal preferred by the petitioner under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (CPC) against the order dated 17th April, 2013 in CS No.52/2012 of the Court of Civil Judge-18 (Central), Tis Hazari Courts, Delhi, allowing the application of the respondents/plaintiffs under Order 39 Rules 1 and 2 of the CPC and restraining the petitioner/defendant, during the pendency of the Suit, from interfering in the ingress or egress of the respondents/plaintiffs and their family members to their property and interference in the use of “passage in question of the plaintiffs” and directing the petitioner/defendant to remove the barbed wire placed in front of the house of the respondents/ plaintiffs.

2. This petition was entertained and notice thereof was ordered to be issued and has remained pending for the last over three years.
3. The counsel for the respondents/plaintiffs states that issues have already been framed in the Suit and trial has commenced. He suggests that the Suit be ordered to be decided within six months from today.
4. On enquiry, it is informed that evidence of the respondents/plaintiffs is already complete and the evidence of the petitioner/defendant is underway.
5. On enquiry, it is informed that the respondents/plaintiffs have instituted the Suit from which this petition arises for permanent injunction restraining the petitioner/defendant from causing interference in the access of the respondents/plaintiffs to their house from land admittedly of the petitioner/defendant, claiming to have acquired the right of use thereof as a passage, by prescription.
6. I have enquired from the counsel for the respondents/plaintiffs whether there can be a right of passage by prescription over Government land without the same being declared as a public road. It prima facie appears that it would become very difficult for the Government to develop its lands, if house owners, by mere passage of time, were to start claiming right of passage by prescription over such land which may not have been developed earlier.
7. The counsel for the respondents/plaintiffs has drawn attention to Section 15 of the Indian Easements Act, 1882 to contend that there can be a right of easement by prescription against the Government except that the said right fructifies in 30 years instead of 20 years.

8. I have next enquired from the counsel for the respondents/plaintiffs whether the construction of the house of the respondents/plaintiffs is sanctioned.

9. The answer is in the affirmative.

10. Prima facie it appears that unless the plan sanctioning construction show access to the property of the respondents/plaintiffs through the point through which right of easement by prescription is claimed, the respondents/plaintiffs cannot have such a right.

11. It has also emerged during the hearing that the petitioner/defendant had at one stage granted permission in writing to the predecessor of the respondents/plaintiffs and which permission was withdrawn more than 30 years prior to the institution of the Suit and it is the claim of the respondents/plaintiffs that in the said 30 years, the respondents/plaintiffs continued to use the said passage.

12. A question also arises whether, when the right is granted contractually, there can be a question of easement by prescription within the meaning of Section 15 of the Easements Act. Prima facie it appears that the principle of law relating to adverse possession i.e. one who comes in possession through a lawful title cannot, without first surrendering the possession, claim right by adverse possession.

13. It also needs to be examined, whether it was for the respondents/plaintiffs to challenge the withdrawal of permission and when the respondents / plaintiffs without doing that, can they claim right of easement by prescription.

14. Though it appears that the Suit can be decided on legal issues only, but since evidence of the respondents/plaintiffs is stated to be complete, it is deemed appropriate to allow the evidence to be completed. Also, since all the material is not on record, in any case the hearing of this petition cannot take place today.

15. This petition is disposed of by directing the Court of Sh. Dheeraj Mittal, Senior Civil Judge, Tis Hazari Courts, Delhi before whom the suit is stated to be now pending to decide the Suit from which this petition arises latest by 31st March, 2018.

16. Since public land is involved, it is also deemed appropriate to direct the Commandant, CFL ASC of the petitioner/defendant to ensure proper representation and appearance of witnesses in the Suit.

17. The person occupying the office of the Commandant, CFL ASC would be personally responsible for compliance.

18. The counsel for the petitioner / defendant to personally communicate this order to the person occupying the office of Commandant, CFL ASC.

19. Needless to state that the observations hereinabove contained to not affect the final adjudication by the learned Senior Civil Judge.

Order dasti under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 15, 2017
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