

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

+ **RSA No.23/2015**

% **16th November, 2017**

GUJRATI WAGHARI SAMAJ SOCIETY Appellant

Through: Mr. Mudit Gupta, Advocate
with Mr. Aman Imrose,
Advocate.

versus

MUNICIPAL CORPORATION OF DELHI & ORS. Respondents

Through: Mr. Abhinav Dang, Advocate
with Mr. Jagat Rana, Advocate
for respondent No.2.

Mr. Dhanesh Relan, Advocate
with Ms. Gauri Chaturvedi,
Advocate for respondent No.3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

**RSA No.23/2015 and C.M. Nos. 1001/2015 (stay), 28116/2015
(under Order XLI Rule 27 CPC) & 29556/2015 (under Order VI
Rule 17 CPC by appellant)**

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the concurrent judgments of the courts below; of the Trial

Court dated 3.12.2013 and the First Appellate Court dated 23.8.2014; dismissing the suit whereby the appellant/plaintiff prayed for a decree of mandatory injunction against the respondents/defendants to demolish a dividing wall which was made in the mandi/market known as Baba Ram Dev Ji Waghari Samaj Old Clothes Sellers Mandi. Mandi/market is situated at Raghubir Nagar, New Delhi.

2. The case of the appellant/plaintiff/society was that it was a society which comprised of around 1000 members who used to buy and sell old clothes. The subject mandi was pleaded to be allotted to the appellant/plaintiff/society in which there were 22 sheds and two gates for entry and exit. It was pleaded in the plaint that each member of the society would pay Rs.2/- as entry fee and Rs.110/- for issuance of the identity card for membership. It was pleaded that mandi was constructed by the respondent no.3/defendant no.3/Delhi Development Authority (DDA) and now the same is under the control of respondent no.2/defendant no.2/Delhi Urban Shelter Improvement Board. It was pleaded in the plaint that the respondent no.2/defendant no.2 had wrongly constructed a dividing wall in the mandi whereby it was divided in two parts and resultantly only 12 sheds and the adjoining

area was available for use by the members of the appellant/plaintiff/society whereas the other ten sheds and one gate was used by the respondent no.2/defendant no.2 for other purposes. It was pleaded by the appellant/plaintiff therefore that mandatory injunction be granted to demolish the dividing wall in the mandi.

3. In the written statement of the respondent no.2/defendant no.2, it was pleaded that the appellant/plaintiff/society had no *locus standi* to file the suit and nor did it have any legal rights in the market. The suit was therefore prayed to be dismissed.

4. Trial court, after pleadings were complete, framed the following issues:-

- “i) Whether the suit of the plaintiff is bad for non-joinder of the parties? OPP
- ii) Whether the plaintiff is entitled to the relief of perpetual injunction, as prayed for? OPP
- iii) Whether the plaintiff is entitled to the relief for mandatory injunction? OPP
- iv) Relief.”

5. The main issues were issue nos. 2 and 3 and the trial court has decided these issues in favour of the respondent no.2/defendant no.2 by holding that there is no legal right of the appellant/plaintiff in the mandi and once members of the

appellant/plaintiff/society were only paying per day licence fee charges for entry to the mandi of Rs.2/- then because of such reason and facts the property/complex cannot be owned and does not belong to the appellant/plaintiff/society.

6. The relevant discussion with respect to issue nos. 2 and 3 is found in paras 10 to 12 of the judgment of the trial court dated 3.12.2013 and these paras read as under:-

“ISSUE NO.2 & 3

10. Both these issues are taken up together as onus to prove both these issues is on the plaintiff and they are interconnected with each other. In the first prayer, the plaintiff seeks perpetual injunction thereby restraining the defendants to raise the wall in the premises and for mandatory injunction, thereby directing the defendants to remove the wall as already constructed. It is important to ascertain as to what right the plaintiff and its members have in the premises for which, the desired relief has been sought. The plaintiff itself states that the whole premises including the sheds was developed by the defendant no.3/DDA. It is further stated that the members of the plaintiff were allotted the required sheds in the premises by the defendant no.3/DDA. It is very important to notice that according to the plaintiff itself, each members was to pay Rs.2/- per day as entry fee in the premises. In its written statement, the defendant no.2 explains that the sellers and buyers of the old clothes were allowed to enter into and use the premises on an entry fee of Rs.2/- per day and they are merely licensee on day to day basis. Neither in the plaint nor in evidence, the plaintiff has disclosed as to what right it has, on the basis of which desired relief can be given. The property/complex does not belong to the plaintiff and purely under the authority of the defendants and in my opinion, the plaintiff cannot claim any right in it. The status of the plaintiff is not even purely of a licensee. The complex/market is open to all, whoever deals in old clothes. Everybody who deals in the business of old clothes may enter into and sit in the complex/market on payment of entry fee of Rs.2/- per day. Under these circumstances, when the plaintiff and its members do not have any concrete right in the complex/market, they cannot claim any injunction against the defendants. The defendants

have full authority to raise any wall or to do any kind of construction in the complex or premises.

11. The plaintiff has relied upon several documents but none of these documents show the right of the plaintiff in the premises/market.

12. In my opinion, the plaintiff has failed to prove its case in its favour. Both these issues are decided against the plaintiff and in favour of the defendants.”
(underlining added)

7. The judgment of the trial court has been upheld by the first appellate court in terms of its judgment dated 23.8.2014 holding that merely because members of the appellant/plaintiff/society may have a right in functioning of the mandi yet the property/complex does not belong to the appellant/plaintiff/society or its members who are only licensees. The appeal filed by the appellant/plaintiff/society was dismissed by making the following observations:-

“14. Shri Kishore Kumar, PW-1 though has not been cross-examined, but if his testimony is perused, it is noticed that he himself has stated in his testimony that the market was constructed by DDA/Slum. He has further deposed that it was handed over to Baba Ram Dev Ji Waghari Samaj Old Clothes Sellers Samiti/Society, which was used by its members on payment of Rs.2/- per day as entry fee and Mandi's slum staff was collecting entry fee against ticket. Members were issued identity card on payment of Rs.110/- per member by the TACIT team. Thus, from his own testimony, it is evident that the members of the plaintiff society used to enter the market on entry fee; the said market has been constructed by DDA/Slum; identity cards were issued on payment of Rs.110/-.

15. From these facts, it comes out that the entries of the members of plaintiff society were merely in the nature of a licensee. When the property had been constructed by DDA, as per own version of the plaintiff society and they have been in use of the Mandi on any entry fee, their user of the property was merely of a licensee. When their user has been merely of a licensee, they cannot claim any right over the suit property as the said property is said to have been constructed by DDA/Slum.

16. The plea taken on behalf of the respondents/defendants that the trial court has not taken into account the Memorandum of Understanding

arrived at on 21.05.1988 is of no assistance as the said Memorandum of Understanding has not been brought on record in the testimony of any of the witnesses. Even otherwise also, this Memorandum of Understanding reiterates the terms and conditions for formation of the society. This does not create any right in the suit property. Thus, from the evidence on record, it comes out that the plaintiff society was mere licensee and it has no right in the suit property. When it has no right in the suit property, it was not entitled for the relief of injunction. The view taken by the trial court is the correct one, which is based on the documentary evidence on record.” (underlining added)

8. Before this Court, on behalf of the appellant/plaintiff/society nothing today is shown as to how merely because members of the appellant/plaintiff/society paying daily licence fee for entry to the mandi for selling their old clothes, how such members or for that matter the appellant/plaintiff/society would get any legal right to the mandi. Admittedly the appellant/plaintiff/society is neither a lessee nor the owner nor a permanent licensee of the mandi and therefore they cannot seek any direction against the respondent no.2/defendant no.2 for demolition of the wall by which the mandi has been divided.

9. In this Court, two applications have been filed by the appellant/plaintiff; one under Order VI Rule 17 CPC being C.M. No.29556/2015; and another under Order XLI Rule 27 CPC being C.M. No.28116/2015, but these applications are liable to be and are

accordingly dismissed because in a second appeal a plaintiff cannot be allowed to amend the plaint and bring on record the documents. Even if we refer to the documents which are now sought to be brought on record and the consequent pleadings of plaintiff which are sought to be amended by reference to these documents, it is seen that none of these documents show that either the plaintiff or its members have any right, title or interest in the mandi in the nature of ownership or lessees or permanent licensees etc. Also, an internal note of DDA cannot be relied once that note is not communicated to the plaintiff vide *Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, 2009 (1) SCC 180*. Also even this note nowhere specifies that the appellant/plaintiff/society is granted any legal rights in the mandi in question.

Applications are therefore dismissed.

10. No substantial question of law arises. Dismissed.

NOVEMBER 16, 2017
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VALMIKI J. MEHTA, J