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

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Date of Decision: February 06, 2017

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RSA 337/2016

ANIL SHARMA

..... Appellant

Through: Mr.Tanuj Khurana & Mr.Ankur
Gupta, Advocates

versus

CHAUDHARY RAVINDER KUMAR

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 is filed impugning the concurrent decision of the two courts below; i.e. judgment dated 26th May, 2016 passed by the First Appellate Court in RCA No.4/2014 and judgment dated 26th November, 2013 passed by the learned Trial Court in Civil Suit No.807/2009 by which the suit of the appellant/plaintiff seeking a decree for permanent injunction has been dismissed in respect of the property described as Bhagwati Mandir, B-34, Govind Mohalla, Haiderpur, Delhi-42.

2. Mr.Tanuj Khurana, learned counsel for the appellant has submitted that both the Courts below vide their concurrent judgments had committed illegality in going into the title of the appellant/plaintiff in respect of the suit property. He further contended that as the appellant/plaintiff is in possession, the suit simplicitor for injunction was maintainable. Since the cause of action pleaded in the suit was about the interference caused by the

respondent/defendant by removing the sign board of Mandir, obstructing the devotees having access to the Mandir from the main road, such type of interference in the lawful possession of the appellant/plaintiff could have been injuncted by a decree for permanent injunction for which suit simplicitor for injunction was maintainable.

3. In support of his submissions, learned counsel for the appellant has relied upon a decision of Hon'ble Supreme Court reported as Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LR's & Others; (2008) 4 SCC 594.

4. I have considered the submissions made by the learned counsel for the appellant. The plaint of Civil Suit No.807/09 is annexed with this appeal as Annexure A-2. The averments made in the plaint are to the following effect:-

(i) The plaintiff is owner and in adverse possession of property namely Bhagwati Mandir, B-34, Govind Mohalla, Haiderpur, Delhi-42 since the year 1976.

(ii) Plaintiff had constructed a Mandir in the said property in the year 1981 by his own funds and he is Mahant/Pujai of the said Mandir till date.

(iii) The defendant is residing in the adjoining property. The gate of the Mandir is on the main road and being used by all the devotees since the date of construction of the said Mandir.

(iv) The defendant had previously affixed an iron railing in the open space on the road for which he filed two Civil Suits impleading MCD as a party. After the MCD removed the encroachment, he withdrew both the suits on 5th November, 2009.

(v) On 5th November, 2009 itself, in the evening, the defendant along with his associates threatened the plaintiff to close the main gate of the Mandir and removed the sign board but could not succeed due to intervention of

neighbours. Complaint was made to DCP, Ashok Vihar on 6th November, 2009.

(vi) The prayer made in the civil suit was to restrain the defendant and his associates, representatives for closing the door of the temple and removing the sign board of the temple known as Bhagwati Mandir.

5. The suit was contested taking the plea that earlier suits were filed by the plaintiff claiming himself to be the owner. In this suit he took the plea of ownership by way of adverse possession. The construction raised by the plaintiff was on public land by encroaching 20 feet wide road and only a small idol of Goddess Kali Maa has been placed in one room and that no threat was ever extended by him.

6. Learned Trial Court vide its judgment dated 26th November, 2013 dismissed the suit observing that the appellant/plaintiff claimed the source of his title on the basis of document exhibit PW-1/1 executed by Smt.Laxmi Devi who herself had no title in the suit property. She herself was an illegal occupant and could not have conveyed a better title to the appellant/plaintiff. The site plan exhibit PW-1/D-1 also proved that the suit property was on a periphery outer road and it is borne out from the record that the plaintiff is in occupation in a 15½ feet road. The construction raised by him is a kind of road block which cannot be constructed with legal sanction. Granting of an injunction in such type of case would signify that the plaintiff has any interest over the suit property or legitimizing his possession which cannot be permitted.

7. Learned Trial Court also examined the case of the plaintiff dehors the above facts and held that the plaintiff being a rank trespasser does not have a locus standi to file the suit.

8. The First Appellate Court vide impugned judgment dismissed the appeal observing that the construction was raised on a piece of public land and plea of adverse possession can only be taken as a shield of defence and dismissed the first appeal.

9. Reliance placed by the learned counsel for the appellant on the decision reported as *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs & Others*; (2008) 4 SCC 594 is of no assistance to the appellant/plaintiff as the question here is not whether suit for injunction simplicitor was maintainable. There is concurrent findings of the facts by the Courts below that the appellant/plaintiff has encroached upon the public land.

10. It is trite that a person who has no legal right to stay in the suit property is not entitled to the discretionary relief of injunction because grant of injunction is a discretionary relief as per Section 36 and 38 of Specific Relief Act, 1963.

11. Both the Courts below have rightly held that mere possession of suit property does not entitle the appellant/plaintiff, who is a trespasser, to discretionary relief for injunction which cannot be granted in favour of a trespasser on a public land.

12. In *Premji Ratansey Shah and Others Vs. Union of India and Others* (1994) 5 SCC 547, the Hon'ble Supreme Court has time and again emphasized that the discretionary relief of injunction should not be granted to a trespasser more so a person, who is a trespasser on a public land.

13. In view of the above, no substantial question of law arises under Section 100 of Code of Civil Procedure and the appeal is dismissed.

PRATIBHA RANI
(JUDGE)

FEBRUARY 06, 2017/ 'pg'