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

+ **CS(OS) 3466/2015 & I.A. 26169/2015**

MANMOHAN SINGH

..... Plaintiff

Through

Mr. Sumeer Sodhi with Mr. Amitabh
Sinha, Mr. Anirudh Chadha and
Mr. Arjun Nanda, Advocates

versus

ASHOK RANA & ORS

..... Defendants

Through

Mr. B.S. Randhawa, Advocate for
D-1.
Mr. Anil Kumar Sharma, D-2 in person.
Mr. Atul Kumar, Advocate for D-8, 9, 13,
18, 19, 24 and 25. Defendant no. 8 in
person.

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Date of Decision: 09th October, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

Present suit has been filed for permanent and mandatory injunction restraining the defendants from interfering with the peaceful possession of the plaintiff and further restraining the defendants from dispossessing the plaintiff without due process of law.

By virtue of order dated 25th September, 2017, defendant nos. 3, 4, 5 to 7, 10 to 12, 14 to 17 and 20 to 23 were proceeded ex-parte.

During the pendency of the present suit, a writ petition filed by the plaintiff being W.P.(C) 10750/2015 was disposed of by this Court vide judgment and order dated 08th July, 2016. The said order is reproduced hereinbelow:-

" Matter has been listed today as 07th July, 2016 was declared holiday on account of Idu'l Fitr.

1. Today, learned counsel for the petitioner states that the petitioner undertakes to develop and maintain the land adjacent to Plot No.77, Friends Colony (West), New Delhi, currently admeasuring approximately 1000 sq. yards (hereinafter referred to as 'the Area') under the petitioner's possession since 1953 as a park for the benefit of Friends Colony residents, their families, children, senior citizens and guests in accordance with the letter dated 15th December, 1953 issued by Mr. R.B. Nathu Ram, Chairman of the Friends Colony Co-operative House Building Society. The letter dated 15th December, 1953 is reproduced hereinbelow:-

*"Friends Colony co-operative
House Building Society Limited, Mathura Road,
New Delhi.*

Dated: 15.12.1953

Dear Manohar Singh,

With regard to your request to have low lying area marked for children's park beside your plot to be filled I am sorry to say the Society has no funds to meet such heavy expenses. You please have it filled up and make use of it. The society has no objections.

Yours sincerely,

*(R.B. Nathu Ram)
Chairman"*

2. Consequently, this Court directs that the Total Stationery Method will be used to demarcate the said Area meant for children's park adjacent to Plot No.77. The demarcation would be done in the presence of the petitioner and other parties including the applicants with prior written notice on or before 22nd August, 2016 at the cost of the petitioner.

3. The petitioner will make the park operational within a period of twelve months from the date of demarcation. The concerned municipal

authority shall have the right to visit, monitor the park and to give binding directions.

4. The petitioner will bear the expenses such as cost of rebuilding the boundary wall and infrastructure for its upkeep as well as provide electricity, water and security.

5. Pending any decision/judgment passed by competent Court/ Forum/Tribunal, the private respondents as well as applicants and their agents, attorneys, successors or any other persons shall have no right, title or interest in the said area as well as not claim any passage through this area and will not in any manner interfere with the construction or operation of the park.

6. All the parties are in agreement that, as of today, the 1,150 sq. yds. land on the western side of the proposed park is vacant. Parties further agree that no third party interest or any construction shall be carried out in the said premises by any party.

7. The statements made by learned counsel for parties are accepted by this Court and the parties are held bound by the same.

8. It is made clear that this Court in the present proceedings has not examined the issue of ownership or title or possession with regard to the area in question or neighbouring 1150 sq. yds. area. Any decision/judgment passed by any competent Court/ Forum/Tribunal shall be binding on the parties to the said proceedings.

9. This Court clarifies that it has expressed no opinion on the merits of the rival claims. Rights and contentions of all the parties are left open. No right or equity shall be claimed by either of the parties in pursuance to this Order.

10. The proceedings filed vide Diary Nos.4448 dated 16th November, 2015 and 4390 dated 9th November, 2015 and Case No.30/SDM/(DC)/SE/3805 before the SDM shall stand disposed of in accordance with this Court's Order. With the aforesaid observations and directions, the present writ petition and applications stand disposed of."

The order dated 08th July, 2016 was challenged by the defendant Nos. 8, 13, 18, 19, 24 and 25 by way of an appeal being LPA 463/2016 and the same was disposed of vide order dated 22nd August, 2016. The said order is reproduced hereinbelow:-

"Caveat Nos.731/2016, 732/2016, 733/2016, 734/2016, 735/2016 & 736/2016

None appeared for the respondent No.1/caveator.

CM No.30336/2016 (exemption)

Allowed, subject to all just exceptions.

LPA No.463/2016 & CM No.30335/2016 (stay)

1. The grievance of the appellants in the present appeal is only with regard to Para 5 of the order under appeal which reads as under:

“5. Pending any decision/judgment passed by competent Court/Forum/Tribunal, the private respondents as well as applicants and their agents, attorneys, successors or any other persons shall have no right, title or interest in the said area as well as not claim any passage through this area and will not in any manner interfere with the construction or operation of the park.”

2. It is submitted by Mr.Chetan Sharma, learned Senior Counsel appearing for the appellants that though the appellants are taking steps to initiate appropriate proceedings for redressal of their grievance, the above observations/findings of the learned Single Judge are adversely affecting the rights of the appellants and that the same would come in the way of adjudication of the rights of the appellants by the competent forum.

3. However, we found that it was made clear in Para 9 of the order under appeal itself that this court has not expressed any opinion on the merits of the rival claims. Hence, though it appears to us that the apprehension of the appellants is without any basis, to meet the ends of justice we make it clear that any of the observations/findings recorded by the learned Single Judge in the order under appeal shall not be treated as conclusive and that the same shall not come in the way of the competent forum/tribunal, before which the proceedings are stated to have been filed/to be filed by the appellants, and that the matter shall be decided on its own merits following due process of law.

4. The appeal stands disposed of accordingly."

Mr. Sumeet Sodhi, learned counsel for the plaintiff points out that despite the aforesaid order, defendants are trying to interfere with the construction of the children park by the plaintiff. He states that plaintiff would be satisfied if defendants undertake that they would not dispossess the plaintiff except in accordance with law.

Mr. B.S. Randhawa, learned counsel for defendant No.1 as well as defendant no. 2, who is personally present and Mr. Atul Kumar, learned counsel for defendant Nos. 8, 9, 13, 18, 19, 24 and 25 vehemently deny that the said defendants are interfering with the construction of the said park.

Mr. Randhawa, learned counsel for defendant No.1 states that defendant No.1 has filed a counter-claim praying for declaration declaring the defendant No. 1 and his siblings are the owners of the area measuring 1255 sq. yrd. out of Khasra No.1130/1105/63 min. situated in village Kilokari. However, he clarifies that the defendant no. 1 is not claiming ownership of the suit land, i.e., 1000 sq. yds. as it is only a passage for him.

Learned counsel for the plaintiff and defendant Nos. 8, 9, 13, 18, 19, 24 and 25 dispute the aforesaid statements.

It is pertinent to mention that there are serious inter-se title and ownership issues between the defendants themselves.

Admittedly, other than the counter-claim filed by the defendant No.1 in the present proceedings, no legal proceeding by any of the defendants is pending as of today.

At this stage, learned counsel for defendant Nos. 8, 9, 13, 18, 19, 24 and 25 state that his clients have filed a fresh suit vide Diary No. 453494 dated 9th October, 2017. However, the said suit has not been listed till date.

In the opinion of this Court, vide order dated 08th July, 2016 in W.P.(C) 11750/2015, an interim arrangement has been made with regard to the area in question till a decision/judgment is passed by any competent a court/forum/tribunal. Since the said order dated 08th July, 2016 and the clarification by the Division Bench vide order dated 22nd August, 2016 has attained finality, all the parties are bound to abide by the same.

At this stage, learned counsel for the defendants and defendant no. 2 state that they would not interfere or impede or prevent or obstruct the construction or operation of the children park directly or indirectly till a competent court/forum/tribunal passes an appropriate order.

The aforesaid statements, assurances and undertakings made by learned counsel for the defendants as well as defendant no. 2 in person are accepted by this Court and the present suit and pending applications are disposed of in terms thereof. It is clarified that this order is without prejudice to the rights and contentions of the defendants.

However, the counter-claim filed by the defendant no. 1 is directed to be registered and numbered separately by the Registry. The counter-claim is directed to be listed for preliminary hearing on 8th February, 2018.

MANMOHAN, J

OCTOBER 09, 2017

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