

\$~11

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

% *Judgment delivered on: 15.01.2018*

+ **RSA 91/2013**

M/S CAPITAL LAND BUILDERS (PVT) LTD. Appellant

Through: Mr. Randhir Pandey, Advocate.

Versus

MUNICIPAL CORPORATION OF DELHI & ANR. Respondents

Through: Mr. Sunil Goel, Standing Counsel
with Ms. Supreet B. And Mr. Mayank
Goel, Advocates for Respondent
No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The present second appeal has been filed by the appellant against the dismissal of their appeal being RCA No. 78/2011 on 01.03.2013, preferred against the judgment dated 19.04.2005 in Suit No. 210/1981, wherein the learned Civil Judge, Delhi, had found that the suit was barred by the rule of *res judicata*.
2. For the sake of convenience, the parties are referred to as the 'plaintiff' and the 'defendant' in the same sequence in which they were arrayed in the original suit.
3. The facts of the case are that the plaintiff/ appellant had sought a permanent injunction against the defendant No.1/Municipal Corporation of

Delhi (MCD) and defendant No.2/Bhagwan Dass Nagar Residents Welfare Association (Regd.), seeking a restraint against the latter from taking possession of land admeasuring 1.5 acres, earmarked for a school, and 193.6 square yards of land for a Petrol Pump, situated in Khasra No. 81-83 of Village Shakurpur, New Delhi, which the plaintiff claimed it owned. This case was instituted in 1981. After the framing of issues, pending the recording of evidence, the plaintiff had filed another suit for injunction i.e. Suit No.151/1997, seeking restraint of the defendants from interference in the aforesaid property of 1.5 acres. The issues were framed in the latter suit too and subsequently, after trial, it was dismissed. The first and the second appeals against its dismissal were also dismissed. In these circumstances, the defendant No. 2 had moved an application seeking dismissal of the first suit on the ground of *res judicata*, since similar reliefs had been sought and dismissed apropos the suit property between the same parties.

4. Considering the above facts, the learned Trial Court dismissed the pending first suit i.e. Suit No. 210/1981 as being barred by the doctrine of *res judicata*. The First Appellate Court upheld the dismissal.

5. In effect, now this is the sixth round of litigation for the same relief by the plaintiff. It is the plaintiff's contention that since Suit No.151/1997 was dismissed without any evidence, the subsequent suit cannot be treated as being barred by the doctrine of *res judicata* i.e. on account of a decision in a previously instituted suit for the same relief. In support of his contentions, he relies upon the following judgments:-

(i) *M. Nagabhushana vs. State of Karnataka & Ors.*, (2011) 3 SCC 408

- (ii) *D.L. F. Universal Ltd. vs. Arjan Singh & Ors.*, AIR 1986 Delhi 381 (DB)
- (iii) *Syed Mohd. Salie Labbai (Dead) by L.Rs. & Ors. vs. Mohd. Hanifa (Dead) by L. Rs. & Ors.*, AIR 1976 SC 1569
- (iv) *Gurbaksh Singh vs. Bhooralal*, AIR 1969 SC 1810
- (v) *Sheodan Singh vs. Daryao Kunwar*, AIR 1966 SC 1332
- (vi) *State of Maharashtra & Anr. vs. M/s National Construction Company, Bombay & Anr.*, AIR 1996 S.C. 2367
- (vii) *Kunjan Nair Sivaraman Nair vs. Narayanan Nair & Ors.*, (2004) 3 SCC 277
- (viii) *Chandradhoja Sahoo vs. State of Orissa & Ors.*, AIR 2013 S.C. 367

6. In rebuttal, the learned counsel for the defendant states that the principle of *res judicata* would be applicable, the appeals too were dismissed as being without merit, hence this second appeal too should be dismissed.

7. The Court is of the view that the prayers sought in both the suits are nearly identical. Suit No. 210/81, had sought permanent injunction restraining the defendants from interfering in the land admeasuring 1.5 acres earmarked for a school, as fully described in the lay-out plan of Bhagwan Dass Colony, Rohtak Road, Delhi, out of Khasra No.81/1 in the estate of Village Shakurpur, Rohtak Road, Delhi. The subsequent suit being Suit No. 151/1997 had sought restraintment of the defendants, their agents and employees from interfering in the aforesaid site, as an interim measure.

8. In the second suit, the learned Trial Court observed that:-

“7. Plaintiff failed to lead any evidence despite the repeated opportunities. Finally last opportunity was given on

23.11.2000 for 22.1.2001 but none of the witness was present. Thereafter, the plaintiff evidence was closed.”

9. Considering the question of burden of proof in the issue: whether the plaintiff was the owner of the suit land was upon the plaintiff, and it had chosen not to lead any evidence, there being no evidence establishing the ownership of the plaintiff, the learned Trial Court decided the first issue against the plaintiff. Similarly, the issue Nos. 2, 3 and 4 i.e. (i) whether the possession of the suit land had been taken by the defendant No. 1 on 19.09.1977; (ii) whether the suit was barred under Order II Rule 2 CPC on account of the previously instituted Suit No.850/1994; and (iii) whether the plaintiff had suppressed material facts, the Trial Court held that the plaintiff had sought restraint against the defendant from interfering in the land admeasuring 1.5 acres for the school out of Khasra No.81/1, which relief was apparently covered in the previously instituted suit. Hence, the second suit being barred by the provisions of Order II Rule 2 CPC, this issue was also decided against the plaintiff.

10. The learned counsel for the MCD submits that in any case, after the dismissal of the previously instituted suit, the second suit seeking identical/similar reliefs ought to have been dismissed, being covered by the principles of *res judicata*.

11. From the preceding discussion it is evident that both the suits had sought the same reliefs, regarding the same property and concerned the same parties. But each time, the plaintiff failed to prove its case. Hence the suits and the successive appeals were rightly dismissed. This appeal too is destined to suffer the same fate because in view of its aforesaid antecedents, it is covered by the principle of *res judicata*.

12. In the aforesaid circumstances, the Court finds no reason to interfere with the impugned order. Accordingly, the appeal is dismissed.

NAJMI WAZIRI, J.

JANUARY 15, 2018/sb

