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IN THE HIGH COURT OF DELHI AT NEW DELHI

Delivered on: 20th August, 2019

RSA 84/2019

ANGURI SAGAR

..... Appellant

Through : Mr.Abdul Sattar, Mr.Dhananjay
Rai and Mr.Gaurav Adhana,
Advocates

versus

M/S NBCC LTD & ORS

..... Respondents

Through : None

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

CM APPL No.19027/2019

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RSA 84/2019 & CM APPL No.19025/2019

1. This appeal is against the judgment dated 06.09.2016 passed in civil suit No.515/14 by learned Civil Judge and also against judgment dated 18.12.2018 passed by learned Additional Senior Civil Judge in RCA No.28/2016. The brief facts are as under :

- (i) *The plaintiff has stated that she is priestess of Prachin Hanuman & Mata Mandir which is an ancient temple situated behind C-2/55, Moti Bagh Part-i, New Delhi (now known as in front of B-12, New Moti Bagh-1, New Delhi).*
- (ii) *That the local residents performed the worship of various*

gods like Hanumanji, Mata Sherawali, Shivji, Ganesh, Bhagwati, Kartikeya, Nandi, Shivling in the said temple.

(iii) That the said temple as shown in red colour in attached site plan IS situated in the area of land measuring 99 feet:6inches in length and 28 feet in width.

(iv) The plaintiff has alleged that images of various gods have been established in the temple since in the year 1903 and they are very old and plaintiff IS looking after the affairs of the temple since the death of her husband on 18.07.1996.

(v) That the defendant no.1 is a registered company and defendant no.2 is the CMD of the company and defendant no.3 is the Director (project) of defendant no.1 and defendant no.4 is the General Manager of defendant no.1. The plaintiff has alleged that defendant no.2 and 4 are the Incharge of defendant no.1 and responsible for day to day affairs of defendant no.1.

(vi) That defendant no.4, claiming himself to be the General Manager of defendant no.1, suddenly started giving threats on 14.01.2011 that he has been instructed by defendant no.1 and 3 to demolish the temple within two-three days.

(vii) That plaintiff has apprehension that defendants may demolish the suit property/ temple therefore, she has no other option except to file the present suit for permanent injunction.

(viii) The plaintiff has alleged that cause of action arose in her favour and against defendants on 14.01.2011 when defendant no.4 extended threats to demolish the temple.

(ix) On the basis of above stated facts and circumstances, the plaintiff prayed for the relief of permanent injunction against the defendants, praying that defendants, their agents, employees and officers be restrained from demolishing the suit property/temple without due process of law. Injunction application under Order XXXIX Rule 1 and 2 CPC was also filed by plaintiff along with suit.

2. The stand of the respondents was the suit property was not an ancient temple but was used as a shelter for NDMC Horticulture workers and class-IV employees of NDMC to take rest during the lunch time in Nursery and that the plaintiff have gradually established one or two deities for worship purely on temporary basis and gradually built up a structure around idols by using old bricks from dismantled C-2 type quarters. It was also alleged the appellant is taking up re-development of the Government land and

the appellant was asked to vacate the premises as it was within of construction zone but she gave assurance to remove the idols when the construction work would begin later. Thus the claim of the appellant was denied by the respondents in their written statement. It was also alleged the land belongs to Ministry of Urban Development and the appellant is rather implementing re-development projects and the said area was handed over to the respondents for construction of Type VII and VIII house. The appellant was directed to vacate the premises illegally encroached by her and no threat was extended to her.

3. The said suit of the appellant was dismissed on the following grounds :

The plaintiff/appellant could not place on record any document to substantiate her claim in the suit property; no evidence was placed on record to show the temple is an ancient temple or the ancestors of the appellant were the priest in the said temple; there was no electricity or water connection and no proper maintenance of record was ever produced; 12 photographs Mark A did not show the temple as an ancient temple; no document was placed on record to show the suit property was handed over to the appellant for construction of temple; the non-production of any document by the respondent to prove the suit property was handed over to them by the Ministry of Urban Development for its re-development was also read in favour of the appellant and against the respondents on the premise the appellant/plaintiff would stand

on her own legs and the appellant is mere a trespasser who encroached upon public land and built a temple over there and was trying to legalize her right over the suit land by filing suit for injunction and the suit was held to be not maintainable for injunction.

4. A similar view was taken by the Additional Senior Civil Judge in RCA No.28/2016 when he held vide his judgment dated 18.12.2018:

14. In the instant case, the appellant has claimed right in the temple/suit property only on the ground that she is a priestess in the suit property/temple since the demise of her husband on 18.07.1996, which was allegedly built in the year 1903. However, the appellant has failed to place and prove on record any document to manifest that the said temple was built in the year 1903. The oldest document related to the suit property is the copy of a letter dated 17.04.1994 mark A, purportedly written by a person, namely, Swami Brahmanand to SHO, PS-Sector-12, R.K.Puram for seeking permission to conduct a "Ramayan Path" on 31.03.1993 and 01.04.1993 in the suit property. However, the said document and later documents Mark A to Mark F are merely photocopies and therefore, they are not proved as per Evidence Act, 1872. Even otherwise, the said documents cannot show that temple at the suit property existed since 1903. Furthermore, water and electricity are basic necessities and it is unimaginable that a temple in the prime location of New Delhi could have existed without the said basic necessities for more than a century. Besides, even the 12 photographs Mark B(colly) do not depict that the said temple is a century old ancient temple. Thus, there is no error in the findings of Ld. Trial Court that the said temple/suit property is not proved to have been established in the year 1903 or that it is an ancient temple.

15. In her cross-examination, the appellant/PW-1 has asserted that her ancestors were priests in the said temple. However, she has even failed to place and prove on record any document to substantiate the said assertion. Thus, the said bald assertions are devoid of substance. Therefore, the findings of Ld. Trial Court that the appellant has failed to establish that her ancestors were priests in the said temple does not require any interference.

16. Astonishingly, in her cross examination, PW-1 has deposed that she is the owner of the suit property. However, she has not produced any document to substantiate the said assertion, which was made with sheer impunity. Even otherwise, appellant never pleaded that

she is its owner. It seems that blinded by over-zeal to grab the suit property, she has falsely testified in her cross-examination that she is its owner. Thus, there is no ground to hold that the appellant is the owner of the suit property.

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20. Ld. Counsel for the appellant has argued that the respondents have not proved any right in its suit property. He has contended that after establishing possession of appellant in the suit property, onus shifted to the respondents to show that they have better right in the suit property. He has further contended that in absence of any evidence of respondents in that regard, they have failed to discharge the said shifted onus. However, the said arguments are not convincing as for discharging her initial onus, the appellant ought to have proved that she is not only in possession of the suit property but she also has right to possess the same. Per contra, in view of the above discussion, the appellant has failed to establish that she has right to be in possession of the suit property.

21. Further, the appellant/plaintiff has to stand on her own legs. She cannot take the benefit of the weakness of the evidence of the opposite side. All the more, when the onus of establishing her right in the suit property lies upon her. The Hon'ble Delhi High Court in case titled as Harish Mansukhani Vs. Ashok Jain 2009 II (AD) (Del) 30 has held that the plaintiff has to prove his case and stand on his legs. The appellant has miserably failed to discharge the onus placed upon her to show that she has right, title or interest in the suit property. In its absence, the appellant is not entitled to any relief qua the suit property.

5. Here I would like also like to refer to the affidavit of one DW1 namely N.J.Kaul, General Manager of respondent who has deposed as follows :

6. I say that before starting the construction work by defendant No . 1 a topographical survey of plot between Shantipath and Vinay Marg, New Delhi was done in November, 2004 by Deccan Consulting Engineers, a temple at C-2(41-44), Near Palika Enclave was noticed and recorded. The plaintiff is claiming the existence of temple behind C-2 (55), therefore in topographically survey of 2004 no such temple is noticed and recorded.

7. I say that the defendant No. 1 had taken the possession of this space in the Month of June 2006 under the plan for development of Netaji Nagar (Part)' and Moti Bagh (east) and for the construction of Type-VII and VIII houses. As per Demolition plan that was done in 12th December 2006, the only temple that was noticed and recorded was in C-2 (41-44) near Palika Enclave, and no such temple was

claimed by Plaintiff near C-2(52) was noticed or recorded.

8. I say that it was observed from the layout plan that was done on 28th July, 2007 that at point 109.1 temple existed, which was also shown in topographical and demolition plan. But' there was no such temple at point No.8 which plaintiff is claiming. Therefore, in Layout plan that was carried in 22nd May, 2009, it was - observed that the temple earlier shown in topographically survey, demolition plan and layout plan was demolished and as of today there is no temple at that point. It is very evident that plaintiff have encroached the premises in illegal manner and there was never such temple behind C-2(55) as claimed by plaintiff.

6. I see no reason to interfere with the orders passed by learned Civil Judge as also the learned Additional Senior Civil Judge. The plaintiff failed to show any document qua her right/title/interest in the suit property and even otherwise, as per respondent such Government land is to be redeveloped for construction of Type VII/ VIII houses. The photocopy of some unproved letters would not create a right in her favour and thus the Courts below had rightly held in holding the plaintiff has to stand at her own legs.

7. Both the courts were concurrent in holding the appellant has no right to obtain a decree prayed for the premises in question.

8. No substantial question of law, therefore, arises in this appeal and hence it is dismissed. No order as to costs.

YOGESH KHANNA, J.

AUGUST 20, 2019

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