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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 39/2022 & CM APPL. 17444/2022, CM APPL.
17445/2022

JANG BAHADUR & ANR. Appellants
Through: Mr. M Qayam-Ud-Din, Adv.

versus

YASH PAL & ANR. Respondents
Through: Mr. Mukesh Gupta, Standing
Counsel for North MCD with Mr. Raghav
Gupta, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **07.04.2022**

1. This appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC), assails the order dated 22nd November, 2021, passed by the learned Additional District Judge-03 (West) ("the learned ADJ"), Tis Hazari, in an appeal against judgment and decree dated 11th April, 2018 passed by the learned Senior Civil Judge ("the learned SCJ") in Suit 12450/2016.

2. A brief conspectus of the facts may be noted.

3. The appellants Jang Bahadur and Jitender were the appellants before the learned ADJ. For the sake of convenience, the parties



would be collectively referred to by name.

4. Yash Pal, the plaintiff before the learned SCJ in CS 12450/2016, and the Respondent 1 before this Court, claimed to have succeeded to ownership of a property situated at A-3/35, Moti Nagar, New Delhi, under a registered Conveyance Deed dated 28th January, 1967, from the Ministry of Rehabilitation. According to the assertions in the plaint in CS 12450/2016, *vide* the said Conveyance Deed, the aforesaid property was conveyed by the Ministry of Rehabilitation to Moti Ram, the father of Yash Pal. Moti Ram having expired on 3rd September, 1990, Yash Pal, as one of the legal heirs of Moti Ram, claimed to be a co-owner in the aforesaid property (hereinafter “the suit property”).

5. According to the assertions in the plaint, Jang Bahadur and Mukund Lal, the father of Jitender, were illegally vending fruits and vegetables on the pavement near the suit property of Yash Pal.

6. Treating these activities as encroachments, the MCD (Respondent 3) removed Mukund Lal and Jang Bahadur from the pavement and discontinued their activities. Thereupon, it is alleged in the plaint, Mukund Lal relocated his activities to an open area near the suit property of Yash Pal.

7. Mukund Lal, thereafter, filed a suit against Yash Pal, claiming to be a tenant of Yash Pal and seeking to restrain Yash Pal from dispossessing him from the pavement from which he was vending.



Yash Pal, in his written statement in response to the suit, clearly stated that the pavement over which Mukund Lal was seeking relief was not his property, but Municipal land and that, by way of the suit, Mukund Lal was using Yash Pal as a stooge to carry out unauthorised activities on land belonging to the MCD.

8. The application for stay under Order XXXIX Rules 1 and 2 CPC, filed by Mukund Lal with his suit, was rejected by the learned Civil Judge by order dated 13th September, 2004, observing that the land on which Mukund Lal was carrying out his activities was, in fact, Municipal land. Mukund Lal appealed but, during the pendency of the appeal, Mukund Lal expired and no efforts were made to implead his legal heirs. The appeal, thus, abated.

9. The plaint in CS12450/2016 further averred that, consequent on the demise of Mukund Lal, Jang Bahadur started selling fruits and vegetables, on the land earlier being encroached by Mukund Lal, which was adjoining the wall of the plaintiff's property, thereby perpetrating the encroachment.

10. Yash Pal alleged that the activities of Jang Bahadur were illegal and unauthorised as the land on which he was vending belonged to the North DMC. Besides, Yash Pal alleged that Jang Bahadur's action were resulting in nuisance, disturbing the peaceful enjoyment, by Yash Pal, of the suit property.

11. Ascertaining that all efforts, with the Municipal authorities, to



remove Jang Bahadur and discontinue his encroaching activities had failed to reap fruit, Yash Pal filed CS 12450/2016, which came to be decided by the learned SCJ *vide* judgment and decree dated 11th April, 2018. The prayer clause in the suit requires to be reproduced, in *extenso*, thus:

“It is therefore prayed that a decree of injunction may kindly be passed against the defendants directing them to remove the defendants No. 1 & 2 from MCD land, touching property No.A-3/35, Moti Nagar, New Delhi as shown red in the site plan enclosed, more particularly against defendant no. 3 to remove the encroachment of defendant No. 1 and 2 from the above portion shown in red from the above property.

(2) A decree of permanent injunction may kindly be passed restraining the defendants from placing Takhats, Tehris, care-curtain, fruits, fruit boxes, on land shown in red in site plan enclosed, touching property No. A-3/35, Moti Nagar, New Delhi blocking the window and passage of the plaintiff and disturbing the peaceful use and enjoyment of property No. A-3/35, Moti Nagar, New Delhi.

(3) Award cost of the suit to the plaintiff.

And pass any other appropriate order or relief in favour of the plaintiff and against the defendants as per circumstances of the case.”

12. The learned SCJ framed the following questions of law as arising for consideration in the suit:

- “1. Whether the suit of the plaintiff is barred by res-judicata ? OPD 1 & 2
2. Whether the plaintiff has no locus-standi to file the present suit as the suit property is situated on government land/MCD land ? OPD 1 & 2
3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD 1 & 2



4. Whether the suit is barred by the provisions of Section 477/478 of DMC Act? OPD 3
5. Whether the plaintiff is entitled for a decree of permanent injunction, as prayed? OPP
6. Whether the plaintiff is entitled for a decree of mandatory injunction, as prayed ? OPP
7. Relief.

13. Having framed the aforesaid questions, the learned SCJ proceeded to answer the questions thus:

(i) With regard to Issue No. 1, i.e. *res judicata*, the learned SCJ held that Jang Bahadur had been unable to indicate that any similar matter was pending adjudication, which would result in Yash Pal's suit being barred by *res judicata*. It was also observed that no such material had come on record even during recording of evidence. The issue was, therefore, decided against Jang Bahadur and in favour of Yash Pal.

(ii) The second issue addressed by the learned SCJ was of the *locus standi* of Yash Pal to file the suit. This is essentially the principal issue that Mr. M. Qayam-Ud-Din, learned Counsel for the appellant, has urged before me in the present proceedings.

On this issue, the learned SCJ held thus:

"10. The onus to prove this issue was upon the defendant no.1 & 2, who have pleaded that the shop in question was situated on Government land i.e. the land of MCD. It is also pleaded that the plaintiff has no right, title or interest in any manner and the plaintiff has no locus-standi to file the suit.



As per the contents of the suit itself, the address of the suit property is A-3/35, Moti Nagar, New Delhi which was allegedly purchased by late Sh. Moti Ram from the Ministry of Rehabilitation vide Conveyance Deed dated 28.01.1967. In para 3 of the plaint itself it is pleaded that both the defendant no.1 and the deceased Mukand Lal were selling fruits and vegetables on Government Patri illegally. In para 5 of the plaint, it is also pleaded that deceased Mukand Lal placed his Takhats and Rehri near the house of the plaintiff in open and placed a cane-curtain around the same. Similarly, in para 6 of the plaint itself, it is pleaded that Sh. Sanjay Kumar Singh, Ld. Civil judge vide order dated 13.09.2004 dismissed the application under Order 39 Rule 1 & 2 CPC of deceased Mukand Lal after hearing the plaintiff and observing that the alleged shop of the plaintiff was on Government land. Moreover, in para 18(1) of the plaint itself i.e. the prayer clause, it is pleaded that the defendant no. 1 & 2 be restrained from MCD land touching the property no. A-3/35, Moti Nagar, New Delhi i.e. the property belonging to the plaintiff.

As per the written statement filed by the defendant no. 3/MCD, on inspection it was found that the defendant no.1 has stacked a fruit rehri in front of the suit property and was selling fruits and vegetables for the last more than 25-30 years. As per the defendant no. 1 & 2, the land belongs to the MCD but as per the plaintiff, he is the owner of the same which was purchased by late Sh. Moti Ram. It is pertinent to note down here that there is no denial to the said pleadings of the plaintiff in the written statement filed by the defendant no.3 i.e. MCD. Moreover, during his cross-examination, the defendant no.1 himself i.e. Sh. Jang Bahadur (OW-1) has stated at page no. 1 itself that he was not aware if the land/house was allotted by the Government to the father of the plaintiff. Since, the onus was upon the defendant no. 1 & 2, who have failed to discharge the same.

Accordingly, the defendants have failed to prove this issue and the same is decided against them and in favour of the plaintiff. ”

As such, Issue No. 2 was also decided in favour of Yash Pal and against Jang Bahadur.



(iii) Issue No. 3 related to the contention of Jang Bahadur that the Union of India and Government of NCT of Delhi were necessary parties and that the suit was, therefore, liable to be dismissed for non-joinder of necessary parties. The learned SCJ held that Jang Bahadur had failed to explain how the Union of India and Government of NCT of Delhi were necessary parties and, accordingly, rejected this contention.

(iv) Issue No. 4 related to the alleged violation, by Yash Pal, of Sections 477 and 438 of the Delhi Municipal Corporation Act, 1957, on the ground that Yash Pal had not served a statutory notice as required under the Act before filing the suit. Holding that Section 478(3) of the DMC Act saves suits, in which injunction alone was sought, from the requirement of having to issue a statutory notice, the learned SCJ held this issue, too, in favour of Yash Pal and against Jang Bahadur.

(v) Issue Nos. 5 and 6 were considered together by the learned SCJ. The learned SCJ held that it had been admitted by the defence witnesses that the pavement, on which Jang Bahadur and Jitender were carrying out their activities belonged to the MCD and that the activities were being carried out without paying any *tehbazari* to the MCD for the said purpose. Similar encroachments carried out by Jang Bahadur and Jitender had, it was noted, been removed on earlier occasions as well as and that they used to re-locate each time. Holding that encroachment on municipal land was not permissible, the learned



SCJ decided both the issues in favour of Yash Pal and against Jang Bahadur.

14. Resultantly, the learned SCJ passed a decree of mandatory injunction directing the North DMC to remove Jang Bahadur and Jitender from the land adjoining the suit property, on which they were carrying out their activities and to remove all encroachments therefrom. Additionally, Jang Bahadur and Jitender were also restrained from carrying out any such further activities on the said land, as would disturb the peaceful use and enjoyment of the property by Yash Pal.

15. Jang Bahadur and Jitender appealed, against the aforesaid order of the learned SCJ, to the learned ADJ.

16. The learned ADJ has noticed, in the appeal, that appellants before him, gave up their challenge to the findings of the learned SCJ on Issues 1 and 4.

17. On Issue 2, the learned ADJ upheld the finding of the learned SCJ that the suit property was owned by Yash Pal, consequent to Conveyance Deed having been executed in favour of his father Moti Ram by the Ministry of Rehabilitation on 28th January, 1967.

18. The findings of the learned ADJ, on the remaining issues, are not strictly relevant for the purposes of the present appeal.

19. Before me, Mr. M Qayam-Ud-Din, learned Counsel for the



appellant, urges, principally, that Yash Pal lacked the *locus standi* to file the suit and that the finding of the learned ADJ, upholding the findings of the learned SCJ in that regard, was patently illegal and gave rise to a substantial question of law. He submits that Yash Pal was, in effect, claiming possession over the land on which Jang Bahadur and Jitender were carrying out their activities and that the suit was a disguised suit for possession as a suit for injunction. He submits that, as Yash Pal was not the owner of the land in question over which Jang Bahadur and Jitender were carrying out their activities, but was merely the owner of the adjoining suit property, he could not have maintained the suit as filed by him. He submits that the learned ADJ materially erred in failing to consider this aspect in its true perspective.

20. Mr. M Qayam-Ud-Din has also sought to resuscitate the submission, urged before the learned SCJ and given up before the learned ADJ, that the suit was bad for violation of Sections 477 and 478 of the DMC Act.

21. No other contention was advanced by the learned Counsel.

22. I have heard learned Counsel for both sides, and having considered the material on record, it is plain, from a reading of the prayers in the plaint filed by Yash Pal, that the only relief sought by Yash Pal was a mandatory injunction for removal of Jang Bahadur and Jitender from the property being occupied by them, adjoining the suit property of Yash Pal, and for restraining them from carrying out any illegal activities on the said property in future.



23. The contention of Mr. M Qayam-Ud-Din is that, not being the owner of the property on which Jang Bahadur and Jitender were carrying out their activities, Yash Pal could not have maintained a suit seeking their removal, as that would effectively be an attempt for Yash Pal to seize possession thereof.

24. I am completely unable to agree with the said submission.

25. The prayer clause in the plaint does not, expressly or by necessary implication, seek possessory or titler rights over the land on which Jang Bahadur and Jitender were carrying out their activities. Yash Pal has, in fact, in the suit, candidly acknowledged that the land on which Jang Bahadur and Jitender were vending was MCD land. The specific case set up by Yash Pal in the suit was that the activities being carried out by Jang Bahadur and Jitender were illegal as they amounted to an unauthorized encroachment on the land belonging to the North DMC and violated the provisions of the DMC Act. The plaint also set out the reason for Yash Pal moving the court, as it was specifically pleaded that the land was adjoining the suit property of Yash Pal and that the illegal activities of Jang Bahadur and Jitender amounted to tortuous nuisance, and was interfering with the peaceful enjoyment, by Yash Pal, of his suit property.

26. All necessary ingredients for Yash Pal to maintain the suit, therefore, existed. It is open to any member of the public to file a suit seeking removal of unauthorised encroachments on municipal lands,



as the cause affects the entire public, including the petitioner who has moved the court. That apart, Yash Pal also set up a specific case of how he himself was affected, as his property was adjoining the property on which Jang Bahadur and Jitender were carrying out their activities, which resulted in interference, by Yash Pal, of the peaceful enjoyment of his property. Tortuous nuisance as a consequence was, in so many words, specifically alleged.

27. Yash Pal, therefore, clearly possessed the *locus standi* to file the suit.

28. I am unable to agree with the contention of learned Counsel for the appellant that the suit was, in effect, a suit seeking possession. As already noted hereinabove, there is no such prayer in the suit which was limited to injunctive relief against the illegal activities being carried out by Jang Bahadur and Jitender.

29. Though the plea relating to violation of Sections 477 and 478 of the DMC Act had given up by the appellant before the learned ADJ, I have nonetheless applied myself to this contention.

30. Sections 477 and 488 of the DMC Act, 1957 read thus:

“477. Protection of action of the Corporation, etc.—No suit or prosecution shall be entertained in any court against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, for anything which is in good faith done or intended to be done, under this Act or any rule, regulation



or bye-law made thereunder.

478. Notice to be given of suits.—(1) No suit shall be instituted against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, in respect of any act done, or purporting to have been done, in pursuance of this Act or any rule, regulation or bye-law made thereunder until the expiration of two months after notice in writing has been left at the municipal office and, in the case of such officer, employee or person, unless notice in writing has also been delivered to him or left at his office or place of residence, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of residence of the intending plaintiff, and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit, such as is described in sub-section (1), shall, unless it is a suit for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit..”

31. As this contention was given up before the learned ADJ, there is no finding returned by the learned ADJ on this issue. The learned ADJ has, on the other hand, noted that sub-section (3) of Section 478 clearly excepted its application to cases where the only relief claimed was injunction, or where the objection would be defeated were notice to be giving to the defendant.

32. Given the nature of the relief in the plaint and the continuous



nuisance that, according to the averments in the plaint, were being perpetrated by Jang Bahadur and Jitender by their illegal activities, the finding of the learned SCJ that, by operation of Section 478(3) of the DMC Act, the suit filed by Yash Pal could not fail for non-compliance with Sections 477 and 478 of the DMC Act, too, does not call for any interference.

33. No substantial question of law arises in this appeal, which is dismissed in *limine*.

APRIL 7, 2022
dsm

C. HARI SHANKAR, J.



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