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

Date of decision: 01.08.2023

+ RSA 116/2019 & CM APPL. 27124/2019

SHRI RAM BHAJ & ORS

..... Appellants

Through: Mr. Vikram Saini, Advocate with
Appellant Nos. 1, 2 and 3 in person.

versus

OM DUTT

..... Respondent

Through: Mr. Jai Bansal, Advocate with
Respondent in person

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This regular Second Appeal impugns the judgment and decree dated 15.02.2019 passed by SCJ/RC (North) Rohini Courts, Delhi ('First Appellate Court') in RCA No. 18/2018 upholding the judgment and decree dated 30.09.2015, passed by Civil Judge (North), Rohini Courts, Delhi ('Trial Court') in Civil Suit No. 773/2013, whereby the Trial Court partly decreed the suit filed by the Respondent, restraining the Appellants herein from interfering in the peaceful use and occupation of the property bearing House No. 76, Main Burari Road, Near Shah Alam Bandh, Village Dhirpur, Delhi measuring about 50 Sq. Yds. ('subject property').

2. The Appellants are the original defendants and the Respondent is the original plaintiff in the civil suit No. 773/2013. The civil suit was filed by the plaintiff for the relief of permanent and mandatory injunction with the following prayers, which reads as under:-



“ a) decree for permanent injunction thereby restraining the defendants from interfering with the peaceful use and occupation of the suit property bearing House No.74, Main Burari Road, near Shah Alam Bandh, Village Dhirpur, Delhi by the plaintiff.

b) decree for mandatory injunction thereby directing the defendants to remove the iron stair installed at the suit property bearing House No.74,"Main Burari Road, near Shah Alam Bandh, Village Dhirpur, Delhi.”

3. It is noted, at the outset, that though the prayer clauses (a) and (b) in the plaint refer to property bearing House No. “74”, it is an admitted case of the parties that the property bearing ‘House No. 74’ belongs to the Appellants/defendants and the Respondent/plaintiff is concerned with the property bearing ‘House No. 76’. The reliefs sought in the plaint were thus, with respect to ‘House No. 76’ in prayer clauses (a) and (b). In fact, the Trial Court while passing a decree in terms of prayer clause (a) has passed the final decree correctly with respect to property bearing House No. 76.

4. The learned counsel for the Appellants/defendants states on instruction that Appellants/defendants have no grievance insofar as the decree of permanent injunction has been passed by the Trial Court and the same has been upheld by the Appellate Court in favour of the Respondent/plaintiff, with the necessary modifications that is with respect to description of the property bearing House No. 76. The operative portion of the decree of the Trial Court reads as under: -

“20. In view of my findings as above specifically in in issue No. 1 suit of the plaintiff is partly decreed and defendants are restrained from interfering into the peaceful use and occupation of the suit property bearing House no. 76, Main Burari Road, Near Shah Alam Bandh, Village Dhirpur, Delhi measuring about 50 sq. yds. As regard to the Mandatory injunction, in view of my findings of issue no. 2, the suit of plaintiff is partly dismissed. Decree sheet be prepared accordingly. Parties to bear their own Costs.

File be consigned to record room.”



(Emphasis supplied)

4.1. The learned counsel for the Appellants/defendants states that in the suit the Respondent/plaintiff had also prayed for a mandatory injunction at prayer clause (b). He states that the prayer clause (b) had been declined by the Trial Court in view of the findings returned in favour of the Appellants/defendants, while deciding issue no. 2.

4.2. He states that despite the Trial Court holding in favour of the Appellants/defendants and declining the relief of prayer clause (b), the Respondent/plaintiff is interfering in the peaceful possession of the Appellants/defendants with respect to their property bearing House No. 74 Main Burari Road, Near Shah Alam Bandh, Village Dhirpur, Delhi.

4.3. He states that due to acts and omissions of the Respondent/plaintiff, the Appellants/defendants have filed a separate suit for permanent injunction against the Respondent/plaintiff with respect to the property bearing House No. 74 Main Burari Road, Near Shah Alam Bandh, Village Dhirpur, Delhi.

5. In reply, learned counsel for the Respondent/plaintiff states that he disputes the submissions of the Appellants/defendants that there is any interference by the Respondent as alleged. He further, states that the Respondent has not challenged the judgment of the Trial Court declining prayer clause (b) for mandatory injunction in the plaint. He states that there is no infirmity in the decree of the Trial Court insofar as it grants the relief of permanent injunction in favour of the Respondent herein.

6. At this stage, learned counsel for the Appellants/defendants states on instructions that the present appeal be disposed of granting liberty to the Appellants/defendants to pursue their remedies against the Respondent/plaintiff in accordance with law.



7. This Court has considered the submissions of the learned counsel for the parties and perused the record.

8. The judgment of the Trial Court granting the relief of permanent injunction in favour of the Respondent/plaintiff has been upheld by the First Appellate Court. The Appellant herein states that he is not aggrieved by the grant of the said relief of permanent injunction in favour of the Respondent and is not pressing this appeal. The said statement of the Appellant is taken on record and he is bound down to the same. The decree of permanent injunction granted by the Trial Court in favour of Respondent/plaintiff has therefore, become final and binding on the Appellant/defendants.

9. It is a matter of record that the Respondent/plaintiff has not impugned the judgment of the Trial Court dated 30.09.2015 in so far as it dismisses the suit of the Respondent/plaintiff with respect to prayer clause (b) for mandatory injunction is concerned, and to that effect the judgment of the Trial Court dated 30.09.2015 has become final and binding on the Respondent/plaintiff herein.

10. This Court is further of the opinion that the judgment and decree passed by the First Appellate Court and the Trial Court are correct in facts and law. The said judgments do not merit any interference by this Court. No question of law arises in the present appeal.

11. This Court is of the opinion that no liberty as prayed for by the Appellants/defendants can be granted, as the decree dated 30.09.2015 passed by the Trial Court granting permanent injunction in favour of the Appellants/defendants is unequivocal and as noted above has become final. The said decree of permanent injunction as admitted by the parties is with respect to the subject property i.e., House No. 76, Main Burari Road, Near



Shah Alam Bandh, Village Dhirpur, Delhi measuring about 50 Sq. Yds and is binding on the parties.

12. The rights of the Appellants/defendants in the new suit filed by them against the Respondent herein will be decided on its own merits and in accordance with law.

13. Accordingly, since no question of law arises in the present appeal and both the parties have accepted the judgment of the Trial Court and the First Appellate Court, this appeal is without any merits and is disposed of taking on record the statements of the parties. Pending application(s) also stands disposed of. No orders as to cost.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 1, 2023/mr/sk

[Click here to check corrigendum, if any](#)

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