



2024:DHC:10105



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

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Date of decision: 16th December, 2024**+ C.R.P. 6/2022& CM APPL. 4303-05/2022 & CM APPL. 40748/2023****SUDIP KOHLI**

S/o K.P.Kohli,

R/o S-35, Greater Kailash-I,

New Delhi-110048

.....Petitioner

Through: Mr. Vikas Tiwari, Mr. Kumar
Deepraj and Ms. Arushi Rathore,
Advocates.

versus

RESIDENTS WELFARE ASSOCIATION DASHRATH PURI

Through its President/Secretary

Having office at:

B-52, Dashrath Puri,

New Delhi -110 045

.....Respondent

Through: Ms. Vibha Sharma, Mr. Lalit
Kumar, Mr. Mukund Thakur and
Mr. Gokulesh Gautam, Advocates.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Petition under *Section 115* of the *Civil Procedure Code, 1980* has been filed by the Petitioner whereby an Application under *Order VII Rule 11* of the CPC preferred by the Revisionist (Defendant), has been rejected vide Order dated 13.08.2021.
2. The basic grievances raised by the Revisionist in his Application under Order VII Rule 11 of CPC was that *Sh. Madan Lal Duggal (his father-in-law)* was the Predecessor-in-interest who was the original owner of property



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bearing No.RZ-85, Dashrath Puri, New Delhi measuring 600 sq. yards vide Sale Deed dated 12.03.1974. Out of the 600 sq. yards, he sold half i.e. 150 sq. yards to Smt. Sharda Aggarwal and 150 sq. yards to Sh. Rameshwar Dayal.

3. The Defendant/Revisionist filed the Application under *Order VII Rule 11 of CPC*, wherein it was asserted that RWA cannot claim any vested right over the common area particularly over a public road. It is the MCD who has the vested right in the public road in terms of *Section 298 of the Delhi Municipal Corporation Act, 1957*. The Plaintiff cannot claim itself to be having any right, title on the public land and, therefore, the Suit is without any cause of action.

4. It is further asserted that the RWA/Plaintiff had played a fraud upon Defendant No.1 and the Suit does not disclose any cause of action.

5. The *RCA No.23/12* was filed by the neighbours to challenge the judgment, but it was dismissed vide Order dated 09.04.2013. It is further contended that in the judgment dated 09.04.2013 the issue whether this property was a public road has been decided in paragraph 15 and the contentions of the neighbours that this was a public land was rejected.

6. Sh. Madan Lal Duggal in his lifetime, had instituted a Suit CS No. 60/2008 for *Permanent and Mandatory Injunction* against Smt. Sharda Aggarwal, Sh. Ravikant, Smt. Manju Gupta, Sh. J.P.Gupta, MCD & SHO, P.S.Dabri on 20.05.2000 for restraining them from carrying out unauthorised construction of Chajja transgressing over the suit property without due sanctioned Building Plan from the MCD. *Mandatory Injunction* was also sought for directing the respondents to demolish the unauthorised



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construction in the suit property.

7. This Suit was decided by learned ASCJ *vide* Judgment dated 26.03.2012 wherein a reference was made to the title documents of Shri Madan Lal Duggal, the predecessor in interest of the Defendant herein which were Ex. PW1/4 and Ex. PW1/5, and it was held that the defendants therein who were the neighbours to the plot in question, had not right to construct *chajjas* or open windows, doors etc towards the said plot.

8. The judgment and was upheld *vide* RAC No.23/2012 *vide* Order dated 09.04.2013. It is contended that in view of the judgment, *the Suit now filed by the Plaintiff (Respondent) was barred under Order 2 Rule 2 CPC.*

9. Furthermore, the judgment dated 26.03.2012 has held that the Predecessor-in-interest of the Defendant was the owner of the property and thus, the findings in the said Civil Suit operate as *res judicata*.

10. Furthermore, *Writ Petition W.P. (C) No.2617/2019* titled *Resident's Welfare Association, Dashrath Puri vs. Govt. of NCT of Delhi* had been filed for the reliefs of Mandamus to restrain the defendants and other persons from interfering in the smooth and uninterrupted passage of the road for the residents of Dashrathpuri. However, this Writ Petition was withdrawn on 15.03.2019 without seeking any liberty. Thereafter, the present *Civil Suit* has been filed by the Plaintiff with identical prayer which is now also barred by *constructiveres judicata*.

11. It is claimed that the litigation has been initiated in public interest by RWA for which it does not have a *locus standi*. The Suit of the Plaintiff/ Respondent was thus, liable to be rejected.



12. The *Respondent/Plaintiff*, however, has countered all the averments and has submitted that what has been claimed by the Defendant as his property, is in fact a *public thoroughfare* which is being used as such for the last many years. Therefore, the Suit had been filed on behalf of the RWA against the Defendant Revisionist to protect the property. *It is submitted that the Application has been rightly rejected by the learned Civil Judge.*

13. The Respondent/ Plaintiff has further submitted that the Defendant/ Revisionist has no title document in his favour; rather he has been threatening to encroach and raise construction on the suit plot which has compelled the RWA to file the present suit. It is further explained that *two Writ Petitions* have been filed by the Revisionist/Defendant to restrain the RWA from taking any action or creating obstructions in his raising the boundary wall along the plot. One Writ Petition got dismissed on 24.07.2024. These circumstances have compelled the RWA to file the present suit.

14. The learned Civil Judge considered all the contentions and rejected the Application under *Order VII Rule 11 of CPC*.

15. Aggrieved the present Revision Petition has been filed.

16. **Submissions Heard.**

17. Briefly stated, the Revisionist/ plaintiff RWA had filed a Suit for Injunction for restraining the Revisionist/ Sh.Sudip Kohli from indulging in any unlawful activities including obstructing the public way and interference in public road or its open adjacent land by undertaking any construction/fencing or by demolition.

18. The Plaintiff/RWA had asserted that the colony named Dashrath Puri



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was established in the year 1973. As per the Master Plan and Zonal Plan of 2021, the area is recognized as a residential Colony with the houses alongside the road and other amenities as earmarked in the Master Plan 2021.

19. On 09.02.2019, the defendant along with the SHO and one Constable from local Police Station, came to the site i.e. property bearing No.RZ-85, Dashrath Puri, New Delhi (property in question), which in fact is a public road passage since 1973 when the colony was established, and forcibly erected the wall blocking the entire road and Grocery Shop owned by one resident. The Plaintiff/RWA opposed such action but was threatened by the Police Authorities. With the support of the local Police, the Defendant/Revisionist was successful in erecting the wall and covering the public utility wall as a private property. He also filed Civil Suit in the Civil Court and got the favourable Order. Relief of Permanent Injunction was thus, sought to refrain Defendant No.1 from blocking or obstructing the Suit property which is the public way and public road.

20. The *first* aspect which emerges is that according to the Plaintiff/RWA the plot in question is a Public Road, a common passage for the resident's as well as public persons. Though, the Revisionist/Defendant No.1 has been claiming it to be his property on the ground that it was owned by his predecessor in interest, Sh. Madan Lal Duggal vide the Sale Deed. However, the said Sale Deed has not been placed on record.

21. It has been explained in the Application itself that half of the suit land i.e. 300 sq. yards, in the plots of 150 sq. yard each, were sold out to two separate individuals.



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22. *First and foremost*, no document or title has been placed on record in support of the assertions by Defendant No.1.

23. *Secondly*, whether it is a plot owned by Defendant No.1 or is a public land, is a matter of evidence and cannot be considered while deciding the Application under *Order VII Rule 11 of CPC*.

24. *Thirdly*, reference has been made to an earlier Suit of 2012 that was filed by the predecessor in interest for seeking Permanent Injunction for restraining the neighbours from constructing *chajjas*, windows and doors towards the suit plot. There may have been a reference to the title documents and there may have been incidental findings in respect of that document, but in a Suit for Permanent Injunction, the title and the ownership of the suit property was not in issue. Any findings made therein which was not in issue but were considered to determine if relief of Injunction is to be granted, cannot be held to be findings on the facts in issue and cannot be therefore, be *res judicata*. ***Therefore, the incidental observations made in the earlier suit about the nature of the plot, cannot operate as resjudicata in the present suit.***

25. The *next factor* which is of consequence is that though the RWA had filed a Writ for restraining the Defendants from obstructing the passage, and the same had been withdrawn without any liberty, but it cannot operate as a constructive *resjudicata* because the controversy involves mixed question of fact and law which could not have been adjudicated in a Writ Petition which was rightly withdrawn by the Plaintiff/RWA. The subsequent Suit had been filed by the Respondent before the Civil Judge, wherein the issues raised



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therein require evidence for adjudication. *The withdrawal of the Writ Petition would not bar the present Suit.*

26. Reliance has been placed on the case of State of Orissa and Anr. vs. Laxmi Narayan Das (Dead) Thr. LRs and Ors. 2023 SCC OnLine SC 825 on behalf of the Revisionist to claim that where the Civil Suit is withdrawn unconditionally, then the Writ Petition on the same cause of action is barred by constructive *resjudicata*.

27. In the present case, the facts are distinguishable as the Writ Petition was withdrawn and thereafter, the Civil Suit was filed. This is not a case where constructive *resjudicata* would be applicable as the Revisionist has sought to invoke.

28. Similarly, the case of K. Jayaram and Ors. vs. Bangalore Development Authority and Ors. (2022) 12 SCC 815 is also not applicable since it has been observed that the jurisdiction under Article 226 of Constitution of India is extraordinary, equitable and discretionary. The Petitioner is required to approach the Court with clean hands and without concealing or suppressing anything. If the complete facts are not disclosed or the relevant material is suppressed or the parties are otherwise guilty of misleading the Court, the Writ Petition may be dismissed.

29. In the present case, as already discussed above, the Writ Petition was withdrawn. ***For the reasons stated above, this judgment also does not support the contentions of the Defendant/Revisionist in any manner.***

30. ***The learned Civil Judge has rightly rejected the Application under Order VII Rule 11 of CPC. Though for the reasons discussed above, it is***



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held that there is no merit in the present Revision Petition, which is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 16, 2024

rk/va