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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 236/2016 & CM Nos. 30418-30419/2016

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1st September, 2016

SOHAN LAL

..... Appellant

Through: Mr. Arun Kaushal, Advocate

Versus

SOBHA SHUKLA

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent Judgments of the courts below; of the Trial Court dated 13.4.2015 and the First Appellate Court dated 3.5.2016; by which the courts below have decreed the suit filed by the respondent/plaintiff for permanent and mandatory injunction. Operative paragraph 30 of the judgment of the trial court decreeing the suit reads as under:-

“In the light of discussion hereinabove, suit of the plaintiff is decreed. The defendant is hereby restrained from constructing any staircases at the back portion of the property bearing no. 277/7, Ground Floor, Pul Prahaladpur, New Delhi. The defendant is also hereby restrained from blocking and locking the common passage entrance gate and bathroom at the ground floor of the above said property. The defendant is further restrained from creating any hindrance in the use of common passage and bath room by the plaintiff in any manner on the ground floor of the above said property. The defendant is also decreed to

remove the goods kept by him in the common passage at the ground floor of the above said property. In the circumstances of the case, no order for cost. Parties shall bear their own cost.”
(underlining added)

2. The case of the respondent/plaintiff was that she purchased the basement/lower ground floor of the property bearing No. 277/7, Pul Prahaladpur, New Delhi, as per documentation dated 26.10.2005 from Sh. Kuljeet Singh. The title documents included registered General Power of Attorney, agreement to sell, affidavit etc. By these documents proved as Ex.PW1/16 (colly) before the trial court, respondent/plaintiff purchased rights in the suit property along with common passage for approach, staircase etc. The respondent/plaintiff was enjoying the common passage, staircase and bathroom on the ground floor since the date of purchase of the suit property and the respondent/plaintiff had installed entrance gate and the door at the back portion of the common passage with the joint funds with other shopkeepers for safety purpose. Electricity meter of the respondent/plaintiff was also installed at the common passage of the ground floor of the suit property. That the appellant/defendant has wilfully and illegally blocked the common passage by keeping his almirah and table and he also has locked the bathroom. Appellant/defendant was seeking to create hindrance in the use of the common passage, and also the bathroom and was trying to illegally put locks at the ground floor of the suit property. Appellant/defendant was also illegally trying to build the staircase on the back portion of the suit property, therefore, closing the door of the back portion as well as the window of the basement property of

the respondent/plaintiff. The subject suit hence was filed by the respondent/plaintiff with the following prayers:-

“(a) pass a decree of permanent injunction in favour of the plaintiff by restraining the defendants, their agents, associates, legal heirs etc. from constructing the staircase at back portion of the said property and blocking and locking the common passage entrance gate and bathroom at the ground floor of the suit property and not to interfere in the use of common passage and bathroom by the plaintiff in any manner.

(b) Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant by removing the goods kept by the defendant in the common passage at the ground floor.

(c) Cost of the suit be awarded in favour of the plaintiff and against the defendant.

(d) Any other relief (s) this Hon’ble Court may deem fit and proper in the facts and circumstances in the present case.”

3. Appellant/defendant filed his written statement and denied the rights of the respondent/plaintiff in the common passage or the bathroom or in the back portion. It was pleaded that the respondent/plaintiff had no rights in the common passage or the back portion or the bathroom of the ground floor of the property.

4. After pleadings were completed, the trial court on 12.9.2011 framed the following issues:-

“(1) Whether the suit is bad for mis-joinder on necessary parties? OPD

(2) Whether the suit is barred by delay and laches? OPD

(3) Whether the plaintiff has not approached the Court with clean hand? OPD

(4) Whether the plaintiff is entitled to a decree of permanent injunction as prayed for in prayer clause (a) of the plaint? OPD

(5) Whether the plaintiff is entitled to a decree of mandatory injunction as prayed for in prayer clause (b) of the plaint? OPD

(6) Relief. ”

5. Evidence was led by the plaintiff as PW1 proving certain documents besides also summoning witness PW2 Sh. Jagmohan Sharma, from the office of the local electricity company/BSES. Appellant/defendant however, failed to lead his evidence and his evidence was closed by the Order dated 22.8.2013. These aspects are noted in paras 6 to 8 of the judgment of the trial court and which read as under:-

“(6) The plaintiff examined herself as PW1 to prove her case. She reiterated the facts stated in the plaint. She relied upon the following documents.

(a) Ex.PW-1/1 to Ex. PW 1/8 are photographs indicating the ‘Kainchi gate’ at point A;

(b) Ex.PW 1/9 is receipt of Jeevan Citizen Service Center run by the plaintiff at her premises;

(c) Ex.PW 1/10 is the copy of electricity bill in the name of Sh. Kuljeet Singh, of period from 10.11.2005 to 13.01.2016 indicated at point X pertaining to property of plaintiff in the suit premises;

(d) Ex. PW 1/11 is the copy of electricity bill in the name of the plaintiff pertaining to the period March, 2008;

(e) Ex. PW 1/12 is the electricity bill in the name of Kuljeet Singh of CRN No. 2510114324 (previous owner of property i.e. basement) of plaintiff;

(f) Ex. PW 1/13 (colly) is name changed demand notice to the plaintiff dated 30.10.2010 in respect of electricity meter bearing K No. 2511 N 8031735 from Sh. Kuljeet Singh in her name;

(g) Ex. PW 1/14 is a site plan of the suit property i.e. the ground floor highlight the common area from point A, B, C and D;

(h) Ex PW 1/15 (colly) are two complaints made to the police by the plaintiff dated 21.05.2011 and 24.05.2011;

(i) Ex. PW 1/16 (colly-24 pages) are the copies of registered GPA with consideration from previous owner i.e. Sh. Kuljeet Singh to the plaintiff and previous chain of property papers of basement property of the plaintiff.

(7) The plaintiff has also examined Mr. Jagmohan Sharma, Section Officer, BSES Office, Pul Prahaladpur, New Delhi, as PW2. He has produced summoned record. The entire file including requisite documents for change of name along with check list and acknowledgement of DSS request order for change of name from Kuljeet Singh to Shobha Shukla duly certified are

exhibited as Ex. PW2/A (colly-16 pages).

(8) PE was closed vide order dated 31.07.2013. The defendant did not lead any evidence. DE was closed vide order dated 22.08.2013.”

6. The courts below have held that respondent/plaintiff by means of her title documents Ex.PW1/16 (colly) has proved that respondent/plaintiff purchased besides the basement/lower ground floor, right in the common passage, staircase etc, and therefore, respondent/plaintiff had rights to use the common passage, bathroom on the ground floor as also prevent the appellant/defendant from closing the back door and construct the staircase at the back.

7. In my opinion, no substantial question of law arises under Section 100 CPC for setting aside of the concurrent judgments of courts below inasmuch as whereas the respondent/plaintiff proved her case by leading evidence, the appellant/defendant admittedly led no evidence.

8. As also stated above, the title documents of the respondent/plaintiff, Ex.PW1/16 (colly) duly show right of the respondent/plaintiff besides to the basement also to the staircase and common passage etc. The only way this evidence could be displaced was by leading of evidence by the appellant/defendant with respect to whether he was the exclusive owner of the common passage on the ground floor, bathroom on the ground floor as also the back portion area for construction of the staircase, but since appellant/defendant led no evidence, appellant/defendant cannot be said to

have proved his case of his ownership of the common passage, bathroom, back portion etc.

9. Learned counsel for the appellant/defendant argued that appellant/defendant had moved an application before the first appellate court for leading additional evidence under Order XLI Rule 27 CPC, but this application was illegally not decided by the first appellate court, however I note that right to lead additional evidence under Order XLI Rule 27 CPC is only if there is already some evidence of a person and additional evidence is sought to be led on complying with the ingredients of Order XLI Rule 27 CPC. However, once evidence of a person is closed because evidence is not led in spite of sufficient opportunities, then in such a case, the provision of Order XLI Rule 27 CPC cannot be invoked.

10. I must finally note that even before this Court in spite of opportunities, appellant/defendant did not file copies of his title documents to show that he was the exclusive owner of the ground floor, common passage, bathroom on the ground floor or the back portion of the property.

11. In view of the above, there is no merit in this Regular Second Appeal and the same is therefore dismissed as no sufficient question of law arises.

SEPTEMBER 01, 2016
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VALMIKI J. MEHTA, J