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Sh. Ram Chander and anr. Vs. Sh. Krishan Kumar Sharma

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Court : Delhi

Decided On : Apr-02-2014

Judge : Valmiki J. Mehta

Appellant : Sh. Ram Chander and anr.

Respondent : Sh. Krishan Kumar Sharma

Advocate for Pet/Ap. : Mr. Dinesh Kr. Gupta, Mr. Vidit Gupta

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RSA No.96/2014 2nd April, 2014 % SH. RAM CHANDER & ANR. Through: .....Appellant Mr. Dinesh Kr. Gupta and Mr. Vidit Gupta, Advocates. VERSUS SH. KRISHAN KUMAR SHARMA Through: ..... Respondent CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This second appeal is filed under Section 100 CPC, 1908 impugning the concurrent judgments of the courts below; of the trial court dated 27.2.2013 and the first appellate court dated 1.2.2014; by which the suit filed by the respondent no.1/plaintiff was partly decreed and the counter-claim filed by the appellants/defendants no.2 and 3 was dismissed.

2. Disputes in the present case pertain to entitlement of construction of plaintiff/respondent no.1 on plot bearing No.24-A, Road No.4, Jai Dev Park, Punjabi Bagh, New Delhi admeasuring 114 sq. metres and situated in

K.No.2434/236, Khata No.401, Khewat No.129. The issue with respect to entitlement to construct on this plot was related to the issue as to whether the subject plot did fall or did not fall in the sanctioned lay out plan of the MCD with respect to Jai Dev Park Colony. If the plot is a part of a sanctioned lay out plan, then MCD will have control over this plot for its management, but if the plot is not a part of the sanctioned lay out plan, then, MCD will have no control over this plot, inasmuch as, the plot will be a privately owned plot originally of the private colonizer, and belonging to the successor-in-interest to whom the plot was sold.

3. In my opinion, the following 17 and 18 paragraphs of the judgment of the first appellate court crisply and correctly summarize the factual position as also the legal conclusions and these paras read as under:

17. It is pertinent to note here that the MCD has not claimed the suit property as an open space or a waste land. The contention of the appellants that the suit property cannot be constructed as per the report dated 19.07.1988 of J.E.(Build.), West Zone, MCD, is contrary to the plea that the Town Planner in its Report dated 30.03.1999 has stated that the plot adjoining to the Plot No.24, Road No.4 does not form part of the approved Lay-Out Plan. Ld. Trial Court, in order to resolve this controversy, has examined the witness from the Town Planner and Sh. Roop Singh, Assistant Town Planner appeared on 14.02.2013 and gave a statement that the plot situated adjacent to Plot No.24 in the south direction is not under the Jaidev Park and the number of this Plot as 24-A has not been given in the Lay-Out Plan by MCD. Therefore, the suit property is situated outside the Lay-Out Plan of Jaidev Park Colony and it cannot be said that the suit property is within the Lay-Out Plan of the colony. Ld. Trial Court has also rightly observed that the Resolution of the Standing Committee Ex.DW3/A and the Lay-Out Plan Ex.DW2/A do not mention anything about the nature of use of the suit property. Hence, the findings arrived at by Ld. Trial Court that the suit property situated in southern side of Plot No.24 is not included in the Lay-Out Plan of the Jaidev Park Colony and therefore, has not been ear-marked by MCD or Colonizer for any specific purpose, is re-affirmed and it is also reaffirmed that the suit property is a private property.

18. RSA962014 The contention of the appellants, that respondent no.1 has failed to prove the title of the suit property, is also without any merits. Once, it is held that the suit property is a private property and there is no dispute about the fact that Jaidev Colony Park was developed by Pandit Jaidev Sharma and Property No.24 and the suit property were owned by him. It is also an admitted fact that Property No.24 was purchased by defendant no.3 from the successor-in-interest of Pandit Jaidev Sharma. It is also not in dispute that the plaintiff has also purchased the suit property from defendant no.5-Smt. Veena Gaur w/o Late Sh. Shashank Dev Gaur, the successor-in-interest of Pandit Jaidev Sharma. The plaintiff has already settled his disputes in respect of the suit property with defendant no.4-Sh. Gulab Singh as is evident from the statement of defendant no.4-Ex.DW1/2 and the order of the Court Ex.DW1/3 both dated 18.09.2007 in Suit No.801/2002 titled as Gulab Singh vs. Krishan Kumar Sharma & Ors.

The appellants have not been able to show if there is any other person claiming title to the suit property. Therefore, there can be no doubt with regard to the title of the suit property in favour of the plaintiff/respondent no.1. Hence, the findings of Ld. Trial Court on the aforesaid issues are re-affirmed.

(underlining added) Page 3 of 4 4. A reading of the aforesaid paras makes it more than abundantly clear that the disputed plot No.24-A was not a part of a lay out sanctioned plan with respect to Jai Dev Park. Once that is so, MCD cannot claim any right to the plot for management and nor can the appellants/defendant nos.2 & 3 claim any title on this plot. So far as ownership is concerned, defendant nos.2 and 3 are not claiming any ownership on this plot, and if there are any inter se disputes between the original owner and the successor-in-interest, including present owner, i.e plaintiff in the suit, the same are of no concern to the appellants/defendant nos.2 and 3.

5. In view of the above, no substantial question of law arises under Section 100 CPC in this appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. APRIL02 2014 ib RSA962014

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