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

Date of decision: 28th January, 2022

\+ **RSA 12/2022 & CM APPLs. 4984/2022, 4985/2022**

RAMESHWAR SINGH ..... Appellant
Through: Mr. Devraj Singh, Advocate.
versus

THE CHIEF SECRETARY, GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI & ANR. ..... Respondents
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

2. The present second appeal arises out of a suit for permanent injunction filed by the Appellant/Plaintiff *(hereinafter "Plaintiff")* in December 2005, against the Defendant-Government of NCT of Delhi. The relief sought in the plaint is as under:

> *"It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:*
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> *a) Restrain the Defendant their agents, servants, employees, workers, friends, assigns, nominees from forcibly and illegally demolishing the porch constructed in the property of the Plaintiff, being marked Red in color in the site plan annexed along with the plaint.*
>
> *b) The costs of this suit may also be allowed in favour of the Plaintiff and against the Defendants.*
>
> *c) Any other and such further relief as this Hon'ble court may deemed fit and proper under the*

circumstances of the case may also be granted in favour of the Plaintiff."

3. The said suit came to be dismissed vide order dated 28th April 2014 in ***suit no. 177/2014*** titled ***Shri Rameshwar Singh v. The Chief Secretary, Govt. of NCT of Delhi*** passed by the ***Civil Judge/Central-05, Delhi*** *(hereinafter "Trial Court")* on the ground that the Plaintiff failed to prove his case. An appeal was preferred by the Plaintiff against the said order in ***RCA 61015/2016*** titled ***Rameshwar Singh v. The Chief Secretary***. However, even the said appeal came to be dismissed by the ***ASJ-02/South East/Saket/Delhi*** *(hereinafter "Appellate Court")* vide the impugned order dated 30th July 2021 which has been challenged in the present second appeal before this Court.

4. The case of the Plaintiff is that he purchased a plot of land admeasuring 1000 square yards forming part of Khasra No. 64/4/2 from one Sh. Kanwar Singh and Sh. Risal Singh, vide registered sale deed dated 4th October, 1985. According to the Plaintiff, the plot was bounded on the East by a private Raasta having 10 feet width, on the West by a Raasta of 15 feet width, on the North by land belonging to a third party and on the South by a Raasta of 30 feet width. From the said plot, the Plaintiff sold 450 square yards to different purchasers from time to time. According to the Plaintiff, he constructed a porch on the property which was constructed a decade before filing of the suit in 2005. It was sometime in December, 2005, that officials of the GNCTD made threats for demolition of the porch marked in red colour in the site plan averring that the porch has been constructed upon pusta. It was this threat which led to the filing of the suit.

5. In the written statement, the GNCTD took the plea that the Plaintiff's claim is wrong and misleading and that the Raasta which is 10 feet wide on the East side of the Plaintiff's property is being used as a public utility for more than 20 years over which the porch has been constructed. In the written statement, the plea taken was that even as per the sale deed, only the land was sold in favour of the Plaintiff and there was no the Raasta on the East which was sold to the Plaintiff. Thus, the Raasta was not part of the property which was sold to the Plaintiff and it was for common use.

6. Trial was held in the suit and parties led their evidence. Witnesses were produced both by the Plaintiff as also the Defendant. On behalf of the Plaintiff, the Plaintiff examined himself as PW-1 and also examined the Head Constable Virendra Singh, Police Station, Nangloi as PW-2. The Record Keeper in the office of Sub-Registrar of Kashmere Gate was also summoned to produce the sale deed marked as Ex. PW3/1. On behalf of the Defendant, Defendant examined one Sh. M.S. Narwal who has filed his evidence by way of affidavit marked as Ex, DW1/A and along with *Sarza* plan.

7. After analysing the sale deed on record, the Trial Court came to the following conclusions:

> *"16. At this juncture it would be worthwhile to reproduce the relevant portion of the sale deed dated 4th October, 1985. Exhibit PW 3/1 which is as under:*
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> *Whereas the vendors are co-owner, occupiers and in absolute possession in a piece of land measuring i bigha i.e. 1000 square yards part of Khasra No. 64/4/2/ situated in the area of village Nangloi jaat, Delhi and bounded as under:*

East: Raasta 10 feet wide North: Other's Property
West: Raasta 15 feet wide South: Raasta 30 feet wide

17. In the entire sale deed and even in the portion as reproduced above there is no mention that the Plaintiff purchased the property vide sale deed Exhibit PW 3/1 bound by a private Raasta having 10 feet width, left by the original sellers from their own property. All that the sale deed Ex. PW 3/1 mentions that the property purchased by the Plaintiff has a 10 feet wide Raasta on the East. The version of the Plaintiff that the said 10 feet wide Raasta on the East was left by the original sellers from their own property is neither mentioned in the sale deed nor has been proved by the Plaintiff. The best evidence for proving this fact were the depositions of the sellers Shri Kanwar Singh and Shri Risal Singh, which the Plaintiff did not produce in his evidence.

18. Furthermore, if for an instance, it is assumed that in the sale deed Exhibit PW3/1 the said 10 feet wide Raasta on the East was left by the original sellers from their own property then by that analogy even the 15 feet wide Raasta on the West and 30 feet raasta on the South must also have been left by the original sellers from their own property. But the Plaintiff does not claims so and claims that only 10 feet wide raasta on the East was left by the original sellers from their own property, which is contrary to the contents of the Sale Deed Exhibit PW 3/1."

8. Thus, in view of these fact that the Plaintiff was unable to prove his case as to rights in the 10 feet Raasta on the East side, the suit was dismissed vide judgment dated 28th April, 2014. The appeal against the said order had also been dismissed by the Appellate Court. The finding of the Appellate Court is as under:

"22. The official witnesses examined by plaintiff did not probablize the case of plaintiff with regard to aforesaid aspects and therefore, their testimonies are discarded by me being inconsequential in nature. Testimonies of plaintiff witnesses were bereft of relevant details and they were not trustworthy. Therefore, I discarded the same.

23. So far as defendant no. 2 is concerned, it examined, DW2-M.S. Narwal Executive Engineer, Irrigation and Flood Control Department. This witness stuck to his version that 10th ft. wide raasta on east side was not the property of plaintiff. Coupled with the same, in his cross-examination, he deposed that said raasta on east side of plot in question was part of bank of drain i.e. Pusta. This witness did not place on record any specific document showing the fact that said 10th ft. wide raasta was a public land. Lack of evidence with regard to said reply did not probablize the case of plaintiff. Said lack of evidence at the most can be seen as a shortcoming in the case of defendant no. 2. Said shortcoming did not probablize the case of plaintiff as the case of plaintiff has to stand on his own legs as per judge made laws. Even otherwise, plaintiff has put suggestion to this witness that said 10th ft. wide raasta on east side of plot in question, was left by plaintiff in his own property alongwith the length of the property. Said suggestion was refuted by this witness. Even otherwise, said contention of plaintiff was not mentioned in the plaint. Therefore, said suggestion was an improvement on the part of plaintiff, which did not probablize the case of plaintiff. Thus, I discarded the said claim of plaintiff.

24. The net result is that, plaintiff failed to prove his case based on preponderance of probabilities. Ld. Trial Court rightly dismissed the suit of plaintiff. In view of the aforesaid appreciation, present appeal has no merits and stands dismissed. No order as to cost. Decree-Sheet be prepared accordingly, Trial Court

Record be sent back along-with copy of this judgment."

9. The submission made by Mr. Devraj, ld. Counsel appearing for the Plaintiff/Appellant is that the Trial Court has wrongly non-suited the Plaintiff. He submits that in the present case, a substantial question arises as to whether the Trial Court was right in holding that since the sellers were not produced as witness before the Trial Court, the case of the Plaintiff was not proved.

10. Heard. An analysis of the Trial Court's judgment clearly shows that the Trial Court has perused the sale deed and has also reviewed the evidence on record. Thereafter, the Trial Court has come to the conclusion that the 10ft. Raasta on the East was not part of the land which was sold. The Trial Court only made a passing observation that the best evidence to prove the Plaintiff's case would have been the sellers, whom the Plaintiff did not produce.

11. In the opinion of this Court, the question as to whether the sellers are required to be produced in such a case, would not be a substantial question of law, as the Plaintiff has chosen to lead evidence in the manner it best thought. The production of these two witnesses or otherwise did not have a bearing on the Trial Court's judgment because in any case, the Trial Court has analysed the sale deed and evidence in detail and has come to the conclusion that the Plaintiff could not prove his case.

12. Thus, in the opinion of this Court, the Appellate Court also having upheld this very finding, no substantial question of law arises in this matter and there is no ground for warranting interference against the concurrent findings of the Trial Court. It is settled law that in a second appeal, the scope

of interference is quite narrow. The Supreme Court in ***C Doddanarayana Reddy (Dead) by LRs & Ors v C Jayarama Reddy (Dead) by LRs & Ors AIR 2020 SC 1912*** has held as under:

> ***"25.*** *The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan: (1999) 6 SCC 343, it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under:*
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> > ***12.*** *This Court had repeatedly held that the power of the High Court to interfere in second appeal Under Section 100 Code of Civil Procedure is limited solely to decide a substantial question of law, if at all the same arises in the case.* ***It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record****.*
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> > ***13.*** *In Ramanuja Naidu v. V. Kanniah Naidu (1996 3 SCC 392), this Court held:*
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> > > *It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction Under Section 100 of Code of Civil Procedure. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal Under Section 100 of the Code in the way he did.*
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> > ***14.*** *In Navaneethammal v. Arjuna Chetty (1996 6 SCC 166), this Court held: Interference with the concurrent findings of the courts below by the High Court Under Section 100 Code of Civil Procedure must be avoided unless warranted by*

> *compelling reasons.* ***In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts****. ... Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."*

13. The Supreme Court recently in ***KN Nagarajappa & Ors. v. H Narsimha Reddy [Civil Appeal Nos. 5033-5034 of 2009, decided on 2nd September, 2021*** has reiterated the above position of law.

14. After considering the aforesaid judgments, this Court is of the opinion that no interference with the concurrent findings of the lower courts, is warranted, in the present second appeal. Accordingly, the present appeal is devoid of merit and is dismissed along with all pending applications.

PRATHIBA M. SINGH
JUDGE

JANUARY 28, 2022*/Aman/SK*