

\$~27(Appellate-2022)

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

+ RSA 233/2019 and CM Appl. 50920/2019 (stay)

SANJAY CHUGH & ANR Appellants
Through Mr. Vikas Tomar, Advocate

versus

RAM KISHAN & ORS Respondents
Through

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

% **30.03.2022**

1. This second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC), assails an order dated 26th September, 2019, passed by the learned Additional District Judge (“the learned ADJ”) in Misc Appl 576/2018, whereby the learned ADJ has reversed an order dated 20th July, 2018, passed by the learned JSCC-ASCJ-GJ (“the learned Civil Judge”).

2. The plaint, from which these proceedings emanate, was preferred by the respondents against the appellants, seeking mandatory injunction, directing the appellants to remove *malba*, garbage etc., which they were alleged to have thrown in open land adjacent to the respondents’ premises and for permanently restraining the appellants from throwing any such *malwa*, garbage etc. at the said land. It was specifically alleged, in para 17 of the plaint, that consequent to certain disputes having arisen between the appellants and the respondents, whereby the appellants were restrained, as a result of which the appellants were allegedly thwarted in their attempts to raise

construction on the open land, they started depositing garbage therein. The plaint also asserts that the respondents had, in this context, addressed a written complaint to the Police Station Mayur Vihar on 13th November, 2012 but that the nuisance continued.

3. The learned Civil Judge, *vide* order dated 20th July, 2018, dismissed the suit as not being maintainable in view of Section 41(j) of the Specific Relief Act, 1963, which proscribes grant of injunction “when the plaintiff has no personal interest in the matter”.

4. On the ground that the respondents have no personal interest in the matter, the learned Civil Judge rejected the suit for want of existence of a valid cause of action, exercising jurisdiction under Order VII Rule 11(a) of the CPC. Paras 2 to 6 of the order of the learned Civil Judge read thus:

“2. In paragraph 4 of the plaint of this suit, the plaintiffs have themselves pleaded that they have no right, title or interest in respect of the open land shown in the site plan filed along with the plaint and they have trespassed upon the said land, just like the other owners of flats of ground floors, of the locality.

3. Along with the plaint of this suit, the plaintiffs have filed an Order dated 12.07.2012, passed by Dr. Saurabh Kulshrestha, the then Ld. Commercial Civil Judge, East District, KKD Courts, Delhi in a previous suit filed by the plaintiffs against the defendants, seeking reliefs of injunctions qua the open land shown in the site plan filed along with the plaint. In the said Order, Dr. Saurabh Kulshrestha, the then Ld. Commercial Civil Judge, East District, KKD Courts, Delhi has observed that the plaintiffs have no exclusive rights in respect of the open land shown in the site plan filed along with the plaint.

4. From the pleadings made in paragraph 4 of the plaint and from the observations made by Dr. Saurabh Kulshrestha, the then Ld. Commercial Civil Judge, East District, KKD Courts, Delhi in the aforesaid Order, I am convinced that the plaintiffs have no personal right, title or interest, in respect of the open land shown in the site plan filed along with the plaint.

5. In Section 41(j) of the Specific Relief Act, 1963, it is specifically provided that no injunction can be granted when the plaintiff has no personal interest in the matter.

6. Keeping in view the fact that the plaintiffs have no personal right, title or interest in respect of the open land shown in the site plan filed along with the plaint and keeping in view the fact that Section 41(j) of the Specific Relief Act, 1963 does not permit this Court to grant any injunction to a plaintiff having no personal interest in the matter, the plaint of this suit is rejected under Order VII Rule 11(a) of CPC, 1908. After preparation of decree sheet by the Reader, the file shall be consigned to the record room.”

5. The respondents appealed to the learned ADJ who, by the impugned order dated 26th September, 2019, reversed the view of the learned Civil Judge, reasoning thus:

“6. The impugned order of the Trial Court cannot be sustained. Plaintiffs do have a right to clean surroundings adjoining their house. They have a right to clean environment. It would not be correct to say that an occupant of a residential property can have no remedy under the law for garbage/debris lying at their entrance or in their immediate backyard. It would also not be correct to say that a person can have no remedy under the law for removal of garbage/debris lying in front of their house or at the back of their house as the land underneath the front and the back of the house may not belong to him. To my mind, this would be an erroneous view to take.

7. Ld. Trial Court in the impugned order noted that in a previous suit between the parties, the Court of Dr. Saurabh Kulshreshtha, the then Ld. Commercial Civil Judge, had held that the plaintiffs had no personal right, title or interest in the

said property. I have gone through the said order passed by Dr. Saurabh Kulshreshtha, the then Ld. Commercial Civil Judge which is dt. 12.07.2012. That order was passed in a totally different context on a temporary injunction application. The plaintiffs had prayed to restrain the defendants from putting a lock on the iron gate of the garden, from entering the garden, from destroying the garden, from removing lock of iron gate, from raising illegal construction over the iron gate. It was in this context that the Court of Dr. Saurabh Kulshreshtha, the then Ld. Commercial Civil Judge had observed that plaintiffs have no exclusive settled possession over the vacant land/backyard and therefore they cannot restrain the defendants from enjoyment of the said land/garden. However, vide the same order the defendants were restrained from raising unauthorised construction in the vacant land and it was also directed that no resident, including the plaintiffs and the defendants, shall put a lock on the iron gate. This order passed by the Court of Dr. Saurabh Kulshreshtha, the then Ld. Commercial Civil Judge does not mean and cannot mean that a person cannot sue for clean surroundings in the space in the front or at the back of their house. This order also cannot be construed to mean a person has no right to clean surroundings.

8. Respondent no. 1 Dr. Sanjay Chugh relied on a judgment of Premji Ratansey Shah & Ors. Vs. Union of India & Ors. (1994) 5 see 547. This judgment holds that injunction is an equitable and discretionary relief and that an injunction cannot be issued in favour of trespasser to protect his possession as he has no personal interest in the matter. This judgment is of no avail. In the present case the plaintiffs are not suing to protect any possession of theirs over the vacant land. They are instead suing for removal of the garbage/debris in the vacant land behind their flat and for injunction for a restraint on the defendants from throwing the garbage/debris. A person certainly has a right to clean space at the entrance or at the back of his house. That apart, given the averments in the plaint and the reliefs sought for, I do not think that it was a case for rejection of plaint.”

6. The burden of Mr. Vikas Tomar’s song is that the respondents had no personal interest over the land, on which the *malba*/garbage

etc. was allegedly being deposited as they claimed no right, title or possession in respect thereof. He submits that, in such circumstances, Section 41(j) of the Specific Relief Act operates as an absolute proscription against grant of injunction.

7. I am unable to agree.

8. Section 41(j) of the Specific Relief Act proscribes grant of injunction “when the plaintiff has no personal interest in the matter”. The word “matter” is of wide and compendious scope, and would include everything, which is subject matter of the suit and grievance expressed therein. B. Ramanath Iyyer’s Law Lexicon defines “matter” as “a fact or facts constituting a whole or a part of a ground of action or defence”. ***Vishwanathan v. Abdul Wajid***¹ holds that “the expression “matter” is not equivalent to “subject matter”; it means the right claimed.” The right claimed by the respondents in their suit was, clearly, avoidance of the nuisance that had resulted as a consequence of the alleged dumping, by the appellants, of *malba* and garbage on the land adjoining their premises.

9. If the plaintiff is a complete stranger, having no personal interest with respect to the grievance expressed in the suit, being “the matter” in the suit, no doubt, Section 41(j) operates as a proscription against grant of injunction. The words “the matter” cannot, however, in my view, be conflict with the property forming subject matter of the suit. The grievance of the plaintiffs, as voiced in the suit, and dehors

¹ AIR 1963 SC 1

its merits, was that the respondents had committed an actionable tort which, if proved, could even amount to nuisance.

10. Inasmuch as the plaintiffs were also claiming that they were enjoying the land in which the *malwa*/garbage etc. was being allegedly deposited, dehors the issue of the respondents' right to possession over the land, it cannot be said that they had no personal interest in respect of the matter, i.e. the grievance ventilated in the suit.

11. To my mind, any other interpretation would be unduly narrowed and not justified by the words used in Section 41(j) of the Specific Relief Act.

12. I am of the view, therefore, that the learned ADJ was correct in his opinion expressed by him, in the passages from the impugned order extracted hereinabove, that the respondents cannot be said to have had no personal interest in the matter, so as to justify summary dismissal of the suit under Order VII Rule 11(a) of the CPC read with Section 41(j) of the Specific Relief Act.

13. In my view, no substantial question of law arises for consideration in this appeal. The appeal is, accordingly, dismissed. Miscellaneous application also stands disposed of.

C.HARI SHANKAR, J

MARCH 30, 2022

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