

CASE NO.:
Appeal (civil) 3281-3282 of 2002

PETITIONER:
JASKIRAT DATWANI

Vs.

RESPONDENT:
VIDYAVATI & ORS.

DATE OF JUDGMENT: 03/05/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Variava

JUDGMENT:

WITH Civil Appeal No. of 2002[Arising out of SLP (C) No. 16183 of 2000]

J U D G M E N T

S. N. VARIAVA, J.

- 1) Leave granted.
- 2) Heard parties.
- 3) Briefly stated the facts are as follows:

One Lt. Dina Nath Ahluwalia filed Suit No. 2248 of 1985, against Respondents 7 to 9 (herein). In the Suit the said Lt. Dina Nath Ahluwalia claimed that he has become the absolute owner of the Annexe Building on land measuring 163 Sq. Metres in No. 6, Friends Colony (West), New Delhi together with easementary rights and passages. The claim to ownership was based on a Will dated 28th August, 1984 executed by the then owner of the property one Rajeshwari Devi. Respondents 7 to 9 claimed to have inherited this property through the same Smt. Rajeshwari Devi but by a will dated 23rd May, 1982.

- 4) An interim application seeking an injunction against Respondents 7 to 9 restraining them from transferring or alienating the annexe in question was also filed. Initially, an order of status quo came to be passed. Pending this application (and the suit) Respondents 7 to 9 sold this property to the Appellant (herein) by a Conveyance dated 25th September, 1986. The said Conveyance, inter alia, provides as follows:

"E) The said entire property at present suffers from the following encumbrances :-

- i) portion shaded in red on the annexed plan B is the subject matter of Suit No. 2348/85 in the Delhi High Court filed by one Shri Dina Nath Ahluwalia against the Vendors whereby Shri Dina Nath Ahluwalia has raised disputes of title to and possession of the construction (annexe) and to the appurtenant land comprised within

the said shaded area (red) under and by virtue of a purported Will of Smt. Rajeshwari Devi purporting to Rajeshwari Devi purporting to bequeath the construction comprised within the shaded portion and the land underneath the said portion to the said Shri Dina Nath Ahluwalia. By orders dated 13.12.85 the Hon'ble High Court has restrained the Vendors from alienating or transferring the said construction (annexe) and has order status quo regarding possession of Shri Dina Nath Ahluwalia therein as well as in the portion of land comprised within the said shaded area.

xxx

xxx

xxx

F. The Vendors had in terms of Agreement for Sale dated 1st September, 1986 agreed to sell and the purchasers had agreed to purchase from the Vendors the said entire property inclusive of the encumbrances described in (E) above on the terms and conditions stated therein with the clear understanding that without in any manner limiting the Vendors obligation to transfer the said entire property to the purchasers, in view of the encumbrances detailed in (E) above, the Vendors shall fulfill their said obligation in two stages i.e. by transferring in the first instance all that portions of the said entire property which is not covered by the encumbrances enumerated in paragraphs E(i) and (ii) and in the second instance by the Vendors transferring by a conveyance, relinquishment deed or otherwise the portions in the said entire property presently covered by the encumbrances enumerated in paragraph E(i) and (ii) above after and if and as soon as the Vendors are legally competent to transfer the said portions, although the balance of the agreed consideration of Rs. 79,00,000/- (Rupees seventy nine lakhs only) for the said entire property (excluding stamp duty and expenses in connection with the transfer which are to be borne by the Purchasers) after reducing the sum of Rs. 2,40,000/- (Rupees two lakhs forty thousand only) already paid i.e. Rs. 76,60,000/- (Rupees seventy six lakhs sixty thousand only) shall be paid by the Purchaser to the Vendors at the time of registration of this Conveyance for the demised premises."

Thus it is to be seen that the Appellant was aware of the pendency of the suit and the status quo order. As per this conveyance deed the Appellant has not yet become owner of the disputed portion i.e. the annexe. This may be the reason why the Appellant made no application to be impleaded as a party to the suit.

5) It has been held by this Court in the case of Dhurandhar Prasad Singh v. Jai Prakash University and ors. reported in JT 2001 (5) SC 578, that Order 22, Rule 10 provides for cases of assignment, creation and devolution of interest during the pendency of a suit. It is held that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject matter of suit is devolved upon another during its pendency. It is held that such a suit may be continued with the leave of the Court by or against the person upon whom such interest has devolved. But, if no such step is taken, the suit may be continued with the original party and the person upon whom the interest has devolved will be bound by the decree. Thus the Appellant would continue to be bound by the decree or order which has been passed in the suit, particularly when she had knowledge of the proceedings.

6) The interim application was finally disposed of on 2nd February, 1995. By this Order it was held that the question whether the Will dated 28th August, 1984 was genuine or not was a question which had to be decided at the final hearing of the suit. It was held that Lt. Dina Nath Ahluwalia was in a settled possession of the annexe and that he could not be thrown out without due process of law. The Court granted an injunction against being dispossessed except by due process of law. The Court also injuncted Respondents 7 to 9 from dealing with or dispossessing of the annexe. The Court, however, held that Lt. Dina Nath Ahluwalia was only in possession of the annexe and the land underneath the annexe and not the open space in front of and adjacent to the annexe. The Court therefore held that Lt. Dina Nath Ahluwalia was not entitled to any injunction restraining Respondents 7 to 9 from dispossessing him from the open space in front of and adjacent to the annexe.

7) No Appeal was filed against this Order either by Respondents 7 to 9 or by the Appellant herein. Lt. Dina Nath Ahluwalia filed an Appeal against the portion of the Order which refused an injunction in respect of the open space in front of and adjacent to the Annexe. During the pendency of the Appeal Lt. Dina Nath Ahluwalia expired. Respondents 1 to 6 have been brought on record as the legal heirs of the said Lt. Dina Nath Ahluwalia. In the Appeal a complaint was also made that Respondents 7 to 9 had constructed a wall/jalli in such a manner that the right of ingress and egress to the annexe from the main gate and even to the water coolers fixed in the annexe was blocked. It was claimed that the light and air to the annexe were also affected by the newly put up construction. It was claimed that two ferocious dogs had been kept and that these dogs had already attacked a child. It is now admitted that a wall/Jalli has been constructed at points A to C and B to Gate D on the plan annexed to this Judgment.

8) In the Appeal the Division Bench appointed a Local Commissioner to visit the property, prepare a plan and take photographs of the annexe together with the land contiguous thereto to find out whether any new construction had been made by the Respondents 7 to 9 or on their behalf shutting out air and light to the annexe. The Commissioner was to suggest a more convenient enjoyment of the annexe keeping in mind the bye-laws of the Municipal Corporation of Delhi. The Commissioner visited the property. At the time he visited the property one Mr. Pradeep Sehgal represented himself to be the attorney of Respondents 7 to 9. The said Mr. Pradeep Sehgal participated in the proceedings of the Commissioner. The Commissioner submitted his report. The Commissioner suggested the erection of a wall in such a manner that a passage of 5 to 6 ft. could be provided to Respondents 1 to 6. The Commissioner also noted that there were newly constructed walls/jallis and that these have barricaded the annexe from all sides and interrupted the light and free flow of air into the annexe and blocked the access of the inhabitants of the annexe. The Commissioner noted that the side road (which Respondents 7 to 9 pointed out) was nothing but waste land belonging to the railways and thus could not be used.

9) Parties were then heard. The Court by an Order dated 12th April, 1996 directed as follows:

"9. The aforesaid suggestions made by the Local Commissioner in his report submitted to this court on 4.1.1996 appear to us to be sound and reasonable and, in our opinion, would protect the interest of both the parties during the pendency of the suit. We, therefore, accept the aforesaid suggestions made in the report of the Local Commissioner and we direct that a 5 feet to 6 feet passage

be provided to the appellants as shown in the map annexed to the report from the main gate to the annexe after raising a brick wall or a perforated jalli in order to protect the privacy of the inhabitants of the annexe and main building. It is further directed that the doors at points G, X, Y and Z of the aforesaid map and the jallis which have barricaded the annexe be removed to provide access, air and light to the inhabitants of the annexe.

10. With the aforesaid observations and directions this appeal is allowed to the extent indicated above but without any costs. The Plan drawn by the Local Commissioner shall also form part of this order. The aforesaid arrangement as directed herein would continue to operate till the disposal of the suit pending before the learned Single Judge."

The passage ordered by Court is between points Y and Z on the Plan annexed to this Judgment.

10) Now the Appellant sought a Review of the Order dated 12th April, 1996. It is to be seen that Mr. Pradeep Sehgal is the attorney of the Appellant. This Review had been dismissed by an Order dated 18th November, 1998. Civil Appeal No. of 2002 [Arising out of SLP (C) No. 4201 of 1999] is against the Order dated 18th November, 1998, whereas Civil Appeal No. of 2002 [Arising out of SLP (C) No. 16183 of 2000] is against the Order dated 12th April, 1996. The Civil Appeal No. of 2002 [Arising out of SLP (C) No. 16183 of 2000] is filed after a delay of 1500 days. No sufficient cause has been shown for the delay.

11) We heard parties at great length on a number of occasions. The parties have time and again informed this Court that they would file a Memorandum of Settlement. Yet on each occasion, one or the other of the party, raised some frivolous dispute. It is clear that no settlement is possible between the parties. We have, therefore, proceeded to hear the matter and to decide the case.

12) In our view, Mr. Mishra is right. If a wall is constructed as directed then the Appellant's access to the garage and the servant quarters gets completely blocked. At the same time, pending the final hearing of the suit, Respondents 1 to 6 cannot be dispossessed from the a

13) nnexe. They must also be given access to the annexe building through the main gate of the property. In our view the walls/jallis constructed around the annexe (at points A to C and B to Gate D) block light and air and prevent ingress and egress to the annexe. The right to use the annexe necessarily means that there must be reasonable space, say 5 feet, available all around the annexe. We, therefore direct that the Appellant and Respondents 7 to 9 shall permit access to the Respondents 1 to 6 and/or their guest through the main gate of the property. The Appellant shall forthwith remove the existing wall/jallis at points A to C and B to Gate D on the plan annexed to the Order. The Gate D shall also be removed. The Appellant shall ensure that Respondents 1 to 6 have a space of at least 5 ft. all around the annexe. That access should be such that it would provide access to the water coolers and to the gate marked "N". The Appellant and Respondents 7 to 9 shall not put up any gate or wall or Jalli within the said passage and not prevent light or air to the annexe by planting any trees or in any other manner. It is, however, clarified that apart from the use of the said passage Respondents 1 to 6 shall not be entitled to use any further or other areas. Thus Respondents 1 to 6 shall not use the lawn in front of the annexe. Respondents 1 to 6 would be permitted to park one car inside the compound next to the

annexe. However, cars of the guests will have to be parked outside.

14) We also clarify that it will be responsibility of the Appellant to ensure that the dogs kept by her do not attack Respondents 1 to 6 or any of their guests or family members. For that purpose the Appellant may put up an enclosure as indicated in red (at points A, E & F) on the plan annexed to this Judgment. The dogs must then be confined to the house and/or in that enclosure.

15) The orders under challenge are accordingly modified. The trial Court shall dispose of the suit in accordance with law uninfluenced by any observation or direction made in this Judgment.

16) With the above directions, these Appeals stand disposed of with no order as to costs.

....J.
(SYED SHAH MOHAMMED QUADRI)

J.
(S. N. VARIAVA)

May 3, 2002.