

**SUPREME COURT OF INDIA**

Ramesh

Vs.

Harbans Nagpal

C.A.Nos.3105-3106 of 2015

(Dipak Misra and Uday Umesh Lalit JJ.)

23.03.2015

**JUDGMENT**

**UDAY UMESH LALIT J.**

1. Leave granted.

2. These appeals challenge the order dated 14.1.2010 in CMM No.846 of 2008 and order dated 2.6.2010 in Review Petition No.58 of 2010 arising out of the said order dated 14.1.2010 in CMM No.846 of 2008, passed by the High Court of Delhi at New Delhi.

3. The appellant under an Agreement of sale dated 27.5.1998 had purchased the property described in the document as under: "Vacant roof of Ground Floor to Top Floor measuring 106 Sq. yds. Out of Property No.1/51, built on Plot No.A/9, out of Khasra No.163 with rights to construct up to Top floor, stairs leading from Ground Floor to Top Floor, situated at Nirankari Colony, Pardhan Marg, Delhi-110009, and bounded as under:-

NORTH: Road below  
SOUTH: Other's property  
EAST: Gali below  
WEST: Other's property"

The appellant submits that in pursuance of the right so conferred, she has erected a building and is in enjoyment thereof.

4. On or about 16.8.2001 the Respondent No.1 herein filed Civil Suit No.229 of 2001 in the Court of Senior Civil Judge, Delhi against the Defendant No.1 i.e. his wife and Defendant Nos. 3 to 5 who are relatives of the Defendant No. 1. The present appellant was joined as Defendant No.2. It was submitted in the plaint as under:

"That the defendant No.1 in connivance with defendant No.2 and other defendants encroached upon the property of the plaintiff and took possession of the chhajja and reconstructed it and debarred the plaintiff from taking any air or natural light. The defendant No.1 and 2 are in conspiracy with other defendants to permanently cust the plaintiff from the premises which is in his ownership.

That mischievously the defendant No.1 connived with the other defendants and with the MCD Officials in order to harm the plaintiff and got demolished the second floor, third floor and fourth floor of the said premises. Thus floors are lying in a dilapidated condition. The chhajjas on the first floor, second floor and fourth floor are being in unauthorized occupation of the defendants."

It was prayed:

"That a decree for mandatory injunction be passed in favour of the plaintiff and against the defendants that the chhajjas occupied by them forcefully and illegally, be handed over to the plaintiff."

The plaint did not give any details or dimensions of the chhajjas, nor did it refer to any plan so that the details or dimensions could be gathered therefrom. But it appears, a sketch was later produced on record.

5. The Appellant was initially proceeded ex-parte vide order dt.20.12.2001 but that order was set aside on 1.8.2002 and the appellant filed her written statement and reply to the application for interim relief. No replication was filed. The suit was dismissed for default on 17.9.2004. Respondent No.1-Plaintiff preferred application for restoration, which was adjourned from time to time for lack of effective service. The suit was later restored on 19.4.2006 when Defendant Nos.1 and 5 appeared in person and submitted that they had compromised the matter and had no objection to the suit being restored. Upon such restoration, the suit was decreed vide judgment dt.7.2.2007 in the absence of the appellant. It was observed by the trial court as under:

"It is pertinent to mention here that defendant Nos.1 and 5 also filed WS but during the pendency of the suit plaintiff and defendant Nos.1 and 5 have reached a compromise. Statements of Defendant Nos.1 and 5 were also recorded separately. Hence, the contents of WS of Defendant Nos.1 and 5 are not reproduced here. It is also pertinent to mention here that defendant No.2 to 4 were proceeded ex-parte by my Ld. Predecessor court on 20.12.2004. It is also pertinent to mention here that suit of the plaintiff was dismissed on 1.9.2004 for non-appearance of the plaintiff. Thereafter, plaintiff filed an application u/o 9 rule 9 CPC on 25.9.2004. Thereafter, notice of this application was sent to defendants but defendant No.2 did not appear despite summons being served which is also reflected in order sheet dt.5.2.2005. Meanwhile, defendant No.1 and 5 along with plaintiff compromised the matter and matter was proceeded further against the remaining defendants."

"Since the defendant Nos.2 to 4 have chosen not to contest the suit of the plaintiff and have chosen to remain ex-parte. Deposition of plaintiff's witness has remained unchallenged, uncontroverted. I have perused the record and heard Ld. counsel for plaintiff. It is also pertinent to mention here that defendant No.1 is wife of plaintiff and defendant No.1 along with defendant No.5 appeared and statement of both were recorded on 19.4.2006 to this effect that they have already settled their dispute in regard of suit property. There is nothing on record to suggest the plaintiff is not entitled to relief claimed. Hence plaintiff is entitled for mandatory injunction whereby defendant No.2, 3, 4 are directed that chhajja occupied by them be handed over to the plaintiff. Plaintiff is further entitled for decree of permanent injunction whereby defendants No.2,3 & 4 are restrained from encroaching as well interfering with the possession of the suit property that is 1/51, Nirankari Colony, Delhi. Decree sheet be prepared accordingly."

6. The record indicates that while the matter was pending consideration for restoration of the suit, vide order dated 27.11.2004 the matter stood adjourned to 07.01.2005 and thus there were no proceedings on 20.12.2004. On the other hand, the appellant was initially proceeded ex parte vide order dated 20.12.2001 but that order was set aside on 01.08.2002. The suit was restored on 19.04.2006 and there was no order after such restoration setting the suit ex parte as against the appellant. The order dated 05.02.2005 also did not mark the suit ex parte against the appellant.

7. On 30.04.2007 application was preferred on behalf of Respondent No.1- Plaintiff for execution of the aforesaid decree. Soon thereafter he filed an application dated 07.08.2007 under Section 151 C.P.C. for amendment of the decree. It was stated therein as under:

"1. That the Site Plan does not show the precise location of the place surrendered or ordered to be given in possession of the plaintiff by the defendants.

2. That although the order and decree sheet clears whatever is to be given to the plaintiff and as against the defendants.

3. That it is highly improper to go beyond the decree sheet and the decree passed by the Court and therefore, it is appurtenant to describe to the bailiff as to where he has to act and what he has to do so that the time of Court and the bailiff is not wasted and decree of this Hon'ble Court be obeyed and ought to be under law."

8. The aforesaid application was dismissed by the trial court vide its order dated 15.10.2007 holding that there was no clerical error or accidental omission in the decree and that taking on record the amended site plan at that stage would amount to going behind the decree and modifying the terms of the original decree. In the meantime the appellant- defendant No.2 got the knowledge of ex parte decree dated 07.02.2007 and preferred an application under Order IX Rule 13 CPC for setting aside the same, which application is still pending consideration.

9. Respondent No.1- plaintiff being aggrieved by the order dated 15.10.2007 preferred CMM No.846 of 2008 in the High Court of Delhi. The High Court in its order dated 14.01.2010 observed that as per the earlier site plan there was a protruding chhajja measuring 33" beyond the staircase and that the said chhajja shall be handed over to the decree holder who shall then erect a wall over the portion measuring 33" beyond the staircase as shown in the initial site plan. It further directed the executing court to issue warrants of execution in terms of the order of the High Court. The appellant preferred Review Petition No.58 of 2010 seeking review of the aforesaid order dated 14.01.2010. The said review petition was, however, dismissed by the High Court vide its order dated 02.06.2010.

10. We have gone through the record and considered the rival submissions. In our view, no dimensions were given in the plaint nor did the plaint refer to any sketch. The judgment and decree also did not refer to any dimensions of the chhajja in

question nor did it incorporate or refer to any sketch from which dimensions could be gathered. In the premises the view taken by the trial court was absolutely correct, in that any exercise would amount to going behind the decree. The application preferred under Section 151 CPC was also vague and lacking in any particulars. The High Court was, therefore, not justified in passing the instant directions. We, therefore, allow the appeal and set aside both the orders under appeal. It is open to Respondent NO.1-plaintiff to take such steps as are open to him in law. We may also observe that the application for setting aside the ex parte decree preferred by the appellant shall be considered on its own merits.

11. The appeals, thus, stand allowed with no order as to costs.