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

+ RSA 141/2017 & CM No.18633/2017 (for stay)

PREM PRAKASH GOELA & ANR. Appellants

Through: Mr. Sunil Mittal, Sr. Adv. with Ms.
Seema Seth, Mr. Ravi Sharma & Mr.
Dhruv Grover, Advs.

Versus

NDMC & ANR. Respondents

Through: Mr. Rajan Sabharwal, Adv. for R-1.
Mr. Rajeev Sharma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.07.2018**

1. Notice of this Second Appeal was issued, without indicating the substantial question of law if any arising, and the trial court record has been received.
2. The suit filed by the appellants/plaintiffs for permanent injunction restraining the respondent / defendant Municipal Corporation of Delhi (MCD) from interfering with the peaceful use and enjoyment of the appellant / plaintiff of private passage / lane known as "Goela Lane" and for mandatory injunction directing the respondent / defendant MCD to repair the damage caused thereto was dismissed and a First Appeal preferred by the appellants / plaintiffs also stands dismissed. I have thus asked the senior counsel for the appellants / plaintiffs as to what substantial question of law arises.
3. The senior counsel for the appellants / plaintiffs states that no finding has been given by both the Courts on the issue no.(iv) as under:



“iv) Whether the lane in question has become a public street and has visited in the Municipal Corporation of Delhi? OPD”

framed in the suit.

5. I have however enquired from the senior counsel for the appellants / plaintiffs the effect of non-returning of a finding on issue no.(iv) aforesaid when both the Courts below have found against the appellants / plaintiff on issue no.(i) as under:

“i) Whether the suit premises known as Goela Lane is a private property of the plaintiffs? OPP”

It has been put to the senior counsel for the appellants / plaintiffs that once the appellants / plaintiffs have failed to prove the lane to be their private property, would not the appellants / plaintiffs be not entitled to the relief irrespective of the decision on the issue no.(iv).

6. The senior counsel for the appellants / plaintiffs states that in proof of title, a Partition Deed, English translation whereof is at page no.162 of the paper book, was proved and attention is invited to the note at the end of Sub-Clause 1&2 of Clause 11 thereof at page 168 of the paper, book recording “Road known as Goela Lane, shall remain the joint property of both the parties.”

7. I have enquired from the senior counsel for the appellants / plaintiffs as to how a Partition Deed *inter se* parties can vest title in the property. Moreover, from a reading of the Partition Deed itself, it is evident that the property was described therein also as road and not as passage or internal passage in the properties of the appellants / plaintiffs or their predecessor.

8. It is also the contention of the senior counsel for the appellants / plaintiffs that the respondent / defendant MCD issued notices under Section



315 of the Delhi Municipal Corporation Act, 1957 to the appellants / plaintiffs with respect to the said road.

9. The Courts have in ***Sawarni Vs. Inder Kaur*** (1996) 6 SCC 223, ***Balwant Singh Vs. Daulat Singh*** (1997) 7 SCC 137, ***H. Lakshmaiah Reddy Vs. L. Venkatesh Reddy*** (2015) 14 SCC 784 and ***Prem Nath Khanna Vs. Narinder Nath Kapoor*** (2016) 12 SCC 235 held that even mutation entries of the municipality do not create title. It has thus been enquired from the senior counsel for the appellants / plaintiffs as to how issuance of a notice in the name of any person can constitute that person as the owner of the property with respect to which the notice is issued.

10. *Prima facie*, it appears that no substantial question of law arises for consideration.

11. On request of senior counsel for the appellants / plaintiffs, list on 26th November, 2018.

RAJIV SAHAI ENDLAW, J

JULY 17, 2018

‘gsr’..

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