

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 6841/2017
(Arising out of Special Leave Petition(C) No(s). 24150/2009)

OM PRAKASH GUPTA

APPELLANT (s)

VERSUS

SUBHASH CHAND GOEL (D) & ORS.

RESPONDENT (s)

O R D E R

Leave granted.

The appellant herein had filed suit against the respondent seeking the following reliefs:

- "(a) Defendants no. 1 and 2 be restrained from raising further construction.
- (b) Defendant no. 2 be restrained from taking physical possession of the Western portion.
- (c) MCD be directed to demolish the illegal construction.
- (d). DESU be restrained from giving electricity connection.
- (e) Defendant NO. 1 be directed to return half portion of the property No. B-1/26, Vasant Vihar, New Delhi to plaintiff."

The appellant and the respondent are brother and they were given joint allotment of B-1/26, Vasant Vihar, New Delhi measuring

400 sq. yards. Allotment was made by Delhi Development Authority (DDA) on lease in their favour. One of the conditions in the lease deed is that there could not be any division on the plot without prior permission of the DDA. Notwithstanding the same, it is an accepted case of the parties that an internal arrangement was made between two brothers as per which they divided the said plot by getting 200 sq. yards each. The appellant has raised construction on the portion which came to his share. On the other portion, the respondent wanted to raise construction. According to the appellant the construction, which was sought to be raised was illegal as no building plans from the Municipal Corporation, Delhi were got sanctioned. It is on that basis, suit was filed seeking the reliefs mentioned above.

The respondent herein filed application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint submitting that there was no cause of action for filing the said suit. This application was rejected by the Civil Court *inter alia* observing that the matter required trial in order to know as to why respondent be not restrained from raising further construction on the disputed property and what is the *locus standi* of the appellant vis-a-vis relief. It was also observed that so long as the plaint discloses some cause of action and raises some questions to be decided by a Court, the plaint cannot be rejected under the provisions of Order VII Rule 11 of the CPC. Challenging

that order, the respondent filed revision petition in the High Court, which has been allowed by the High Court holding that there was no cause of action in filing the suit. Discussion in this behalf is contained in paras 7 and 8 of the impugned judgment, which is reproduced herein below:

"7. It is obvious that two brothers who were joint owners of plot had divided the plot into two parts and each became owner in respect of half of the plot. Defendants' right vis-a-vis other authorities cannot to be at the mercy of plaintiff. If the authorities cannot to be at the mercy of plaintiff. If the authorities consider that his building plan is not to be sanctioned or he is not to be given electricity, their consideration has to be without any influence of plaintiff/respondent herein.

8. The suit filed by the respondent Om Parkash Gupta was liable to be rejected under Order 7 Rule 11 CPC. There were no issues which could be tried and the suit seems to have been filed by one brother against the other when the brother sold away his portion and moved out from the property. If any action is sought to be taken by superior lessor, the superior lessor would be free to take action as per law. Similarly MCD/DDA would also be free to take action against the petitioner as per law."

We are unable to accept the aforesaid reasoning given by the High Court in support of its conclusion . No doubt, the respondent would have rightly raised the construction on his portion, but the same is to be done in a legalised manner. When the appellant had set up a case that the building plans were not sanctioned and still wanted to raise the construction, there was a cause of action for filing the suit and, therefore, the plaint could not have been

rejected. We, thus, allow this appeal and set aside the impugned order and direct the Civil Court to decide the suit in accordance with law and on its own merits.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
APRIL 03, 2017.

ITEM NO.48

COURT NO.8

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 24150/2009

(Arising out of impugned final judgment and order dated 10/12/2008 in CRP No. 205/2007 19/12/2008 in CRP No. 205/2007 passed by the High Court Of Delhi At New Delhi)

OM PRAKASH GUPTA

Petitioner(s)

VERSUS

SUBHASH CHAND GOEL (D) & ORS.

Respondent(s)

(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND PERMISSION TO PLACE ADDL. DOCUMENTS ON RECORD AND PERMISSION TO PLACE ON RECORD ADDL. AFFIDAVIT AND OFFICE REPORT)

WITH

SLP(C) No. 27443-27444/2012 (WITH OFFICE REPORT)

SLP(C) No. 28523-28524/2012 (WITH OFFICE REPORT)

Date : 03/04/2017 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. Tripurari Ray, Adv.
Mr. B.S. Billowria, Adv.
Mr. Suresh Kumar Sharma, Adv.
Mr. Rajinder Singh, Adv.
Mr. V.P. Pandey, Adv.
Mr. Vishnu Sharma, Adv.

Mr. Rakesh K. Sharma, Adv.

For Respondent(s) Mr. P. Parmeswaran, Adv.

Mr. Rahul Tyagi, Adv.
Ms. Neha Gupta, Adv.
Mr. R.K. Singh, Adv.
Mr. Virag Gupta, Adv.
Mr. Praveen Swarup, Adv.

Mr. Monish Kumar, Adv.
Mr. Piyush Kaushik, Adv.

Ms. Aarohi Holani, Adv.
Mr. Rakesh K. Sharma, Adv.

Ms. V. Mohana, Sr. Adv.
Ms. Sunita Sharma, Adv.
Mr. Raj Bahadur, Adv.
Mr. Mohan Prasad Gupta, Adv.

Ms. Binu Tamta, Adv.

Ms. Sushma Suri, Adv.

Mr. Vishnu Sharma

UPON hearing the counsel the Court made the following
O R D E R

Special Leave Petition(C) No(s). 24150/2009

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.

SLP(C) No. 27443-27444/2012 & SLP(C) No. 28523-28524/2012

List On 10.04.2017.

(Ashwani Thakur)

COURT MASTER

(Signed order is placed on the file)

(Mala Kumari Sharma)

COURT MASTER