
(2017) 05 DEL CK 0167

In the Delhi High Court

Case No : 194 of 2004

JAGAT NARAIN SARAF & ANR.

APPELLANT

Vs

ANJANI KUMAR SHARMA THROUGH LRS AND ANR.

RESPONDENT

Date of Decision : 25-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 100](#)
- Second appeal
[Transfer of Property Act, 1882](#), [Section 11](#)
- Restriction repugnant to interest created

Citation : (2017) 05 DEL CK 0167

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Manish Bishnoi, M.M.Kalra, Sonali?Kumar, Shipra Garg, Gaurang Kanth

Judgement

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellants/plaintiffs impugning the concurrent judgments of the courts below; of the Trial Court dated 22.3.2003 and the First Appellate Court dated 22.4.2004; by which the suit filed by the appellants/plaintiffs for injunction has been dismissed. The subject suit for injunction was filed by the appellants/plaintiffs that the respondent no.1/defendant no.1 should not raise walls of his property towards the eastern side which would have the effect of closing the windows etc of the property of the appellants/plaintiffs.

2. The facts of the case are that the appellants/plaintiffs purchased the property bearing no.2797, Gali Matawali, Cheerakhana, Chandni Chowk, Delhi. Appellants/plaintiffs when they were owners of the property no. 2797, the adjoining property bearing no. 2793, Gali Matawali, Cheerakhana, Chandni Chowk, Delhi was purchased by the respondent no.1/defendant no.1 as per a registered sale deed dated 14.8.1984. The predecessor-in-interest of the appellants/plaintiffs as regards the property no.2797 and the property no.2793 of the respondent no.1/defendant no.1 was the same i.e there was one owner of both the properties nos.

2797 and 2793 and that the original owner had sold one property bearing no. 2797 to the appellants/plaintiffs and property no. 2793 to the respondent no.1/defendant no.1. I may note that the respondent no.1/defendant no.1 expired during the pendency of the suit and was thereafter represented by his legal heirs.

3. The limited issue which was called for decision by the courts below, and is also called for by this Court, is whether Clause 12 which existed in the sale deed dated 14.8.1984 executed in favour of the respondent no.1/defendant no.1 by the owner restricting the respondent no.1/defendant no.1 from raising the height of the walls or blocking or closing of the widows and ventilators in the adjoining property of the appellants/plaintiffs, is a valid clause in view of Section 11 of the Transfer of Property Act, 1882. Respondent no.1/defendant no.1 pleaded that though there did exist a Clause 12 in the sale deed dated 14.8.1984 executed in his favour with respect to the property no. 2793, however any such direction in the sale deed as per Clause 12 with respect to restriction on enjoyment of the property purchased by the respondent no.1/defendant no.1 fell foul of Section 11 of the Transfer of Property Act.

4. Section 11 of the Transfer of Property Act reads as under:- "11. Restriction repugnant to interest created.-Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction. Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

5. A reference to the first part of Section 11 of the Transfer of Property Act shows that wherever a property is sold by the transferor to the transferee and whereby the transferor by a clause in the sale deed imposes terms and conditions upon the transferee for user of the property which is purchased by the transferee, and whereby there is caused restriction on user, such a clause is liable to be ignored by the transferee inasmuch such a clause restricting user and enjoyment of a property purchased has to be taken as illegal and void. Therefore, in the opinion of this Court the clear language of first part of Section 11 of the Transfer of Property Act would make the subject Clause 12 as illegal and void and thus liable to be ignored by the respondent no.1/defendant no.1. Resultantly, once Clause 12 of the sale deed executed in favor of the respondent no.1/defendant no.1 is illegal, hence there cannot be any restriction imposed for user and enjoyment of the purchased property upon the respondent no.1/defendant no.1 or his successor-in-interest, and therefore, no injunction can be granted in favour of the appellants/plaintiffs, restraining the respondent no.1/defendant no.1 from making any construction towards the eastern side of the respondent no.1's/defendant no.1's property no. 2793, including by raising of walls etc etc.

6. Learned counsel for the appellants/plaintiffs argued that the second part of Section 11 of the Transfer of Property Act shows that any restriction which is imposed as per Clause 12 of the sale deed in the present case of the respondent no.1/defendant no.1 is a valid clause and it is argued that when in the second part of Section 11 of the Transfer of Property Act reference is made to enjoyment of one piece of immovable property so as to secure beneficial enjoyment of another piece of the property, then by virtue of the second part of Section 11 of the Transfer of Property Act, the relevant Clause 12 in the sale deed of the respondent no.1/defendant no.1 is valid and binds the respondent no.1/defendant no.1 whereby the respondent no.1/defendant no.1 should be restrained from making any construction towards the eastern side of the property which has the effect of blocking or closing of the windows and ventilators in the property of the appellants/plaintiffs.

7. I cannot agree with the arguments urged on behalf of the appellants/plaintiffs because the second part of Section 11 of the Transfer of Property Act deals with and its subject matter is one single immovable property and different parts of that one single immovable property. Once there is one single immovable property, then different parts of one such immovable property if sold, in such a case the sale of different parts of one immovable property can contain a clause so as to put restriction on one owner of the part of one whole immovable property, and which is for the beneficial enjoyment of the single property by the owner of the other parts of the single/joint immovable property. Second part of Section 11 of the Transfer of Property Act does not entitle any valid restraint on being put on separate immovable properties, such as upon the adjoining separate immovable property being property no. 2793 in the present case. I may note that it is not the case of the appellants/plaintiffs that the properties bearing nos. 2797 and 2793 were/are actually one immovable property as a whole and that it is only that they are separately sold in terms of separate sale deeds containing separate municipal numbers and although the immovable property remained as one whole single immovable property. Therefore, once the property of the appellants/plaintiffs bearing no. 2797 is a totally separate immovable property, then the property no. 2793 of the respondent no.1/defendant no.1, merely because the property no. 2793 of the respondent no.1/defendant no.1 is adjoining to the property no. 2797 of the appellants/plaintiffs, would not mean that the second part of Section 11 of the Transfer of Property Act will come into play.

8. Learned counsel for the appellants/plaintiffs sought to place reliance upon certain judgments of the courts of UK, however in none of these judgments it is found that the facts of any of such case deals with two separate independent immovable properties.

9. In view of the above, the courts below have rightly held that Clause 12 of the sale deed dated 14.8.1984 executed in favour of the respondent no.1/defendant no.1 was illegal/invalid/void and that the respondent no.1/defendant no.1 was

rightly entitled to ignore the same and raise construction on his separate immovable property inasmuch as by virtue of first part of Section 11 of the Transfer of Property Act it is clear that there cannot be any restriction on an absolute owner from enjoyment and user of his separate independent immovable property.

10. In view of the above, no substantial question of law arises. Dismissed.