

(2011) 12 DEL CK 0238

In the Delhi High Court

Case No : Regular First Appeal No. 17 of 2010

K. Deshaprabhu and Others

APPELLANT

Vs

Meera Abhichandani and Others

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, 96
Easements Act, 1882 — Section 15

Citation : (2011) 12 DEL CK 0238

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Azhar Alam with Mr. Sankalp Goswami, for the Appellant; Jai Gupta, Advocate with Ms. Sunit Yadav, Advocate and Mr. Rakesh Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the

impugned judgment of the trial Court dated 24.12.2009 dismissing the suit as per the admitted facts by exercising powers under Order 12 Rule 6

CPC. The suit has been disposed of at the stage of disposal of the interim injunction application in view of admitted facts.

2. The facts of the case are that respondent No. 1 is the owner of flat No. 56, Pocket-C, (C-56-D) Alaknanda, New Delhi and which flat is

situated on the third floor in a block of flats having a total of eight flats. The respondent No. 1 and her husband are senior citizens who are living

alone in their flat. The flat is situated in a colony in which the flats are built by Delhi Development Authority (DDA). In the block of flats where

respondents/defendants are owners of the flats, the appellants/plaintiffs also

own the flats, namely, 55-B and 55-C. As per the policy of the DDA, in the open area adjacent to the staircase, a lift can be constructed on no objection being given by the other owners of the flats in the block of flats.

Such a no objection was given by the appellants/plaintiffs on 18.1.2009 and pursuant to which the respondent No. 1 constructed the lift well and

was in the process of installing the lift when disputes were raised by the appellants/plaintiffs on the ground that their rights of light and air will be

affected in case of construction of the lift and that instead of constructing a lift for carrying of only two persons a larger lift is being installed. I may

note that no objection is being raised by the DDA and the DDA has in fact filed affidavit in this Court supporting the stand of the respondent No.

1. Even in the trial Court counsel for the DDA stated that the lift was being constructed at the earmarked place for installation of the lift as per the

approved plan of DDA. The respondent No. 3 in this appeal was defendant No. 3 in the trial Court being the President of Resident Welfare

Association and who has also supported the respondent No. 1 and has taken up a stand that such lifts exist in various other blocks of flats in the

area and no one has ever had any difficulty with respect to the lifts.

3. Two issues were argued before this Court. The first argument was that the appellants' easmentary rights were affected as a result of

construction of the lift, and therefore the lift should not be constructed. The second argument was that suit could not have been decreed at the

stage of disposal of the interim application as there were disputed questions of facts.

4. In my opinion, both the arguments as raised on behalf of appellants have no force. Obviously, this litigation is an endeavour to unnecessarily

harass the senior citizens who want to construct a lift to reach their flat on the third floor. The reasonableness of the respondent No. 1 can be

gauged from the fact that besides bearing the entire cost of construction of lift, she is agreed to create an opening towards the flats on the first floor

of the appellants, however, this proposal was turned down on behalf of the appellants/plaintiffs on the ground that they would have to climb seven

steps to reach their flats. The respondent No. 1, however, states that the appellants would only have to climb four steps and not seven steps. Be

that as it may, whether four steps or seven steps it is not such a big handicap for

seeking to prevent the construction of the lift, more so when the entire cost of the lift and the opening towards the flats of the appellants is being borne by the respondent No. 1. Being choosy because of the few number of steps required to reach the flats of the appellants, in my opinion, shows complete unreasonableness and a sheer ego battle on behalf of the appellants who are only benefitting by construction of the lift by the respondent No. 1. I may note that as already stated above, there is no objection to the construction of the lift by the other flat owners in the block of flats. In fact, possibly even NOC on behalf of other residents of block of flats may not be required because the lift is situated on the portion which belongs to the DDA and does not belong to any of the owners of the flats. In terms of Section 15 of the Indian Easements Act, 1882, no right of light and air arises unless such right is claimed uninterruptuously for 20 years and it is not the case of the appellants/plaintiffs that they have uninterruptuously enjoyed light and air for a period of 20 years from the limited area where the lift is being constructed. In fact, I really fail to understand as to what can be loss of light and air, by construction of the lift and in fact really there is none, and obviously unnecessary disputes are being raised to arm-twist senior citizens living all alone on a third floor flat. I may note that lift is being constructed by the respondent No. 1 inasmuch as her husband, who is a senior citizen, is a patient of acute vertigo and has difficulty in climbing on the flat at the third floor of the respondent No. 1. I may only add that even if there are no medical problems but at the age at which the respondent No. 1 and her husband are (about 60 years) surely they are entitled to legally construct a lift at a place earmarked for construction of a lift, because after all climbing to a third floor is not at all easy, more so at an advanced age, and also because a person may have to repeatedly go up and down. I may also additionally note that flats of appellants have unrestricted access to light and air to their complete flat and not even a single window or any opening of even a minutest size is being affected as a result of the construction of this lift, and which becomes crystal clear when we look at the plan of the entire block of the eight flats. I therefore hold that the appellants do not enjoy any right of easements as they have not claimed any right of easements in accordance with Section 15 of the Indian Easements Act, 1882 and nor is any such assumed

easementary right being legally affected by construction of the lift in question. The respondent No. 1 is therefore entitled to construct the lift of

which the lift well has already been constructed. The appellants are therefore estopped from seeking any relief of injunction having once given the

NOC dated 18.1.2009 and which was acted upon. The appellants surely must introspect as to why they are seeking to unfairly obstruct the

construction of the lift and what is the purpose they will achieve by this unnecessary litigation.

5. I may state that even during the course of hearing, I asked the counsel for the appellants as to what really the problem was, and can the problem

be sorted out, as the respondent No. 1 is bearing the entire cost of the lift, however, counsel for the appellants pleads lack of instructions.

6. The second aspect as to whether the suit should have been set down for trial is an aspect which seemed to have merit on the first blush,

however, in view of the fact that admittedly no legal right of easement under the Indian Easements Act, 1882 is pleaded by the appellants, the lift

well is not being constructed on the property/land of the appellants, the DDA admittedly has no objection to construction of the lift (and which

entity is the owner of the land where the lift is being installed), not a single opening of light and air of the appellants is being blocked, and thus there

are really no disputed questions of facts which require trial as to whether or not by construction of the lift the easementary rights or any other

presumable rights of the appellants are at all affected.

7. No other issue is urged or argued before this Court.

8. In view of the above, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs. Interim orders

stand vacated.