

2024 SCC OnLine SC 2582

In the Supreme Court of India
(BEFORE PANKAJ MITHAL AND R. MAHADEVAN, JJ.)

Kamal Kishore Sehgal (D) thr. Lrs. and Others ...
Appellant(s);
Versus

Murti Devi (Dead) thr. Lrs. ... Respondent(s).
Civil Appeal No. 9482 of 2013
Decided on September 19, 2024

Advocates who appeared in this case :

For Appellant(s) Mr. Krishan Kumar, AOR

For Respondent(s) Mr. Pramod Dayal, AOR

The Judgment of the Court was delivered by

PANKAJ MITHAL, J.:— The suit of the plaintiff now represented by her heirs and legal representatives (respondents herein) for the decree of permanent injunction in respect of the use of passage, more commonly described as 'common passage', was dismissed by the court of first instance, but in appeal the judgment and order of the Trial Court has been reversed and the suit stands decreed.

2. In the above circumstances, the defendants and their legal representatives (appellants herein) have preferred this appeal.

3. We have heard Mr. S. K. Sharma, advocate for the appellants and Mr. Gaurav Agrawal, Sr. Advocate for the respondents.

4. The pleadings of the parties reveal that Sh. Jaspal Singh along with Smt. Raj Rani and Smt. Sudesh Rani jointly purchased a piece of land measuring 3116 square yards, more popularly/particularly described as plot no. 8C, Rajpur Road, Civil Lines, Delhi *vide* sale deed dated 30.09.1972. Out of the aforesaid 3116 square yards of land, Sh. Jaspal Singh became the absolute owner in possession of 1398 square yards of land with all easementary rights and this area in his possession came to be marked as Municipal No. 8C/1, Rajpur Road, Civil Lines, Delhi. The said plot of land faces the Battery Lane on the northern side and on one side of it is Tirath Ram Hospital and on the other two sides there are properties of two other private persons. It means that the said plot had no other access except through the Battery Lane.

5. Sh. Jaspal Singh divided his plot of land measuring 1398 square yards in two equal halves of 699 square yards and marked them as A (front portion) and B (back portion). He sold both portions A and B each having an area of 699 square yards *vide* separate registered sale

deeds dated 12.04.1974. Portion A was sold to plaintiff-respondents and portion B to the defendants-appellants. Since portion B was in the back and had no access to the Battery Lane, the sale deed of the plaintiff-respondents, categorically provided that she would leave a 15 feet wide common passage on side of portion A for the common use of the owners of portions A & B both. However, in the sale deed of the defendants-appellants, there was no similar stipulation that they would also have to leave any such passage, much less to be used by the owners of portion A.

6. It is worth noting that the size of both the portions A & B transferred by Sh. Jaspal Singh were exactly the same. The sale deeds were executed on the same day and on the same sale consideration. In other words, plot A, which was in the front and plot B, which was on the back side were valued at the same rate. It may be relevant to note that since the portions which were sold, were little elevated *vis a vis* the Battery Lane, a ramp was constructed at the entry point of the passage. It is also important to note that though the respective sale deeds refer to a 15 feet wide common passage, but in reality, the said passage is only 10-11 feet wide to which no one has objected as of date.

7. The plaintiff-respondents sometime in the year 1991, brought about the aforesaid suit for permanent injunction *inter-alia* alleging that the 15 feet wide common passage shown in green colour is not the passage adjoining only portion A of the plaintiff-respondents, but it also includes the passage which runs across the portion B of the defendants-appellants as well. Therefore, the plaintiff-respondents have a right to use the said entire common passage shown in green colour in the map attached to the sale deeds. The defendants-appellants cannot obstruct the use of the said common passage by the plaintiff-respondents. As such, they may be, apart from other things, restrained from causing any obstruction in the use of the said entire common passage by the plaintiff-respondents.

8. The suit was contested by the defendants-appellants by filing written statement contending that according to the sale deed of the plaintiff-respondents, they alone were required to leave a common passage of 15 feet wide for use of defendants-appellants, as they had no other way to access their property i.e., portion B. The said common passage has been marked as X to Y in the map forming part of the sale deed. The open space left by the defendants-appellants in their portion B in alignment with the common passage X-Y which is marked in the map as Y-Z or Z-Z1, was never intended to be used as common passage but was exclusive part of portion B purchased by them.

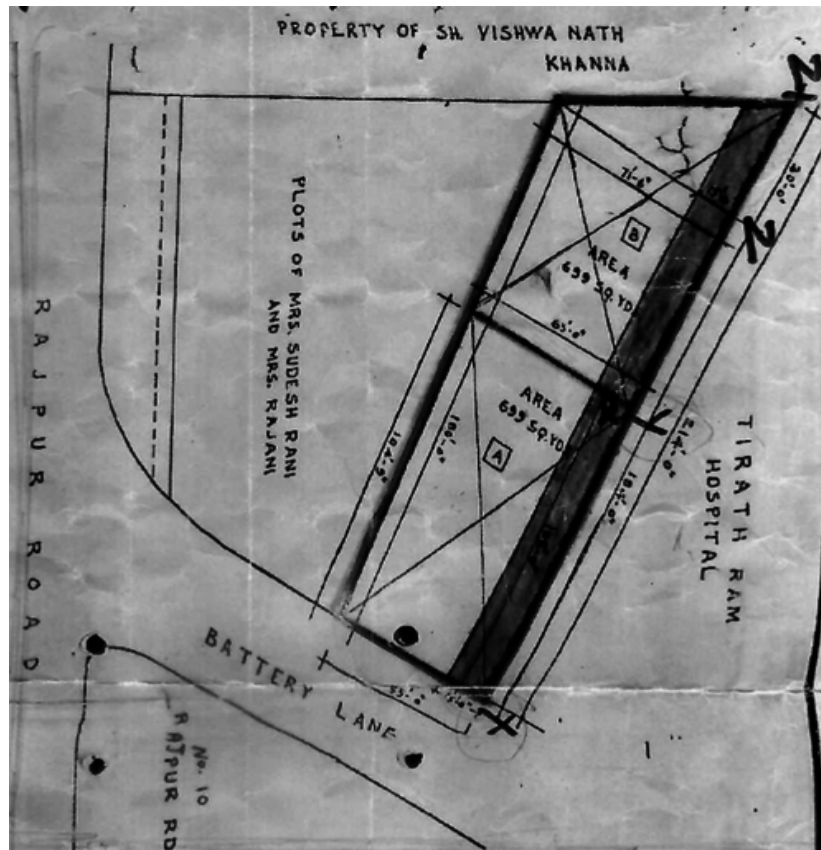
9. On the pleadings of the parties, issues were framed by the court of first instance and finally the suit was dismissed holding that the

plaintiff-respondents under their sale deed had to leave the common passage X to Y for ingress & egress of defendants-appellants as an access to their back portion B to be used jointly by both the parties. There was no stipulation that portion Y-Z is to be used by the plaintiff-respondents.

10. Aggrieved by the aforesaid judgment and order of the Trial Court, plaintiff-respondents preferred Regular First Appeal in the High Court which has been allowed by the impugned judgment and order dated 01.11.2011. It has been held that the entire common passage X-Z1 is a common passage which is usable by both the parties i.e., the owners of portions A and B.

11. The basic issue before this Court is whether the entire so called 'common passage' shown in the green colour in the map annexed to the sale deeds which is in 3 parts, and marked by letters X to Y, Y to Z and Z to Z1 is to be used by both the parties i.e., the plaintiff-respondents and defendants-appellants or the portion of the said passage marked by X to Y alone is to be used as a 'common passage' by the parties and the passage marked Y to Z and Z to Z1 are the exclusive properties of the defendants-appellants.

11.A. A sketch map as per that enclosed to the sale deeds showing the position of portion A & B with the alleged common passage X-Y, Y-Z & Z-Z1 is produced below for the easy understanding of the controversy:



12. The answer to the said issue largely depends upon the interpretation of the recitals of the sale deeds and as to whether the 'common passage' in use by both the parties refer to the entire common passage from X-Y, Y-Z and Z-Z1 or only to X-Y.

13. The sale deed of portion A executed in favour of plaintiff-respondents dated 12.04.1974 in unequivocal terms provides that the vendor is transferring his absolute rights in the said land portion A together with right to use of 15 feet wide common passage which has been left for access to the back portion. The relevant extract of part of clause 1 of the said sale deed in context with 15 feet wide common passage is extracted below for ready reference:

"..... the said seller doth hereby sell, convey, transfer and assign by way of absolute sale his share to the extent of 699/3116 in Plot No. 8-C, Rajpur Road, Delhi i.e., 699 square yards out of his own 1398 square yards as shown and marked as portion A in the plan annexed together with right of use of 15 feet wide common passage which has been left for access to the back portion as shown in green colour in the plan annexed unto the purchaser along with all his right, title, interest, option and privileges. The vacant possession in respect of the demised property has already been given to the

purchaser on spot."

(emphasis supplied)

14. A plain reading of the above recitals of the sale deed would make it crystal clear that the plaintiff-respondents were supposed to leave a 15 feet wide common passage for access to the back portion, i.e., for the defendants-appellants of the portion B, but, the plaintiff-respondents would also have the right to use the same. Therefore, by necessary implication the said 15 feet wide common passage refers to the passage to be left by the plaintiff-respondents, meaning thereby, the passage marked X-Y only. The aforesaid recitals in the sale deed are in continuation with the agreement to sell between the parties dated 11.06.1973 which also provides for leaving of 15 feet wide passage by the plaintiff-respondents for use of the owner of the back portion. The aforesaid sale deed nowhere contains any stipulation that the plaintiff-respondents, the purchaser of portion A, will have any right, in any manner, over portion B or to use the passage if any existing or to be constructed in part of portion B owned by defendants-appellants.

15. Now coming to the sale deed dated 12.04.1974 executed in favour of the defendants-appellants, it categorically states that the vendor Sh. Jaspal Singh is transferring portion B with the right of use of 15 feet wide common passage for access thereto as left by Smt. Murti Devi (plaintiff-respondents) for that purpose, to whom the whole of front portion A belongs. The said recitals as contained in clause 6 of the aforesaid sale deed are reproduced herein below:

"The seller agreed to sell his 699/3116 share in Plot No. 8-C, Rajpur Road, measuring 1398/3116 square yards i.e., 699 square yards out of his 1398 square yards more specifically shown in the plan annexed i.e., being the areas measuring 699 square yards with right of use of 15 feet wide common passage for access thereto as left by Smt. Murti Devi for that purpose, to whom the whole of the front portion measuring 699 square yards facing Battery Lane has been sold, unto the purchasers for a total sale price of Rs. 98,000/- (Ninety eight thousand) and the purchasers agreed on 06.11.1973 to purchase the same vide terms and conditions in the agreement of sale registered as No. 1219 in addl. Book No. I, Vol. No. 3084 on pages 54 to 58 in the office of the sub-Registrar, Delhi on 28.03.1974."

(emphasis supplied)

16. There is no recital in the said sale deed that the defendants-appellants also have to leave a 15 feet wide passage in their portion B for use as a common passage by the plaintiff-respondents, the owner of portion A.

17. On a harmonious reading of the above recitals contained in both

the sale deeds, it is implicit that portion A was purchased by the plaintiff-respondents whereas portion B in the back was purchased by the defendants-appellants. The plaintiff-respondents have agreed to leave a 15 feet wide common passage in their portion A for common use by the defendants-appellants and the plaintiff-respondents for the purposes of ingress and egress to their portion from the Battery Lane. This passage alone has been referred to as the 'common passage' to be used by both the parties and has been marked as X-Y. The defendants-appellants, purchaser of portion B has no-where agreed to leave any passage in portion B for use by the plaintiff-respondents. Therefore, implicitly the defendants-appellants are the exclusive owner of the entire portion B.

18. It is a cardinal principle of interpretation that where the language employed in the instrument is clear and unambiguous, the common literary meaning ought to be assigned in interpreting the same and one should not fall back on any other inference. Only the expression in clear words contained in the instrument/document must be considered and not the surrounding circumstances. In short, literal construction must be considered first, rather than going into the intention behind what is said in the instrument/document if the language of the instrument is clear and unambiguous.

19. The court of first instance, applying the above principle of interpretation and upon proper and due consideration of the recitals in the two sale deeds, categorically ruled that it was only the plaintiff-respondents, the owner of the front portion A, who had to sacrifice for the 15 feet wide passage and not the defendants-appellants who own the back portion B. It would be beneficial to reproduce Paragraph 14 from the Trial Court judgment which reads thus:

"A perusal of these clauses clearly goes to show that in the sale deed of plaintiff, he was required to leave 15 feet wide common passage for access to the back portion and there was no clause that she will have access to the passage in front of the portion of the defendants. Similarly, in the sale deed of the defendants, it has been provided that they will have access to the back portion from the front portion while the plaintiff was to leave 15 feet wide common passage no such condition was imposed on the defendants to leave passage as common to be jointly used by plaintiff and defendants. It was admitted by the attorney of the plaintiff that the sale deed of both the parties was drafted by him. He also admitted that no agreement took place between the parties with regard to passage and its user. He also admitted that agreement to sell Ex.DW1/2 executed between Jaspal Singh and the defendants is witnessed by him and bears his signature at point A. In pursuance to a specific question put by the learned counsel for the defendant to Shri R.P Bansal as to whether

there was condition in the sale deed in favour of the plaintiff that she will leave passage of 15 feet for access to the back portion of the plot owned by Jaspal Singh and sale deed Ex.DW1/1 executed by Jaspal Singh in favour of the plaintiff had a rider that the plaintiff will leave a passage of 15 feet for access to the rear portion and that in the agreement to sell Ex.DW1/2 there was no such condition or rider that defendant will leave common passage for use of occupants of front portion out of defendants property measuring 699 sq. yards and on the other hand, it was mentioned that purchaser agreed to purchase the remaining 699 square yards being the back portion after leaving 15 feet side passage for access to back portion agreed to be sold to the site plans attached to the respective sale deeds of the parties. Relevant clauses of the sale deeds as reproduced above makes it amply clear that while in the sale deed Ex.DW1/1 executed by Jaspal Singh in favour of plaintiff there was a rider that the plaintiff will leave passage of 15 feet for access to the rear portion but there was no clause in her favour that she will have corresponding right of common passage in front of the portion of defendants more specifically shown in portions Y to Z and Z to Z-1 in the site plan. It may be mentioned that true intention of parties is not correctly reflected in the site plan attached with the sale deeds of respective parties because both of them are exactly similar. Moreover, there is no ambiguity in the sale deed so that any clarification may be sought from the site plan. There is force in the contention of the learned counsel for the defendants that since the plaintiff was getting front portion and the defendants was getting rear portion for the same consideration amount, the plaintiff had to sacrifice passage of 15 feet. It is common knowledge that market value of front portion is practically more when both the parties were purchasing exactly same land, why the defendants would have agreed to pay same consideration except for the fact that since the plaintiff was deriving all the benefits of being purchaser of front portion that she was required to sacrifice passage of 15 feet wide for access to the defendants and there was no such rider on the part of the defendants. If the plaintiff intended to use 214 feet wide passage as common, there could have been no hitch in marking specific mention of it in the sale deed which was drafted by none else but the attorney of the plaintiff who is a senior advocate and each and every clause must have been drafted very carefully. Further in para 10 of the plaint, it has been alleged that parties agreed/arrived at an understanding that entire common passage 214 ft deep passing adjacent to the portion A and B should be made of marble by the parties at their own costs. The defendants put up kota stones in the portion of the common passage in front of their portion

B while the plaintiff put up crazy marble tiles in the portion in front of her portion in front of her portion A. So, the fact that the different constructions of both the portions between X and Y and Y and Z have taken place this also reflects the intention of the parties that these portions are in occupation of two different persons and while portion shown X to Y in the site plan was to be a common passage, since the defendants was to have access to his portion from that passage, rest of the passage from point Y to Z is part of property of the defendants and plaintiff has nothing to do with that portion.”

20. Upon the reading of the entire sale deeds and even considering the map attached thereto, we are satisfied that the court of first instance has rightly interpreted the two documents to conclude that the common passage referred thereto is only in respect of common passage marked in the letters X-Y as this was the passage supposed to be left aside by the plaintiff-respondents, the owners of the portion A for common use by both the parties, with no stipulation that the owners of the back portion are also to leave a similar passage in their portion for use by the other party.

21. The first appellate Court completely misconstrued the two sale deeds and simply for the reason that the passage Y-Z and Z-Z1 were in alignment with the passage X-Y left by the plaintiff-respondents for common use held that the entire passage from X-Z1 is a common passage for the use of both the parties. This is something which is completely erroneous and in conflict with the clear recitals of the sale deeds. The first appellate Court has unnecessarily laid undue emphasis on the words ‘common passage’ to hold that it refers to the entire passage from X-Z1 otherwise it would defeat the whole intention behind using the phrase ‘common passage’ in the two sale deeds.

22. In view of the aforesaid facts and circumstances, on the simple reading of the contents of the two sale deeds, we are of the opinion that the common passage referred to in those sale deeds and the map thereto is only in context with the common passage X-Y which was supposed to be left by the purchasers/owners of the portion A i.e., plaintiff-respondents for ingress and egress of the owners of portion B as they have no other alternative way of access to the Battery Lane or as a matter of fact to any other road or lane. Since the defendants-appellants under their sale deed were not supposed to leave any such passage in the portion purchased or owned by them, the plaintiff-respondents have no right to use any part of portion B which exclusively belongs to the defendants-appellants.

23. There is otherwise no justification for allowing the plaintiff-respondents to have access or use of the passage Y-Z or ZZ1 comprised in portion B as there is no access to their portion from the said passage. Simply for the reason that the said passage is in alignment with the

common passage X-Y, the plaintiff-respondents cannot claim any right over it.

24. Accordingly, in our opinion the judgment and order of the First Appellate Court dated 01.11.2011 cannot be sustained in law and is hereby set aside and that of the court of first instance dated 22.02.2002 is restored.

25. The appeal is allowed with no order as to cost.

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