



2025:DHC:7791-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment reserved on: 27.08.2025*

+ *Judgment pronounced on: 08.09.2025*
FAO(OS) 63/2025 and CM APPL. 32149/2025
MATA AMRITANANDAMAYI MATH & ANR.

.....Appellants

Through: Mr. Rajesh Yadav, Sr. Adv.
with Mr. Ashok Malik, Mr.
Chandresh Pratap, Ms. Swati
Mishra, Mr. Vishnu S. Pillai,
Mr. Om Prakash, Adv.

versus

ANIL KUMAR JAIN & ORS.Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Ankur Jain Adv. for
R-1

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through this Appeal, filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] read with Section 10 of the Delhi High Court Act, 1966, the Appellants [Plaintiffs in CS(OS) 339/2022 and Defendants in CS(OS) 340/2022 and CS(OS) 793/2022] assail the correctness of the Order dated 20.05.2025 [hereinafter referred to as 'Impugned Order'], passed by the learned Single Judge while issuing *ad interim* mandatory injunction, directed the Appellant No.1 to demolish the boundary wall and vacate 92 sq. yds. portion of the land forming part of plot no.D-1,



Khasra No. 17/2/2 situated in Mehrauli, Delhi.

2. Smt. Gayatri Devi [hereinafter referred to as 'Smt. Gayatri'] is stated to be the owner of 1 bigha land measuring 1008 sq. yds. Out of this 1008 sq. yds., she sold a 200 sq. yds plot to Smt. Zohra Fatima [hereinafter referred to as 'Smt. Zohra']. Thereafter, she sold another plot measuring 200 sq. yds. to one Sh. M.B. Pandey in the year 1994. Both sales were executed by a set of documents, including General Power of Attorney, Will, Agreement to Sell, Affidavit, etc. Subsequently, she executed a Registered Sale Deed dated 19.01.1998, with respect to this 1008 sq. yds., in favour of her husband, Respondent No.2/Sh. Mahesh Kaushik, and Respondent No.1/Sh. Anil Kumar Jain [Plaintiff in CS(OS) 340/2022 and CS(OS) 793/2022].

3. A bare perusal of the Sale Deed proves that 1 bigha land comprised in Rectangle No.29, Khasra No. 17/2/2 is alleged to have been sold for Rs.1,60,000/-, however, no payment was made before the Sub-Registrar, Mehrauli. Smt. Gayatri is claimed to have purchased this 1 bigha land from Sh. Ram Prakash Gupta on 28.05.1992. Neither have any dimensions of the plots been given in the sale deed, nor has a layout plan been attached. Further, Smt. Zohra purchased the plot measuring 200 sq. yds. from Sh. M.B. Pandey, thus, she became the owner of a total of 400 sq. yds., which she later sold in favour of the Appellant No.1 *vide* Registered sale deed dated 27.02.1997. The Appellant No.1 also purchased 12 biswas of land from M/s Nova Agencies.

4. This Court has been given to understand that the total area of 1



bigha is 1008 sq. yds, which comprises 20 biswas of land. In other words, the area of each biswa is a little more than 50 sq. yds.

5. Initially, the Appellant No.1 filed a suit bearing CS(OS) 339/2022 for grant of decree of permanent injunction, whereas Respondent No.1 filed two suits bearing CS(OS) 340/2022 and CS(OS) 793/2022 for grant of decree of possession, permanent, mandatory and prohibitory injunction, restraining the Appellants from encroaching upon 50% of the property being 504 sq. yds. (including the area of 92 sq. yds.). In paragraph no.2, the Respondent No.1 claims that the Appellant No.1 illegally encroached upon the area and constructed the same. Subsequently, it was claimed that Appellant No.1 has precisely encroached upon 150 sq. yds., in the front portion of the plot, and the Respondent No.1 has not been left with any passage. During the pendency of the proceedings before the learned Single Judge, the Respondent No. 1 filed a fresh site plan prepared by a draughtsman duly identifying the disputed area admeasuring 92 sq. yds.

6. The Respondent No.1 claims that he has had an uninterrupted easementary right through the property for the last 24 years. The joint property purchased by him along with the Respondent No.2 was divided, and he came into possession of 504 sq. yds. He shifted to the United States of America [hereinafter referred to as 'USA'] in the year 2000 and requested Sh. Vinod Khatri to take care of the property, who visited the premises on 10.04.2022 and came to know that the boundary wall constructed had been demolished, and the police were apprised about the same. Subsequently, Sh. Vinod Khatri again visited



the property and found that a boundary wall had been constructed, blocking his passage. Sub-Divisional Magistrate [hereinafter referred to as 'SDM'] was also requested to carry out the demarcation of the property.

7. The Respondent No.1 also impleaded Shri Mahesh Kaushik in the suit as proforma Defendant No.5. The Appellants/Defendants contested the suit and submitted that Smt. Gayatri had no right to sell 1008 sq. yds., after already having sold 400 sq. yds to Smt. Zohra and Sh. M.B. Pandey. It was claimed that Smt. Gayatri was left with 608 sq. yds. The Appellants/Defendants claim to be running a religious institution ('Math'), which is also running a school in the adjoining premises. It was claimed that the revenue officials, under the supervision of the SDM, with the help of the Total Station Machine method [hereinafter referred to as 'TSM'], demarcated the area, and a report, in this regard, was submitted on 01.08.2022. According to the said report, it was found that one corner of Rectangle No.29, Khasra No. 17/2/1, is inside the building, which has been constructed by Shri Mahesh Kaushik.

8. The learned Single Judge also appointed an advocate as 'Local Commissioner', who submitted his report, claiming that a passage has been blocked by a newly constructed wall.

9. The learned Single Judge granted an interim mandatory injunction on the *prima facie* observations, which are summarised as under:

i. A perusal of four sale deeds dated 08.03.2021, relied upon by



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the Appellant No.1, shows that no boundaries have been mentioned, whereas the layout plan of the Shanti Kunj Colony, clearly, enabled marking of these boundaries.

ii. The layout plan of Shanti Kunj Colony was submitted by the Secretary, Residents Welfare Association [hereinafter referred to as 'RWA'] to the Government of National Capital Territory of Delhi [hereinafter referred to as 'GNCTD'], which shows that the Respondent Nos. 1 and 2 were owners of adjoining plot nos.D-1 and D-2, which had access from Mata Amritanandamayi Road.

iii. As per the report of the Additional Commissioner of Police, Public Grievance, South-West District [hereinafter referred to as "ACP"] dated 22.06.2022, the Appellants unilaterally and illegally broke the boundary wall.

iv. On 25.04.2022, the Secretary, RWA has also given a statement confirming that the Appellant No.1 has unlawfully trespassed into the land.

10. Heard learned counsel for the parties at length, and with their able assistance, perused the paperbook, along with the record of the Civil Suits.

11. On 25.08.2025, learned senior counsel for the Appellants was heard at length, and learned senior counsel for the Respondent No.1 also made a few submissions. On 25.08.2025, this Court expressed its willingness to inspect the site, which was accepted by learned senior counsel for the parties, and hence, in the presence of the parties and



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their counsel, the site was inspected by this Court on 26.08.2025 at about 6:40 AM.

12. At the site, it was found that the Respondent No.2, the co-owner of Respondent No.1, has constructed his building with a commercial establishment in the front. It was admitted by the persons present at the site on behalf of the Respondents that previously, the Respondent No.1 used to have access from inside the building, constructed by Respondent No.2, which was subsequently closed. It was also found that the plot in possession of the Respondent No.1 does not abut the road or any street, and probably, that is the reason the Respondent No.1 was using open land to reach the street after the wall was constructed to close the passage between property No.D-1 and D-2.

13. Further, it was observed that there is a temporary room and an abandoned water pump located in the plot in possession of the Respondent No.1. The temporary room was unoccupied, whereas the water pump was not functional, and an electricity wire was coming from the building of the Respondent No.2 towards the water pump, which was disconnected. Keeping in view the growth of wild grass and plants, it appears that the plot in possession of the Respondent No.1 was not being used for quite some time.

14. Learned senior counsel for the Respondent No.1 has submitted that plot no.D-3 was purchased in the year 1994, whereas plot no.D-23 has been purchased by Appellant No.1 on 08.03.2021. Learned senior counsel has submitted that independent access to the road was available to the Respondent No.1 till the year 2022, which is



corroborated by the report of the Local Commissioner. Subsequently, Appellant No.1 purchased the property and cut off the access of the Respondent No.1. The wall between plot no.D-1 and D-2 was in existence for the last 20 years, and the Respondent No.1 is in settled possession. He has also submitted that in the year 2010, while plot numbers were allotted in the layout plan which was submitted to the GNCTD, the sale deeds in favour of the Appellants do not give any dimensions.

15. After having holistically considered the matter, this Court is of the view that the learned Single Judge has erred in granting an *ad interim* mandatory injunction in favour of the Respondent No.1 and against the Appellant No.1, on account of the following reasons:-

i. It is evident from the facts narrated above that the correctness of the sale deed in favour of the Respondent Nos.1 and 2, with respect to the land measuring 1008 sq. yds. (1 bigha), is doubtful, in view of the fact that Smt. Gayatri had already sold two plots of 200 sq. yds. each, in favour of Smt. Zohra and Sh. M.B. Pandey respectively, which now are owned by the Appellant No.1. A perusal of the sale deed dated 19.01.1998, relied upon by the Respondent No.1, proves that one bigha land in Rectangle No. 29 in Killa No.17/2/2 was purchased through Registered Sale Deed from the wife of the Respondent No.2, who was one of the purchasers for a sum of Rs.1,60,000/-, however, no payment was made in the presence of the Sub-Registrar. Neither have any dimensions of the plots been given in the sale deed, nor has a layout plan been attached. There is no material to prove the exact frontage of the plot measuring 1008 sq. yds. There is also no material



to prove that, on mutual partition, how much frontage of the plot came in the share of the Respondent No.1.

ii. As per the report of the revenue authorities, under the supervision of the SDM, with the help of TSM, it is *prima facie* proved that Appellant No.1 has not encroached upon any part of the Respondents' property. On the other hand, one corner of land comprising in Rectangle No. 29 Khasra No. 17/2/1 is inside the building. It has not been reported in the demarcation that a certain portion of the Respondent No.1's property has been encroached by the Appellant No.1. Further, the report of an advocate who was appointed as a Local Commissioner cannot be relied upon, as he did not have professional assistance to demarcate the property. The Respondent No.1, while filing the civil suit, claimed encroachment of 150 sq. yds., whereas the learned Single Judge directed the removal of encroachment over an area of 92 sq. yds. because the Respondent No.1 [Plaintiff in CS(OS) 340/2022] subsequently filed a fresh layout plan showing the encroachment over an area of 92 sq. yds.

iii. Admittedly, the Respondent Nos.1 and 2 jointly purchased the land. While partitioning the property, the co-sharers are required to arrange passage to each plot. The neighbours cannot be forced to provide passage.

iv. The learned Single Judge has also erred in relying upon the reports of the Local Commissioner and the ACP. The Local Commissioner, in his report dated 21.06.2022, has only reported that there is a new wall that has been constructed; however, it has not been



disclosed as to when the said wall was constructed. The newly constructed wall can be a few days old or a few months old.

v. While filing the suit, the Respondent No.1 claimed that his plot to the extent of 150 sq. yds. has been encroached upon by the Appellant No.1, however, no material in this regard has been produced by the Respondent No.1. The report by the revenue official does not support the case of the Respondent No.1. Subsequently, he has claimed encroachment to the extent of 92 sq. yds.

vi. The learned Single Judge has also erred in observing that, because of the urbanisation, the Delhi Land Revenue Act, 1954, is not applicable, hence the demarcation report cannot be relied upon. However, the validity of the demarcation carried out by the revenue authorities is not excluded from consideration.

vii. Learned senior counsel for the Respondent No.1 is not correct in contending that the Respondent No.1 purchased the property in the year 1998, whereas the Appellant No.1 purchased the property from Smt. Zohra, who in turn purchased the property from Smt. Gayatri, earlier in point of time. Similarly, usage of an open land for having access up to the road would not provide the Respondent No.1 with any right, unless the Respondent No.1 establishes an easement by prescription, and in the present case, the Respondent No.1 is yet to prove the same.

viii. Similarly, the existence of a wall in between plot Nos.D-1 and D-2 would also not help the Respondent No.1, considering that he and the Respondent No.2 jointly purchased the property. Hence, by



partition of the property, the Respondent No.1 was required to be given access to the road/street. A perusal of the layout plan prepared by the colony residents, which was submitted to the GNCTD, shows that the dimensions of the plot have not been given. Hence, there is no material to prove what is the total frontage of the plot nos.D-1 and D-2.

ix. The learned Single Judge has further erred in observing that the dimensions of the plot purchased by the Appellants have not been given in the sale deeds executed in their favour. The Respondent No.1 filed the suit and alleges encroachment. Thus, the onus is upon the Respondent No.1 to prove that his plot has been encroached upon.

x. Lastly, it is already a settled position that the *ad interim* mandatory injunction is granted only in rare and exceptional cases of extreme hardship. This case does not fall in that category. Admittedly, the Respondent No.1 has been residing in the USA for the last 20 years. It is not the case of the Respondent No.1 that somebody was residing in the plot in question. Hence, occasional access to the plot through the open land would not be sufficient to establish settled possession or easement by prescription.

16. Keeping in view the aforesaid discussion, the Appeal is allowed. The Impugned Order is set aside.

17. Needless to state that the learned Single Judge shall proceed to decide the Civil Suits uninfluenced by the observations made by this Court.



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18. The present Appeal, along with pending application, stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 08, 2025/jn/sh/er