
(1915) 05 AHC CK 0009
In the Allahabad High Court

Bishambhar Nath and Others

APPELLANT

Vs

B. Jagan Nath Prasad and Others

RESPONDENT

Date of Decision : 26-05-1915

Acts Referred:

Easements Act, 1882 — Section 13(3)(d)

Citation : AIR 1915 All 249 : 29 Ind. Cas. 695

Hon'ble Judges : Rafique, J;P.C. Banerji, J

Bench : Division Bench

Judgement

1. The facts of this case are these: The father of the plaintiff-respondent No. 1 was the owner of an enclosure, on one side of which there was a temple. The enclosure was sold by auction in execution of a decree and was purchased by the defendants. There was some litigation between the parties as regards the portion of the building known as the temple. In that litigation the defendants failed. It is alleged that the defendants have now practically closed, by staking bricks, three doors appertaining to the house, and have stopped the flow of water through a drain which had existed for a number of years. The present suit was accordingly brought for removal of the obstruction to the three doors and for restoration of the drain and for an injunction. It was alleged that the door C, marked on the plan filed with the plaint, was used as a passage and that the doors A and B were used principally for light and air. The Courts below decreed the claim. Upon appeal this decree was set aside and the claim of the plaintiffs was dismissed in its entirety. It is contended on behalf of the plaintiffs-appellants that the lower Appellate Court has wrongly applied the provisions of Section 13 of the Easements Act to this case. The learned Vakil for the appellants relies, on Clause 3 (d) of that section, which is to the effect that if an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer took effect, the transferee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement. It is urged that the learned Judge ought not to have considered the matter from the point of view of an easement of necessity, but should have determined whether the doors

were necessary for the enjoyment of the building as it was enjoyed before the transfer in favour of the defendant took effect. In our opinion as regards the three doors in question, the learned Judge has found, upon a consideration of all the circumstances, that the keeping open of these doors is not necessary for the enjoyment of the premises as it was enjoyed before the sale to the defendants. He visited the locality and he has found that according to the statement of the plaintiffs themselves, the doors used practically to remain closed always. He further found that there is access to the house of the plaintiffs otherwise than through one of these doors, and that in two of the rooms there is plenty of light and air, and sufficient light and air can be obtained without the opening of the doors. He came to the conclusion that the existence of these doors was not in the least necessary either for egress and ingress or for the enjoyment of light and air. The meaning of his finding clearly is that for the enjoyment of the house as it was enjoyed before the sale, the existence of the doors is not necessary. In view of this finding the claim in respect of the three doors has been rightly dismissed. As for the drain, we do not agree with the learned Judge. He himself finds that there is no other drain in the house of the plaintiffs, and that for the flow of water from the rasoī or kitchen of the house there is no other outlet. It is thus clear that the maintaining of the drains is necessary for the enjoyment of the house for the flow of water from the kitchen, and the defendants are not entitled to close the drain. Of course the plaintiffs' right is a right to use the drain for the flow of water from the kitchen or rasoī, and not for the discharge of ordinary sullage water or rain water from the whole house. The defendants will be at liberty to cover up the drain, but in such a way as not to obstruct the flow of water as it has hitherto been discharged from the kitchen or rasoī. We accordingly vary the decree of the Court below to this extent that we direct that the drain be restored for the discharge of water from the kitchen, the defendants being at liberty to cover it up in such a way as not to obstruct the flow of water from the kitchen. In other respects we affirm the decree of the Court below. The parties will pay and receive costs in all Courts proportionately to failure and success, and the costs in this Court will include fees on the higher scale.