

(1978) 03 AHC CK 0050
In the Allahabad High Court
Case No : Second Appeal No. 398 of 1968

Jagdish Prasad and Another

APPELLANT

Vs

Ram Saran and Others

RESPONDENT

Date of Decision : 08-03-1978

Acts Referred:

Specific Relief Act, 1963 — Section 38

Citation : AIR 1978 All 311

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : Krishna Prasad, M.K. Chaudhary and B.D. Mandhayan, for the Appellant; Swami Dayal, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan, J.—This is a plaintiffs second appeal arising from a suit for injunction.

2. The plaintiffs' case was that they were the owners of two shops Nos. 51 and 72 situate in the New Market, Tundla. The shops had been purchased by them from the Government, On the east towards the back of the shops there was a public drain and road patri which was admittedly public land. The plaintiffs wanted to open the door at the right end side of the eastern wall of their shops. The defendants who were large in numbers being the members of the public prevented the plaintiffs from doing so and wanted to construct a latrine at the place where the plaintiffs wanted to open their door. A suit was, accordingly, filed against the defendants under Order 1, Rule 8 of the Code of Civil Procedure. The trial court dismissed the suit on the finding that there was a public urinal at the place where the plaintiffs wanted to open the door in the eastern wall of their shops and that urinal was wrongfully demolished by the plaintiffs. Under these circumstances, the trial court held that the grant of injunction being discretionary the case was not a fit one for doing so. The lower appellate court has affirmed the finding and the view taken by the trial court.

3. Sri B. D. Mandhayan, learned counsel for the appellants has urged that no one could prevent the plaintiffs from opening a door in their own wall and since the defendants threatened to do so that the courts below were wrong in refusing to grant an injunction prohibiting them from doing so. I am unable, to agree. Admittedly, the land of the Patri does not belong to the plaintiffs but is public land. A urinal for the convenience of the public existed at the place where the plaintiffs want to open the door in their eastern wall. That urinal was wrongfully demolished "by the plaintiffs as concurrently found by the two courts below. The plaintiffs have not made the State a party to the suit, although it is not disputed that the land over which they intend to pass after opening the door and over which the urinal existed belongs to the Government. It may be that the plaintiffs have a right to break open any number of doors in their wall, even to demolish the whole wall, if they so please, but they have no absolute right to pass over the land of others adjoining the wall, The object of opening door was to pass over the public land and at a place where a urinal existed from before. Under these circumstances, if the members of the public prevented the plaintiffs from passing over the land which was being used by them, it cannot be said that they acted wrongfully in any manner. The injunction was rightly refused in exercise of the discretion which vested in the court in granting a relief of this kind under the Specific Relief Act.

4. In the result, the appeal fails and is dismissed with costs throughout.