

(1935) 02 AHC CK 0035
In the Allahabad High Court

Paduman Das

APPELLANT

Vs

Shrimati Parbati

RESPONDENT

Date of Decision : 01-02-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Civil Procedure Code, 1908 (CPC) — Section 11

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1935 All 649 : 155 Ind. Cas. 365

Hon'ble Judges : Ganga Nath, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ganga Nath, J.—This is a plaintiff's appeal and arises out of a suit brought by him against the defendants-respondents for a declaration that the western wall of house No. 24-70 situate in Mohalla Gopal Das Sahu, Benares City, appertains to house No. 24-70 which belongs to the plaintiff and defendant 2 and that it was not the eastern wall of house No. 24-68 which belongs to defendant-respondent 1, and that the plaintiff was not bound by decree No. 521 of 1925 in the case of Ganesh Das v. Srimati Parbati, defendant. The plaintiff further prayed for the demolition and removal of certain constructions alleged to have been made in the intervening wall in dispute as they interfered with the privacy of the plaintiff. The defendant contended that the suit was not maintainable under Order 2, Rule 2, Civil P.C. that the wall in dispute was a joint wall of the parties and that the suit was barred by Section 11, Civil P.C. Both the Courts below have found that the suit was barred by Section 11, Civil P.C. The plaintiff Paduman Das is a minor. The former suit was brought by his brother Ganesh Das on his own behalf and that of plaintiff in respect of the same wall. The interest of Ganesh Das was not adverse to that of plaintiff, nor was plaintiff prejudiced in any way. Both the Courts below; have found that the plaintiff is bound by the decree in the former suit.

2. As a matter of fact and quite independently of the former decision both the Courts below have found that the wall in dispute belongs to the parties. Both the Courts below dismissed the plaintiff's suit. In this appeal the first point urged is that the plaintiff's suit as regards the removal of the construction which affected his right of privacy should have been decreed. The Courts below have found that the plaintiff's privacy is not affected by the constructions in dispute. There is another fatal defect to this part of the plaintiff's case. The plaintiff did not come into Court on the basis of any customary right of privacy. As held in *Bhagwan Das v. Zamurrad Hussin* 1929 All. 676, it was necessary for the plaintiff to have alleged that a customary right of privacy existed in the particular neighborhood in which the plaintiff was living or that he, individually or as a member of a particular class was entitled to take advantage of the customary right of privacy. As against this, both the Courts below have recorded a finding that on all sides there are houses which overlooked the plaintiff's house and interfered with the plaintiff's right of privacy. The plaintiff's suit therefore has been rightly dismissed as regards his relief concerning his right of privacy. The other point urged by the learned Counsel for the appellant was that the defendants have no right to rest their beams on any portion of the wall. It appears from the judgment of the lower appellate Court that the respondents have placed their beams about 6 inches inside the wall towards their side and have covered the wall with plaster. The lower Court has observed:

Some portion of the beams has been covered by the plaster, and as such, there is practically no support of it nor any interference has been caused nor she has done any act as to make the wall exclusively her own.

3. Co-ownership implies that each co-owner should have a reasonable user of the thing owned in common and so long as each co-owner uses the wall reasonably without interfering with the enjoyment of that wall by the other party, or without doing anything which would weaken, damage or increase or diminish the wall enjoyed in common, he is entitled to do what he likes. A co-owner of a party wall has no right to do any act which may have the effect of excluding the other co-owner from the wall or interfere with his reasonable use of the wall. Nothing has been done by the respondents which might tend to interfere with the reasonable use of the appellant. In *Baij Nath v. Janki Prasad* 1930 All. 318, an order refusing to restrain a co-owner of a party wall from opening an almirah in the wall and from placing some beams on his side of the wall was upheld. The lower Courts rightly refused to grant an injunction to the appellant. A preliminary objection was raised by the learned Counsel for the respondents that inasmuch as the plaintiff had a certificated guardian, this suit which has been brought by the minor under the guardianship of Ranchor Das who is not a certificated guardian is not maintainable. Both the Courts below have held that implied permission of the Court would be presumed and rightly because the suit has not been dismissed on the ground of want of permission. The absence of a formal order granting leave to sue is not necessarily fatal to the suit : vide *Sridhar Rao v. Ram Lal* 31 All. 7. There is no force in the appeal. It, is therefore ordered that the

appeal be dismissed with costs and the decree of the lower Court confirmed.
Permission to file a Letters Patent appeal is refused.