
(1951) 05 MP CK 0001

In the Madhya Pradesh High Court

Case No : Second Appeal No. 101 of 2004

Ramnath and Others

APPELLANT

Vs

Dattatraya and Others

RESPONDENT

Date of Decision : 15-05-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 18

Citation : (1951) 05 MP CK 0001

Hon'ble Judges : Kaul, C.J;Chaturvedi, J

Bench : Division Bench

Advocate : J.M. Anand, for the Appellant; Motilal Gupta, for the Respondent

Final Decision : Allowed

Judgement

Chaturvedi, J.—The Plaintiff in this case brought a suit for pre-emption on 16-11-1942, the sale having taken place on 18-9-1942. The Plaintiff in para. 4 of the plaint claimed superior right of pre-emption as against the vendee on the following grounds: (1) Contiguity (2) Common wall between the house of the Plaintiff and the pre-emptor property, and (3) half portion of the common wall being Plaintiff property.

The Plaintiff also alleged that the real sale price is Rs. 1500 only and not Rs. 1820/- as stated in the sale deed. The Defendant vendee resisted the suit on the ground that there are some apertures in the pre-empted house which open towards the Defendant's house and therefore, he himself had a right of pre-emption superior to that of the Plaintiff. It was also stated that the real sale price is Rs. 1820/- and not Rs. 1500/-. The trial Court decreed the suit on the ground that the Plaintiff had a superior right of pre-emption. It held that the eaves of the Patars in the Plaintiff's house extended over the pre-empted house, and water from these eaves is discharged over it; also that there is a common wall and there is a staircase in the Plaintiff's house attached to this common wall; that there is a Khassi Mori (Spout) in this common wall; that rain water from the pre-empted house through this Khassi Mori flows in the drain of the Plaintiff's house

and then passes on to the Mori of the pre-empted house before flowing in the public gutters on the road. The Court further held that the apertures in the house of the Defendant Dattatraya are newly built and no right of easement is proved. The Plaintiff was, therefore, held to have a superior right of preemption and his suit was decreed on certain conditions.

2. The Defendant vendee appealed and the findings of the trial Judge were set aside by the first appellate Court which held that there was a mistake in the sketch map of the houses, that on inspection of the site, it was found that there is no staircase of the Plaintiff attached to the common wall, that drains of the two houses are separate and that the Plaintiff has no right of easement over the pre-empted property. The appeal was allowed and the suit was dismissed.

3. The Plaintiff filed an appeal to the Gwalior State High Court, and the learned Judge on the single Bench, who heard the appeal, was of opinion that the Plaintiff had put in specific grounds in para. 4 of the plaint, one of which could give him a superior right of pre-emption. He could not afterwards be allowed to take up new grounds (viz. of easements) and the appeal was therefore dismissed. The Plaintiff then approached the Judicial Committee of the Gwalior State which came to the conclusion that the grounds stated in para. 4 of the plaint should be taken to be illustrative only and not as exhaustive. The Judicial Committee set aside the judgment and decree of the Gwalior State High Court and remanded the case back for disposing the appeal according to law after hearing arguments on the evidence adduced by the parties in the case. It was in these circumstances, that this appeal was pending in the Gwalior State High Court when the merger took place. This appeal was then transferred to this Court.

4. Mr. Motilal Gupta, learned Counsel for the Respondents, urged that this Court is not bound by the directions of the Gwalior State Judicial Committee and should ignore them. In our opinion Issue No. 1 "Has the Plaintiff a superior right of pre-emption" is sufficiently wide and as evidence has been allowed and has been adduced in the case about the easements and no party can be taken by surprise now, we decided to hear the counsel on the merits.

5. Our attention was invited to the fact that the judgments of all the three Courts are based upon the local inspection of the Judges. In - Raj Chandra Banik and Others Vs. Iswar Chandra Banik and Others, it was held that though Order 18 Rule 18 of the CPC empowers the Court to go on local inspection of any property in respect of which it is called upon to decide a question in controversy, it is still the duty of the Court not to make the result of such inspection the foundation of its judgment which must be based upon evidence adduced by the parties. It does not entitle the Judge to put his view obtained by means of such inspection in place of evidence. The Judge is to hold such inspection for the purpose of better following and understanding the evidence adduced before him or to test its accuracy.

6. In a suit about damages for injuries on G.I.P. Railway where the Judges of the

Bombay High Court visited the scene of the accident and based their judgment on their own observations, their Lordships of the Judicial Committee disapproved the mode of deciding the case on impressions and of casting to the winds the legal evidence in the case - "Kessowji v. G.I.P. Rly." 31 Bom 381 at p. 392.

7. In - "Ahmad Sahib Shutari v. Magnesite Syndicate Ltd. 39 Mad 501 it was held by a Divisional Bench that the inspection which a Judge makes should be used by him only to test the accuracy of the evidence let in. He should not, without submitting himself to the test of cross-examination make his knowledge the sole evidence for determining the question raised before him. I respectfully concur with this view. The same view has been expressed in - Dawarka Prasad and Another Vs. Makhu Lal, . In - Abdul Baqi Vs. M. Fakhrul Islam and Others, , Wort J., further remarked that by understanding the evidence, is not meant "contradicting a witness" and a witness may make a statement which from the local inspection may appear to be untrue but a Judge is not entitled to say that it is untrue from what he himself observes.

8. The trial Court has, of course, discussed the evidence adduced by the parties in the case; but the learned District Judge has based his decision on the local inspection and on nothing else. In my opinion, this judgment cannot be sustained. I would, therefore, allow this appeal and reverse the decree of the District Judge and remit the case to him for disposal of the appeal according to law. Costs will abide the result.

Kaul, C.J.

9. I agree.