

(1964) 04 AHC CK 0025
In the Allahabad High Court
Case No : Second Appeal No. 394 of 1963

Smt. Gyanwati Naithani and Another	Vs	APPELLANT
Udai Raj Ayodhya Prasad and Another		RESPONDENT

Date of Decision : 29-04-1964

Acts Referred:

Transfer of Property Act, 1882 — Section 108

Citation : AIR 1964 All 417

Hon'ble Judges : G.D. Sahgal, J

Bench : Single Bench

Advocate : V.N. Seth, for the Appellant;

Final Decision : Dismissed

Judgement

G.D. Sahgal, J.—The appellants are the tenants of respondent No. 1 of a certain accommodation in Bahraich. The roof of one of the rooms in that accommodation has given way. It was a tiled roof. The appellants want to replace it by a roof made of cement slabs. Objection had been taken against it by respondent No. 1. He filed a suit for an injunction restraining the appellants from making the constructions. The plea of the appellant was that they were only making repairs allowed to them u/s 108, T. P. Act. This plea of the appellants found favour with the learned Munsif but it did not find favour with the learned Civil fudge of Bahraich in appeal. The suit was accordingly decreed for a permanent injunction restraining the appellants from demolishing the old roof and replacing it by a new Pakka slab roof. In this second appeal the only point that has been urged at the time o? admission is that it was not a case o? reconstruction but was a case of repairs which the appellants had a right to make u/s 108, T. P. Act.

2. It is not disputed that originally there was a tiled roof over the room. The appellants now want to replace it by a roof of cement slabs. They say that the roof is to be repaired as it is badly damaged and as the rain water leaks through it. Assuming for a moment that the old roof had to be repaired the question is whether replacing it by cement slabs amounts to repairing.

3. The lower Court has relied on the case of *Bepin Behari Chatterji v. Munsif, West Allahabad*, 1959 All W R197 (HC) wherein it has been held that where a portion of an accommodation had ceased to exist and required to be reconstructed its reconstruction did not amount to repairs. That was, however, a case where the whole structure had fallen down. But in this case only the roof has given way and requires repairs. The question however would still arise whether replacing of the tiled roof by a roof made of cement slabs will amount to repairs. The learned counsel points out that the entire roof was leaking and, therefore, its replacement amounted to repairs. In support of his contention, he relied on the case of *Augustine v. Chandy*, AIR 1953 Trav Co 462. In that case the observations of Fletcher-Moulton L. T. in *Lurcott v. Wakely & Wheeler*, (1911) 1 K B 905 at p. 918 to the following effect

"repair includes replacement of parts . . . Many, and in fact most, repairs imply that some portion of the total fabric is renewed, that new is put in place of old"

have been referred to. That was a base of a thatched old shed made of very flimsy materials like bamboo and arecanut stem. Its repairs, according to what has been held in that case implied renewal and replacement of parts and it was in that connection that the above observations of Fletcher-Moulton, L. T., were relied upon. In this case also, no doubt, the roof was a tiled one and if the structure of the roof had given way and the files had also given way then they could be pulled down and completely renewed and replaced, but that did not mean that they could be replaced by entirely a new type of construction. The case goes to help the appellants only to this extent, and I respectfully agree with the observations made therein, that the appellant could have replaced the tiled roof by pulling down the old structure on which the files rested, but they could not replace the tiled roof by a roof made of cement slabs.

4. According to Webster's New International Dictionary "repair" means "to restore to a sound or good state after injury, decay, dilapidation or partial destruction; also to renew, revive, to rebuild, after exhaustion, loss etc." According to Murray's Dictionary also "repair" means "to restore (a composite thing, structure etc.) to good condition by renewal or replacement of decayed or damaged parts, or by refixing what has given way, to amend" "To restore" means "to set right, to build up again to erect or reconstruct, to bring back to the original state." Thus while the appellants were entitled to pull down the old rotten structures and replace them by new ones, they were not entitled to replace them by a new structure of a type different from the old structures. They could thus reconstruct the tiled roof, but they could not replace it by a roof of cement slabs. The learned counsel for the appellants says that his client will not charge from respondent No. 1 the cost of repairs. It may be that a roof of cement slabs is costlier than a tiled roof and so far as the value of the property is concerned it will be more advantageous to the landlord if the roof is replaced by a roof of cement slabs instead of the tiled roof being reconstructed if the appellants do not charge the cost from the landlord, but the landlord may not

like it. He may not like to change the look or his constructions for keeping which intact he may have some sentimental reasons. It may be that he might be thinking that if the premises are vacated he would put a ceiling under the tiled roof and would live under the construction. A ceiling under the tiled roof will keep the construction cooler in summer. He might not thus like the idea of the roof being replaced by cement slabs though so far as the money value is concerned, he may gain by the appellants' conduct. What the appellants wanted to do in this case was to replace the old roof by a new type. This act of theirs did not amount to repairing the old roof and they were not entitled to do it, even if they forgo the payment of the same by the landlord.

5. In these circumstances, the appeal has been rightly decided and the injunction has been rightly issued restraining the defendants-appellants from demolishing the old roof and replacing it by a new Pakka slab roof.

6. The appeal is, accordingly, dismissed summarily under Order 41, Rule 11 of the Code of Civil Procedure.