

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

CHANDI PRASAD (DEFENDANT-APPELLANT) v. SHYAM

BEHARI, PLAINTIFF AND ANOTHER (DEFENDANT

RESPONDENTS)*

1937
July, 13,

Tenant's right to construct kacha chabutra on his sahan darwaza—Proprietor's right to get chabutra, built without his permission, demolished.

Where admittedly a tenant is entitled to use a certain land as *sahan darwaza* he is entitled to construct a *kacha chabutra* for use as a convenient sitting place. A temporary structure of such a nature does not constitute any infringement of the rights of the proprietor and does not give him any cause of action to recover possession of the land by demolition of the *chabutra*. *Mahabal Kurmi v. Sarju* (1), *Sheo Sahai Singh v. Rai Rajeshwar Bali* (2), and *Mahadeo Rai v. Jan Muhammad* (3), referred to.

Messrs. *Hyer Husain and Ambeshwar Misra*, for the appellant.

Mr. *L. S. Misra*, for the respondents.

SRIVASTAVA, C.J.—This is a defendant's appeal against the decree dated the 2nd of March, 1935, of the learned District Judge of Unao reversing the decree dated the 6th of December, 1934, of the learned Munsif of Purwa at Unao. It arises out of a suit for recovery of possession over a plot of land No. 213/2 by demolition of a *chabutra* built on it. It is common ground between the parties that the plaintiff-respondent is the proprietor of village Magrer and that on 28th June, 1911, the plaintiff on receipt of a sum of Rs.25 by way of *nazrana* gave the defendants permission to build a house on parti plot No. 214/2 and to use the land in suit as *sahan*. The plaintiff's complaint is that the defendants had constructed a *chabutra* on plot No. 213 without his permission.

*Second Civil Appeal no. 163 of 1935, against the decree of Raghubar Dayal, Esq., I.C.S., District Judge of Unao, dated the 22nd of March, 1935, setting aside the decree of Kuar Raghuraj Bahadur, Munsif of Purwa at Unao, dated the 6th of December, 1934.

(1) (1917) 4 O. L. J., 454.

(2) (1919) 6 O. L. J., 281.

(3) (1925) I. L. R. 47 All., 541.

It is contended on his behalf that he had no authority to make the construction. The trial court held that under the terms of the *chitti* exhibit A-1 dated the 28th of June, 1911, the defendants were entitled to construct the *chabutra*. It accordingly dismissed the suit. On appeal the learned District Judge held that the *chabutra* in suit was built without the permission of the plaintiff and that the latter was therefore entitled to have it demolished.

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The learned District Judge has observed in his judgment that the *chabutra* in dispute is a *kachcha* one and has got bricks only on the sides. It has been argued on behalf of the defendant-appellant that the construction of such a *chabutra* is not in any way inconsistent with the rights of a proprietor and does not give him any cause of action to seek its demolition. A reference has been made to the decisions of the late Court of Judicial Commissioner in *Mahabal Kurmi v. Sarju and others* (1) and *Sheo Sahai Singh v. Rai Rajeshwar Bali* (2) and of the Allahabad High Court in *Mahadeo Rai v. Jan Muhammad* (3) in which it was held that a tenant (*riyaya*) is competent to sink a well without the permission of his landlord on such portion of the *abadi* land as has been used by him as an appurtenant (*sahan*) to his dwelling house. The reasoning on which these decisions were based was that the sinking of a well is an act necessary for the enjoyment of the premises by the *riyaya*. The same line of argument is applicable to the present case even with greater force. When admittedly the defendants were entitled to use the land in suit as *sahan darwaza* they should be entitled to construct a *chabutra* of this nature for use as a convenient sitting place. I am therefore of opinion that a temporary structure of such a nature does not constitute any infringement of the rights of the proprietor and does not give him any cause of action to recover possession of the land. I would further point out that the *chitti* exhibit A-1 shows that plot No. 214/2

(1)(1917) 4 O. L. J., 454.

(2) (1919) 6 O. L. J., 281.

(3) (1925) I. L. R., 47 All., 541.

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and the *sahan* were given to the defendants for the construction of *makan waghaira*. The word "*waghaira*" may well include the construction of a *chabutra* for the better use of the *sahan*. For the above reason I am of opinion that the plaintiff has failed to establish his right to recover possession of plot No. 213 or to get a decree for demolition of the *chabutra*. I accordingly allow the appeal, set aside the decree of the lower court and dismiss the plaintiff's suit with costs in all the courts.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

SITA RAM (PLAINTIFF-APPELLANT) v. PUTTU LAL, AND
ANOTHER (DEFENDANTS-RESPONDENTS)*

1937
July, 15.

Highway—Obstruction to public road—Civil suit for removal of obstruction to public thoroughfare, when can be maintained.

No suit for obstructing a public thoroughfare can be maintained in a civil court without proof of special injury. *Karim Bakhsh v. Buddha* (1), *Satku v. Ibrahim Agha* (2), *Adamson v. Arumugam* (3), and *Bati Ram Kolita v. Sib Ram Das* (4), referred to and relied on.

Mr. R. B. Lal, for the appellant.

Mr. K. P. Misra, for the respondents.

SRIVASTAVA, C.J.—This is a second appeal by the plaintiff who has been unsuccessful in both the lower courts. He brought the suit which has given rise to this appeal for demolition of a wall constructed by the defendants on the ground that it was an encroachment on a public road running by the side of it and that the encroachment had caused obstruction to his bullock-carts. Both the lower courts have held that though the

*Second Civil Appeal no. 252 of 1935, against the decree of M. Ziauddin Ahmad, 1st Civil Judge of Kheri, dated the 15th of May, 1935, upholding the decree of S. Akhtar Ahsau, Munsif of Kheri, dated the 14th of December, 1934.

(1) (1876) I. L. R. 1 All., 249.

(2) (1877) I.L.R. 2 Bom. 457.

(3) (1886) I.L.R. 9 Mad., 463.

(4) (1921) A. I. R., Cal., 271.