APPELLATE CIVIL

Before Mr. Justice Radha Krishna Srivastava

RADHEY LAL AND OTHERS (DEFENDANTS-APPELLANTS) *v.* KUNJ BEHARI LAL, MAHRAJ (PLAINTIFF-RESPONDENT)*

1939 *September,* 15

Co-sharer's right to build on joint land—Sahan-darwaza in exclusive possession of a co-sharer—Right to build on sahan-darwaza.

It is well-settled law that one of several joint owners cannot erect a building on joint land without the consent of other co-sharers. Even when a plot is in the exclusive possession of a co-sharer as his *sahan-darwaza,* he has no right to erect a building on any part thereof. The construction of a building on a *sahan-darwaza* is to change the method of exclusive possession already enjoyed by one co-sharer, and the other co-sharers are well within their right to object to the construction of the building even in the absence of proof of direct injury to them. *Sheo Harak Upadhya* v. *Jai Govind Tewari* (1), relied on, *Chandi Prasad* v. *Shyam Behari* (2) referred to.

Mr. *H H. Zaidi,* for the appellants.

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

RADHA KRISHNA, J.:—This is the defendants' second appeal arising out of a suit brought by the plaintiff against them for a permanent injunction restraining them from building any constructions on plot no. 39 in the *abadi* of village Umrapur, pargana Pirnagar, district Sitapur. A further relief for demolition of certain walls which had been newly constructed was added in the plaint by amendment. It is admitted that the plaintiff and defendants Nos. 1 and 2 are co-sharers in the *abadi* land which is undivided, and it is further admitted that defendants Nos. 4 to 6 are occupying houses nos. 18, 19 and 20, which are situated just to the west of plot no. 39 on behalf of defendants 1 and 2. It may further be pointed out that the house of the plaintiff is situated to the east of the houses of defendants Nos. 4 to 6 and in between the house of the plaintiff and those of the defendants stands the *abadi* plot no. 39, which is the subject-matter of dispute in the present case.

*Second Civil Appeal No. 305 of 1936, against the order, dated the 21st May, 1936, of Saiyid Abid Raza, Additional Sub-Judge, Sitapur.

(1) (1927) A.I.R., All., 709. (2) (1937) I.L.R., 13 Luck., 442.

1939

RADHEY LAL AND OTHERS *v.* KUNJ BEHARI LAL, MAHRAJ.

Radha Krishna, J.

The trial court came to the finding that plot no. 39 was used by the defendants as their *sahan-darwaza* for sitting purposes and for tying their cattle. It further found that there was a public *rasta* on this plot running from north to south and that the rain-water from north had its natural flow over plot no. 39 towards the south. It came to the conclusion that the plot was not in the exclusive possession of the defendants as alleged by them.

The judgment of the trial court shows that in its opinion the plea that plot no. 39 was in the use by the defendants as their *sahan-darwaza* and the plea that plot no. 39 was in their exclusive possession did not present any distinction for the purpose of the decision of this case. The learned Munsif further held that the narrow strip of land out of plot no. 39, as it would be left after the completion of the proposed construction by the defendants, would not be sufficient either for *rasta* or for the entire rain-water to run out and that it would endanger the *kachcha* house of the plaintiff. In the result, the trial court decreed the suit and ordered removal of the walls complained of. The lower appellate court upheld the decree passed by the trial court.

As regards the exclusive possession set up by the defendants it held it proved that defendants Nos. 4 to 6 tied their cattle on this plot and kept straws thereon and took this evidence to establish that plot no. 39 was in the use of the defendants as their *sahan-darwaza*. It may, however, be noted that neither of the courts below demarcated on the spot as to how much of plot no. 39 was the exclusive *sahan-darwaza* of the defendants and what part of it was used as public *rasta*. I have gone through the entire evidence on the record and find that plot no. 39 being vacant land is used for *rasta* as well as towards the west of it the defendans tie their cattle and have their cattle troughs fixed and use it more or less as one would use a *sahan-darwaza*. The lower appellate court was of opinion that the

1939

RADHEY LAL AND OTHERS *v.* KUNJ BEHARI LAL, MAHRAJ.

Radha Krishna, J.

constructions would inconvenience the plaintiff and were likely to cause damage to the *kachcha* house towards the east, and dismissed the appeal.

In second appeal before this Court, the learned counsel for the appellants has argued that on the finding that the plot in dispute was in the use of the defendants Nos. 4 to 6 as their *sahan-darwaza* on behalf of defendants 1 and 2 co-sharers they were entitled to erect constructions on it as of right, and the cases which were applicable to the *sahan-darwaza* of mere *riyayas* were not applicable to the *sahan-darwaza* in the occupation of a co-sharer in the village. He has further argued that the evidence on record did not establish any injury or likelihood of any injury to the plaintiff in the enjoyment of his *kachcha* house towards the east.

I am unable to agree with any of the contentions raised by the learned counsel for the appellants. It is well-settled law that one of several joint owners cannot erect a building on joint land without the consent of other co-sharers. Whether he can erect a building on land which he has been using as *sahan-darwaza* is a question which also, in my opinion, must be decided on the same principles. The right of a co-sharer to continue in exclusive possession of those portions of joint land of which he was allowed to acquire exclusive possession arises on the assumption that it was consented to by his other co-sharers. Such a consent, in my opinion, in case of plots in exclusive possession of one co-sharer in a village must be confined to the nature of exclusive possession already enjoyed. If the nature of the exclusive possession which has been submitted to or consented to by other co-sharers, is changed then the other co-sharers have a right to object to the change. In my opinion, the construction of a building on a *sahan-darwaza* is to change the method of exclusive possession already enjoyed by one co-sharer, and the other co-sharers will be well within their right to object to the construction of the building even in the absence of proof of direct injury to them. Even assuming that

1939

RADHEY LAL AND OTHERS v. KUNJ BEHARI LAL, MAHRAJ.

the plot in suit was in the exclusive possession of the appellants as their *sahan-darwaza*, I am of opinion that they have no right to erect a building on any part thereof. I am supported in the view that I have taken above by a decision of Mr. Justice ASHWORTH in *Sheo Harakh Upadhya* v. *Jai Govind Tewari* (1).

Radha Krishna J.

The learned counsel for the appellants has drawn my attention to a decision of this Court reported in *Chandi Prasad* v. *Shyam Behari* (2), in which it was held that a tenant is entitled to construct a *kachcha chabutra* as a convenient sitting place on a portion of his *sahan-darwaza*. This case does not lay down any rule of law contrary to the one I have stated above. In fact a *kachcha chabutra* for sitting purposes is not inconsistent with the nature of use of the land as *sahan-darwaza*.

Further, both the courts below have in this case come to a concurrent finding of fact that the constructions in question will inconvenience the plaintiff and are likely to cause damage to his *kachcha* house.

The second point raised by the learned counsel for the appellants also has no force. The finding is a finding of fact and there is a good deal of evidence on record in support of that finding.

The result is that I maintain the decree passed by the courts below and dismiss the appeal with costs.

Appeal dismissed.

(1) (1927) A.I.R., All., 709. (2) (1937) I.L.R., 13 Luck., 442.