Chotalal Hirachand Vs. Manilal Gagalbhai

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Court : Mumbai

Decided On : Mar-12-1913

Reported in : (1913)ILR37Bom491

Judge : Basil Scott, Kt., C.J. and ;Chandavarkar, J.

Appellant : Chotalal Hirachand

Respondent : Manilal Gagalbhai

Judgement :

Basil Scott, Kt., C.J.

1. The question is whether the possession of a pankh or eaves for the discharge of water overhanging the defendant's land is an easement or an occupation of defendant's property.

2. Both Courts have held that the right is an easement but that the interference by the defendant turning back the eaves was trifling and could be compensated by payment of rupees three.

3. The appellant contends that an injunction against interference should have been allowed.

4. Various cases were cited for appellant.

5. In the oldest Bombay case, dated 1878, Mohanlal Jechand v. Amratlal Bechardas (1878) 3 Bom. 174, the Court treated the right sought to be enforced by injunction from two points of view, trespass ripening into adverse possession and, easement, inclining to the view that it was a case of adverse possession.

6. In Vitoba bin Raghunath v. D. Anna Rosario (1888) P.J. 212 the Court inclined to the other view citing Gale on Easements. The passage referred to seems to have been the following quotation from the Digest (see 7th Edition, 252): 'The civil as well as the English law prohibited a man, from projecting the wall or roof of his house over the boundary line of his neighbour's land, even though, by spouts or other means, the fall of water therefrom might be prevented: but a right to do so might be acquired by user; and when such projection did not, in any manner, rest upon the neighbour's soil, it was called jus projiciendi; where the projection was merely intended to protect the wall, either by erecting shade against the heat of the sun, or keeping off the rain, it was the jus protegendi. 'There is this difference between the right of projecting over and that of placing upon the neighbour's property--that the projection is carried out (proveheretur) in such a manner as not to rest anywhere (nusquam requiesceret), as

a balcony or eaves; while the thing 'placed upon' is so put as to rest on something, 'as a beam or rafter'.'This view appears to have been adopted in Easements Act, see Section 23, illustration (2).

7. Corbett v. Hill (1870) L.R. 9 Eq. 671, a case arising out of transfer of part of a property to another and turning on the question of how much was reserved from the freehold by the transferor in no way supports the appellant's position. Ranchod Shamji v. Abdulabhai Mithabhai (1904) 28 Bom. 428 also does not support the appellant.

8. Riathinavelu Mudaliar v. Kolandavelu Pillai (1906) 29 Mad. 511 recognizes that mere projection of a board over another's land may not be trespass as was decided in Pickering v. Rudd (1815) 4 Camp. 219.

9. The reasoning in Nritta Kumari Dassi v. Puddomoni Bewail (1903) 30 Cal. 503 favours the respondent's rather than the appellant's contention.

10. In Harvey v. Walters (1873) L.R. 8 C.P. 162 the right is treated as an easement.

11. For these reasons we affirm the decree of the lower Court and dismiss the appeal with costs.