

Mst. Kamla and Others

Vs

Bhanwarlal Vaid and Others

Civil Appeal No. 281(N) of 1971

(O. Chinnappa Reddy, R. B. Misra JJ)

01.02.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. We are afraid the High Court was wholly unjustified in interfering in second appeal with the concurrent findings of the courts below. One Thakur Kirat Singh gifted a house to defendant 1 on April 4, 1949 and got the deed of gift registered on August 19, 1949. On July 9, 1950, a certain extent of land towards the south of the house gifted to defendant 1 was gifted to the plaintiff by Thakur Kirat Singh after leaving land measuring 3 feet - 6 inches x 68 feet between the house gifted to defendant 1 and the land gifted to the plaintiff. In the deed of gift executed in favour of the plaintiff, it is expressly recited that there are Khidkis, Jalis and Parnalas of the house gifted to the first defendant opening into the adjacent land and therefore, "for them" (Presumably meaning for the enjoyment of the Khidkis, Jalis and Parnalas) land measuring 3 ft - 6 inches by 68 ft was left out as a gali. Apparently in order to prevent any future trouble, Thakur Kirat Singh took the further step of transferring the land measuring 3 feet - 6 inches x 68 feet to the first defendant. The plaintiff started raising constructions on the land gifted to him. He opened doors and windows into the gali. As his privacy was being invaded by the opening of doors and windows into the gali, the first defendant put up a well in the gali. Thereupon the plaintiff claiming a right of easement filed a suit out of which this appeal arises to restrain the first defendant from raising any wall which would obstruct his right to light and air through the doors and windows opened by him into the gali. Both the trial courts and the lower appellate court found that the gali was the exclusive property of the first defendant and that the plaintiff had no right to open any doors and windows into the gali. On those findings the right of easement claimed by the plaintiff was negated and the suit was dismissed. In second appeal the High Court came to the conclusion that the deed of gift in favour of the plaintiff, by necessary implication, granted to the plaintiff a right of easement. We have read the deed of gift with the assistance of counsel. We find no justification for the view taken by the High Court. All that the deed of gift in favour of the plaintiff mentioned was that a gali measuring 3 feet - 6 inches x 68 feet was left out for the enjoyment by the first defendant of the Khidkis, Jalis and Parnalas of the house of the first defendant. There is no indication whatsoever of any easementary right in favour of the plaintiff in case of any future construction to be raised by him. To make matters clear, Thakur Kirat Singh himself within two days after the execution of the deed of gift in favour of the plaintiff transferred that very plot of land measuring 3 feet - 6 inches x 68 feet to the first defendant. In the face of this transfer, we cannot understand how the High Court could come to the conclusion that there was any grant of easement by implication. The High Court was in error in interfering in second appeal with a concurrent finding of fact, and that on a misinterpretation of the documents. The appeal is allowed. The judgment of the High Court is set aside and that of the lower courts restored. No costs.

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