

SUPREME COURT OF INDIA

Kanhaiya Lal

Vs.

Babu Ram (Dead) By Lrs.

(B Kirpal and S R Babu JJ.)

28.07.1999

ORDER

1. Respondent 1 had filed a suit for permanent injunction for restraining the appellant herein to have ingress and egress from the door in the suit property. The said property was originally owned by two brothers, namely, Prag Dass and Durga Prasad. In 1918 there was a partition of the said property between these two brothers.
2. After the partition, Prag Dass sold his share in the house to Ram Dulari. On the other hand, the share of Durga Prasad was inherited by the appellant herein. It appears that in a court auction the share of Ram Dulari in the house in question was sold and the same was purchased by Respondent 1. In connection with this, a sale deed was also executed in favour of the said Respondent.
3. In the suit filed by Respondent 1, it was contended that there was a door which was shown at a point marked as 'X' which opened in the gallery. It was the case of the plaintiffs that as per the sale deed, this gallery belonged to them and, therefore, the defendants should be restrained from using the said door.
4. The defence of the defendants was that this door had been used by them for over 60 years. In particular, it was contended that in the partition deed of 1918 it was clearly stipulated that Durga Prasad will have a right to have ingress and egress from the gallery and Prag Dass will have no right to stop this
5. The trial court dismissed the suit and the Additional District Judge, Hardoi upheld the said decision. In doing so, the lower appellate court came to the conclusion that in view of the partition deed, the defendants had a right to use the said door.

6. The High Court in second appeal reversed the findings of the courts below. It came to the conclusion that the defendants could not have an easement of necessity and if they be regarded as licensees then the licence stood terminated with filing of the suit by the plaintiffs. With regard to the term in the partition deed of 1919, the High Court observed that one did not know as to what was the position prevailing in 1918; whether there was a passage where the door 'X' existed; and the right of ingress and egress could not be established.

7. We have heard the learned counsel for the parties and in our opinion the High Court was wrong in interfering with the concurrent findings of fact arrived at by the trial court and the lower appellate court. The Courts below have found as a fact, on the basis of the evidence on record, that the door in question had been used for the last 60 years. This being so, there was no warrant for the High Court observing that it was not known as to what was the position prevailing in 1918 and whether there was a passage where the door 'X' existed. The High Court, while hearing the second appeal, was bound by the findings of fact concurrently arrived at by the courts below, namely, that a door existed and the same was being used by Durga Prasad and his successors-in-interest for the last 60 years.

8. It was submitted by Shri Keshwani, learned counsel for the respondents that the deed of partition bound only the brothers and no one else. We are unable to agree with this. The partition deed contained a condition to the effect that Durga Prasad would have a right to use the gallery for the purpose of ingress and egress. It was because of this that the door existed. This condition of the partition deed would bind not only the two brothers but also their successors-in-interest. The use of the door was not a right in easement, it was a right which came into existence as a result of the partition deed itself.

9. It was further submitted by Shri Keshwani that in the sale deed there is no mention of this right and, therefore, the plaintiff who was the auction-purchaser cannot be held to be bound by the same. We are afraid that there is no merit in this submission either. The court auction cannot be of an interest which was more than what the previous owner had in the said property. If attached to the property was a right which was given to Durga Prasad and his successors to use the said door and there was a prohibition on Prag Dass and his successors from interfering with this right, then it is with this restriction that the right of Prag Dass could be sold. As a result of the purchase by the auction-purchaser, he stepped into the shoes of the erstwhile owner and such a sale could not bring to an end a right in the property of use of the said door which existed in favour of the defendants.

10. The judgment of the High Court, in our opinion, is not correct. We, therefore, allow this appeal, set aside the judgment of the High Court the result of which would be that the suit filed by Respondent 1 would stand dismissed.

11. No order as to costs.