

ALLAHABAD HIGH COURT

Hafis Manzoor Ahmad

Vs

Mohammad Abdul Jamil

(Sulaiman, J.)

24.08.1933

JUDGMENT

Sulaiman, C.J.

1. This is a defendants' appeal arising out of a suit for an injunction and damages. The lower portion of a wall between the houses of the parties admittedly belongs to the defendants. Ten or eleven years before the suit the plaintiff was allowed to raise this wall by constructing its upper portion as part of the walls of his privy on the upper storey. The lower appellate Court has found that this construction by the plaintiff must have been made with the knowledge of the defendants, either with their consent or, at any rate, without any protest on, their part, and remained in existence for a long number of year, though not for more than 12 years. The defendants subsequently demolished the upper portion and prevented the plaintiff from reconstructing it. The plaintiff accordingly sued for damages for the demolition of that portion of the wall and also for an injunction restraining the defendants from interfering with his construction. The first Court gave the plaintiff a decree both for injunction and damages, but on appeal the lower appellate Court came to the conclusion "that the right not having been enjoyed for the full period of 20 years the plaintiff had not acquired any right by prescription or otherwise, and that accordingly, although he was entitled to get damages for the loss incurred by Trim he was not entitled to any injunction, against the defendants.

2. In second appeal a learned Judge of this Court came to the conclusion that the lower appellate Court had over-looked that the construction made by the plaintiff was the work of a permanent character and that on the find-ling of the lower appellate Court there was an implied grant of a license by the defendants to the plaintiff to construct the wall on the upper storey and that, as the wall had cost at least Rs. 25, the construction was a work of a permanent character and not of a temporary nature and the defendants were therefore not entitled to revoke the license under Section 60(b) of the Indian Easements Act. The learned Judge has further held that Section 64 of the Act does not apply to a case where the work executed is of a permanent character and that accordingly the plaintiff was not entitled to revoke the license on payment of compensation.

3. In our opinion the view taken by the learned Judge of this Court is perfectly correct. In the absence of a clear finding to the contrary he was entitled to examine the record and the circumstances of the case and come to the conclusion that the wall built on the upper storey was a work of a permanent character. He was not bound to send an issue to the lower appellate Court on that point. A license which under Section 52, of the Indian Easements Act is a mere right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, is ordinarily revocable. But Section 60 provides that a license can be revoked by the grantor, unless:

(a) it is coupled with a transfer of property and such transfer is in force; or (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution. The present case undoubtedly falls within the scope of subsection (b) of Section 60. It therefore cannot be revoked by the grantor. In several earlier cases it was held by this Court that where a work of a permanent character has been executed in pursuance of the license, it becomes irrevocable.

4. In a recent case Iqbal Ahmad, J., has held that where a license has become irrevocable the Courts cannot allow a licensor to revoke the license on the condition of his making compensation to the licensee for loss incurred by the revocation of the license. The learned Judge distinguished the Calcutta case of *Surnomoyee v. Chunder Kumar Das*¹ and another Calcutta case, on the obvious ground that the Indian Easements Act was not in force in Bengal and the learned Judge! of the Calcutta High Court had not to consider the effect of Section 60, but merely proceeded on general principles deducible from English rulings.

5. It seems to us that it would be a contradiction in terms to hold that a license is irrevocable under Section 60 of the Easements Act if a work: of a permanent character has been executed and, at the same time, to lay down that the grantor can revoke the license provided he is willing to pay compensation.

6. We also think that the provisions of Section 64 in no way destroy the revocability of the license for the section deals with a license that has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the License, the right for which he contracted and is claiming compensation. It is always open to a licensee not to insist on the restoration of the license but be merely content with the compensation. We therefore think that the decree passed by the learned Judge of this Court is right and we accordingly dismiss this appeal with costs.

Cases Referred

1(1910) 8 I.C. 793

