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SooperKanoon Citation : sooperkanoon.com/477059

Court : Allahabad

Decided On : Apr-11-1919

Reported in : AIR1919All223(2); 50Ind.Cas.646

Judge : Henry Richards, C.J. and ;P.C. Banerji, J.

Appellant : Gaddar

Respondent : Kalla and ors.

Judgement :

1. This appeal arises out of a suit in which the plaintiff claimed an injunction restraining the defendants from using a certain well. The facts are quite dear. The well was enjoyed by both the parties prior to a recent partition. When the partition was made, that part of the land in which the well is fell into the plaintiff's Mahal and according to the partition the well was given to the plaintiff. The words in the partition order were that the Pucca well shall be transferred along with the land. It seems quite clear, therefore, that the well and all rights in the well were allotted to the plaintiff to whose share the land was allotted. The lower Appellate Court seems to have thought that the defendants might have an 'easement of necessity.' Section 13 of the Easements Act provides amongst other things that 'Where a partition is' made of the joint property of several persons, if an easement over the share of one, of them is necessary for enjoying the share of another of them the latter shall be entitled to such easement.'

2. Clause (f), 'if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such an easement.' It is clear that the clauses referred to apply to 'easements of necessity.' The use of the well cannot possibly be said to be necessary for the enjoyment of the defendants' share on partition. No doubt it might be convenient for them to have such enjoyment but it is not necessary. The worst that can happen is that the defendants will be obliged to dig a new well for themselves. It seems quite clear that the partition officer rightly or wrongly intended to allot the well to the plaintiff. In the case of *Sukhdei v. Kidarnath* 9 Ind. Cas. 628 : 33 A. 467 : 8 A.L.J. 280, a Bench of this Court laid down what an easement of necessity is. It is an easement without which a property cannot be used at all, and not one merely necessary to the reasonable enjoyment of the property. If the partition authorities wished to reserve any right to the defendants upon the partition, that ought to have been done in the partition proceedings. In the absence of any such provision it is clear that the plaintiff is the absolute owner of the well free from any right on the part of the defendants.

3. We allow the appeal, set aside the decrees of both the Courts below and decree the plaintiff's claim for an injunction. We, under the circumstances, do not award any damages but the plaintiff-appellant will have his costs in all Courts, including in this Court fees on the higher scale.