

Om Parkash Vs. Chamel Singh

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Court : Punjab and Haryana

Decided On : Feb-01-2005

Reported in : (2005)140PLR782

Judge : V.M. Jain, J.

Appeal No. : Regular Second Appeal No. 3733 of 2003

Appellant : Om Parkash

Respondent : Chamel Singh

Advocate for Def. : Vishal Gupta, Adv.

Advocate for Pet/Ap. : Ashish Aggarwal, Adv.

Judgement :

V.M. Jain, J.

1. This Regular Second Appeal has been filed by the defendant-appellant Om Parkash, against the judgment and decree dated 29.10.2002, passed by Additional District Judge vide which the appeal filed by the plaintiff was allowed, the judgment and decree dated 11.3.2002, passed by the Trial Court were set aside and the suit of the plaintiff for mandatory injunction was decreed and the defendant was directed to remove the chhajja, doors and windows etc. of his house.

2. The facts in brief are that Chamel Singh, plaintiff had filed a suit for mandatory injunction directing the respondent to remove the chhajja as well as two doors, two windows and two parnalas, which were constructed by him after the filing of the previous suit. The said suit was contested by the defendant. Various issues were framed. After hearing both sides, learned trial Court dismissed the suit of the plaintiff holding that the plaintiff was not entitled to the decree for mandatory injunction. However, the appeal filed by the plaintiff was allowed, judgment and decree of the trial Court were set aside and the suit of the plaintiff for mandatory injunction was decreed and the defendant was directed to remove the chhajja, doors and windows etc. of his house, so raised or opening towards the property of the plaintiff, vide judgment and decree dated 29.10.2002. Aggrieved against the same, Om Parkash defendant filed the present appeal in this Court.

3. Vide order dated 30.9.2004 in the presence of the counsel for the parties records were requisitioned. Records have been received and perused.

4. I have heard the learned counsel for the parties and have gone through the record carefully.

5. Learned counsel for the defendant appellant submitted before me that the appellant had constructed the chhajja, doors and windows etc., in his own property and as such the defendant appellant could not be directed to remove the same in view of the law laid down by a Division Bench of this Court in Registered Society, Arya Priti Nidhi Sabha v. Paras Ram, (1973)75 Punjab Law Reporter 671. On the other hand the learned counsel appearing for the plaintiff respondent submitted before me that even if the law laid down by the Division Bench in the aforesaid judgment is relied upon, still the defendant appellant would be required to remove the chhajja, which was protruding towards the land of the plaintiff respondent.

6. After hearing the learned counsel for the parties and perusing the record, in my opinion, the following substantial question of law arises for determination in this appeal:-

Whether the defendant appellant could be directed to remove the door, windows and parnalas constructed by the defendant appellant in his own property in view of

the law laid down by a Division Bench of this Court in Arya Priti Nidhi Sabha's case (supra)?

7. In Registered Society, Arya Priti Nidhi Sabha v. Paras Ram, (1973)75 P.L.R. 671 (supra), it was held by a Division Bench of this Court as under: -

'As I look at the matter, when a person opens a door in his own wall, he does not do so in another man's land. The wall, in which the door is opened, undoubtedly exists in his own land and the door, being admittedly in the said wall, cannot be stretched into the neighbour's land and opened there. Secondly, by the mere fact that somebody opens a door in his own wall, he does not, thereby, interfere with the right of his neighbour to use his land without obstruction. The existence of the door, by itself, cannot entitle the opener of the door to pass over the land of his neighbour as a matter of right, or trespass into it. It is not necessary that simply because a person has opened a door, he should be permitted by his neighbour to use it for going into or coming out of it. If the neighbour so likes, he can prevent him from using the door from the very first day and if the latter still insists on doing so, he will be guilty of criminal trespass. It would not, therefore, be correct to say that the mere existence of the door would naturally enable the person opening it to pass over the neighbour's land towards which it opens or to trespass into it.'

8. From a perusal of the law laid down by a Division Bench in the case referred to above, it would be clear that the defendant appellant could not be asked to close the doors, windows and parnalas which were constructed by him in his own land. Furthermore, if the plaintiff is aggrieved against the same, he can close the apertures by putting a wall in front thereof in his own land. However, the position of chhajja would be different inasmuch as the chhajja is protruding in the land of the plaintiff and the plaintiff certainly can seek a decree for mandatory injunction directing the defendant to remove the chhajja which was protruding in the land of the plaintiff.

9. In view of the above, substantial question of law, referred to above, is decided in favour of the defendant appellant and it is held that the plaintiff cannot seek a direction to the defendant to close the doors, windows and parnalas since the plaintiff himself can close the apertures by putting a wall in front thereof in his own

land. However, the position would be different in respect of chhajja, referred to above.

10. For the reasons recorded above, present appeal is partly allowed, judgment and decree dated 29.10.2002, passed by the Additional District Judge are modified and the suit of the plaintiff is decreed only in respect of chajja, whereas the same is dismissed in respect of doors windows and parnalas. There shall be no order as to costs.

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