

20.04.2023
SL No.14
Court No.8
(gc)

SAT 181 of 2015

Sri Bishnudeo Das
Vs.
Sri Ram Nath Shaw

The appellant is not represented, nor any accommodation is prayed for on behalf of the appellant. The appeal is of the year 2015. The matter initially appeared in the Warning List on 6th March, 2023 and thereafter transferred to the Regular List on 21st March, 2023. Since then the matter is appearing in the list. The appellant has due notice about the listing of the matter.

In a suit for eviction on the ground of default, nuisance and annoyance, the Trial Court decreed the suit on 30th January, 2013 and the said judgment and decree was affirmed by the First Appellate Court on 15th January, 2015. The second appeal is arising out of the appellate decree. In absence of the appellant, we have carefully read the judgment of the Trial Court as well as the First Appellate Court. It is quite established from the evidence that the appellant has virtually abandoned his tenancy and his brother and his family members used to occupy the property in question and used common water tap, bath and latrine of the suit premises to the annoyance of the other tenants in the suit premises. The learned Trial Judge in arriving at the said finding has

relied upon the evidence of P.W.2, P.W.3 and P.W.4 who are the tenants in the suit property. They have categorically stated that the appellant permitted his brother, Raju Das and his family members to come and use the privy, water tap and bathroom unauthorizedly causing inconvenience and disturbance to the other tenants. In fact, the other tenants have complained to the landlord about such unauthorized use and inconvenience caused to the other tenants. These statements are corroborated by the documents marked as Exhibit-3. The learned Trial Judge also recorded the contradictory statements of the appellant in his pleadings and evidence. The relevant portion of the judgment of the Trial Court in this regard is stated below:-

“Coming to the lack of authority and want of entitlement of Raju Das to use the facility attached to the suit premises, the defendant himself helped the plaintiff to establish the same. Throughout the proceeding, he has repeatedly changed his stance on this on this point. In paragraph 9(i) and (iii) of the written statement he mentioned that Raju Das was member of his joint family and tenancy was taken with joint contribution from Raju Das. In paragraph 15 of the same, he contradicted by saying that his brother Raju Das resided in 121/H/5 as tenant under this plaintiff only and this plaintiff has granted him the permission to use the common water, tap, bath and latrine of the suit premises. He again departed from the said contentions in his deposition where he mentioned that Raju Ds resided in

121/H/5 as tenant under the Rajid Mia and his son Mumtaz.

If his own averments are taken to be true, then it can be safely concluded that his brother Raju Das reside at 121/H/5 under a different landlord other than the present plaintiff and as such the question of permitting Raju Das to use the suit premises does not arise. Moreover, the defendant also failed to furnish any scrap of paper to reflect that any such permission was granted by the plaintiff.

Nuisance is the act or omission causing injury to any person by violating some right which he possesses. It is settled law that when the conduct of a person unduly interferes with the comfortable and convenient enjoyment of his neighbor in respect of his property, it amounts to nuisance. Annoyance is even a wider term. Any act which interferes with the reasonable and pleasurable enjoyment of property is included within its purview. It means inconvenience and harassment.

Here PW3 and PW4 asserted about the inconvenience faced by them for the acts of the brother of the defendant. PW2 and the plaintiff also resides in the same suit house and the adjoining hut. As such they all come within the coverage of the term "neighbour".

As held in the case of Niadar Vs. Ugar (AIR 1966 Punj 509) the tenant preventing other occupants of the house from using common bathroom and latrine commits nuisance as well as annoyance."

The Appellate Court on appreciation of the evidence affirmed the judgment of the Trial Court. In concurring with the judgment of the Trial Court, the First Appellate Court has observed as follows:-

“Endorsing the view of the Ld. Trial Judge this Court finds that the defendant allowed his brother, Raju Das and his family members to come in the suit premises in every morning and used privy, bath and water therein and obstructed the plaintiff his family members and other tenants from using said privy, bath and water. On this score, complaint is being made against them. So, the suit has been rightly decreed on the ground of nuisance and annoyance. In Judhisthir Vs. Dhirendra 1990 (II) CHN 334 it has been defined that nuisance is a mixed concept partly subject and partly objective. It is to be construed in normal way i.e. according to plaint and sober and simple notion and not as covering anything merely fanciful or a matter of mere delicacy or fastidiousness. Annoyance on the other hand has been taken to have a wider meaning covering everything which reasonably troubles the mind or pleasure of an ordinary sensible person. In order to show that there was annoyance to neighbours the Court must be satisfied that reasonable people having regard to ordinary use of a house for pleasurable enjoyment would be annoyed or aggrieved by what is being done. It is not that any particular person is annoyed or aggrieved. But there is annoyance or grievance to person who hold reasonable views. Ordinarily nuisance and annoyance would be that which affects the right of neighbours to live presently. In the case of Judhistir (Supra) the defendant appellant carries on business of a sweat-meat shop by burning a big woven for more than 12 hours. Secondly, such conduct of the appellant has affected the right of neighbours including the plaintiff/landlord to live pleasantly, not to speak pleasantly it has made it too hot for the

respondent/landlord to occupy or use his mezzanine floor in normal or ordinary way.

From the above judgment it is clear that the tenants and the landlords are annoyed or aggrieved with the defendant for allowing his brother, Raju Das and his family member to use common bath, privy and water and thereby obstructed the plaintiff and his family in common user of bath, privy and water. So, right of the plaintiffs/tenants and others of the suit holding for pleasurable enjoyment were affected. It is a continuing affecting the right of landlord and neighbours to live pleasantly. So the findings arrived at in Issue No.8 is hereby affirmed and suit be decree on this court.”

The concurrent findings of facts are based on cogent evidence.

Under such circumstances, we do not find any reason to admit the second appeal.

The second appeal being SAT 181 of 2015, accordingly, stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)