

SITA RAM,—*Defendant-Appellant*

versus

NAUBAT RAI,—*Plaintiff-Respondent.*

Regular Second Appeal No. 449 of 1953.

1954

Party-wall—Meaning of—Partition—Whether permissible—Rule in such cases stated.

June, 9th

Held, that a party-wall means—

- (i) a wall of which the two adjoining owners are tenants in common;

- (ii) a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners;
- (iii) a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as dividing wall between the two tenements.

Held further, that a claim by co-owner to the partition of a party-wall cannot be resisted even where the claim caused inconvenience and difficulty of partition, though it will not be allowed to affect easements that exist in favour of one party against the other party.

Second Appeal from the decree of Shri Mohindar Singh, Senior Sub-Judge with enhanced appellate powers, Hoshiarpur, dated the 10th July, 1953 affirming that of Shri Ved Parkash, Sub-Judge, III Class, Hoshiarpur, dated the 8th June 1953, granting the plaintiff a preliminary decree for possession by partition of the wall in suit but making no order as to costs. The appellate Court allowed costs of its Court.

I. D. DUA, for Appellant.

M. C. SUB, for Respondent.

JUDGMENT

HARNAM SINGH, J. In Civil Suit No. 429 of 1952 Harnam Singh, Naubat Rai claimed, *inter alia*, possession of the half share of the 'party-wall' by partition. In deciding that suit the court of first instance decreed the claim for possession of the half share of the 'party-wall' by partition of that wall. J.

Sita Ram, defendant, appealed from the decree passed in Civil Suit No. 429 of 1952, under section 96 of the Code of Civil Procedure. That appeal failed and was dismissed with costs.

Sita Ram, defendant, appeals under section 100 of the Code of Civil Procedure from the decree passed on appeal.

Sita Ram
v.
Naubat Rai

In *Watson versus Gray*, (1), Fry, J., in considering the meaning of the expression *party-wall* said :—

Harnam Singh,
J.

“They may mean, first, a wall of which the two adjoining owners are tenants in common, as in *Wiltshire v. Sidford* (2), and *Cubitt v. Porter* (3). I think that the judgments in those cases show that that is the most common and the primary meaning of the term. In the next place the term may be used to signify a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners, as in *Matts v. Hawkins* (4). Then, thirdly, the term may mean a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as dividing wall between the two tenements. The term is so used in some of the Building Acts. Lastly, the terms may designate a wall divided longitudinally into two moieties, each moiety being subject to a cross easement in favour of the owner of the other moiety.”

In considering the question of the partition of a *party-wall* Fry, J., said in *Watson v. Gray* (1) :—

“In the case of longitudinal division between the two neighbours, each of them, as was said in *Cubitt v. Porter*, (3), has a right to pare away one moiety of the wall, and if this was done the moiety of the other owner might be of

(1) (1880) 14 Ch. D. 192.
(2) 1 Man and Ry. 404.
(3) (1828) 8 B. and C. 257
(4) 5 Taunt. 20.

very little use to him. Again, if the wall belongs to the adjoining owners as tenants in common, it may become the subject of a partition, and then exactly the same difficulty would arise. To meet this difficulty the fourth meaning of the term 'party-wall' was suggested by the learned author of the note to *Wiltshire v. Sidford*, (1)".

Sita Ram
v.
Naubat Rai
—
Harnam Singh.
J.

In *Ganpat Rai and others v. Sain Dass and others* (2), Shadi Lal, C.J. (Gordon Walker, J., concurring) said :—

"As pointed above, this is a case of a party-wall of which the two adjoining owners are, to use the phraseology of the English law, tenants in common; and the wall cannot be treated as a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners."

In the judgment under appeal the Senior Subordinate Judge basing himself on *Mansa Ram and another v. Nanak Chand and others* (3), found that a claim by a co-owner to the partition of a party-wall cannot be resisted even where the claim caused inconvenience and difficulty of partition. In deciding the point of law that arose in *Mansa Ram and another v. Nanak Chand and others* (3), Rashid, J., based himself upon *Gobind v. Narain Dass* (4), and *Hardandas v. Sundar* (5). In *Mansa Ram and another v. Nanak Chand and others* (3), no reference is to be found to *Ganpat Rai and others v. Sain Dass and others* (2).

(1) 1 Man and Ry. 404.
(2) I.L.R. 12 Lah. 542.
(3) A.I.R. 1934 Lah. 893.
(4) 29 P.R. 1882.
(5) 64 I.C. 949.

Sita Ram
v.
Naubat Rai
Harnam Singh,
J.

In *Gobind v. Narain Dass* (1), the dispute was between two joint-owners for partition of shop and for separate possession by plaintiff of his share. In second appeal the defendant maintained that the plaintiff was not entitled to enforce partition of the shop to the injury of the defendant and that the shop was not capable of partition. In deciding the case *Smyth and Elsmie, JJ.*, said :—

“ We consider that it is practicable to make a partition of the shop and that the plaintiff is legally entitled to have a partition effected, and therefore that no injury in the legal sense will be caused to defendant by the partition. He may be put to inconvenience, but that is incidental to the nature of his interest in the shop; and he cannot reasonably complain because, being a joint owner, he is subject to inconveniences from which a sole owner of property is free.”

Plainly, *Gobind v. Narain Dass* (1), has no application to the facts of the case.

In *Hardandas v. Sundar* (2) the defendant-appellant maintained that the plaintiff was not entitled to partition of the *party-wall*. In deciding that appeal *Saunders, J. C.*, found that the plaintiff was entitled to partition of the *party-wall*. In that case the claim of the plaintiff for the partition of the staircase was refused on the ground that partition of the staircase would reduce the width of the staircase to one foot four inches.

As pointed out hereinbefore, in *Mansa Ram and another v. Nanak Chand and others* (3), no reference is to be found to *Ganpat Rai and other v. Sain Dass and others* (4).

(1) 29 P.R. 1882

(2) 64 I.C. 949

(3) A.I.R. 1934 Lah. 893

(4) I.L.R. 12 Lah. 542

In deciding Civil Suit No. 429 of 1952, the Court of first instance acted on the evidence given at the trial that in the *party-wall* there are *allas* on both sides and the girders of the plaintiff and the defendant rest on the *party-wall*. In the Court of first appeal the truth of that evidence was not disputed. In these circumstances, partition of the 'party-wall' cannot be allowed to affect easements that exist in favour of one party against the other party.

Sita Ram
v.
Naubat Rai
—
Harnam Singh.
J.

For the foregoing reasons, I modify the decree passed on appeal by directing that the 'party-wall' should be divided longitudinally into two moieties, each moiety being subject to cross easements in favour of the owner of the other moiety.

In the result, I allow Regular Second Appeal No. 449 of 1953 to the extent indicated in the preceding paragraph.

Parties are left to bear their own costs throughout.