
(1957) 01 MP CK 0005
Madhya Pradesh High Court
Case No: Second Appeal No. 760 of 1950

Sureshchandra

APPELLANT

Vs

Gangabai

RESPONDENT

Date of Decision: Jan. 11, 1957

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Easements Act, 1882 - Section 4

Citation: AIR 1958 MP 26

Hon'ble Judges: Hidayatullah, C.J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hidayatullah, C.J.

This second appeal is by the plaintiffs whose suit for a permanent injunction was dismissed in the Court of appeal below. In the trial Court the plaintiffs has succeeded.

2. The appeal in the Court below was decided only on one point, viz., that the plaintiffs had no right of suit. The plaintiffs belong to the Bengali Community, though they have not sued in a representative capacity. One Babu Sharda Kumar Mukerji made a will (Exhibit P-4) in 1939, by which he left his house and other property absolutely to his daughter In the house it was customary to instal at Dasehra the image of Debi, and this right was continued to the Bengalis of Sagar, unless it was abandoned for five years.

3. The defendant constructed two doors towards the western side of her house, and it was alleged she started using the land appurtenant to the house where the Debi is installed as a passage. She also constructed drains and nabdans and used the passage for the sweeper. The suit was filed for a permanent injunction prohibiting her from such user.

4. The trial Court decreed the suit. But the lower appellate Court reversed the decision and dismissed the suit holding on the authority of [Manbahal Rai and Others Vs. Ram Ghulam Pandey](#), that the plaintiffs had no right of suit being mere licensees themselves.

5. It is contended that the correct law is laid down in [Panni Lal Vs. Anant Singh and Another](#), and that the licensees had a right of suit. In the latter ruling it is stated that each case by the licensee must be examined with reference to the relief claimed to see whether the right of suit exists or not.

6. An easement right is carved out in favour of a dominant heritage and is imposed on a servient heritage. In every case the right is exercised qua owner or occupier of a dominant heritage and falls as a burden on the owner or occupier of a servient heritage. If the suit had been brought by Mrs. Tarulata Devi. to whom the property belonged absolutely, no question could be raised. But the suit was brought by two members of the Bengali community of Sagar who are only allowed use of the premises for a few days in a year for the purpose of installing the Debi. If the easement right was acquired in the land the burden will fall on them as on the owner. It was for the owner and not for the licensees enjoying licensee right for a few days in a year to resist by suit the right claimed by the defendant. Such a suit is not open to licensees.

7. I see no reason to interfere. The appeal fails and is dismissed with no order for costs since the defendant-respondent did not put in an appearance in this Court.