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(1957) 02 MP CK 0014

Madhya Pradesh High Court (Indore Bench)

Case No: C.F.A. No. 27 of 1954

Ramgopal		APPELLANT
	Vs	
Gopikrishna		RESPONDENT

Date of Decision: Feb. 25, 1957

Citation: (1957) JLJ 730

Hon'ble Judges: Samvatsar, J; Dixit, J

Bench: Division Bench

Advocate: S.W. Phadnis, for the Appellant; M.B. Rege and R.S. Joshi, for the Respondent

Final Decision: Allowed

Judgement

Dixit, J.

This appeal arises out of an action brought by the respondent Gopikrishna against the appellants for damages in respect of injuries to the plaintiff''s house and articles consisting of medicines, clothes etc. The plaintiff claimed damages to the extent of Rs. 5,247-8-0. The learned Civil Judge, Ujjain, who tried the suit, gave to the plaintiff a decree for Rs. 3,000 only.

2. The plaintiff Gopikrishna is the owner of a house situated in Ramji-ki-Gali at Ujjain. The defendants are the owners of an adjoining house situated to the West of the plaintiff''s house. The walls of the two houses are contiguous touching each other lengthwise. The plaintiff alleged that the two adjoining houses, built independently but each on the extremity of its owners soil, had lateral support from the soil on which the other house rested; that sometime in May and June, 1943, the defendants employed some workers to pull down their house and reconstruct it; that in this work of reconstruction, the defendants dug the foundation of their house so deep as to remove some of the stones and some part of the soil, which formed the support of the plaintiff''s house; and that on account of this removal of the support and the negligence of the defendants in excavating their soil to a considerable depth, the plaintiff''s house, which was a two storeyed structure, fell down on 11th June, 1943. The plaintiff claimed that on account of the collapse of the house, he

sustained a loss of Rs. 3,000 in respect of the house itself and a further loss of Rs. 2,247-8-0 on account of medicines and miscellaneous articles which were completely destroyed. The defendants denied the plaintiff''s claim. They pleaded that there was no negligence on their part in digging the foundation on their soil and that the plaintiff''s house, which was a very old structure, collapsed due to heavy rains. The plaintiff''s claim was first dismissed by the learned Civil Judge. He then filed an appeal in the Madhya Bharat High Court which was allowed and the case was remanded to the original Court for a proper trial according to law. The learned Judges of the Madhya Bharat High Court, who heard the appeal came to the conclusion that the trial Court had confined its attention merely to the question of negligence on the part of the defendants in the construction of their house and had overlooked the question whether the plaintiff acquired by prescription a right of support in respect of house, although the question was one in issue between the parties. The parties did not produce any further evidence after the remand. In the meantime, the learned Civil Judge who had dismissed the plaintiff''s suit was succeeded by another Judge. The successor Judge held on the evidence already on record that the plaintiff had failed to establish that he had a "natural right of support" in respect of his building or that the defendants were negligent in digging the foundation, or that during the course of the digging operations, the defendants removed any stone or any part of the soil which afforded support to the soil under the plaintiff''s house. The learned trial Judge, however, thought that the defendant''s negligence consisted is not making proper arrangement for the safety of the plaintiff''s house when the excavating operations were on. According to the learned Judge, having regard to the condition of the plaintiff''s house and to the fact that the work of digging the foundation was being carried on during the rains, the defendants were bound to shore up the plaintiff''s building adequately; that they did not do this; that by merely putting three pillars to support the plaintiff''s building while carrying on the excavating operations on their soil, the defendants could not be said to have taken proper and adequate care for the preservation of the plaintiff''s house. On this basis, the defendants were held responsible for making good to the plaintiff the damage sustained by him by the collapse of his house.

3. In our judgment, this appeal by the defendants must be, accepted and the plaintiff''s suit for damages must be dismissed. The grounds on which the plaintiff claimed damages were negligence of the defendants in digging the foundation, and the removal by them of the support which the plaintiff stated his building was entitled to receive from the defendant''s soil and building. Now there is no evidence whatever to show that the digging operations, were conducted by the defendants in a negligent manner or that in doing so any stones or part of the soil which formed the support of the plaintiff''s building were removed. The plaintiff and his witnesses simply stated that the house fell down because sum stones and some soil which afforded support to the soil under the plaintiff''s building were removed. None of them however, saw any soil or stones being actually removed. They were not even

present at the time when digging operations were on. The fact that the foundation was not dug by the defendants to a dangerous depth, and that there was no negligence on their part in conducting the digging operations, is supported by the fact that when the defendants, whose land was on a higher level than the plaintiff''s land, reduced the level and brought it in line with the level of the plaintiff''s land, the plaintiff''s house stood in this situation of the land without any damage for over a month and that even when the defendants excavated the soil to a depth of 21/2 feet the plaintiff''s house remained undamaged for nearly three days and it was only when there was a heavy rain that the house fell down. This is clear from the evidence of the plaintiff''s witnesses Jankivallabh and Ambaram, as also from the evidence produced by the defendants,

4. The case of negligence being thus not established, the decree made by the learned Civil Judge can be supported only if it is held that the plaintiff had the right of support for his building or of his land burdened with the additional weight of his building. The plaintiff has not established that be has any such right. His land was no doubt originally on a lower level than the defendant''s land. The plaintiff''s land, unburdened and in its natural state, was therefore, entitled, to vertical and natural lateral support by the subjacent and adjacent soil of the defendants. This is clear from S. 7 (b) of the Easement Act. But this does not mean that the plaintiff has natural right to support for his building. There is a distinction between a natural right of support to one''s land in unburdened and natural state from the adjacent and subjacent land of the neighboring owners and the right of support for buildings or structures standing on the land. While the former right is a natural incident of one''s ownership of the land, the right for the support for building or structure on land is an easement and can be claimed only as an easement. If the owner of a building has not acquired such a right in easement of lateral support for his building from his neighbor&#65533;s land, the neighbor would be within his rights in carrying on excavation on his soil even if by so doing damage is caused to the building of his neighbor, provided, of course, there is no negligence in the excavation operations, The leading case on the subject is the case of Charles Dalton vs. Henry Angus and Co, (1881) 6 AC 740. The decision of the House of Lords in that case points out a distinction between a right which is natural and which is available in respect of a land in its natural and unburdened state and a right which is acquired in respect of a building or structure on the land, and lays down that a right to lateral support from adjoining land may be acquired by twenty year''s uninterrupted enjoyment for a building proved to have been newly built, or altered so as to increase the lateral pressure, at the beginning of that time; and it is so acquired if the enjoyment is peaceable and without deception or concealment and so open that it must be known that some support is being enjoyed by the building. While laying down this proportion, Lord Penzanco made the observation that "at any time within twenty years after a house is built, the owner of the adjacent soil may with perfect legality dig that soil away and allow his neighbor&#65533;s house, if supported by it, to fall in runs

to the ground."

5. In Clerk and Lindsell on Torts", eleventh edition, at pages 584 and 586, It is stated as follows:--

The owner of land has a right to the support of his land in its natural state from the adjacent and subjacent land of the neighbouring owners. This right is not an easement but a natural incident of his ownership. There is no natural right of support for buildings, but such a right may be acquired as an easement by grant, express or implied, or by prescription at common law or under the Prescription Act, 1832, An acquired right is similar in character to a natural right. If the adjacent or subjacent support is withdrawn so as to cause land to subside, and the subsidence has not been caused by the additional weight of the buildings or other erections upon the land, the land-owner is entitled to recover, in addition to damages for the subsidence of his land, damages for injury to his buildings or other erections although he has no acquired right of support in respect of them.....

There is no natural right of support for buildings, and therefore a land-owner may make an excavation on his own land notwithstanding that by so doing be may cause his neighbour''s building to fall. Also if in pulling down his own house he removes the support of his neighbour''s house, he is not bound to shore up his neighbour''s house or take any other active steps for its protection. But if his neighbor has an easement of support for his building from the adjoining buildings, he must not pull down his own building so as to remove the support from his neighbour''s building.

6. The distinction between a right which is natural and which is available in respect of land in its natural and unburdened state and a right which is acquired in respect of a structure built on the land is also illustrated by the decisions in Rasiklal Manilal Bhatt and Others Vs. Savailal Hargovindas Sur, and Bengal Provincial By. Co. Ltd. Vs. Rajani Kanta De and Others, Both these cases lay down that while there is a natural right of lateral support to one''s land in unburdened and natural state from one''s neighbour''s land, there is no such right for land burdened with the additional weight of buildings thereon unless the same is acquired as an easement.

7. In this case the plaintiff made no attempt whatever to prove that he had acquired in easement the right of support for his building from the defendant's land. Indeed it appears from the plaint and the evidence which the plaintiff gave that though the plaintiff alleged that his building bad the right of lateral support from the soil on which the defendant''s house stood the plaintiff did not understand the distinction between a natural right which is available to the land in its natural and unburdened form and a right which may be acquired by a building or structure on such land. The plaintiff led no evidence to show that his land would have subsided even if it had been in a natural state and unburdened with his building by reason of the excavations made by the defendants. In his anxiety to show that his building was a new one and not a dilapidated one which could have fallen down as a result of

a heavy downpour, the plaintiff and his witnesses made the statement that he i.e. the plaintiff had very recently constructed his house and it was not more than 10 or 12 years old. In this attempt the plaintiff overlooked the fact that if the building was a recent one, not more than 20 years old, he could never establish the fact that he had acquired as an easement by the process of prescription the right of support for his building from the defendants'' land. Similarly, the defendants equally anxious to show that the plaintiff''s house was a very old one, produced witnesses of ages 29 and 30 years who said that the plaintiff''s house was about 100 years old. The evidence of such witnesses of the defendants as to the age of the building is clearly of no value to the plaintiff in showing that he has acquired the right of support to his building as an easement and that the enjoyment of that right has been peaceable, open and uninterrupted for the prescriptive period. If then the plaintiff has not succeeded in showing that the defendants carried on the digging operations negligently, or that they removed some stones or soil affording protection to the soil under his house or that he has acquired a right in easement of support for his building from the defendant''s land, the decree made by the lower Court cannot be supported merely on the ground that the defendants did not adequately shore up the plaintiff''s house or take other active steps for its protection. The defendants would have been, no doubt, bound to take proper steps for the protection of the plaintiff''s house only if the plaintiff had an easement of support for his building from the defendant''s land or building.

8. In the result, this appeal is allowed, the decree of the learned Civil Judge, First Class, Ujjain, is set aside and the plaintiff''s suit is dismissed with costs here and in the Court below.

Samvatsar J.

9. I agree.