APPELLATE CIVIL

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

REGISTERED SOCIETY, ARYA PRITI NIDHI SABHA, PUNJAB GURUDATT BHAWAN, JULLUNDUR CITY, ETC.,—*Appellants.*

versus

PARAS RAM,—*Respondent.*

Regular Second Appeal No. 1441 of 1964

September 21, 1972.

Specific Relief Act (I of 1887)—Section 52—Easement Act (V of 1882)—Section 18—Wall of a property facing towards another property—Owner of the first property—Whether has right to open apertures including doors in that wall—Such right—Whether restricted—Extent of restriction—Stated.

Held, that when a person opens apertures or a door in his own wall he does not do so in another man's land. The wall in which the apertures or door is opened exists in his own land and the apertures or the door cannot be stretched into neighbours land thereby interfering with the right of the neighbour to use his land without obstruction. Thus the principle which applies in cases where the dispute is regarding opening of apertures by one person in his own walls facing towards the property of a neighbour is that every owner has got a right to use his property in the manner he likes, subject to the condition that by putting the said property in use, he is not entitled to invade the privacy or any other pre-existing and well established right vested in his neighbour and secondly that he cannot use the same in such a manner which may give cause of actionable nuisance to the neighbour. The right to open apertures in one's own walls is restricted to that extent alone. In case a neighbour feels any difficulty because of the said apertures, it is open to him to construct a wall on his own land thereby closing the apertures if by doing so he does not evade a pre-existing or well established right vested in his neighbour who had the apertures. This principle will apply to the opening of a door in the wall also. By merely opening a door, the person is not entitled to get into the property of another person. If he does so, he is liable to be criminally prosecuted.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan vide *order dated 16th August, 1971 to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Pandit and Hon'ble Mr. Justice Bhopinder Singh Dhillon finally decided the case on 21st September, 1972.*

(Para 20)

Registered Society, Arya Priti Nidhi Sabha, Punjab, Gurudatt Bhawan, Jullundur City, etc. *v.* Paras Ram (Pandit, J.)

Regular Second Appeal from the decree of the Court of Shri Shamshad Ali Khan, Senior Sub-Judge, with enhanced appellate powers, Patiala dated the 19th day of May, 1964 reversing that of Shri Rajinder Lal Garg, Sub-Judge 1st Class, Nabha, dated the 20th April. 1963 and granting the plaintiff's decree as prayed for and leaving the parties to bear their own costs throughout.

Roop Chand, Advocate, *for the appellants.*

Rajinder Krishan Aggarwal, Advocate, *for the respondent.*

JUDGMENT

Pandit, J.—This is a defendants' second appeal against the decision of the learned Senior Subordinate Judge, Patiala, reversing on appeal the order of the trial Court dismissing the suit.

(2) Paras Ram brought a suit against the Arya Pratinidhi Sabha Punjab and three others for a mandatory injunction, directing the defendants to close 3 windows and 3 ventilators on the ground floor and 3 *jalis* (also called *Pinjras*) of bricks on the first floor of the Arya Girls High School, Nabha. His allegations were that the said apertures in the wall of the school were opening on a vacant plot of land which belonged to him and the same was adjacent to his house. This land, according to the plaintiff, was evacuee property and had been purchased by him in auction and the defendants had no right to open these apertures, even though they existed in their own wall.

(3) The suit was contested by the defendants, who denied the allegations made by the plaintiff. According to them the plaintiff was not the owner of the plot in question towards which these apertures opened. It was said that the plaintiff had no *locus standi* to file the suit and he had no cause of action. It was also pleaded that the defendants were entitled in law to open all these apertures in their own wall.

(4) The trial Court came to the conclusion that the plaintiff was the owner of the said plot of land, but the defendants were justified in opening the windows, ventilators and *jalis* in their own wall. It was also held that the plaintiff had no cause of action and *locus standi* to file the suit. On these findings, the suit was dismissed.

(5) When the matter went in appeal before the lower appellate Court, the learned Judge affirmed the finding of the trial Court regarding the ownership of the plot, but he came to the conclusion that the plaintiff had a cause of action and *locus standi* to file the suit, because the defendants were not justified in opening the various apertures in their own wall, but towards the plot of land which belonged to the plaintiff. As a result, the appeal was accepted, the judgment and decree of the trial Court were reversed and the plaintiffs suit decreed. The defendants have come here in Second Appeal.

(6) The appeal first came up for hearing before Mahajan J., but he referred the same to a larger Bench, because according to him, there was a conflict of judicial opinion, so far as this Court was concerned, on the question whether an owner has a right to open apertures in his own wall or whether he can be forced to close the same at the instance of his neighbour. According to the learned Judge, Tek Chand J, in *Kanshi Nath and others* v. *Ram Jiwan and others* (1) had taken one view and an opposite view was expressed by Teja Singh CJ, in *Bhag Singh and others* v. *Sewa Singh and others,* (2). The learned Judge had also made a reference to the judgment of Tuli, J., in *Pritam Singh* v. *Mohan Lal and others* (3) but that authority has, admittedly, nothing to do with the present issue. That is how this case has been placed before us for decision.

(7) The sole point for determination in the instant case is as to which of the two views—one expressed by Tek Chand J. and the other by Teja Singh CJ.—is correct.

(8) In the case of *Kanshi Nath and others,* (1) Tek Chand J. had held :

> "Every owner has got the right to open apertures in his own wall and unless by doing so he invades the privacy or any other pre-existing and well established right vested in his neighbour, the latter cannot force him to close the apertures. The neighbour's remedy is to build on his own land or otherwise obstruct the apertures."

(1) A.I.R. 1933 Lah. 847.
(2) A.I.R. 1953 Pepsu 150.
(3) 1969 Curr. L.J. 627.

(9) This view of the law finds support in the decision of a Division Bench of the Calcutta High Court in *Sarojini Devi and another* v. *Krista Lal Haldar and others* (4) wherein Sir Asutosh Mookerjee, who prepared the judgment, observed :

> "The dispute in the present litigation relates to the allotment made to Sarojini, the widow of Amritalal, under the first arbitration award, and the allotment given to Krishnalal, the son of Rajkumar, by the second arbitration award.
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> In the eastern wall of the portion of the house allotted to Sarojini there are three openings on the ground floor and four on the first floor. Of the three openings on the ground floor, two are windows and one is a door; of the four openings on the first floor, one was a window and three were doors at the time of the partition; two of the doors have since then been converted into windows, so that at the time of the suit there were on the first floor wall three windows and one door.
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> The existence of the window and the doors on the ground floor and on the first floor render it possible for people in the portion of the house occupied by the first defendant to obtain access to the premises now held by the plaintiff to overlook his rooms and to destroy his privacy. The plaintiff accordingly erected walls on his own land to stop these openings, but they were demolished by force by the first defendant.
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> The plaintiff has accordingly instituted this suit for declaration of his right to obstruct the doors and windows and for an injunction restraining the first defendant from interference with the construction and maintenance of the wall which he proposes to erect. The defendant denied the right of the plaintiff to obstruct the door and windows in any manner.
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> The Subordinate Judge has held that the plaintiff was entitled to obstruct the doors and windows, but only by the erection of wooden structures with blinds fixed up and he has

(4) A.I.R. 1923 Cal. 256.

made a decree accordingly. On the present appeal, the first defendant has contended that the plaintiff was not competent to obstruct at all the doors and windows. The plaintiff, on the other hand has presented a memorandum of cross-objection and has urged that he cannot be compelled to adopt a prescribed method for the obstruction of the doors and windows, and, that if he so chooses, he may, for the purpose, erect a brick wall on his land instead of a wooden structure.

The principle applicable to cases of this character is well known and was explained recently in the case of *Tustu Mondal* v. *Kenarem Mondal* (5).

But before we deal with the question, it may be useful to point out, as was done by Lord Westbury in *Tapling* v. *Jones* (6) that the expression "right to obstruct" has a tendency to mislead. "If my adjoining neighbour builds upon his land and opens numerous windows, which look over my gardens or pleasure grounds, I do not acquire from this act of my neighbour any new or other right than I before possessed. I have simply the same right of building or raising any erection I please on my own land, unless that right has been, by some antecedent matter, either lost or impaired, and I gain no new or enlarged right by the act of my neighbour."

The erection of a wall or other obstacle is, indeed, the only remedy available to a landowner, if he is annoyed by the opening of new widows overlooking his ground; he can maintain no action nor can he obtain other relief at law or in equity; in building to obstruct new windows, however, he must be careful to avoid obstructing ancient lights: *Re Penny and S. E. Ry Co.* (7); *Turner* v. *Spooner* (8); *Chandler* v. *Thompson* (9).

To put the matter briefly, every one may build upon or otherwise utilise his own land, regardless of the fact that his

(5) (1921) 34 C.L.J. 518.
(6) (1865) 11 H.L.C. 290=20 C.B. (N.S.) 166.
(7) (1857) 110 R.R. 773.
(8) (1861) 127 R.R. 192.
(9) (1811) 13 R.R. 756.

doing so involves an interference with the light which would otherwise reach the land and building of another person. On the other hand, every man may open any number of windows looking over his neighbour's land, for the interference with a neighbour's privacy or with his prospect, does not, by itself, give the latter a cause of action, in the absence of other circumstances. If windows are so opened, the neighbour may, by building on his own land, obstruct the light which would otherwise reach them."

(10) This distum of Sir Asutosh Mookerjee was followed by the Patna Court in *Ramdutar Gope and others* v. *Sheonandan Mistri & others* (10).

(11) Then we have the judgment of the Oudh Chief Court in *Ganesh Prasad and others* v. *Basdeo* (11), wherein it was observed :

"A person is entitled to open doors in a wall of his own house in the exercise of his right of possession and enjoyment of his own property unless he is prevented from doing so by any rule of law or by any right acquired by another authorizing him to have the said doors closed or on the ground that the doors interfere with the right of enjoyment by another of his own property.

A mere apprehension of the defendants' acquiring a right of easement to light and air after the lapse of 20 years if the doors opened by them in the wall of their house towards the plaintiff's land are allowed to stand, cannot afford any justification for preventing the defendants from enjoying their property without interfering with the right of the enjoyment of the plaintiff of his own property. It is perfectly open to the plaintiff to prevent the acquisition of the right of easement to light and air by the defendants by putting up structure on his own land if he so desires."

(12) A Division Bench of the Punjab Chief Court consisting of Plowden and Bradreth, JJ. in *Yasin and others* v. *Gokal Chand and others* (12) had also taken a similar view.

(10) A.I.R. 1962 Patna 273.
(11) A.I.R. 1941 Oudh. 442.
(12) 19 P.R. 1882.

(13) Our attention was not invited to any decision of any High Court in India, which had taken a contrary view.

(14) The only authority on which reliance has been placed by the learned counsel for the respondent is *Bhag Singh and others* v. *Sewa Singh and others* (2). There the dispute was regarding the opening of a door. Teja Singh C.J. after referring to the rule of law laid down in *Kashi Nath's* (1) case observed :

> "With all deference I cannot accept this view. In the first place I consider that when a man opens a door in another man's land he interferes with the right of the latter to use that land without obstruction because the existence of the door would naturally enable the former to pass over the land or to trespass into it. Secondly, if the person in whose land the door is opened sits silent and does not take any action for closure of the door, after the lapse of twenty years the opener of the door might come forward with the plea that he had acquired an easement either of light or of right of way over the neighbour's land and this would certainly subject the owner of the land to a great hardship or it may lead to an irreparable injury. The argument that the owner of the land can take any other steps for closing the door such as building a wall in front of it, ignores the fact that this would compel the person concerned to incur an expense which he might not be able to bear or which he may not like to bear if left to himself. Accordingly, I hold that the injunction is the only remedy in a case of this kind."

(15) With great respect to the learned Chief Justice, I am unable to agree with the reasons given by him. Two reasons have been mentioned by him for coming to a contrary view. In the first place, it has been stated that when a person opens a door in his own wall, he does so in the neighbour's land, and thereby he interferes with the right of the neighbour to use his land without obstruction, because the existance of the door, according to the learned Chief Justice, would naturally enable the former to pass over the land or trespass into it.

(16) 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.

(17) The second reason given by the learned Chief Justice is, that if the person in whose land the door is opened, sits silent and does not take any action for closing the door, then after the lapse of 20 years, the person who has opened the door may subsequently come forward with the plea that he has acquired an easement either of light or right of way over the neighbour's land and this will subject the owner of land to great hardship or lead to irreparable injury. If the owner of the land is left to take any step for closing the door e.g. by building a wall in front of it, that argument ignores the fact that it would compel the person concerned to incur an expense which he may not be able or like to bear, if left to himself.

(18) The first part of the reasoning is negatived by the decision referred to above. There it has been laid down that a mere apprehension that if a person is allowed to have a door or aperture in his own wall for twenty years without any objection by the neighbour, he might acquire a right of easement, cannot afford any justification for preventing him from enjoying his property without any interference and it would not be a ground for granting the neighbour a mandatory injunction for getting the said aperture closed. With regard to the remedy of the neighbour that he can close the aperture by putting up a wall in front of it, but in his own land, it will not be correct to say that the owner is forced to incur an expense which he may not be able or like to bear, if left to himself. In this connection,

it is enough to say that if he does so, he does it either for his own personal convenience and benefit or for preventing the other person from acquiring any rights in his land.

(19) The two reasons, mentioned by the learned Chief Justice, therefore, in my opinion, and I say so with respect, cannot lead us to take a different view of the law than the one which has been laid down in a number of authorities referred to above. Applying the rule of law ennunciated in *Kashi Nath and others* v. *Ram Jiwan and others* (1) I would accept this appeal, set aside the judgment and decree of the lower appellate Court and restore those of the trial Court. In the circumstances of this case, however, I leave the parties to bear own costs throughout.

Dhillon, J.—(20) I entirely agree with the view taken by my learned brother P. C. Pandit J. I wish to add further that the principle, which would apply in such cases where the dispute is regarding the opening of apertures by one person in his own walls facing towards the property of another neighbour, would be that every owner has got a right to use his property in the manner he likes subject to the condition that by putting the said property in use, he is not entitled to invade the privacy or any other pre-existing and well established right vested in his neighbour and secondly that he cannot use the same in such a manner which may give cause of actionable nuisance to the neighbour. So the right to open apertures in one's own walls is restricted to that extent alone. In case a neighbour feels any difficulty because of the said apertures, it is open to him to construct a wall on his own land thereby closing the apertures if by doing so he does not evade a pre-existing or well established right vested in his neighbour who had the apertures. The argument that in that case the neighbour shall have to spend the money in order to close the apertures by raising the wall loses sight of the basic principle that every owner has got a right to use the property in the way he likes subject to the above mentioned restrictions, which restrictions are well recognised by law. Therefore, I entirely agree with my learned brother P. C. Pandit, J. that the view taken by Teja Singh C.J. in *Bhag Singh and others* v. *Sewa Singh and others* (2) is not the correct view of law. I wish to add that the decision made by me in *Kaur Sain* v. *Bibi Hirinder Kaur* (13) in holding that the defendant in that case should close his door opening towards the house of

(13) 1970 Curr. L.J. 433.

the plaintiff, was not correctly made by me and I fell in error in following the decision of Teja Singh C.J. *in Bhag Singh's case* (2) (*Supra*). In that case I followed the principle as laid down by Tek Chand J. *in Kanshi Nath's case* (1) (*supra*) as far as the opening of the windows and ventilators towards the house of the plaintiff were concerned, but about the door I held that since the door would always mean that a person has got the right to get into his house and to get out of it, therefore, that would amount to trespassing the property of another neighbour towards whose house the door opens. I wish to point out that this view taken by me does not appear to be a correct view of law. By merely opening the door, a person would not be entitled to get into the property of another person. A larger window may take the form of the door. Therefore, in principle, the opening of a window or a door will not make any difference. If a person criminally trespasses into the property of another, he is liable to be prosecuted for criminal trespass. As regards the opening of Parnalas it appears that this may be an actionable nuisance. Draining out the whole water from one's property into the premises of a neighbour, would, perhaps, be an actionable nuisance and which may not be permitted. Therefore, I wish to point out that the basic principle as laid down in *Kashi Nath's case* (1) (*supra*) is the correct enunciation of law and while deciding such cases the said principle has to be kept in view. I have, therefore, made it clear that the view taken by me in so far as ordering the defendant *in Kaur Sain's case* (13) (*supra*), to close his door, was not correct.

B. S. G.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

MOHINDER SINGH KOHLI,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Letters Patent Appeal No. 605 of 1971.

September 26, 1972.

Punjab Excise Act (*I of* 1914)—*Section* 58(2)(*d*) *as substituted by Punjab Act* 1 *of* 1940—*Punjab Excise Bottles Rules* (1963)—*Rules* 4 *and* 93—*Constitution of India* (1950)—*Articles* 301, 304 *and* 305 *and*