Chhedi Lal And Anr. vs Chhotey Lal on 16 November, 1950

Equivalent citations: AIR1951ALL199, AIR 1951 ALLAHABAD 199

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. These appeals have been referred to the Full Bench for decision by one of us, as they raise questions upon which there is conflict of view between the decisions of the Allahabad High Court as it existed before the amalgamation and the decisions of the late Chief Court of Avadh. Before addressing our-selves to these questions, it will be convenient) to give facts of each case separately.

2. One Tika Ram was the owner of Khata No. 54 corresponding to 17 (new), which included plot No. 1607 in the agricultural area of Hardoi. Tika Ram survived by his four sons, Jutta who died issueless, Nimman Lal, Jai Lal and Chunni Lal. Chunni Lal died leaving a son Gur Sahai, who left a widow Suraj Kuar, defendant 1 in the case Nimman Lal and Jai Lal transferred their entire share in the property of their father to Chhedi Lal and Sheo Narain, On 5-6-1929, Chunni Lal sold a specific share to Chhedi Lal and Sheo Narain. This share included plot No. 1607. Suraj Kuar and one Chhotey Lal started raising constructions upon this plot whereupon Chhedi Lal and Sheo Narain tried to stop them on 6-7-1941, but they paid no heed and went on with the constructions. Chhedi Lal and Sheo Narain thereupon filed a suit two days later on 8th July for possession of the plot by demolition of the constructions raised by the defendants on the ground that they were the sole owners of the entire property owned by Tika Ram, which included the plot in suit and that the defendants had no right. The defendants filed separate written statements denying the plaintiffs' claim, Suraj Kumar pleading that the plaintiffs were not the sole owners and that she was in possession of a portion of the plot and Chhotey Lal asserting that Suraj Kuar was the sole owner and that the plaintiffs had no right at all. The trial Court decreed the suit holding that the defendants had no right to build but this decision was set aside on appeal and the suit was remanded for a trial de novo. Upon retrial, the trial Court held that the plaintiffs had not purchased the entire share of Chunni Lal in the plot in suit and that Suraj Kuar had a subsisting interest in the khata and was entitled to joint possession of the plot in question. The plaintiffs' suit was, therefore, dismissed. The lower appellate Court upheld the dismissal. The plaintiffs thereupon filed Second Civ. App. No. 282 of 1943.

3. The suit, out of which Second Civ. App. No. 145 of 1944 arises was filed by Sheo Mangal Singh on 27-3-1943, for possession by demolition of certain Constructions made by the defendants and for a

permanent injunction restraining them from building in future. The ground of the claim was that one Hardeo Bakhsh Singh was a co-sharer with the; defendants in the village of Bakhtawarpurwa which Was included in the town of Hardoi. Hardeo Bakhsh Singh made a gift on 23-8-1949, in favour of Sheo Mangal Singh, his sister's son of his entire interest in the village. The constructions complained of by the plaintiff were started on 13-2-1940 in plot No. 2642/7 of Bakhtawarpurwa. The plaintiff protested on 2-2-1942, but the protest was unheeded and the defendants continued the constructions. The ground of the claim was that the plot was the joint property of the properties (sic) and the defendants had no right to build without the permission of co-sharers. The plaintiff had obtained a temporary injunction ex parte on the date of the suit but when the application for injunction came up for hearing on 17-4-1943, the defendants made an application Stating that they had built on the old site after dismantiling the old building, that it was complete except the re-roofing which remained to be done and that object of the plaintiff was that the building should fall down and the mud-bricks which they had prepared be spoilt in the rains. They added that if the plaintiff proved any right, the defendants will remove all the materials with which they would have constructed the building. The trial Court ordered that in view of this reply counsel for the plaintiff did not press the application for injunction.

4. The defence was that the land was not joint but was allotted to the defendants in partition in 1910, that the defendants had the right to build on the site of old Gonda (compound for cattle) and that the plaintiff was estopped by acquiescence from claiming demolition.'

5. The trial Court decreed the suit holding that the land was never partitioned by metes and bounds and that the entire area continued to be joint between the co-sharers, that the defendants had made new constructions on parti and lastly that the plaintiff was not estopped. As a result of the findings, the trial Court decreed joint possession by demolition of the entire pucca constructions shown in the commissioner's map and also decreed permanent injunction restraining the defendants from raising constructions in future.

6. The lower appellate Court upheld the relief for permanent injunction but dismissed the relief for demolition on the ground that the parties being co-sharers the demolition would cause greater inconvenience to the defendants; The lower appellate Court relied on Tilok v. Ramadhin, Select Case No. 270 in support of this conclusion. The lower appellate Court-disbelieved the statement that the plaintiff had made any protest; The plaintiff has appealed and the defendants have filed cross-objections.

7. Before dealing with the question of law, it may be as well to dispose of the plaintiff's contention in the second case that the order of 17-4-1943, passed upon the plaintiff's application for injunction' should be deemed to bind the defendants by the offer they made to remove the materials of the house. This contention involves a misreading of the defendants' application of that date containing the alleged offer. There is no offer-to remove the materials of the house which had already been completed on the date of this application, but the offer related to the removal of materials which may be used for raising constructions in future. The contention is overruled.

8. Our learned brother Kidwai J., in his referring order referred to the following two questions which arise in the two appeals. The main question is whether when one of several co-sharers without the consent of the other co-sharers, raises a construction upon joint land which bill then had been in the cultivation of the tenants or had been lying fallow, any of the other co-sharers can get the building demolished. The subsidiary question referred to by him is as to what 'are the conditions-for the application to such a case of-the doctrine of estoppel by acquiescence.

9. Before any satisfactory answer on the main question can be attempted it would be necessary to bear in mind that there is no statutory law in this country governing the relations among co-sharers inter se about common land and the matter must be regulated by the rules of justice, equity and good conscience. In a case arising in Bengal between tenants in common ;the defendants were in actual occupation and cultivation of a part of the estate as if it were their own separate property and resisted the plaintiffs' entry upon such part, not in denial of their title, but to protect such cultivation from wilful interference. The plaintiffs' claim to a decree for joint possession or to an injunction was refused : Robert Watson Co. v. Ram Chand Dutt, 17 I. A. 110 : (18 Cal. 10 P. C.). Sir Barnes Peacock, who delivered the judgment of their Lordships of the Judicial Committee observed:

> "It appears to their Lordships that, in a case like the present, an injunction is not the proper remedy. In India a large proportion of the lands, including many very large estates, is held in undivided shares, and if one shareholder can restrain another from cultivating a portion of the estate in a proper and husband like manner the whole estate may, by means of cross-injunctions, have to remain altogether without cultivation until all the share-holders can agree upon a mode of cultivation to be adopted, or until a partition by metes and bounds can be effected--a work which, in ordinary course, in large estates would 'probably occupy a period including many seasons. In such a case, in a climate like that of India, land which had been brought into cultivation would probably become waste or jungle, and greatly deteriorated in value. In Bengal the Courts of justice, in cases where no specific rule exists, are to act according to justice, equity and good conscience, and if, in a case of share-holders holding lands in common, it should be found that one share-holder is in the act of cultivating a portion of the lands which is not being actually used by another, it would scarcely be consistent with the rule above indicated to restrain him from proceeding with his work, or to allow any other share holder to appropriate to himself the fruits of the other's labour or capital."

In the well-known case of Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy, 51 I. A. 293 : (A. I. R. (11) 1924 P. C.144) a case of co-sharers Sir John Edge, while reiterating the view taken in Waston's case, (17 I. A. 110 :18 Cal. 10 P. C.) observed as follows:

> "Where lands in India are so held in common by co-sharers| each co-sharer is entitled to cultivate in his own interests in a proper and husband like manner any part of 'the lands which is not being cultivated by another of his co-sharers, but he is liable to pay to his co-sharers compensation in respect of such exclusive use of the lands. Such an exclusive use of lands held in common by a co-sharer is' not an ouster

> of his co-sharers from their proprietary right as, co-sharers in the lands. When co-sharers cannot agree how any lands held by them in common may be used, the remedy of any co-sharer who objects to the exclusive use by another co-sharer of lands held in common is to obtain a partition of the lands.: No co-sharer can, as against his co-sharers, obtain any jote right, a right of permanent occupancy, in the lands held in common nor can he create by letting the lands to cultivators as his tenants any right of occupancy of the lands in them."

These two cases define the limits of the rights of co-sharers and it is not possible for us to depart from the principle of law enunciated by their Lordships of the Privy Council. The soundness of the decisions of our Courts in India will have to be tested in the light of the above-principle.

10. The earliest Avadh case on the subject is Tilak v. Ramadhin, Select Case No. 270 decided by Mr. Spankie, A. J. C. in 1894. The headnote of that case faithfully reproduces the principle of the decision arrived at' in' that case. It reads:

> "Where a co-owner of joint land sues to have a permanent building erected on the land by another co-owner removed, the Court, in considering whether the injunction should be granted or withheld, should weigh the amount of substantial mischief done to the plaintiff, and compare it with that which the injunction, if granted, would inflict upon the defendant, and should, if, under all the circumstances of the case, it does not appear fair and reasonable to insist upon the removal of the building, leave the plaintiff to his remedy by partition.
>
> If the plaintiff has not brought the suit at the earliest opportunity, but has waited till the building has been completed, the Court, notwithstanding that the building may have been erected in spite of the plaintiff's protest, should not order the removal of the building, unless there are special circumstances which render it fair and reasonable to do so, as, for instance, where very serious damage would ensue if the order was withheld compared with what would ensue if the order was granted, but should leave the plaintiff to his remedy by partition."

This principle was deduced by the learned Additional Judicial Commissioner by referring to several cases, in particular to the decision of Sir Barnes Peacock in Lalla Bissambur Lal v. Rajaram, 3 Beng. L. R. (App) 67 : (13 W. R. 337) and to the decision of Mahmood J. in Paras Ram v. Sherjit, 9 ALL. 661 : (1887 A.W.N. 253). Reference was made to Sections 54 and 55, Specific Relief Act and the principle of what may be called balance of convenience was accepted as guiding the exercise of a judicial; discretition by, the Court in granting or withholding an injunction in such cases.

11. Mr. Chamier A. J. C. (afterwards Sir Edward Chamier) in Kallu v. Gaya Din, 7 O.C. 362 allowed the plaintiff, a co-sharer, a decree for possession of a piece of shamilat land and for demolition of a chaupal erected by some of the co-sharers on the ground that the defendants' act had resulted in the closing of village road whereby the damage done could not be remedied by partition unlike the erection of a, building upon an open piece of joint land where the' parties may be left to adjust their

differences upon partition.

12. Both these cases were followed by Gokaran: Nath Misra J. in Parmai v. Mohan, 3 O. W. N 564 : (A. I. R. (13) 1926 Oudh 412) and this in turn was followed by Wazir Hasan, J. in Gaya Prasad Singh v. Someshwar Nath Singh, 3 O. W. N. sup 230 : (98 I. C. 791). The case of Midnapur Zamindary Co. Ltd., (51 I.A. 293 : A.I.R. (11) 1924 P. C. 144), was referred to as laying down the principle regulating the rights of co-sharers in joint property;

13. There is a considerable gap in Avadh since these decisions were given until we come to 1939 when the question came up before Radha Krishna J. in Radhey Lal v. Kunj Behari Lal, 1939 O. W. N. 863 : (A.I.R. (26) 1939 Oudh 275) and Amjad Ali Khan v. Mt. Bismillahan, 1939 O. W. N. 911 : (A. I. R. (27) 1940 Oudh 24). In the first case the decision of Ashworth J. in Sheo Harakh Upadhya v. Jai : Govind Tewari, A. I. R. (14) 1927 ALL. 709 : (104 I. C. 414) was followed in support of the view that where the land is in the exclusive possession of a person as his sahan darwaza, he had no right to erect a building on any part of it without the consent of the other co-sharers. In the latter case the Avadh cases referred to above were noticed by the learned Judge but he made a distinction between the oases where the construction complained of had been completed and no action was taken by the non-consenting co-sharers at the time of the construction and the cases where objection had been taken at the time of the construction. He followed the view expressed in Najju Khan v. Imtiaz-ud-din, 18 ALL. 115 : (1895 A.W.N. 243) and Ram Lal v. Muhammad Amir Mustafa Khan, A. I. R. (12) 1925 ALL. 700 : (85 I. C. 849) in support of the proposition that a non-consenting co sharer has a right to question the act of the co-sharer appropriating the land to his exclusive use or letting it out to a tenant of his own for building purpose without the consent of other co-sharers and the non-consenting co-sharer has a right to question the act of such a co-sharer without showing any special inconvenience or injury to himself.

14. The oases of the Allahabad High Court on the point are far more numerous. Paras Ram v. Sherjit, 9 ALL. 661 : (1887 A.W.N. 253) is a decision by Mahmood J. in a case where a co-owner sought demolition of a building constructed by a joint owner in spite of his protest. The learned Judge observed that as a pure question of law as distinguished from the rules of equity the plaintiffs may be entitled to the decree but Courts in India exercise the combined jurisdiction of law and equity and cannot disregard equitable doctrines in enforcing remedies. He distinguished oases in which a building is erected by a rank trespasser upon a land of another and cases in which the building is erected by a joint proprietor on joint land without the permission of his joint owners or in spite of their protest. The learned Judge then quotes the well-known judgment of Sir Barnes Peacock in Biswambhar Lal v. Raja Ram, 3 Beng. L. R. (App.) 67: (13 W.R. 387) and concludes that when a joint owner of land, without obtaining the permission of his co-owners, builds upon such land, such buildings should not be demolished at the instance of such co-owners, unless they prove that the action of their joint owner in building upon joint land had caused them a material and substantial injury such as cannot be remedied by partition of the joint land. This case was considered by a Full Bench of five Judges including Mahmood J. in Shadi v. Anup Singh, 12 ALL. 436 : (1890 A. W. N. 95 F.B.). The Suit was brought for an injunction within three or four days of the defendant commencing a construction upon joint land. The defendant asserted exclusive right to the land. The plaintiff obtained an interim injunction hut the District Judge on appeal, in new of the ruling in Paras Ram's

case, 9 ALL. 661 : (1887 A. W. N. 253) went into the question as to whether the plaintiff could be compensated by the defendant at partition. He found that the defendant was building upon land which was in excess of the share which would come to him on partition and the plaintiff could not, therefore, be adequately compensated. Sir John Edge C. J. held that the District Judge was wrong in going into the question whether the excess land had been appropriated and that finding of fact given by him the injunction should have been granted. It is obvious from a reading of the judgment in Paras Ram's case, 9 ALL. 661 : (1887 A. W. N. 253) that it did not justify an investigation into the question whether more land than belonged to the co-sharer was appropriated. The learned Chief Justice observed that the defendant, instead of going to the partition Court, proceeded to appropriate to himself lands in which each of his co-sharers had an interest and thus he proposed to exclude them from all use and enjoyment of a portion of common land. He went on to say :

> "We need not in this case consider what a civil Court should do it the defendant has erected at great expense buildings which a Court of equity might hesitate to order him to pull down."

This observation clearly saves the power of the Court under Section 55, Specific Relief Act, as a Court of equity to regulate its discretion in accordance with the provisions of that section in granting or withholding injunction.

15. Straight, J. took a different line. He observed that the District Judge had come to two findings of fact, firstly that the defendant had appropriated the land in excess of his share and secondly that 'his action" in commencing the erections upon the land had caused injury to the plaintiff that could not possibly be remedied by partition. The learned Judge held that the Court could not interfere in second appeal with the exercise of the discretion vested in the District Judge in granting the injunction. The learned Judge referred to the provisions of Sections 54 and 55, Specific Relief Act and held that it was purely a question of discretion whether the Court granted the injunction rightly or wrongly. This case does not shake the soundness of the decision in Paras Ram's case, 9 ALL. 661 ::(1887 A. W. N. 253) which is in accord with the old Avadh view.

16. The case of Najju Khan v. Imtiaz-ud-din, 18 ALL. 115 : (1895 A. W. N. 243) to which Sir John Edge was a party, followed the Full Bench case.

17. Another Full Bench case of the Allahabad High Court is to be found in Ram Bahadur v. Ramshankar Prasad, 27 ALL. 688 : (2 A. L. J. 455 P. C.). The judgment begins by saying that the observations made therein are directed to the particular circumstances of the case and every case of this nature must be decided in view of the facts which are established in evidence. That was a case in which the defendant had proceeded to erect a wall upon a portion of the common land. An objection was taken immediately to the defendant's act followed by a suit in Court. There is no doubt that the learned Judges observed that in a case of this kind it is not necessary to prove special damage, but they went on to say :

> "The Court below did not exercise a judicial discretion in refusing a mandatory injunction. It exercised an arbitrary discretion, not such a discretion as can be termed

a judicial discretion."

This decision is, therefore, no authority for the broad proposition contended for on behalf of the plaintiffs that the mere fact that a construction has been raised upon common land by one of the co-sharers is quite sufficient to entitle him to demolition of the construction irrespective of the equities of the case.

18. The decision in Mukund Lal v. Mohan Lal, A.I.R. (14) 1927 ALL. 518: (101 I. C. 744) by Iqbal Ahmad J. (afterwards Sir Iqbal Ahmad C. J.) does not refer to the previous cases and takes no note of the fact that while a co-owner may have the right to relief for demolition, the Court is invested with the discretion under Section 55 to grant or withhold such relief on circumstances established in the case. Another decision reported in this volume is at p. 709 given by Ashworth J.--Sheo Harakh Upadhya v. Jai Gobind Tewari, (A. I. R. (14) 1927 ALL. 709 : 104 I. C. 414). In this case while laying down that injunction should be granted notwithstanding that the erection of the building causes no direct loss to tire other joint owners, the learned Judge went on to say that :

> "If the building was erected long ago, it will be presumed that the co-sharer in exclusive possession, who erected the building, did so with the permission of the other co-sharers. No such presumption can be made in a case like this where the erection is of recent date and has been objected to from the beginning."

This observation takes us back to the discretion of the Court exercising powers under Section 55, Specific Relief Act.

19. Ashworth J., in Parmeshri Kunwar v. Dhuman Kunwar, A. I. R (16) 1929 ALL. 393 : (119 I. C. 484) while stating that there is no doctrine of special damage applicable to a co-sharer complaining of invasion of his right observed :

> "It is true that a Court has a discretion to refuse or order an injunction and may refuse to do so when it considers that the remedy of injunction is too severe to meet the necessities of the case and is unnecessary to afford adequate relief to the plaintiffs. But this is a very different thing from saying that a co-sharer complaining of the action of another co-sharer has to prove special damage."

20. The case in Shankar Lal v. Pati Ram, A. I. R. (24) 1937 ALL 293 : (168 I. C. 650), drew a distinction between a permanent structure and a temporary structure and held that if the construction put upon joint land by one co-sharer is of such a character as to give exclusive possession to him to the ouster of other co-sharers such exclusive possession is not justified but there would be no ground for objection if the structure is temporary. To the same effect is the view expressed in another case reported at p. 547 of the same Volume Mt. Jamilunnissa v. Mohammad Zia, (A. I. R. (24) 1937 ALL. 547 : I. L. R. (1937) ALL. 609).

21. Ram Sewak v. Ram Sahai, 1942 O.W.N. 281 is a decision by Yorke J. The learned Judge expressed the view that where the construction raised by a co-sharer has the effect of completely

ousting other co-sharers from the use of the plot covered thereby the plaintiff will be entitled to relief for demolition, but he added :

> "This, of course, id subject to the proviso that there shall be due diligence on the part of the co-sharer complaining of ouster and it shall not be possible to say that there has been such delay as will make him subject to an estoppel by reason of acquiescence and presumed 'consent'."
>
> Obviously the relief is qualified by these words by the circumstances of the case and inevitably by the discretion of the Court.

22. So far, we have referred to the decisions of the Allahabad High Court before the amalgamation but two oases of the new Court after the amalgamation need to be noticed. One of these is reported in Ram Lal v. Jagan Nath, 1950 A. W. R. 336 and is a decision by the present Chief Justice. The other is a Bench decision, unreported in Sheo Nath v. Shiam Behari second Civ. App. No. 445 of 1942 by the present Chief Justice sitting with our brother Chandiramani J. In the former case, the learned Chief Justice enunciated the principle that a co-sharer in exclusive possession of joint) land is not entitled to so change the character of possession as to effect a complete ouster of the other co sharers. By adding more constructions to those already existing a co-sharer cannot be said to change the nature of his possession or putting the land to use for which it was not meant and the other co-sharers are not entitled to have the constructions removed. Such cases are to be decided on a balance of convenience and the Courts have to see whether the acts complained of are such that they were detrimental to the interest of the other co-sharers and something to which they had not already acquiesced before. The learned Chief Justice also refers to a large number of Allahabad decisions and to the unreported case. This view is in full accord with the older Avadh decisions to which we have referred.

23. It would not be out of place to mention that the view expressed in Shadi v. Anup Singh, 12 ALL. 436 : (1890 A. W. N. 95 F. B.) and Najju Khan v. Imtiaz-ud-din, 18 ALL. 115: (1895 A. W. N. 243) has been dissented from by the Calcutta High Court and it was held in Akshay Kumar Shaha v. Bhajagobinda Shaha, 67 Cal. 92 : (A.I.R. (17) 1930 Cal. 341) that there is no such broad proposition that one co-owner is entitled to an injunction restraining another co-owner from exceeding his rights absolutely and without reference to the amount of damage to be sustained by the one side or the other from the granting or withholding of the injunction. It was also held that in the matter of injunctions there is a considerable distinction between a case in which the other co-sharers, acting with diligent watchfulness of their rights, seek by an injunction to prevent the erection of a permanent building and a case, in which, after a permanent building has been erected at a considerable expense they seek to have it removed.

24. In Ahmad Gul v. Rahim Khan, A.I.R. (13) 1926 Lah. 52 : (89 I. C. 831) Moti Sagar J. held that the mere circumstance of a building erected on common land without the consent of the co-sharers and despite their protest even, is not sufficient in itself to entitle the aggreived co-sharers to claim the demolition of the building so erected unless it could be shown that the erection of that building had actually caused such material and substantial injury as could not be remedied on a partion of joint

land.

25. As a result of the foregoing discussion, it appears to us that the question of the right of co-sharers in respect of joint land should be kept separate and distinct from the question as to what relief should be granted to a co-sharer, whose right in respect of joint land has been invaded by the other co-sharers-either by exclusively appropriating and cultivating land or by raising constructions thereon. The conflict in some of the decisions has apparently risen from the confusion of the two distinct matters. While therefore a co-sharer is entitled to object to another co-sharer exclusively appropriating land to himself to the detriment of other co-sharers, the question as to what relief should be granted to the plaintiff in the event of the invasion of his rights will depend upon the circumstances of each case. The right to the relief for 'demolition and injunction will be granted or withheld by the Court according as the circumstances established in the case justify. The Court may feel persuaded to grant both the reliefs if the evidence establishes that the plaintiff cannot be adequately compensated at the time of the partition and that greater injury will result to him by the refusal of the relief than by granting it. On the contrary if material and substantial injury will be caused to the defendant by the granting of the relief, the Court will no doubt be exercising proper discretion in withholding such relief. As has been pointed out in some of the cases, each case will be decided upon its own peculiar facts and it will be left to the Court to exercise its discretion upon proof of circumstances showing which side the balance of convenience lies. That the Court in the exercise of its discretion will be guided by considerations of justice, equity and good conscience cannot be overlooked and it is not possible for the Court to lay down an inflexible rule as to the circumstances in which the relief for demolition and injunction should be granted or refused.

26. It now remains to deal with each of the appeals separately upon its own facts. So far as Second civ. App. no. 282 of 1943 is concerned, the plaintiffs set up an untrue case that they were the sole owners and both the Courts below have found that the defendants had a subsisting interest in the land in suit and had a right to build. It has also found against the plaintiffs that they made no oral protest as alleged by them. Both the Courts below have exercised their discretion upon the circumstances of the case in favour of the defendants and have refused the reliefs asked for by the plaintiffs. In this appeal the question resolves itself merely into the fact whether the discretion was exercised improperly. We are of opinion that the plaintiffs have failed to establish circumstances which would justify this Court in second appeal to interfere with the exercise of the discretion concurrently by the two Courts below. We accordingly dismiss this appeal with costs.

27. As regards App. No. 145 of 1944, the findings arrived at by the two, Courts below are that the land covered by the building was parti, that no protest was made as alleged by the plaintiff and that the suit was brought long after the building had been completed, namely, more than three years. It is obvious upon these facts that the Courts below were justified in refusing the relief for demolition of the building. With this exercise of the discretion we see no reason in second appeal to interfere. The relief for injunction was granted by the Courts below and the exercise of this discretion is challenged by way of cross-objections by the defendants. It seems to us that the decision on this part of the case is not open to interference in the same way as the decision in favour of the defendants, in refusing the relief for demolition. We accordingly dismiss the appeal and the cross-objections with costs.

Kidwai, J.

28. I agree and have nothing to add.

Chandiramani, J.

29. I agree.