KRISHNA KUMAR AGRAWAL AND ORS.

v.

JAI KUMAR JAIN AND ANR.

JANUARY 2, 1996

K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Unauthorised Construction—Demolition of—Only the offending wall and not the entire building—Directions issued.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1544 of 1996.

From the Judgment and Order dated 2.3.95 of the Patna High Court in Second Appeal No. 292 of 1991.

Ajit Kr. Sinha, Pradeep Ranjan, S.S. Mishra and Santosh Kumar for the Appellants.

S.C. Gupta, Jatinder K. Bhatia Sunil K. Jain, Advs. for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard the counsel for the parties. This Court issued notice confining to the question as indicated in our order dated August 21, 1995 which reads thus :

> "It is contended for the petitioners that interpreting the operative part of the decree of the trial court, namely,
>
> "It is, accordingly declared that the defendants have absolutely no right to close the windows and ventilators in the northern wall of the plaintiffs house and he interfere with the same in any way causing diminution in the light and air to which the plaintiffs are entitled to and have been enjoying as of contractual right consequently they are directed to remove the walls or any other restructure made adjacent to the northern wall of the plaintiffs house within two months failing which the plaintiffs shall have right to get the same removed in due process of law in the interest of finally of the dispute it is hereby made clear that the defendants shall be at liberty to raise their wall

after leaving a set back of 3 feet from the northern wall of plaintiffs so as to enable to later to enjoy the light and air in terms of the sale deed of the year 1921."

even the construction made in the year 1947-48 upto the first floor is also sought to be removed by wrong interpretation sought to be put upon the decree. It is contended that in fact the defendants construction was latter in point of time though the petitioners had not objected. Therefore, the respondents now cannot object and claim demolition of the even existing structure except the one which is constructed in the year 1982-83. Issue notice on this limited question."

The learned counsel for the respondents has placed before us a photograph in which it is seen that there exists a double-storeyed building and besides that the offending wall was constructed. The said wall is now found to have been constructed recently as found by the trial Court and affirmed by the appellate, as well as the High Court. In view of the above finding, the apprehension of the appellants that existing double-storeyed building would be demolished in execution of decree of the trial Court is unfounded. What is to be demolished is the construction unauthorisedly made by the appellants as found by the Commissioner who was examined as PW-8 whose report is Ex.1 and the field Book 1/A.

The appeal is accordingly disposed of with the above directions. No costs.

Appeal disposed of.