

(1941) 08 BOM CK 0017

In the Bombay High Court

Case No : Second Appeal No. 137 of 1940

Bhajgovind Chunilal Sevak

APPELLANT

Vs

Harilal Gordhandas Sevak

RESPONDENT

Date of Decision : 22-08-1941

Acts Referred:

Citation : (1942) 44 BOMLR 401

Hon'ble Judges : Divatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Divatia, J.—The only point urged on behalf of the appellants in this appeal relates to that part of the decision of the lower Court in which they are directed to put up three perpendicular wooden bars in their window "X" in the plan, so that one may not peep out of it. That injunction was given because on the finding of the lower appellate Court one can look into the upper storeys of the plaintiffs on both the sides and that those storeys were used for sitting and sleeping purposes. This finding is made because of the custom of privacy which is found to be prevailing in Gujarat and judicially recognised by authorities since a very long time. The finding is attacked on behalf of the appellants on the ground that the previous decisions relating to the right of privacy were given in cases coming from the districts of Broach, Surat and Ahmedabad, but that there was no judicial decision which lays down that the custom of privacy prevails in the district of Kaira in Gujarat from which this case comes. The principal argument is that although the decision in *Mdnishankar Hmgovmi v. Trikam Narsi et al* (1867) 5 B.H.C.R. 42 which has been subsequently followed, lays down that the right of privacy prevails in Gujarat, it related to a house in the district of Broach and there was nothing to show in that case that the right of privacy was proved to have existed in the whole of Gujarat. It is true that the case came from the district of Broach, but the observations in the judgment that the usage existed in the whole of Gujarat are based upon several decisions relating to the right of

privacy in different parts of Gujarat. The series of decisions there referred to as coming from Gujarat are *Rughoonath Oodhowjee v. Shureef Moohwmmud and Suyud Umjud* (1819) 1 Bom. 272 *Jacob Johannes V. Shekh Ahmud Noor-ooddeen* (1811) 1 Borr. 422 *Veerchand Deepchand v. Raichund Panachund* (1860) 7 Harington 212, *Sped Imambuksh v. Gugul Purbhoodas* (1860) 9 Harington 274, and *Kashidas Runchhod v. Jumnadas Jetabhai* (1863) S. A. 278 of 1863. Both the cases of *Rukhoo-nath Oodhowjee* and *Jacob Johannes* were from Surat, the case of *Veerchand Deepchand* was from Ahmedabad, so also the case of *Syed Imambuksh* and the case of *Kalidas Runchhod* were from Nadiad, i.e. the district of Kaira, All these districts comprise what is known as Gujarat, and it was therefore observed in *Manishankar's* case that the custom of privacy had been proved as existing in Gujarat. This decision is given in 1867 and even at that time it was observed that the rulings of the Sudder Court and the High Court were founded on the long established usage of the province so that as early as 1867 it was held that the right of privacy had been long since established in Gujarat. In fact the case of *Rughoonath Oodhowjee* was decided in 1811. The decision in *Manishankar's* case was followed in *Kuverji Premchand et al v. Bai Javer* (1869) 6 B.H.C.R (A.C.J.) which was from Ahmedabad. Thereafter in *Keshav Harkha V. Ganpat Hirackand* (1871) 8 B.H.C.R. 87, which came from Ahmedabad, the decision in *Manishankar's* case was explained as applying not to an open court-yard outside the house, but to those particular apartments which are ordinarily secluded from observation-Then there was the decision in *Nathwbhai v. Chhaganlal* (1900) 2 Bora. L.R. 454 which was a case from Ahmedabad, to the effect that the right of privacy has been recognized in Gujarat. In *Mulia Bhana Vs. Sundar Dana*, , which was also a case from Ahmedabad, this Court threw some doubt on the decision in *Manishankar's* case on the ground that the proposition laid down there did not necessarily follow from previous decisions. But the point considered was not whether the custom which has been held as proved in Broach and Surat should be extended to other places in Gujarat, but whether it applied to an open court-yard or a khadki or was restricted to particular apartments secluded from observation. The finding of the lower Court was that the window opened by the defendant abutted on a khadki or a court-yard and it was observed that the plaintiff would not have been entitled to the relief of injunction on the ground that the window did not overlook any private apartment of the plaintiff. But the appeal was decided on the ground that there was an agreement between the parties that the window should not be opened and that it was on that ground that the injunction was granted against the defendant. This decision therefore does not overrule the previous decision that the right of privacy had been judicially recognized as existing in Gujarat. Thereafter the right of privacy again came before this Court in *Maneklal v. Mahanlal* (1919) 22 Bom. L.R. 226, which; was a case from Ahmedabad, and this Court did rely upon *Manishankar's* case for the proposition that the right of privacy exists in Gujarat. The decision of the lower Court which granted an injunction against the defendant on the ground of invasion of the plaintiff's right of privacy was confirmed. It is clear therefore that our High Court has now

definitely recognised that the right of privacy exists not merely in some parts of Gujarat but in the whole of Gujarat.

2. Mr. Desai, on behalf of the appellants, however, contends that the latest full bench decision reported in *Dashrathlal Chkaganlal v. Bai Dhondubai* (1940) 43 Bom. L.R. 581, F.B. throws doubt on the proposition that the right should be recognized as prevailing in the whole of Gujarat. This full bench decision did not relate to the right of privacy in Gujarat but to the custom: of pre-emption. The question there was whether, if the custom was judicially recognized as existing in the city of Ahmedabad, it should be held that it existed in that area which was known as the city of Ahmedabad as it stood at the time when the custom began or that it should be recognized as existing in the whole of the area which is now known as the city of Ahmedabad. But it was not necessary to decide that point in view of the fact that the suit lands there were situated within the city walls of Ahmedabad and that therefore in any case the custom of preemption would apply to those lands provided they were free-hold lands. The actual decision was that as the lands were leasehold the right of pre-emption did not apply to them. I do not see how that decision helps the appellants in the present case. It seems to have been relied on by the appellants by way of analogy, but even so it was taken for granted that the right of pre-emption did exist in the city of Ahmedabad. In the case of custom of privacy the decisions are that the right of privacy does exist in the whole of Gujarat and there is no question here as to whether the district of Kaira can be regarded as a part of Gujarat. It is and it always was an integral part of the province of Gujarat from the earliest times, and I think it is now too late to contend that the right of privacy should be held as recognized only in those towns from which the previous decisions came and that it should not be extended to other parts of Gujarat. As I have pointed out above, *Kashidas Runchhod V, Jumna-das Jetabhai*, which is referred to in *Mmishankar's* case, came from the district of Kaira from which the present case also comes. Therefore on that ground also it cannot be said that the right of privacy would not apply to the present case. I think that the decision of the lower appellate Court is correct.

3. The point urged by way of cross-objections on behalf of the respondents is that the direction given by the lower appellate Court that the horizontal bamboo which has been existing below the roof of the defendants and above their window " X" should be allowed to remain. Both Courts have held that this bamboo is hung by means of wires and is hanging below the projecting part of the defendants' roof. That bamboo overhangs the chowk which is the exclusive property of the plaintiffs. The finding, however, is that this bamboo has existed since very old time and the lower Courts have given certain directions that although the bamboo should remain the defendants should not hang their clothes on it in such a manner as to touch the passersby or to drop water therefrom. Presumably the finding of the lower Court is that it is a right of easement which has been acquired by the defendants, I do not think that I can interfere with that finding. The appeal and the cross-objections are therefore dismissed with costs.