
(1923) 02 AHC CK 0070
In the Allahabad High Court

Bohra Tara Chand and Another	Vs	APPELLANT
Musammat Rayazi Begam		RESPONDENT

Date of Decision : 27-02-1923

Acts Referred:

Citation : AIR 1923 All 404 : 73 Ind. Cas. 1040

Hon'ble Judges : Gokul Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gokul Prasad, J.—This is a plaintiffs' appeal arising out of a Suit brought by them for removal of a wall alleged to have been built by the defendant on the plaintiffs' land and for the closing up three windows which were alleged to interfere with the plaintiffs' right of privacy. The defence raised was that the wall stood on defendant's own land and that two of the windows were old ones, and one a new one, and that there was no interference with the plaintiffs' right of privacy. The First Court decided that the wall was on defendant's own land and that the question of right of privacy did not arise as the land was lying waste and was rasta. It dismissed the plaintiffs' claim. The plaintiffs went up in appeal and the learned Judge has come to the conclusion that the wall was on defendant's own land and that the plaintiffs could not have it removed. He further went on to hold that as there was no zenana house of the plaintiffs, there the question of the right of privacy did not arise. The existence of the right of privacy does not depend on the caste or creed of the person owning it or on the fact, viz., if it was used by the ladies. It is a custom of the country and has as such to be protected, [see Gokal Prasad v. Radho 10 A. 358 : A.W.N. (1888) 133 : 6 Ind. Dec. 241 and Jamilud-din v. Abdul Majid 28 Ind. Cas. 674 : 13 A.L.J. 301.

2. In order to enable me to decide this appeal it is necessary to have findings on the following issues:

(1) Is the plot of land belonging to the plaintiffs to the south of the wall A B open

to the gaze of other people living in houses to the south and west thereof?

(2) Have the plaintiffs, as a matter of fact, been enjoying the right of privacy with reference to this plot?

(3) Have the Jang/as put by the defendant in fact invaded the right of privacy of the plaintiffs?

3. The issues are to be decided on the evidence actually on the record and if necessary by another inspection of the locality. No fresh evidence will be received. On receipt of the finding the usual ten days will be allowed for objections.

4. The facts of the case are given at length in my order of the 30th November 1922 referring certain issues to the Court below. The findings, on all the three points referred, have been returned. They are against the appellants. These findings are findings of fact and cannot be interfered with. The appeal, therefore, fails and is dismissed with costs.