

(1920) 02 CAL CK 0061
In the Calcutta High Court

Hiralal Dutta and Others

APPELLANT

Vs

Mohendra Nath Banerjee and Others

RESPONDENT

Date of Decision : 25-02-1920

Acts Referred:

Citation : 57 Ind. Cas. 706

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for declaration of the plaintiff's right to access of light and air through the northern windows of the plaintiff's rooms over the defendants' land. The right, it is found, has been enjoyed for more than 25 years. The defendants' house is to the north of the plaintiff's and there is an intervening space. of 1 feet 10 1/2 inches. The defendants, it appears, had a compound wall, 8 feet 5 inches in height, immediately to the north of this intervening space. The top of the northern windows of the plaintiff's rooms was 7 feet 6 inches from the ground level, so that the compound wall was 6 1/2 inches higher than the top of the plaintiff's windows. The height of the wall was raised to 18 feet and thereupon this suit was instituted by the plaintiff. The suit was dismissed by the Court of first instance. On appeal the. learned Subordinate Judge held that the raising of the wall did not substantially diminish the access of light and air to the western room, but had done so with regard to the middle and the eastern room, and accordingly made a declaration of the plaintiff's right to light and air to that portion and directed the demolition of that portion of the wall which stood in front of the middle and the eastern room.

2. It is contended on behalf of the appellants that there should have been an enquiry as to the quantity of light and air formerly enjoyed by the rooms, as compared with that which came from the windows after the raising of the wall.

3. In the case of Colls v. Home & Colonial Stores Limited (1904) A.C. 179 : 73 L.J. Ch. 484 : 53 W.R. 30 : 90 L.T. 687 : 20 T.L.R. 475 it was laid down by the House of Lords that to constitute an actionable obstruction of ancient lights it

was not enough that the light was less than before, that there must be a substantial privation of light enough to render the occupation of the house uncomfortable according to the ordinary notions of mankind, and, in the case of business premises, to prevent the plaintiff from carrying on his business as beneficially as before; and in the case of *Peter Charles Ernest Paul v. William Robson* 24 Ind. Cas. 300 : 18 C.W.N. 933 : 27 M.L.J. 117 : 1 L.W. 561 : 16 M.L.T. 204 : (1914) M.W.N. 631 : 12 A.L.J. 1166 : 16 Bom. L.R. 803 : 20 C.L.J. 353 : 42 C. 46 : 41 I.A. 180 (P.C.) the Judicial Committee also referred to the law as formulated in *Coll's Case* (1904) A.C. 179 : 73 L.J. Ch. 484 : 53 W.R. 30 : 90 L.T. 687 : 20 T.L.R. 475 cited above and *Jolly v. Kine* (1907) A.C. 1 : 76 L.J. Ch. 1 : 95 L.T. 656 : 23 T.L.R. 1 and held: "The easement acquired by ancient lights is not measured by the amount of light enjoyed during the period of prescription," but that "the owner of the dominant tenement obtains right to so much of it as will suffice for the ordinary purposes of inhabitancy or business according to the ordinary notions of mankind, having regard to the locality and surroundings," and further held that there was no infringement of the right unless what was done amounted to a nuisance.

4. In the present case, the learned Subordinate Judge says with regard to the middle room that it was already ill ventilated or rather unhealthy for the purpose of a bed-room for which it was used. Then he refers to the evidence on the point and holds that it has become now unfit for ordinary purposes of inhabitancy. With regard to the easternmost room he says that the western half of it in front of the disputed wall has become altogether dark, while there is sufficient light in the eastern half of the room in front of which stands the existing wall (to the east of the disputed wall) the height whereof from the ground level is only 6 feet 6 inches. The learned Subordinate Judge found that the western half had been enjoying almost as much light as the eastern half before the wall was raised to 18 feet, and that the raising of the wall to 18 feet had rendered the habitation of the room a most uncomfortable one for a gentleman in the position of the plaintiff. We think that these findings are sufficient to dispose of the case, having regard to the law as laid down in the cases cited above.

5. It is contended that the plaintiff's right of easement in respect of air and light as claimed should not have been declared in the decree, because it might interfere with the plaintiff's dealing with his own property in future. But so far as the raising of the wall to 18 feet is concerned, it is found by the lower Appellate Court that it has rendered the occupation of two of the rooms unfit for habitation and the decree, therefore, has declared the right to light and air and ordered the portion of the wall which stands in front of the middle and the eastern rooms to be reduced to its old height. We do not think, therefore, that the decree should be varied in any way, as the decree merely gives the relief, in respect of right to light and air as has been found by the Court below to have been obstructed.

6. The appeal fails and is dismissed with costs.