

(1925) 08 BOM CK 0028
In the Bombay High Court

Rajubhai Mohanbhai

APPELLANT

Vs

Lalbhai Mulchand and Others

RESPONDENT

Date of Decision : 18-08-1925

Acts Referred:

Citation : AIR 1926 Bom 545

Hon'ble Judges : Macleod, C.J

Bench : Division Bench

Judgement

Macleod, C.J.—The plaintiff filed this suit to obtain an injunction restraining the defendants from raising any construction over the chora or open space to the south of his wall, thus necessitating the closing of any jalis, or windows or stopping the mori mentioned in the plaint. The plaintiff failed to prove that the wall to the south of his house was of his exclusive ownership. The first Court has found that it was a joint wall and both parties are entitled to its equal user. The trial Court dismissed the suit. The appellate Court considered that the plaintiff had proved that all his windows and openings, except a jali in the wall on the ground floor, were of over twenty years' standing, and therefore, the appellant was entitled to a legal easement entitling him to an injunction against the respondents from obstructing or interfering with the light and air to these openings and the discharge from the mori.

2. There can be no question of easement as regards light and air in the case of joint property. Both parties were entitled to the full ownership of this wall and the plaintiff, after the fire in 1881, repaired the party wall with the consent or acquiescence of the defendants. Then the result would be, as was decided in *Imambhai v. Rahimbhai* AIR 1925 Bom. 373 that where one of two neighbouring owners raises a party wall, the other owner either giving his consent or acquiescing, the raised portion of the wall assumes the same character as the old party wall on which it stands. If the plaintiff opened apertures in the wall he could not acquire an easement of light and air through these windows over the defendants' premises. It would be open to the defendants to object to the

windows being opened, and even if they did not file a suit that would not prevent them from blocking the windows opened by the plaintiff so as to look over the defendants' premises.

3. The plaintiff, therefore, was not entitled to the injunction sought for in the plaint, and the cross-objections filed by the respondents must be allowed and the suit dismissed with costs throughout.