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v.
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law on the subject, that the invasion of privacy by opening windows is not a wrong for which an action will lie. As observed by Innes, J., the person whose privacy is so invaded has it in his power to build on his own ground so as to shut out the view from the offending window. To the same effect is the decision of the Calcutta High Court in *Mahomed Abdur Rahim v. Birju Sahu*(1) and of the Bombay High Court in *Shrinivas Udupirav v. Reid*(2). The cases in *Manishankar Hargoran v. Trikam Narsi*(3) and *Kwarji Premchand v. Bai Javer*(4) are decisions with reference to the special custom of Guzerat. The decisions of the Allahabad High Court in *Gokal Prasad v. Radho*(5) and *Abdul Rahman v. Emile*(6) rest on the customary right which prevails in various parts of the North-Western Provinces.

Following the decision in *Komathi v. Gurunada Pillai*(7), we allow the appeal and, setting aside the decree appealed against, direct that plaintiff's suit be dismissed; but considering the circumstances of the case, we direct that each party do bear his and her costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

LATOHANNA (PLAINTIFF), APPELLANT,

v.

SARAVAYYA AND OTHERS (DEFENDANTS Nos. 1 TO 3),
RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, s. 13, explanation 5—Res judicata
between defendants.*

In a suit to recover the plaintiff's share of lands appertaining to an agra-haram the defendants pleaded that the lands in question were their own and were not subject to partition. It appeared that in a previous suit brought by a third party against the present plaintiff and defendants and others to recover his share of the

(1) 5 B.L.R., 676.

(4) 6 Bom. H.C.R., 143.

(7) 3 M.H.C.R., 141.

(2) 9 Bom. H.C.R., 266.

(5) I.L.R., 10 All., 353.

* Appeal against Order No. 5 of 1893.

(3) 5 Bom. H.C.R., 42.

(6) I.L.R., 16 All., 69.

agraharam lands, it was held that the lands now in question formed part of the lands of the agraharam, and they were divided in execution of the decree in that suit. The present plaintiff and defendants were then *ex parte* :

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Held, that the defendants were precluded under Civil Procedure Code, section 13, from raising the above plea.

APPEAL against the order of A. Venkataramana Pai, Subordinate Judge of Vizagapatam, in appeal suit No. 172 of 1891, reversing the decree of R. Hanumanta Rau, District Munsif of Yellamanchily, in original suit No. 537 of 1890 and remanding the suit for rehearing.

The plaintiff sued to recover an eleven-sixteenths share of certain inam land appertaining to an agraharam, the sharers in which were represented by the defendants. The facts of the case were stated by the Subordinate Judge in paragraph 7 of his judgment as follows :—

“Yerakabhupati agraharam belongs to plaintiff, defendants, and others in certain shares. These sharers own 16 vrittis or lands in the agraharam. Each vritti or portion of a vritti is held by one or more of the sharers. A re-distribution of the land takes place among the sharers every twenty years. The last re-distribution not having been made by the sharers, one of them brought suit No. 28 of 1886 in the District Court for possession of his own share $3\frac{1}{4}$ of the agraharam lands. The present plaintiff and the first, second and third defendants were respectively the twentieth, second, seventh and ninth defendants in that suit. These four were among the *ex-parte* defendants in that suit. The Court decreed that if the parties should not affect a re-distribution within three months, ‘their re-distribution will be made through the Court and a share of $\frac{1}{4}$ of a vritti assigned to plaintiff’ (exhibit A). The decree appears to have been sent for execution to the District Munsif’s Court. In execution proceedings the agraharam lands, including the lands now in dispute, were divided and the decree-holder’s share was ascertained and (it is admitted) was delivered to him, the District Munsif holding that the land now in dispute was included in the property ordered to be divided by the decree—See his order (exhibit D).”

On these facts the District Munsif held that defendant No. 1 was precluded by the decree in original suit No. 28 of 1886 on the file of the District Court of Vizagapatam from pleading that the land in question was his own inam land and he passed a decree for plaintiff. The Subordinate Judge on appeal reversed the

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decree and remanded the suit as above stated, expressing his view on the question of *res judicata* in the following terms:—

“ Paragraph 8. Now, there can be no doubt that as between the decree-holder and the defendants in suit No. 28 of 1886 the question as to whether the land now in dispute is comprised in the decree and was liable to be brought to division along with the other lands in the agra-haram is *res judicata*. But as between the defendants, the matter would be *res judicata* only if there was conflict of interests between them and a judgment defining the ‘ real rights and obligations of the defendants interested.’ *Ram-chandra Narayan v. Narayan Mahadev*(1). In the present case both the plaintiff and the first defendant were *ex-parte* defendants in suit No. 28 of 1886. So, any dispute between them was not before the Court in that case. Assuming, therefore, that the land now in dispute is included in the property of which a share was awarded to the former plaintiff, that decree does not operate as *res judicata* as regards any dispute between the defendants therein.

“ Paragraph 9. But then it is urged that the former suit was for partition, and that in such a suit the Court has power to award to each co-sharer his proper share in the property sought to be divided. The decree does not show, however, that the Court either determined or awarded the share of any party other than the plaintiff therein.”

The plaintiff preferred the present appeal.

Subramanga Ayyar for appellants.

Mr. J. G. Smith for respondents.

JUDGMENT.—The question for determination in this appeal is whether the defendants claim to the land in dispute as his inam is *res judicata*. The facts of the case are sufficiently stated by the Subordinate Judge in paragraph 7 of his judgment. It is observed by him that as between the plaintiff and the defendants in the previous suit including plaintiff and first defendant the question is certainly *res judicata*. Though the plaintiff and defendants in the present suit were merely co-defendants in the previous suit, and though they were *ex-parte* and there was no contest between them, yet my decision in this case must depend on explanation V of section 13 of the Code of Civil Procedure. It was held with

reference to that explanation in *Chandu v. Kunhamed*(1) that though the first defendant in that case under whom the then plaintiff claimed was *ex-parte* in the previous suit and the title of the second defendant cannot, therefore, be said to have been actively contested between the then first and second defendants in the previous suit, yet the first defendant and his other co-sharers must be held as claiming under the plaintiff in the previous suit by explanation V of section 13 of the Code of Civil Procedure. The case now before me is on all fours with that case. The parties to this suit were co-defendants in the previous suit, and though they were all *ex-parte*, the land in question was claimed by the then plaintiff as part of the agra-haram land which was liable for re-distribution among him and the defendants who are other agra-haramdars and his co-sharers. It was the first defendant who claimed the land in question as his inam in execution; but his claim was disallowed under section 244. Upon these facts it is clear that the other co-defendants who were co-sharers in the agra-haram with the plaintiff in the previous suit must be taken as claiming under him as he claimed the land as common to himself and other agra-haramdars and as such partible amongst them. The principle on which this explanation rests is that when an adjudication is necessary to give the appropriate relief to the plaintiff in the prior suit, the adjudication is *res judicata* even as between co-defendants when the right asserted by the plaintiff and decided in the previous suit was one so asserted and decided as common to himself and others.

The order of the Subordinate Judge must be set aside and the decision of the District Munsif restored. Respondents will pay appellant's costs both in this Court and in the Lower Appellate Court.

(1) I.L.R., 14 Mad., 324, 327.