

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SAYYAD AZUF (DEFENDANT), APPELLANT,

v.

AMEERUBIBI (PLAINTIFF), RESPONDENT.*

1894.
April 27.
September
27.

Easement—Invasion of privacy—Suit for injunction.

The invasion of privacy by opening windows is not a wrong for which an action will lie.

SECOND APPEAL against the decree of H. G. Joseph, District Judge of Ganjam, in appeal suit No. 52 of 1890, affirming the decree of K. Ramalinga Sastri, District Munsif of Chicacole, in original suit No. 403 of 1893.

The plaintiff sued for an injunction against the defendant alleging that the defendant had made a window in his house whereby the privacy of the plaintiff's house which adjoined it had been invaded. The District Munsif passed a decree as prayed, which was confirmed on appeal by the District Judge.

The defendant preferred this second appeal.

Srirangachariar for appellant.

Seshagiri Ayyar for respondent.

JUDGMENT.—The suit was brought for an order directing defendant to close a window opened by him in a wall newly built by him. Plaintiff's case is that the window opens on to a passage immediately to the west of the wall, which passage leads to the plaintiff's house, and the privacy of which is invaded by reason of the window. The District Munsif bound it to be a fact that plaintiff's privacy was thus invaded and gave her a decree directing the closing of the window.

On appeal the District Judge affirmed the District Munsif's decree.

Hence this second appeal, in which we are referred to the decision of Holloway and Innes, JJ., in the case of *Komathi v. Gurnada Pillai*(1), where it was held, following the English

* Second Appeal No. 1740 of 1893.

(1) 3 M.E.C.R., 141.

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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.