

that the judgment of the Court of first instance was correct. We therefore allow the appeal, set aside the decree of the District Judge, and restore that of the Court of first instance. The appellants will have their costs of this appeal, and also their costs in the lower appellate Court.

*Appeal decreed.*

*Before Mr. Justice Blair.*

BEHARI LAL AND OTHERS (PLAINTIFFS) v. GHISA LAL AND OTHERS  
(DEFENDANTS).\*

*Injunction—Maxim—Cujus est solum ejus est usque ad calum—Question whether common law rights of owner can be limited by religious prejudices of neighbours.*

Certain plaintiffs sued for an injunction restraining defendants from obstructing them in cutting certain branches of a pipal tree overhanging their property. The pipal tree grew in the inclosure of a temple, and the resistance was based on the ground that the tree was an object of veneration to Hindus, and that the lopping of its branches would be offensive to the religious feelings of the Hindu community.

*Held* that the plaintiffs were entitled to the injunction prayed for, and that the fact that the plaintiffs' action might cause annoyance to a large number of Hindus, was not a sufficient ground for cutting down the well recognized common law rights of an owner of property.

THE facts of this case sufficiently appear from the order of the Court.

Pandit *Moti Lal Nehru* (for whom Pandit *Tej Bahadur Sapru*), for the appellants.

Pandit *Madan Mohan Malaviya*, for the respondents.

BLAIR, J.—This appeal impugns the propriety of a decision of the Subordinate Judge of Moradabad dismissing the plaintiffs' suit under the following circumstances. The plaintiffs are the owners of a house adjacent to the site of a Hindu temple. Near their house stands in the temple inclosure a pipal tree, the branches of which extend over their house, and which has, of course, been growing there for many years. The plaintiffs, alleging that the branches of the tree afforded facilities for a thief to obtain entrance into their house, and endangered life and property, desired to cut those branches.\* They were prevented

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\* Second Appeal No. 374 of 1901 from a decree of Rai Mata Prasad, Subordinate Judge of Moradabad, dated the 31st January 1901, confirming a decree of Maulvi Muhammad Abdul Latif, Munsif of Moradabad, dated the 30th of November 1900.

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from so doing by the defendants. The plaintiffs ask that an injunction may be issued against the defendants, enjoining them not to offer obstruction to the cutting of those branches which spread over the plaintiffs' house. Both the Munsif and the Subordinate Judge have found that the pipal tree is an object of veneration to pious Hindus, and has been growing there for over 20 years. Both of them have dismissed the plaintiffs' suit. The question is a serious one in this country, because, on the one hand, it is highly undesirable to insult or irritate the religious susceptibilities of the people; and on the other, one has to look for the existence of some principle of law by which the general feeling of one part of the population can be allowed to override the ordinary rights of property vested in another person. Mr. *Tej Bahadur*, for the appellants, contends that there is no such curtailment of individual right of property known to the law, and Mr. *Malaviya*, for the respondents, is unable, out of the long array of Indian cases, to produce a single authority in support of the judgments of the Courts below. It is not for me to find facts, but to accept them implicitly as found by the Courts below. The lopping of inconvenient boughs of such a tree as this may possibly be regarded as a sort of sacrilege by certain of the Hindu population. But it appears that the tree has been lopped before. And it is also found by the Subordinate Judge that the branches of this tree have been hanging over the old building for a considerable time. But that fact cannot, in my opinion, override the right of the appellants to occupy their house in comfort and safety. Mr. *Malaviya* does not attempt to found any argument upon the fact that the tree has been standing there for over 20 years, and indeed no such easement could be claimed.

The proposition put before me is, that if the general body of a muhalla entertain a feeling of reverence towards any tree, no individual owning a house in that muhalla can seek to lop off any of its branches which may overhang his property, even though they may prejudicially affect it. That is a proposition unsupported by authority and inconsistent with common sense. I set aside the judgments and decrees of the Courts below and decree this appeal with costs.

*Appeal decreed.*