

## APPELLATE CIVIL

1907  
April 16.

*Before Mr. Justice Sir George Knox.*

ABDUL RAHMAN AND OTHERS (PLAINTIFFS) v. BHAGWAN DAS  
AND OTHERS (REPRESENTATIVES OF HARDEO SAILAI, DEFENDANT).\*

*Easement—Right of privacy—Defendant not allowed to give himself increased facilities for overlooking plaintiff's zenana.*

*Held* that the fact that the plaintiffs' zenana house might be to some extent overlooked by persons standing on the roof of the defendants' house was no justification for the defendant's opening fresh doors or windows in the wall of their upper storey looking towards the plaintiffs' house, whereby the plaintiffs' house might be overlooked without the person inspecting it being visible to the occupants of that house. *Gokal Prasad v. Radho* (1) referred to.

THE defendant purchased a house in the city of Meerut opposite to one owned by the plaintiffs and used by them as a zenana house. When the defendant purchased the house it had one storey only, but after a time the defendant began to add a second storey. He built a wall on the side of the plaintiffs' house and was putting in a door and two windows when the plaintiffs sued for an injunction to compel the defendant to block up the door and windows upon the ground that they were an interference with the plaintiffs' right of privacy. The court of first instance (Additional Munsif of Meerut) found that there had been no substantial interference with the plaintiffs' right of privacy, if any in fact existed, and accordingly dismissed the suit, and this decree was affirmed in appeal by the Additional District Judge. The plaintiffs thereupon appealed to the High Court.

Dr. *Tej Bahadur Sapru*, for the appellants.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Sarat Chandra Chaudhri*), for the respondents.

KNOX, J.—The plaintiffs and the defendant in this case are inhabitants of houses which lie opposite the one to the other. The defendant respondent has recently purchased the house, which was confined to one storey. He has begun to add to that house by constructing a second storey, and in the wall of the

\* Second Appeal No. 639 of 1905, from a decree of E. A. Kendall, Esq., Additional District Judge of Meerut, dated the 6th of April 1905, confirming a decree of Behari Lal Merh, Esq., Additional Munsif of Meerut, dated the 11th of August 1904.

1907

---

 ABDUL  
 RAHMAN  
 v.  
 BHAGWAN  
 DAS.

second storey which overlooks the plaintiffs' *zenana* he has pierced a door and two windows. The plaintiffs, alleging that by this act the defendant has invaded the right of privacy of the *pardah-nashin* ladies of their house, have brought this suit, praying that the defendant may, by a perpetual injunction, be restrained from opening towards the house of the plaintiffs any door or window in the northern wall of the upper storey of his house, and that a certain door frame, which he has already put up, may be removed. The defence is to the effect that before the defendant began to build, the plaintiffs' *zenana* was overlooked by the roof of the defendant's house, and that whatever right of privacy may exist in favour of the plaintiffs is a right which has not been substantially and materially interfered with by the action of the defendant. If the defendant's action has in any way affected the plaintiffs' right of privacy, it has virtually increased and not diminished that privacy. Both the Courts below have accepted this defence and held that it has not been proved that the defendant has intruded upon the privacy of the plaintiffs, but, on the other hand, has shut up all prospect except so much as may be seen from the places where the door and the windows have been opened. The plaintiffs having lost their suit in both the Courts below appeal to this Court and take the plea that the construction of the walls and doors makes the appellants' position worse, inasmuch as there is a greater apprehension now of the respondent using his second storey to the prejudice of the appellants' right of privacy.

In support of this plea the case of *Gokal Prasad v. Radho* (1) has been put forward. Particular stress has been laid upon the judgment of the learned Chief Justice, Sir John Edge. That portion is to be found at page 387, where a similar contention was raised to the effect that as the other portion of the house and part of the courtyard were overlooked from the houses of other people, there could be no substantial interference with any privacy of the plaintiffs' house. The learned vakil for the respondent also takes his stand upon the same judgment and points out that the learned Chief Justice held that every case of this kind must be governed by its particular facts. The primary question will be,

1907

ABDUL  
RAHMAN  
v.  
BRAGWAN  
DAS.

does the privacy in fact and substantially exist, and has it been and is it in fact enjoyed? If it is found that it did substantially exist and was enjoyed, the next question would be was that privacy substantially or materially interfered with by acts done by the defendant, without the consent or acquiescence of the person seeking relief against those acts? It is now admitted by both sides that in the town of Meerut, where these houses are situate, there is a local custom in favour of privacy, and all that I have to consider is, whether that privacy has been substantially or materially interfered with. At first sight it would seem that it had not been, but on giving the case my full consideration, I am inclined to the view that from an Indian point of view, there is a great deal to be said in favour of the right of privacy being more substantially and materially invaded by apertures which would permit a person to look on without being observed than by the existence of an open surface where the presence of a looker-on would at once be conspicuous and could easily be guarded against. Viewed in this light the acts of the defendant are clearly a substantial and material invasion of the right of privacy of the plaintiffs. I decree the appeal, set aside the decrees of both the Courts below and decree the plaintiffs' claim with costs in all the Courts.

*Appeal decreed.*

1907  
April 18.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burdett.*

NAJM-UD-DIN AHMAD (DEFENDANT) v. ALBERT PUECH (PLAINTIFF).  
*Civil Procedure Code, section 522—Arbitration—Award—Decree on award made without allowing time to file objections—Appeal.*

An appeal will lie from a decree passed in accordance with an award if such decree has been passed without allowing to the parties the time prescribed by law for filing objections to the award. *Ibrahim Ali v. Mohsin Ali* (1) and *Maharajah Joymungul Singh Bahadur v. Mohun Ram, Marwaris* (2) followed.

THE suit out of which this appeal arose was for an account of partnership dealings, and was referred to arbitration on the 20th of June 1905. On the 14th of November 1905, an award was made and the 25th of November was fixed for the disposal of the

\* Second Appeal No. 1031 of 1906, from a decree of Munshi Muhammad Ahmad Ali Khan, Additional District Judge of Meerut, dated the 7th of July 1906, confirming a decree of Mr. H. David, Subordinate Judge of Meerut, dated the 25th of November 1905.

(1) (1896) I. L. R., 18 All., 422.

(2) (1875) 23 W. R., 429.