

## APPELLATE CIVIL.

*Before Bhide J.*

RATTAN CHAND (DEFENDANT) Appellant

*versus*

LAL CHAND (PLAINTIFF) Respondent.

1933

Nov. 9.

**Civil Appeal No. 244 of 1933.**

*Easement — Agreement not to block windows — proper interpretation thereof—Extent of the diminution in light required—to found a claim for injunction or damages—Other sources of light—whether can be considered.*

The plaintiff sued for a mandatory injunction requiring the defendant, to demolish his house so as not to block the windows in his rooms marked R. 1 and R. 2 in the plan. The claim was based on a written agreement between the parties according to which the defendant undertook not to close (*band karna*) the windows in question. The Courts below held that the agreement merely meant that the plaintiff was entitled to as much light and air through the windows as he would have been if he had obtained a prescriptive right of easement thereof and using this test, found that there was no such diminution of light and air in respect of the windows in the room R. 2 as would entitle the plaintiff to relief but that he was entitled to relief in respect of the window in R. 1. On appeal, the learned Additional District Judge, however, awarded Rs. 200 as damages to the plaintiff in respect to room R. 2 on the ground that there was some diminution of light in that room owing to the defendant's building.

*Held*, that the interpretation placed on the agreement by the Courts below was correct and it could not be taken to mean that the defendant should not erect any building at all in front of the plaintiff's house.

*Gur Prasad Mukerji v. Bishan Lal* (1), followed.

*Held further*, that in order to entitle the plaintiff to relief, it was, therefore, not sufficient for him to prove that there was some diminution of light, but he must show that he is prevented from getting that quantity of light or air which is re-

quired for the ordinary purposes of inhabitancy or business, according to the ordinary notions of mankind.

*Paul v. Robson* (1), followed.

*Held also*, that in order to arrive at a decision on this point it was open to the Court to take into consideration other sources of light besides the one in dispute, and as the Courts below had decided that room R. 2 was still sufficiently lighted there was no actionable nuisance in respect thereof and plaintiff was not entitled to any relief either by way of injunction or damages.

*Second appeal from the decree of Mr. D. Falshaw, Additional District Judge, Lyallpur, dated 21st November, 1932, modifying that of Lala Ram Lal, Subordinate Judge, 4th Class, Sheikhpura, dated 22nd August, 1932, and granting the plaintiff a mandatory injunction and awarding him Rs. 200 as compensation.*

MUHAMMAD HUSSAIN, for Appellant.

V. N. SETHI, for Respondent.

BHIDE J.—The plaintiff sued in this case for a mandatory injunction requiring defendant to demolish his house so as not to block the windows in his rooms marked as R. 1 and R. 2 in the plan. The plaintiff also alleged that the defendant was not entitled to use the western wall of plaintiff's house for lateral support as he had done. The plaintiff's claim was based on a mutual agreement which had been executed between the parties. The Courts below have held that the agreement merely meant that the plaintiff was entitled to as much light and air through the windows as he would have been, if he had obtained a prescriptive right of easement thereof and using this test found that there was no such diminution of light or

1933

RATTAN CHAND  
vs.  
LAL CHAND.

BHIDE J.

1933

RATTAN CHAND

vs.

LAL CHAND.

BHIDE J.

air in respect of the windows in the room R. 2 as would entitle the plaintiff to relief, but that he was entitled to relief in respect of the window in R. 1. As regards the question of lateral support the trial Court held that the western wall was not joint as alleged by the defendant but it did not consider that plaintiff was entitled to any relief according to law. On appeal the learned Additional District Judge agreed with the findings of fact of the trial Court in respect of the windows in R. 1 and R. 2, but was of opinion that though plaintiff was not entitled to an injunction in respect of R. 2, he should get damages as there was some diminution of light owing to the defendant's building. He accordingly awarded Rs. 200 as damages in respect of the windows in room R. 2. As regards the window in the room R. 1 the trial Court had given no specific directions as to what portion of the defendant's house was to be demolished in order to give plaintiff the light and air to which he was found to be entitled. The learned Additional District Judge, therefore, directed that a portion 6 feet wide and 12 feet long in front of the window should be demolished. The learned Additional District Judge considered it unnecessary to give any findings as to the question of lateral support from the western wall as he was of opinion that the issue framed on that point was unnecessary.

From the above decision of the Additional District Judge the defendant has filed a second appeal while the plaintiff has filed cross-objections. It was urged on behalf of the defendant-appellant that the learned Additional District Judge having found that there was no appreciable diminution of light or air in the room R. 2, he was not justified in awarding a sum of

Rs. 200 as damages. It was further urged that the order passed by the learned Judge as regards demolition of a portion 6' x 12' in front of R. 1 was arbitrary and unjust and based on no evidence. On behalf of the plaintiff-respondent on the other hand it was urged that the interpretation placed upon the agreement by the Courts below was not correct and that the plaintiff was entitled to an injunction even in respect of the windows in R. 2. that the order as regards R. 1 was proper and that the plaintiff should also have been granted relief in respect of the lateral support from his western wall.

The first point for decision is the interpretation to be placed on the agreement between the parties. The agreement is somewhat vague as it merely says that the defendant was not to close (*band karna*) the windows in question. But considering all the circumstances it does not appear that the parties could have intended that the defendant should not erect any building at all in front of the plaintiff's house, the area belonging to the defendant being very small. The interpretation placed upon the agreement by the Courts below seems to be in accord with the view taken by the Allahabad High Court in respect of a similar agreement in *Gur Prasad Mukerji v. Bishun Lal* (1), and I see no good ground for interference with the finding in second appeal.

As regards the damages of Rs. 200 awarded by the learned Additional District Judge I am unable to find any justification for the same on the findings arrived at by him. The learned Additional District Judge agreed with the trial Court that the room R. 2

1933

RATTAN CHAND

v.

LAL CHAND.

BEIDE J.

1933

RATTAN CHAND

v.

LAL CHAND.

BRIDE J.

was sufficiently lighted otherwise. This being the case, I am unable to see why any damages should have been allowed at all. As pointed out in *Paul v. Robson* (1), a plaintiff is not entitled to relief in such cases unless he is able to show that he is prevented from getting the quantity of light or air which is required for the ordinary purposes of inhabitancy or business, as the case may be, according to the ordinary notions of mankind. Now the finding of the learned Additional District Judge in this case (as I understand it) was that the room was sufficiently lighted. There were two windows in R. 2 and one of these was blocked to the extent of a few inches only. The Courts have also found that there were other sources of light from doors and windows. Some of these adjoined a lane while others opened into a courtyard of the plaintiff himself. Taking all these facts into consideration the Courts found that the room R. 2 was sufficiently lighted. The learned counsel for the plaintiff-respondent contended that the Courts below were not justified in taking into consideration other sources of light. But this contention does not appear to be correct (see Peacock on the Law relating to Easements in British India, 3rd Edition, page 100). The learned Additional District Judge has remarked that there was some diminution of light, but this is not sufficient. On the findings of the Courts below, the room R. 2 being still sufficiently lighted, there was no actionable nuisance in respect thereof and consequently it would seem that the plaintiff was not entitled to any relief, either by way of injunction or damages. If the learned Additional District Judge

---

(1) (1915) I. L. R. 42 Cal. 46 (P.C.).

had found that the room was not sufficiently lighted and had considered damages to be a more appropriate relief than injunction in the circumstances of the case, the position would have been different. But this is not what the learned Judge found.

As regards the room R. 1, it is conceded by the learned counsel for the plaintiff-respondent that there is no evidence on the record to support the learned Additional District Judge's order and it is not possible to say whether it is necessary to order the demolition of the portion of the house mentioned in his judgment or whether demolition of a smaller portion will meet the requirements of the case. The contention of the learned counsel for the appellant is that demolition of a much smaller portion would have sufficed. This matter cannot, I think, be decided without a proper inquiry through a local Commissioner, and the case will have to be remanded for the purpose.

As to the last finding, *viz.* lateral support from the western wall, it is not clear why the learned Additional District Judge considered the issue on the point unnecessary. The defendant apparently claimed to use the wall for such support on the ground that it was joint but the finding of the trial Court was against him. The learned Additional District Judge gave no finding on this point. If the Additional District Judge comes to the same finding as the trial Court he will have to consider whether the defendant has taken any support from it, whether he was justified in doing so according to law, and if not what relief the plaintiff is entitled to.

I accept the appeal and the cross-objections in part and setting aside the order as to damages remand

1933

RATTAN CHAND

v.

LAL CHAND.

BHIDE J.

1933  
 RATTAN CHAND  
 v.  
 LAL CHAND.  
 BHIDE J.

the case for redecision as regards the relief in respect of the windows in R. 1 and the lateral support from the western wall of the plaintiff's house in the light of the above remarks. The appellant and respondent will get half their costs in this Court.

*P. S.*

*Appeal accepted in part;*

*Case remanded.*

---

**APPELLATE CIVIL.**

*Before Bhide J.*

DASONDHI MAL-DINA NATH (DECREE-HOLDER)

Appellant

*versus*

PIRTHU RAM AND OTHERS (JUDGMENT-DEBTORS)

Respondents.

Civil Appeal No. 1809 of 1932.

*Execution of Decree—Ex-parte simple money decree—no ambiguity—Objection by a judgment-debtor that he was not personally liable—whether competent in execution proceedings.*

In the execution proceedings of an *ex-parte* money decree one of the judgment-debtors raised an objection that he was not liable personally but only to the extent of his share in the joint family property. The decree was drafted as an ordinary money decree directing the defendants to pay the decretal amount. The lower Courts upheld the objection of the judgment-debtor and decided that the respondent could only be liable to the extent of his share in the joint family property.

*Held*, that an *ex-parte* decree is as good in law as a decree passed after contest and the function of the executing Court is to take the decree as it stands, *i.e.* in the present case a simple money decree against all the judgment-debtors person-