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SHANKAR SANA v. SHIVABHAI VALLAVBHAI.

I agree with the remarks made by the learned District Judge. It is certainly desirable that there should be some further publication of the notice calling for claims than the mere publication in the *Government Gazette*. Under section 14 (1) the notice would be published in the *Government Gazette* and in such other manner as the Governor-in-Council may, by general or special order, direct, and I think our best course is to send a copy of the proceedings in this case and our judgment to Government, suggesting that some special order should be made under section 14 (1) of the Court of Wards Act with regard to the further publication of notices calling for claims under that section. At present this appeal must be dismissed with costs.

HEATON, J.:—I agree.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

1919.

November 14.

MANEKLAL MOTILAL, HEIR AND LEGAL REPRESENTATIVE OF PARIKH MOTILAL VRIJLAL, SINCE DECEASED (ORIGINAL DEFENDANT), APPELLANT *v.* MOHANLAL NAROTUMDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

Right of privacy—Customary right of privacy in Gujarat—Invasion of privacy an actionable wrong—Injunction.

The plaintiff, a resident of Ahmedabad, sued for an injunction to restrain the defendant from invading the privacy of his bed-room by opening a window in the additional storeys erected by him. The District Judge found that the plaintiff had a right of privacy to the particular room and granted the injunction prayed for. On appeal to the High Court,

Held, that in the province of Gujarat the customary right of privacy must be taken to have been proved and the invasion of the right was an actionable wrong.

* Second Appeal No. 518 of 1918.

Manishankar Hargovan v. *Trikam Narsi*[1], relied on.

SECOND appeal against the decision of B. C. Kennedy, District Judge of Ahmedabad, modifying the decree passed by M. M. Choksi, Additional First Class Subordinate Judge at Ahmedabad.

Suit for an injunction.

Plaintiff and defendant owned houses facing one another over a narrow khadki (lane). The plaintiff complained that the defendant while repairing his house put two new windows in his third floor and added a fourth floor; that through the windows defendant was able to peep into the plaintiff's apartments on the second floor and thus his privacy was interfered with. Plaintiff prayed for several injunctions against the defendant as follows:—Lowering of house to old limits in order to prevent diminution of light and air, removal or obstruction of windows on the third and fourth floor so as to secure privacy, removal of eaves so as to prevent discharge of water on the plaintiff's chowk.

The defendant contended that there were two windows in his third floor for nearly fifty years and the new windows were placed where the old windows were; that there was no interference with the plaintiff's right of privacy, that the eaves were not extended further and that the plaintiff raised no obstruction to the building of the new storey.

The Subordinate Judge dismissed the plaintiff's suit holding that the two windows in the third floor of the defendant's house were not newly opened; and that the plaintiff had not enjoyed the right of privacy.

On appeal, the District Judge held that the windows were new and created an invasion of the plaintiff's

[1] (1867) 5 Bom. H. C. (A. C. J.) 42.

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right of privacy. He, therefore, granted an injunction restraining the defendant from invading the privacy of the plaintiff's bed room.

The defendant appealed to the High Court.

G. N. Thakor, for the appellant.

H. V. Divatia, for the respondent.

MACLEOD, C. J. :—In this case the plaintiff sued for several injunctions against the defendant, his neighbour. He succeeded in getting an injunction from the District Judge restraining the defendant from invading the privacy of his bed-room by opening a window in the additional storeys erected by him. The Judge has found as a matter of fact that the privacy of the plaintiff was not invaded directly before the house of the defendant was raised, and he has given effect to the decisions of this Court which have held that in the Province of Gujarat there is a customary usage which makes an invasion of privacy an actionable wrong, and that a man may not open new doors or windows in his house, or make any new apertures, or enlarge old ones, in a way which will enable him to overlook those portions of his neighbour's premises which are ordinarily secluded from observation. That is laid down in *Manishankar Haryovan* v. *Trikam Narsi*[1]. The Court said: "A series of decisions extending over a long number of years [and commencing with 1 Borr. 272] has settled the question". Those decisions must no doubt have been founded on evidence, at any rate we must presume that, and as the case cited has never been over-ruled, in second appeal it is impossible for us to say that the decision on a question of fact was wrong. Therefore in the Province of Gujarat this customary right of privacy must be taken to have been proved. The only ground upon which it may be argued

[1] (1867) 5 Bom. H. C. (A. C. J.) 42.

that the decision of the learned District Judge was wrong was that the plaintiff before the defendant altered his building had no privacy for this particular room. For, if already there was a window in the defendant's house which looked directly into the plaintiff's bed-room, it would make no difference if more windows were added which also overlooked the plaintiff's room. But the learned Judge has found as a fact that the plaintiff had a right of privacy of this particular room and that right of privacy was not affected by the fact that a man with a flexible neck standing on the defendant's Agashi (which did not actually belong to the house in dispute), might be able to crane over and thus see a portion of the plaintiff's bed-room. That, as the learned Judge remarked, would be a positive act of spying. I do not think that it could be said that the plaintiff has not acquired a right of privacy for his bed-room, merely because a person by doing something, which he ought not to do, might be able to look into a portion of it. In my opinion, therefore, the decision of the learned District Judge was right. The appeal should be dismissed with costs.

HEATON, J. :—I agree. It was argued that the somewhat peculiar exception to the general law which has been applied to the Province of Gujarat really ought not to be applied. We have an instance of it in the case of *Manishankar Hargovan* v. *Trikam Narsi*[1] and it is now too well-recognised to be successfully disputed. It is not contended in this case that the person aggrieved belongs to a class who do not by custom obtain the benefit of this law as to privacy. It may be there are people on whom this peculiar custom confers benefit, and others, who do not take that benefit. But no point of that kind is raised here. Therefore we

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have to accept first of all that the rule as to privacy applied in this neighbourhood; and, secondly, that it applies to the plaintiff. That being so, the questions whether his privacy was real before the present additions to the defendant's house, and whether that privacy is now invaded by reason of those additions, are both purely questions of fact. They are not, and cannot, as far as I can see, be questions of law. The Judge below has found on those questions of fact. He is right in his application of the law, and I think his decision must be affirmed and the appeal must be dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Crump.

1919.
December 24.

KRISHNAJI SAKHARAM DESHPANDE (ORIGINAL DEFENDANT), APPELLANT *v.* KASHIM *valad* MOHIDINSAHEB HAVALDAR AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Indian Limitation Act (IX of 1908), section 20, Article 116—Mortgage of Vatan lands—Death of mortgagor—Mortgagor's son recovering possession of lands—Suit by mortgagee to recover mortgage money—Limitation—Covenant in the mortgage deed to pay mortgage money.

In 1893, certain Vatan lands were mortgaged with possession for Rs. 2,000 for a period of twelve years by the Vatandar. The mortgage deed contained a covenant: "If there be any hindrance to the continuance of the land, I shall pay the said sum together with interest thereon at the rate of one per cent. per mensem out of my other estate and personally in the year in which the hindrance may arise". The mortgagor having died in 1901, his son recovered possession of the lands in 1914 on the ground that on the death of the mortgagor the mortgage became void under section 5 of the Bombay Hereditary Offices Act, 1877. The mortgagee thereupon sued to recover the mortgage amount with interest relying upon the personal covenant in the deed:—

Held, that the claim was barred by limitation.

* Second Appeal No. 233 of 1917.