1903 MARCH 19, 20, 23, 24, 25, 26. APRIL 1.

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30 C. 883.

That being so, we must hold that there has been nothing shown in the circumstances under which the leases were granted or the subsequent conduct of the parties from which it could be inferred that the leases were intended to be perpetual.

It remains now to notice the fourth and last point raised in the case, namely, whether any notice was necessary for the maintenance of the suit, and, if so, whether the notice given was not a bar to the claim for mesne profits for 1955 Sambat. Of course, if a notice was necessary, the terms of the notice would lend support to the contention that the claim for the mesne [900] profit for 1955 was not maintainable. But we are of opinion that no notice was necessary for the maintenance of the suit; and the terms of the notice go to show that though notice was given, the plaintiff did not admit that such notice was necessary. The notice states that although the leases came to an end upon the death of Sheotahal Ram Sahu, the last of the lessees, and the mauzas were brought under resumption, the defendants, without any reason, refuse to give up possession, and the notice was given evidently with a view to remove any possible objection that might be made. In the view we have taken of the nature of the leases we do not think that any notice was necessary for the maintenance of the suit. In that view of the case there can be no objection to the plaintiff's recovering mesne profits for 1955. The result is that the points for determination must be decided in favour of the respondent and this appeal dismissed with costs.

Appeal dismissed.

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30 C. 901.

[901] APPELLATE CIVIL.

FAZILATUNNESSA *v.* IJAZ HASSAN.* [12th June, 1903.]

Co-sharers—Building, right to removal of—Discretion of Court—Judgment, contents of.

Where several parties are joint owners of land and one of them erects a wall upon the land without the consent of his co-sharers, the Court should not interfere to order the demolition of the wall when there is no evidence to shew that injury has been done to the party complaining and that reasonable steps were taken in time to prevent the erection of the wall.

Najju Khan v. *Imtiazuddin* (1) dissented from. *Nocury Lall Chuckerbutty* v. *Brindabun Chunder Chuckerbutty* (2), *Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee* (3) and *Joy Chunder Rukhit* v. *Bippro Churn Rukhit* (4) followed.

In a suit like the present it is of the utmost importance that the decree should state the precise nature of the relief granted.

[Dist. 1906 A. W. N. 221. Ref. 4 C. L. J. 198; 20 I. C. 263; 11 C. L. J. 189= 5 I. C. 171.]

SECOND APPEAL by defendant No. 1, Bibi Fazilatunnessa.

The plaintiffs and the defendants are the co-owners of mouza Rasulpore Fateh, and have their respective dwelling-houses on the said land, separate portions of which were in their individual occupation by mutual

* Appeal from Appellate Decree No. 1423 of 1900, against the decree of A. E. Staley, District Judge of Mozufferpore, dated May 3, 1900, affirming the decree of Mahmood Hasan, Munsif of Mozufferpore, dated Jan. 9, 1900.

(1) (1895) I. L. R. 18 All. 115.
(2) (1882) I. L. R. 8 Cal. 708.
(3) (1886) I. L. R. 14 Cal. 189.
(4) (1886) I. L. R. 14 Cal. 236.

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30 C. 901.

consent as the *ramna* or compound of their houses. A few months previous to the institution of the suit, defendant No. 1 erected a wall upon a portion of this *ramna* in her occupation. The plaintiffs alleged that the erection of the wall obstructed the passage for "egress and ingress to the mosque, *imambara* and dwelling-house." But there was no clear finding on this point by the Lower Appellate Court, and there was no suggestion that the defendant No. 1 had been warned not to erect the wall. In the plaint the plaintiffs prayed as follows:—

"(1) That it may be adjudicated that the *ramna*, which is attached to the house of both the parties and which is about 3 bighas [902] 6 cottas 16 dhurs, and the boundaries whereof are given in schedule I of the plaint, is *ijmali* (joint); that the plaintiffs have the right to use the aforesaid *ramna* that, in like manner, the house of Mussammat Mitho, together with about 1 cotta of land appertaining thereto, as bounded below in schedule No. 2, is also *ijmali* (joint), and that it is not the exclusive property of the defendants 1st party.

(2) That, for the convenience of both the parties, a direction may be given for the use of the *ramna* by each party, and that it may be further ordered that no party should use the *ramna* in such a way as to do mischief and injury to another party.

(3) That the defendant, 1st party may be stopped from raising a new wall in the *ijmali ramna* land; that the brick wall, 56 feet long, and the mud wall, 132 feet long, and each 2 feet broad, as per boundaries given below in schedule No. 8, so far as the walls have already been constructed and are being constructed and will be constructed hereafter may be demolished, and removed; that the expenses incurred in demolishing the wall and levelling the ground may be taken from the plaintiffs, and that a decree for so much amount with interest thereon may be passed against the defendant 1st party.

(4) That if the Court, having regard to the convenience (of the parties), their possession and their use of the *ramna* land and *sahan*, considers partition thereof necessary, the Court may separate the *ramna* land to the extent of 3 annas, the share of the plaintiffs by effecting partition thereof and fixing the boundary limits thereof.

(5) That other reliefs to which the plaintiffs may be entitled may also be granted to the plaintiffs.

(6) That the costs in Court may be awarded against the defendant 1st party."

The Munsif after setting forth in the decree the reliefs asked for in the plaint ordered that the suit be decreed with costs, without stating the precise nature of the relief granted, and the District Judge affirmed on appeal the decree of the Munsif.

Mr. *O'Kinealy*, Babu *Umakali Mookerji* and *Syed Mahomed Tahir* for the appellant.

Dr. *Ashutosh Mukerji*, Babu *Jnanendra Nath Bose* and Babu *Joy Gopal Ghose* for the respondents.

PRATT AND MITRA, JJ. The facts found in this case are as follows:—Plaintiffs and their aunt, the defendant No. 1, are co-owners of mouza Rasulpore Fateh, and have their respective houses upon the land, and they occupy separate portions of the [903] *ramna* or compound by mutual permission and for their individual convenience. A few months before suit the defendant erected a wall upon a portion of the compound in her occupation, and this the learned Judge held that she had no right to do, as it operated to restrain the plaintiffs from passing over the land so built over, and therefore he thought they were entitled to have the wall demolished, even though it caused them no damage.

Though the view thus expressed by the learned Judge may perhaps be justified by the case of *Najju Khan* v. *Imtiazuddin* (1), it is not consistent with the decisions of this Court as expressed in a number of cases, of which we think it sufficient to cite only the three following. In *Nocury Lall Chuckerbutty* v. *Brindabun Chunder Chuckerbutty* (2), it was held as follows:—"There is a considerable difference between a case in which the other co-sharers, acting with diligent watchfulness of their rights, seek by an injunction to prevent the erection of a permanent building and a case in which, after a permanent building has been erected at considerable expense, he seeks to have that building removed. In a case such as that last mentioned the principle which seems to have been settled by the decisions of this Court is this that though the Court has a discretion to interfere and direct the removal of the building, this is not a discretion which must necessarily be exercised in every case; and as a rule it will not be exercised unless the plaintiff is able to show that injury has accrued to him by reason of the erection of the building, and perhaps further that he took reasonable steps in time to prevent the erection." In the case of *Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee* (3), it was laid down that there is no such broad proposition as that one co-owner is entitled to an injunction restraining another co-owner from exceeding his rights absolutely and without reference to the amount of damage to be sustained by the one side or the other from the granting or withholding of the injunction. That case was cited and expressly followed in *Joy Chunder Rukhit* v. *Bippro Churn Rukhit* (4).

In the case before us there appears to be no suggestion that the defendant had been warned not to build the wall. No specific **[904]** injury to the plaintiffs has been found in the judgment of the learned Judge. In the plaint it was stated that the site of the wall was used as a passage for egress and ingress to the mosque, *imambara* and dwelling-house. Issue No. 6 expressly raises the question of obstruction to the plaintiff's right-of-way. The Munsif states in his judgment that the evidence on behalf of the plaintiffs was that they used to go to the mosque and *imambara* over the land where the wall has been erected, and that the defendant's pleader contested the question with so little force that the Munsif considered he had fallen in with his own view, that this part of his case was weak and indefensible. Possibly the appellant did not contest the Munsif's finding on this point in the Appellate Court. However that may be, it is necessary for the Judge to consider the matter. Even if he thinks that the plaintiffs had a way of necessity which has been obstructed, still it may not be necessary to remove the whole of the wall in order to afford the plaintiffs a convenient passage.

The case must be remanded to the Lower Appellate Court for reconsideration in the light of the above observations. The Judge's attention is drawn to the very imperfect decree of the Munsif, which he affirmed. That decree after setting forth the reliefs asked in the plaint, which included a prayer for partition, simply ordered that the suit be decreed. In a case like the present one it was of the utmost importance that the decree should state the precise nature of the relief granted. Costs of this appeal will abide the result.

We desire to state in conclusion that the parties being nearly related to each other would be well advised to settle the dispute amicably.

Case remanded.

(1) (1895) I. L. R. 18 All. 115.
(2) (1882) I. L. R. 8 Cal. 708.
(3) (1886) I. L. R. 14 Cal. 189.
(4) (1886) I. L. R. 14 Cal. 236.