

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Glover.

LALA BISWAMBHARIAL (ONE OF THE DEFENDANTS) v. RAJARAM
AND ANOTHER, (PLAINTIFFS).*

1869
May 20

Suit for Demolition of a Wall.

Where two parties were joint owners of land one of them erected a wall upon the land, without obtaining the consent of his co-sharer, held, that the Court would not interfere to order the demolition of the wall, when there was no evidence to show that injury had been done to the co-tenant of the builder by its erection.

SEE ALSO
12 B. L. R. 19

Mr. R. T. Allan and Baboo Bhawanee Charan Dutt for appellant.

Babooo Mookes Chandra Chowdhry, Ramesh Chandra Mitter, and Durga Das, Dutt for respondents.

PEACOCK, C. J.—One issue, raised by the Subordinate Judge, was “whether the said land being joint, the defendant’s erecting a wall of the house over the said joint land is valid, or whether the said wall ought to be demolished.” He then in his judgment proceeds to show that the land is joint, and he says that “in compliance with what has been above alluded to, it is proved that the said land is conjointly held by both parties; under these circumstances, the defendant’s erecting a wall of his house on the conjoint land, without the accord and consent of the plaintiff, is by all means unlawful, nay, the said wall is fit to be demolished, therefore it is ordered that the appeal be dismissed,”—the substance being that the wall was to be demolished. It appears to me, that even if the defendant had not a strict legal right to build the wall upon the joint land, that this is not a case in which a Court of Equity ought to give its assistance for the purpose of having the wall pulled down. A man may insist upon his strict rights, but a Court of Equity is not bound to give its assistance for the enforcement of such strict rights.

It appears to me that this is a case in which apparently no injury to the plaintiff has been caused by the erection of the wall, and that, therefore, the plaintiff ought to be left to such remedy as he may have, without applying to a Court of Equity for assistance, in having the wall demolished. He may, if he think fit, apply for a partition, but I do not think that it would be equitable after the defendant has gone to the expense of building the wall upon the land of which he was a joint owner, to have that wall demolished at the suit of his joint co-sharer, without showing that it causes any injury to the plaintiff.

Under these circumstances, I think that the appeal ought to be allowed, and the suit of the plaintiff dismissed with costs.

GLOVER, J.—I concur.

*Special Appeal, No 474 of 1869, from a decree of the Subordinate Judge of Sarun, dated the 21st Nov. 1868, affirming a decree of the Munsiff of Pusa in that district, dated the 14th February 1868.