

Muhammad Khan Vs. Dhuman Khan

Muhammad Khan Vs. Dhuman Khan

SooperKanoon Citation : sooperkanoon.com/459167

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1897)ILR19All153

Judge : Aikman, J.

Appellant : Muhammad Khan

Respondent : Dhuman Khan

Judgement :

Aikman, J.

1. The parties to this suit are neighbours occupying adjoining houses in the city of Allahabad. The houses stand at right angles to one another. The house of the plaintiff looks towards the west, and that of the defendant towards the south. The land in the angle formed by the houses was alleged by the plaintiff to belong to him. It has been found by the Courts below that this land does not belong to the plaintiff, but is a portion of a public lane, the ownership of which is vested in the Municipality. The plaintiff has a balcony and windows in the front of his house. He came into Court alleging that a month before the date of the institution of his suit the defendant had constructed a balcony supported by stone rests, which, projecting from the front of his (defendant's) house, interfered with the plaintiff's balcony and with the light and air of one of the plaintiff's windows, and he prayed for the demolition of a portion of the defendant's balcony. The lower Courts have

given the plaintiff a decree, and the defendant comes here in second appeal. The plaintiff did not in his plaint allege that he had acquired any right of easement. The finding of the Court below is that the plaintiff's balcony and window have not been in existence for more than fifteen years at the outside. It is dear that this term is not sufficient to create a right of easement. But the Lower Appellate Court, relying on the case *Jootoor Achanna v. Vanamala Venkamma* 5 Madras Law Journal p. 25 has nevertheless decreed the claim. In my opinion that case is not in point. In that case it was held that it was not necessary for the plaintiff, who received light through a window in his wall opening on a piece of vacant ground the property of Government, to establish prescriptive rights against the defendant, who was a wrong doer, and that the mere fact of the plaintiff's enjoyment was sufficient to entitle him to an injunction. The learned Judge who decided that case relied on the decision in *Jeffries v. Williams* 20 L.J. Ex. 14. In that case it was objected by the defendants that the plaintiffs had not alleged that they had acquired any right of support from the soil in which the defendants had been excavating mines. In his judgment Parke, B. remarked with reference to this plea: 'If it had appeared in the declaration that the soil in which the mines were was the defendant's, or that the defendant had all the right to get the mines which the owner of the adjoining soil had, the objection would have been fatal; because, arguing against a person having the right to the adjoining soil, or claiming under one that had all his rights to interfere with the soil, it would be necessary for the plaintiffs to show a title to a support of the soil according to the doctrine laid down in *Wyatt v. Harrison*; but if the defendant is not stated in the declaration to have any such right, and is therefore prima facie a wrong doer, the declaration, it seems to us, would be sufficient.' It appears from this that the principle upon which that case and the case in the Madras High Court were decided was that the defendant was a wrong doer. In the present case, however, the defendant has received permission from the owner of the soil, that is from the Allahabad Municipality, to construct the balcony which projects from his house. This being so, I am of opinion that the principle of *Jeffries v. Williams* 20 L.R. Ex. 14 will not apply, and that the plaintiff was not entitled to the relief he asked for, inasmuch as he had not acquired by prescription any easement as against the defendant or the Municipality. Taking this view, I hold that this appeal must succeed. I set aside the decrees of the lower Courts and

dismiss the plaintiff's suit with costs in all Courts.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com