

Diwan Singh Vs. Inderjeet

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Court : Allahabad

Decided On : Jul-13-1981

Reported in : AIR1981All342

Judge : Deoki Nandan, J.

Acts : [Easements Act, 1882](#) - Sections 18; [Specific Relief Act, 1963](#) - Sections 36

Appeal No. : Second Appeal No. 1326 of 1980

Appellant : Diwan Singh

Respondent : inderjeet

Advocate for Def. : Dhruwa Narain, Adv.

Advocate for Pet/Ap. : L.P. Naithani, Adv.

Disposition : Appeal dismissed

Judgement :

Deoki Nandan, J.

1. This is a plaintiffs second appeal in a suit for mandatory injunction directing the defendant to close the windows opened by him in the rooms on the first floor of his house facing the plaintiff's property, and a prohibitory injunction restraining the defendant from discharging dirty water in the 5' wide lane between houses of the

parties.

2. The parties are displaced persons having settled down at Dehradun after partition. Their respective houses are divided by a 5' wide lane. The suit was filed when the defendant sought to raise the construction on the first floor of his house. The plaintiff's house is to the south of the land while the defendant's house is to the north thereof. The plaintiff did not claim that the land was his private property, but he claimed that it was not a public street and only the owners and residents of the houses to the south of that lane had a right to use it. The closure of the two windows, opened by the defendant in the two rooms on the first floor of his house, was sought on the ground that they infringed the plaintiff's privacy and the defendant was sought to be prevented from discharging the dirty water of his house through the lane on the ground that it was not a public street and he could discharge the same through the public street to the north of his house.

3. So far as the alleged infringement of the right of privacy is concerned, it has been found by the two Courts below that only 1/2 part of the one of the two windows overlooks the open courtyard in the front of the plaintiff's house, learned counsel for the plaintiff urged that the right of privacy was a well-recognised customary right in this part of the country and the two Courts below were in error in not ordering the closure of the windows. Before looking into the cases relied upon by the learned counsel, I must also observe that the window overlooks the outer courtyard of the plaintiff's house and not the inner court-yard. That outer courtyard opens on the 5' wide lane between the houses of the parties and even before the construction of the first floor of the defendant's house, it was overlooked completely from the open roof of his house. There could be, in my opinion, no right of privacy in respect of an outer courtyard of one's house which opens on the street in the front of the house. The right of privacy used to be recognized in respect of the inner courtyard.

4. Learned counsel for the appellant cited the case of *Ganeshi Lal v. Smt. Rasool Fatima* : AIR1977 All118 in which M. Hamid Hussain, J., was rather critical of the decision of Dhavain, J., in *Basai v. Hasan Raza Khan* : AIR1963 All340 and referred to certain old decisions which show that the right of privacy was a well-

recognized customary right in this part of the country and said that it was not open to a learned single Judge of this Court to go against the decisions of a Division Bench. With respect I would observe that the right of privacy being a customary right, it is always open to the Court to see whether the custom is, in the circumstances, reasonable and whether it has ceased to be enforceable by desuetude. Be that as it may, the customary right of privacy may be said to exist only in respect of the inner courtyard, and the inner parts of a house inhabited by women and cannot by any stretch, be said to exist in respect of the outer courtyard of a house which opens on the front street. The decision in *Kumi Behari v. Brij Behari Lal* (AIR 1947 Oudh 139) is also of no help. The customary right of privacy was found to exist in that case 'in the plains of the United Provinces'. Dehradun is on the hills and, at any rate, not in the plains. Moreover, it was held in that case that it is not every infringement of privacy which is actionable. It must be shown that there has been a substantial and material infringement of privacy. The right of privacy cannot be carried to an oppressive length. Each case must be decided upon its own peculiar facts in determining whether there has or has not been a substantial infringement of the right of privacy and lastly, in that case, the fact that the plaintiffs residential portion was overlooked from the open roof of the second storey of the defendants' houses was found sufficient for holding that the construction of a room roofed with tin and having five doors in place of the open roof did not make any such material alteration as to justify the closure of the doors. In the present case also the plaintiffs courtyard was overlooked from the roof of the defendant's house. The construction of the room on the first floor and putting of the windows in question does not in any manner increase the chances of overlooking the plaintiff's courtyard from the defendant's house. Indeed, the change of doing so would be much less now.

5. As to the flowing of the dirty water of the defendant's house through the drain on the 5 wide lane in front of the plaintiff's house, it is clear that the lane is not the private property of the plaintiff and that being so, all the owners of the houses whether to the south of the lane like the plaintiff or to the north of the lane like the defendant, have a right to use the lane. Nothing has been shown to me to restrict the right to use the lane only by those who have their houses to the south of it. What was urged was that the lane was not a public street and did not vest in the

Municipal Board. That only means that the Municipal Board may not be liable to maintain it or to clean it but that does not show that the defendant has no right to use it. The fact that the defendant has a lane to the north of his house also does not mean that he cannot use the lane to the south of his house.

6. The appeal fails and is dismissed with costs.

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