

Lachmi Narain Vs. Ram Bharosey

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Court : Allahabad

Decided On : Jul-29-1926

Reported in : AIR1926All764; 97Ind.Cas.500

Appellant : Lachmi Narain

Respondent : Ram Bharosey

Judgement :

Mukerji, J.

1. To understand the facts of this appeal it will be necessary to look at two plans which I have marked for the sake of identification with my own initials and have numbered them as 1 and 2. The parties are neighbours. The plan LGM 1 will show that the plaintiff's house lies to the south-east corner. There is a piece of land which is described as the land in dispute. To the east of that land is the defendant's house. It occupies almost the whole of the eastern boundary of the land. To the south of the land are a temple and a house besides the plaintiff's platform which is really nothing but a stepping stone into the plaintiff's house which is to the further south. To the west of the land is a public road and to the north is a third person's house. The plaintiff's house is shown in map LGM 2. If the lines AB and CD be fitted on to the lines AB and CD on the plan LGM 1 a clear idea of the whole situation could be made. The house of the plaintiff is already mentioned, lies to the south-(SIC) corner of the land in dispute. The entrance into the house lay

over this piece of land: but after the plaintiff's house has been once reached, all concern with this open piece of land ceases. The land does nothing more than provide a means of passage into the plaintiff's house. I am for the present not speaking of any passage of air and light-a topic which is in controversy in this appeal.

2. The plaintiff's case was that he had a right of easement over the entire area of the disputed land for the purpose of using it for sitting purposes on occasions of births or deaths in the family. That portion of his case has been found against him. The plaintiff also claimed a right of way over the land and this portion of his claim has been acceded to him. The plaintiff further claimed a right of easement for air and light to his house through this open space. The plan does not clearly specify, vide para. 2 of the plaint, the portions of the plaintiff's building to which light and air were received though this open piece of land. Para. 2 however of the plaint shows that all that the plaintiff claimed was that he received light and air through a certain doorway at the letters. A and B in plan LGM 1, and through a window in the upper storey shown in the plan LGM 2 by the letter W. As to the window, it has been found that it does not appertain to any room. The space behind the window is an open one and forms the roof of the first story. It is clear, therefore, that this portion of the claim was rightly dismissed in the Court below.

3. The plaintiff's complaint is that the defendant was building a wall, being a portion of a contemplated building, at a distance of 6' 6" from his platform and that there was a danger of light and air being shut out by this wall. It appeared during the course of investigation in the Courts below, that the proposed wall was to go as high as 20, that being the height of the buildings of the defendant and the plaintiff on the spot. Dr. Katju has, to-day, agreed, after consultation with his client, that the defendant would not take the building to a greater height than 12' from the surface of the disputed land.

4. The Court of first instance held that the threatened building of the wall would materially diminish the passage of light and air into the plaintiff's building and it accordingly decreed this portion of the claim. On appeal the learned Subordinate Judge held that the wall was not likely to make any substantial diminution of air

and light and he accordingly dismissed the claim. In appeal it has been contended that the learned Judge was not right in his opinion. It was farther contended that the decision of the learned Subordinate Judge was arrived at without a proper consideration and discussion of the evidence adduced in the case.

5. To take the second point first: It appears to me that this ground of complaint is not substantial. It is not said that the learned Judge did not hear all the evidence that was offered to be read out to him. All that is said is that the learned Judge has not discussed in his judgment the various evidence that has been led and that he decided the case on a mere inspection of the plan of the locality. The learned Judge does refer to the fact that a vast amount of evidence has been adduced and some of the evidence purports to have been given by experts. If the learned Judge did not find it necessary to discuss that evidence it can hardly be said that he did not pay any attention to that evidence specially as it is not a part of the appellant's case that evidence was not allowed to be read.

6. Coming to the first point: The learned Judge found that the people were residing in a place like Cawnpore where much of the population lived in a congested area. Of course that would be no ground for further congesting the residential places of the parties. But what may be a legitimate grievance for a person living, say, in the Civil Lines of Allahabad, cannot be a legitimate grievance for a person living in a congested portion of the city of Cawnpore. My attention on this point has been called to the case of Behari Lal v. Maclean AIR 1924 All 392 which, in my opinion, is quite relevant on the point. The learned Judge found that the plaintiff's building adjacent to the land in dispute, consists of a platform and two rooms behind it. The platform has been marked as by me on the plan LGM 2 and the two rooms behind it have been marked respectively by me as Y and Z on the same plan. The learned Judge found that the room Y was only 3' 4' square and the room behind Y, viz., room Z, was 7' 10' 3' 9. He also found that the door AB in the room Y opened to the north and it did not, therefore, receive any direct rays from the sun. All the light that was received was diffused light. He noticed that as they stood before the building by the defendant was contemplated, not much light was received by the rooms Y and Z. The learned Judge came to the conclusion that by building a wall 20' high there would not be a substantial diminution of air and light to the rooms Y

and Z.

7. The law on the point is not to be found in its entirety in Section 28 of the Basements Act as has been contended for by the learned Counsel for the appellant. Section 28 does no doubt mention the quantity of air and light to which a person is entitled, as a right of easement. But reading Sections 33 and 35 along with Section 28, it is abundantly clear that it is not every interference with the right of easement that gives a right of suit. To give a right of suit either for compensation or for an injunction there must be a substantial diminution. The case of Kunni Lal v. Kundan Bibi (1907) 29 All 571 decided by a single Judge of this Court has been relied on behalf of the appellant. But; there is a two Judge case of this very Court in Gajadhar v. Kishori Lal AIR 1915 All 151. The later case deals with Sections 33 and 35 as well, while the earlier case does not make any mention of those two sections. I have no doubt that the later case should be followed in preference to the earlier case. That being so the plaintiff, for his success was bound to prove that the projected building was likely to diminish the access of light and air into his rooms Y and Z to a substantial extent. What would be a substantial damage within the meaning of Section 43, in the case of an inhabitant of an open area need not necessarily, be a substantial damage to a person accustomed to living in a congested area. I need not again refer to the case in Behari Lal v. Maclean AIR 1924 All 392 already referred to. The position is this: At a distance of 6' 6" plus 2' 10" (being the breadth of the plaintiff's platform) from the entrance AB it is proposed to build a wall 12' high. Can it be said that the building which would be erected to the north of the entrance would so far obstruct the passage of light and air into the rooms Y and Z that the plaintiff would suffer substantial damage? Is really a mixed question of fact and law and has to be answered according to one's own light. In my opinion the learned Subordinate Judge may have been partially wrong in thinking that a wall 20' high would not cause substantial damage to the plaintiff. But in my opinion if the wall is not higher than 12' no substantial damage would happen to the plaintiff so as give him a right of action. In this view the appeal should be practically dismissed.

8. The result is that I hereby modify the decree of the Court below by enjoining the defendant perpetually from raising a building more than 12' high (as undertaken by

him before me) at the contemplated site, vide plan LGM. The rest of the appeal is dismissed. In the circumstances of the case the parties will pay their own costs of this appeal. I make no order as to the costs in the Court below. The plan LGM 1 and the plan LGM 2 will form parts of the decree of this Court.

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