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Ram Naraln Vs. Shib Lal

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Court : Allahabad

Decided On : Apr-16-1910

Reported in : 6Ind.Cas.398

Judge : John Stanley, C.J. and ;Banerji, J.

Appellant : Ram Narain

Respondent : Shib Lal

Judgement :

John Stanley, C.J.

1. In view of the findings of fact of the lower appellate Court, I am of opinion that the learned Judge of this Court ought not to have interfered with its decree. For similar reasons Appeal No. 24 of 1907, under the Letters Patent, was decided by a Bench of this Court of which I was a member. In that case I and my Brother Burkitt held, in a somewhat similar case, that in view of the findings of both the lower Courts, the learned Judge of this Court, from whom the appeal in that case was preferred, should not have disturbed the decisions of the Courts below. I would, therefore, allow this appeal, set aside the decree f of the learned Judge of this Court in regard to the windows complained of and restore the decree of the lower appellate Court with costs.

Banerji, J.

2. I am of the same opinion. It was pointed out, in the case of Gokul Prasad v. Radha 10 A. 358, that every case must depend on its own facts. In every case the principal question is whether the right ' of privacy exists and whether there has been a substantial invasion of the right if it exists. The question whether a right of privacy exists and whether it has been infringed is a question of fact. In the present case, the learned Judge of the lower ...appellate Court found that the plaintiff had aright of privacy and that this right had been substantially interfered with by the erection of windows which the defendant opened in his house. This Court in second appeal is bound to accept the findings of fact of the Court below, and upon the findings, to which I have referred, it ought to have dismissed the appeal instead of reversing the judgment of the Court below. 1 would accordingly allow the appeal and restore the decree of the lower appellate Court with costs as regards the windows in question.

3. The order of the Court is that the appeal is allowed and the decree of the learned Judge of this Court so far as regards the opening of the windows complained of is set aside and the decree of the lower appellate Court in respect of those windows is restored with costs.

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