

Syed Hakimullah Vs. Md. Samiullah

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Court : Allahabad

Decided On : Mar-27-1935

Reported in : AIR1935All750a

Appellant : Syed Hakimullah

Respondent : Md. Samiullah

Judgement :

Ganga Nath, J.

1. Second Appeal No. 496 of 1933, has been heard and disposed of with this appeal. Both are defendants' appeals and arise out of two suits brought by the plaintiff-respondent against the defendants¹ for an injunction requiring the defendants to cut away the branches of their trees overhanging over the plaintiff's, land. The defendants, contended that the branches of their trees had been overhanging over the plaintiff's land for more than 20 years, that they had acquired a prescriptive right and that the plaintiffs suits were barred by time. Both the Courts have found against the defendants and have decreed the suits.

2. There can be no customary easement under Section 18, Easements Act of 1882, of projecting the branches of trees growing on one's land over the land of another. No prescriptive right to keep the overhanging branches, on one's neighbour's land can be acquired by any number of years. This view is supported by Keshav Krishna v. Shankar Mahadeo 1925 Bom. 446 and Gurusami Raja v.

Perumal Raja 1929 Mad. 815. A similar view was taken in Behari Lal v. Ghisa Lal (1902) 24 All. 499, where the tree had been growing for more than 20 years. It was held:

And it is also found by the learned Subordinate Judge that the branches of this tree have been hanging over the old building for a considerable time. But that fact cannot, in my opinion, override the right of the appellants to occupy their house in comfort and safety. Mr. Malaviya does not attempt to found any argument upon the fact that the tree has been standing there for over 20 years, and indeed no such easement could be claimed.

3. The judgments of the Court below are unassailable. There is no force in the appeals. It is ordered that the appeals be dismissed with costs and the decrees of the lower Court be confirmed. Permission to file a Letters Patent appeal is rejected.

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