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Court : Allahabad

Decided On : Jul-18-1927

Reported in : AIR1928All201

Appellant : Fazal Haq

Respondent : Fazal Haq

Judgement :

1. The parties to the suit are neighbours. There is a public road in mohalla Panjabian of Pilibhit which runs from north to south. To the east of the said road is the house of the defendants and to the west the house of the plaintiff, which is occupied by the plaintiff and the ladies of his house. In June 1924, the defendants started certain constructions on the upper flat of their house and opened three new doors facing the west. These doors have been marked in the site plan attached to the plaint by the letters A, B and C. The customary right of privacy applies in the neighbourhood where the plaintiff's house is situate, and it applies to the class of persons to which the plaintiff belongs. By opening the doors aforesaid the defendants invaded the plaintiff's right of privacy. The plaintiff protested to the defendants, but the latter heeded him not. The plaintiff approached the Municipal Board of Piliphit who had sanctioned the construction of the defendant's house, but found no redress. He next approached the police, but the latter possessed no preventive or protective resources in a matter like this. He next lodged a regular complaint before a Magistrate but no effective relief could be had.

2. The present suit was instituted on 5th July 1924, and originally the plaintiff sought two reliefs: (a) The closure of the three doors and (b) a perpetual injunction restraining the defendants from making any construction calculated to invade the privacy of the plaintiff's house. On 8th July 1924, the Subordinate Judge issued an injunction to the defendants directing them to keep the doors closed. In spite of service of notice the injunction was disobeyed, and on 17th July, a notice was issued to the defendants to show cause why they should not be committed for contempt. On 28th July the Subordinate Judge made a local inspection and found that the defendants had started putting up a balcony towards the west. The plaintiff thereupon added a third prayer to his plaint, namely, for the removal of the balcony. Of the four defendants defendant 1 alone contested the suit and put forward a number of flimsy and unsubstantial pleas. In para. 4 of his additional statement he admitted, however, that a portion of the present female apartment is visible from the doors in dispute.

3. The learned Subordinate Judge decreed the plaintiff's suit and ordered the closure of the doors and the demolition of the balcony within six weeks of the date of the decree and also a perpetual injunction. On appeal the learned District Judge affirmed the decree of the Court of first instance. The defendant now comes to this Court in second appeal. The matter is no longer open to any controversy and has indeed been settled by a long course of judicial pronouncements that a customary right of privacy within certain limitations exists in the North-Western Provinces, and a material interference with such a right is an actionable wrong and affords a good cause of action to the person or persons affected thereby. In this respect the rule enunciated above departs from the well-recognized rule of English law which renders invasion of privacy unactionable. In view of the social conditions of this country which prescribe seclusion for females belonging to certain respectable class of the Hindu and Mahomedan communities in answer to communal sentiment and as the practical result of the custom which has descended from olden times, the right of privacy has taken too deep a root to be dislodged by any a priori reasoning.

4. The learned Counsel for the appellant did not seriously attempt to press grounds 1 and 2 of his memorandum of appeal. His chief argument, however, was

that the Courts below were not justified in directing the closure of the doors and the demolition of the balcony. He contended that adequate remedy could have been provided to the plaintiff without having the balcony removed or the doors closed which was too drastic. The learned Counsel for the respondent, however, took his stand on the decision of Sheo Nath Rai v. Ali Husain [1904] 1 A.L.J. 118. In this case the defendants had built a two-storeyed house, made two sky lights in the second storey and an opening on the stair case towards the plaintiff's house which infringed the privacy of the plaintiff's house. The District Judge had ordered the defendants to close the skylights and the opening and to erect on the roof a wall 4 feet high. Their appeal to the High Court was dismissed by an eminent Judge of this Court, who usually brought strong common-sense to bear upon his judicial pronouncements. In an appeal under the Letters Patent it was held by Stanley, C.J., and Burkitt, J., that the direction given to the defendants to build a wall upon their roof was not consistent with the nature of the mandatory injunction, the essence of which was to restore things to status quo ante and not to create a new state of things. They granted a decree restraining the defendants by injunction

from permitting any portion of the building raised by them on the site of the former building by which the privacy of the plaintiff's house was or might be invaded to remain, and from erecting any building or permitting any erection to remain on the site of the former building of the defendants so as to interfere with the privacy of the plaintiff's house as the same was enjoyed prior to the erection of the building complained of.

5. It ought not to be lost sight of that a mandatory injunction is essentially an equitable relief, and the form in which the injunction is to be granted must necessarily vary with the posture of each particular case. This form of relief being discretionary must necessarily be flexible, land we do not think that there is any authority for the proposition that where the infringement complained of by the plaintiff can be adequately remedied by any means short of a total demolition of the constructions complained of, the Indian Courts, in the exercise of their powers as a Court of equity, are under a legal compulsion to direct a complete demolition of the building and nothing short of it. Section 55, Specific Relief Act, clearly

negatives such a proposition. It provides that

when to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts.

6. The above section limits and restricts the injunction strictly to the extent of the invasion of the plaintiff's right. That this was the intention of the legislature is rendered manifest by referring to illustration (a) of Section 55:

A by new buildings obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, part 2. B may obtain an injunction not only to restrain A from going on to the buildings, but also to pull down so much of them as obstructs B's lights. (The italics are ours.)

7. There are a number of cases, which though not relating to right of privacy, proceed on the principle enunciated above. For instance, (1) Bihari v. Ajnas 6 W.R. 86: In this case the Court refused to direct the pulling down of the offending wall, but required the defendants to make apertures in his own wall for the egress of smoke and ingress of air affecting the plaintiff's room. (2) Abdul Hakim v. Ganesh Dutt [1886] 12 Cal. 323: In this case the defendants had erected a dam across a natural water course which was found to interfere with the natural drainage of the surplus rain-water of the adjoining land belonging to the plaintiff. The lower Court had directed the complete removal of this dam. The High Court directed, however, that the proper course for the Court below was to enquire how far the erection of the dam was an invasion of the plaintiff's right and after inquiry to remove the dam either in whole or in part as might be justified by the evidence. (3) Bala v. Maharup [1896] 20 Bom. 788: The Court directed that the demolition of the buildings by the defendants was not necessary in this case at all so long as the defendants made the necessary arrangements for the carrying away of water which was the right claimed by the plaintiffs.

8. Both the Courts below were evidently exasperated by the attitude of defendant 1. He flouted decency and appeared to take a malicious pleasure in causing

embarrassment, discomfort and distress to the plaintiff and his unoffending womenfolk. He defied constituted authority. He adopted a line of defence which could not be supported either in fact or in law. As a consequence of all this the learned Judges of the Courts below had some justification for decreeing the plaintiff's claim in its entirety as affording relief to the plaintiff.

9. We agree with Dr. Katju that the end and objective of law is not vindictiveness but justice. The gravamen of the plaintiff's complaint is the infringement of his privacy. If the invasion of his right of privacy is prevented and completely put an end to without the complete removal of the balcony, the plaintiff should have no further grievance. We think that we ought to respect the plaintiff's right of privacy and afford proper protection to him and the womenfolk of his house. We ought not at the same time unnecessarily to trench upon the defendant's right to build upon their own land so long as the said building does not invade the privacy of the plaintiff's house. This can very well be effected by directing a blind masonry wall being built at the edge of the balcony on the west between the letters A and B on the map attached to the decree of the trial Court and also on the two sides between A and C and B and D which we have enclosed in red. Varying therefore, the decrees of the Courts below we allow the appeal in part and direct the above to be done. We direct that the height of the wall should be raised up to the top of the balcony. We allow the defendants to do this within two months from the date of our decree, failing which the decree of the Court below is to be affirmed, that is, the doors closed and the balcony completely removed. We also grant relief (b). We penalize the defendants with bearing their own costs throughout and paying the costs of the plaintiff in this Court and also in the Courts below.