

E.S. Levy and ors. Vs. D.E. Ezra and ors.

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Court : Kolkata

Decided On : Feb-20-1920

Reported in : AIR1921Cal378,62Ind.Cas.199

Judge : Asutosh Mookerjee and ;Ernest Fletcher, JJ.

Appellant : E.S. Levy and ors.

Respondent : D.E. Ezra and ors.

Judgement :

Asutosh Mookerjee, J.

1. This is an appeal by the plaintiffs in a suit for a mandatory injunction to remove and demolish a wall crested by the defendants. The rights of the parties depend on a consent decree made on the 18th June 1918 in a previous litigation between them as the authorities of two Jewish Synagogues, Neveh Shalome and Maghen David. Under that decree, the respondents undertook to make over absolutely; to the plaintiffs certain disputed godowns with the land whereon the buildings stood and also pieces of land marked A and B on an annexed plan on either side of the Neveh Shalome Holy Boom. The terms of the settlement further provided that the appellants would, at the request of the respondents, separate the two pieces of land from the land of the Maghen David Synagogue by a proper brick wall, and, in default, the respondents would be at liberty to build the same at the cost of the appellants. There was a third provision that the Maghen David Synagogue would

be at liberty to erect building either of one or two storeys, as may be deemed desirable, on its ground to the west of the Holy Room of the Neveh Shalome Synagogue, who would not be entitled to make any objection to the same in consequence of such building blocking up the west window of the said Holy Boom or interfering with the access of light and air through such window. The contingency contemplated happened; the defendants respondents proceeded to erect a wall, with the effect that it blocked the west window of the Holy Boom. The plaintiffs thereupon instituted this suit on the allegation that the defendants had committed an act of trespass, inasmuch as in the process of creation of the wall mentioned in the fifth paragraph of the terms of settlement, they had built on the foundations of the Holy Room. They accordingly asked for a mandatory injunction to compel the defendants to remove the wall in so far as it stood on the foundations of the Holy Room and also in so far as it adjoined the western edge of the parcels marked a and B. Mr. Justice Greaves has come to the conclusion that on the authority of the decision in *Abdul Hossain v. Ram Charan* Law 12 Ind. Cas. 459 : 38 C. 687 : 16 C.W.N. 313, the defendants must be deemed to have committed an act of trespass in so far as they have superimposed their wall upon the footings or foundations of the Holy Boom. He has accordingly directed that the defendants should within three months remove the trespass and demolish the wall. The plaintiffs were not satisfied with this order, and seek to have the wall removed even in regard to portions which do not stand on the footings or foundations of the Holy Boom. Their argument is that the intention of the parties, when they entered into the terms of the settlement, was that the western boundary of the land should be a straight line, and that if, in any portion, the line has to be removed westwards, the whole of the line must be so removed. In our opinion, there is no foundation for this contention. The intention of the parties, as is obvious upon the terms of the settlement, was that the plaintiffs should be restricted to the land and buildings to the east of the red line. By the operation of the principle of law recognised in *Abdul Hossain v. Ram Charan* Law 12 Ind. Cas. 459 : 38 C. 687 : 16 C.W.N. 313, namely, that the land covered by the underground foundations belongs presumably to the person who built the footings, the plaintiffs have obtained a decree for the removal of the wall in so far as it has been superimposed on the foundations of the Holy Room; but plainly they are not

entitled to a larger measure of relief. What was intended by the parcels a and B is clear from an examination of the plan; they are parcels bounded on the west by a portion of the red boundary line, but as there are no buildings on these parcels, there has been no encroachment on footings, or foundations, and the defendants cannot be sailed upon to remove the portions of the walls on the parcels A and B.

2. The result is that this appeal is dismissed with costs.

Fletcher, J.

3. I agree.

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