

(1907) 04 AHC CK 0005

Allahabad High Court

Case No: None

Abdul Rahman and Others

APPELLANT

Vs

Bhagwan Das and Others
(Representatives of Hardeo
Sahai)RESPONDENT

Date of Decision: April 16, 1907**Citation:** (1907) ILR (All) 582**Hon'ble Judges:** George Knox, J**Bench:** Single Bench**Final Decision:** Disposed Of

Judgement

George Knox, J.

The plaintiffs and the defendant in this case are inhabitants of houses which lie opposite the one to the other. The defendant respondent has recently purchased the house, which was confined to one storey. He has begun to add to that house by constructing a second storey, and in the wall of the second storey which overlooks the plaintiffs' zenana he has pierced a door and two windows. The plaintiffs, alleging that by this act the defendant has invaded the right of privacy of the pardah-nashin ladies of their house, have brought this suit, praying that the defendant may, by a perpetual injunction, be restrained from opening towards the house of the plaintiffs any door or window in the northern wall of the upper storey of his house, and that a certain door frame, which he has already put up, may be removed. The defence is to the effect that before the defendant began to build, the plaintiffs' zenana was overlooked by the roof of the defendant's house, and that whatever right of privacy may exist in favour of the plaintiff's is a right which has not been substantially and materially interfered with by the action of the defendant. If the defendant's action has in any way affected the plaintiffs' right of privacy, it has virtually increased and not diminished that privacy. Both the Courts below have accepted this defence and held that it has not been proved that the defendant has

intruded upon the privacy of the plaintiffs, but, on the other hand, has shut up all prospect except so much as may be seen from the places where the door and the windows have been opened. The plaintiffs having lost their suit in both the Courts below appeal to this Court and take the plea that the construction of the walls and doors makes the appellants' position worse, inasmuch as there is a greater apprehension now of the respondents using his second storey to the prejudice of the appellants' right of privacy.

2. In support of this plea the case of *Gokal Prasad v. Radho* ILR (1888) . 10 All has been put forward. Particular stress has been laid upon the judgment of the learned Chief Justice, Sir John Edge. That portion is to be found at page 387, where a similar contention was raised to the effect that as the other portion of the house and part of the courtyard were overlooked from the houses of other people, there could be no substantial interference with any privacy of the plaintiffs' house. The learned vakil for the respondent also takes his stand upon the same judgment and points out that the learned Chief Justice held that every case of this kind must be governed by its particular facts. The primary question will be, does the privacy in fact and substantially exist, and has it been and is it in fact enjoyed? If it is found that it did substantially exist and was enjoyed, the next question would be was that privacy substantially or materially interfered with by acts done by the defendant, without the consent or acquiescence of the person seeking relief against those acts? It is now admitted by both sides that in the town of Meerut, where these houses are situate, there is a local custom in favour of privacy, and all that I have to consider is, whether that privacy has been substantially or materially interfered with. At first sight it would seem that it had not been, but on giving the case my full consideration, I am inclined to the view that from an Indian point of view, there is a great deal to be said in favour of the right of privacy being more substantially and materially invaded by apertures which would permit a person to look on without being observed than by the existence of an open surface where the presence of a looker on would at once be conspicuous and could easily be guarded against. Viewed in this light the acts of the defendant are clearly a substantial and material invasion of the right of privacy of the plaintiffs. I decree the appeal, set aside the decrees of both the Courts below and decree the plaintiffs' claim with costs in all the Court's.