

Muhammad Yahia Vs Bhagwan Das and Another

Court: Allahabad High Court

Date of Decision: March 1, 1913

Citation: (1913) ILR (All) 292

Hon'ble Judges: Harry Griffin, J; Chamier, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Harry Griffin, J.

The plaintiff in this case is the zamindar of a patti in the town of Mariahu, where the defendants reside. The plaintiff

brought this suit for an injunction to restrain the defendants from constructing a well in their house and for an order directing them to remove the

materials and to restore the land to its original condition. The defendants are shop-keepers whose family has been in occupation of the premises for

generations without paying any rent. They pleaded that they had a right to construct the well on their premises, that the well had been constructed

for their own comfort and convenience, and that the suit was brought out of malice. The court of first instance dismissed the suit, holding that the

construction of the well inside the house was not such a user as affected the zamindar's rights injuriously, and that the well was a necessary adjunct

to the comfort of the occupants of the house. The lower appellate court on appeal held that the plaintiff zamindar was entitled to the relief asked for

on the ground that the construction of the well was an interference with the plaintiff's right as zamindar. The lower appellate court having decreed

the suit the defendants come here in second appeal. The courts below find that the occupiers of houses in Mariahu have a right to transfer houses

subject to payment of one-fourth of the sale price to the zamindar. We have heard the learned Counsel for the parties at considerable length. The

question, as it appears to me, for decision, in this appeal is whether the plaintiff has made out a case for issue of an injunction. The plaintiff is the

zamindar of the patti where the defendants' house is situated. His rights as zamindar appear to be limited by the rights which occupants of houses

have acquired by custom against the zamindar so long as the houses are in the occupation of the family. The houses only escheat to the zamindar in

case of the family dying out. I am unable to hold that the construction of the well on the premises of the defendants is a breach of any obligation

existing in favour of the plaintiff whether expressly or by implication. A well on the premises is an undoubted adjunct to the convenience of the

occupants, and it is difficult to see in what way the zamindar's interests are injuriously affected by its construction; while its removal would

undoubtedly cause inconvenience to the defendants. If there be an invasion of the zamindar's rights it is of so slight and doubtful a nature as not to

call for interference, more particularly in view of the fact that the chance of the zamindar entering into possession of the house is very remote. There

appears to be some reason for holding, as held by the court of first instance, that the plaintiff was actuated by malice in instituting the present suit.

Taking all the circumstances into consideration I am of opinion that this is not a case in which the injunction asked for should be granted. I would

therefore allow the appeal and dismiss the plaintiff's suit.

Chamier, J.

2. I agree that this appeal should be allowed. The appellants are the owners and occupiers of a shop and an adjoining house in qasba Mariahu.

The respondent is the zamindar of the qasba. The question for decision is whether the appellants are entitled to sink a well inside the shop without

the permission of the respondent. It has been found by the courts below, and it is now admitted by the appellants, that the respondent is the

exclusive owner of the land on which the house and shop stand, but that the appellants are entitled to retain possession as long as the buildings

remain on the land. The Munsif held that the appellants were entitled to sink the well without the respondent's permission. On appeal the

Subordinate Judge held that they were not.

3. It must be taken that the predecessors of the appellants obtained the land from the zamindar for the time being, for the purpose of erecting

buildings thereon, and that they agreed expressly or impliedly not to use the land for any other purpose. Therefore, if the acts now complained of

are inconsistent with the purpose for which the land was given to the appellants' predecessors, the respondent is entitled to a mandatory injunction.

It was not suggested by counsel for the appellants that a mandatory injunction was not a suitable form of relief or that any other relief would meet

the case. In this connection I may note that it was admitted before us that the respondent objected to the construction of the well as soon as he

came to know of it.

4. Two provisions in the wajib-ul-arz have been referred to. One of them certainly has no bearing upon the case. It relates to the digging of wells

by kashtkars, and evidently was not intended to apply to the abadi. The other says that a kashtkar, or ryot, can build and pull down as he pleases

within his own inclosure (andar ahate apne ke bana o bigar sakta hai). I doubt whether this was intended to authorize the construction of wells. It

was probably intended to authorize a kashtkar or ryot, to make structural alterations inside his premises without reference to the zamindar.

5. But I am not prepared to hold that the sinking of a well within the premises was an act necessarily inconsistent with the purpose for which the

land was granted. A well is one of the amenities or conveniences of an Indian house, and I consider that the grant of land for building purposes

carries with it the right of making a well for the convenience of the occupiers. I would therefore restore the decree of the Munsif.

6. The appeal is allowed, the decree of the lower appellate Court is set aside and that of the court of first instance restored. The plaintiff will pay

the costs of the defendants throughout.