

(1869) 05 CAL CK 0038

Calcutta High Court

Case No: Special Appeal No. 404 of 1869

Raja Ram And Another

APPELLANT

Vs

Lala Biswambharlal

RESPONDENT

Date of Decision: May 20, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

One issue, raised by the Subordinate Judge, was "whether the said land being joint the defendant's erecting a wall of the house over the said joint land is valid, or whether the said wall ought to be demolished. He then in his judgment proceeds to show that the land is joint, and he says that in compliance with what has been above alluded to, it is proved that the said land is conjointly held by both parties; under these circumstances, the defendant's erecting a wall of his house on the conjoint land, without the accord and consent of the plaintiff, is by all means unlawful, nay, the said wall is fit to be demolished, therefore it is ordered that the appeal be dismissed,"--the substance being that the wall was to be demolished. It appears to me, that even if the defendant had not a strict legal right to build the wall upon the joint land, that this is not a case in which a Court of Equity ought to give its assistance for the purpose of having the wall pulled down. A man may insist upon his strict rights, but a Court of Equity is not bound to give its assistance for the enforcement of such strict rights. It appears to me that this is a case in which apparently no injury to the plaintiff has been caused by the erection of the wall, and that, therefore, the plaintiff ought to be left to such remedy as he may have, without applying to a Court of Equity for assistance, in having the wall demolished. He may, if he think fit, apply for a partition, but I do not think that it would be equitable after the defendant has gone to the expense of building the wall upon the land of which he was a joint owner, to have that wall demolished at the suit of his joint co-sharer, without showing that it causes any injury to the plaintiff.

2. Under these circumstances, I think that the appeal ought to be allowed, and the suit of the plaintiff dismissed with costs.

Glover, J.

I concur.