courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 25/10/2025

Yosef David Varulekar Vs Moses Solomon Talkar

Second Appeal No. 182 of 1921

Court: Bombay High Court

Date of Decision: Dec. 23, 1921

Citation: (1922) 24 BOMLR 298 : 76 Ind. Cas. 754

Hon'ble Judges: Shah, J; Norman Macleod, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, C.J.
Both the lower Courts have held on the evidence that the plaintiff''s sweeper used the passage along the east side

of the hedge inside the defendants'' compound to get to the privy, which curiously enough was built so that the sweeper could only have access to

it from the defendants'' compound. That is a question of fact which it is difficult to avoid, and I see no reason myself for disturbing the decision of

the lower Courts. The defendants evidently have been very remiss, because from the photograph which has been produced here, the privy must

certainly be a nuisance to them as it is within a few feet of their house. But at the same time any casual observer must have noticed that it was

cleaned from the defendants'' side of the hedge. Therefore, they must have had knowledge that the plaintiff''s sweeper was using the lane. As the

Judge was satisfied that the lane was used by the plaintiff''s sweeper as of right for more than twenty years, a right to an easement has been

established. I would advise the defendants to move the Municipality to require the plaintiff to remove the privy further away from the plaintiff''s

house. In that case the privy will not have to be cleaned by the sweeper using the defendants'' ground. The appeal must be dismissed with costs.

Shah, J.

2. I concur. I cannot say that I am quite satisfied with the finding in this case by the lower appellate Court, but it is a finding of fact, and I do not

think it is reasonably possible to interfere with the finding in second appeal, though, having regard to the situation of the house, I should have been

very glad to see my way to relieve the defendants from the obligation of providing a passage for the plaintiff''s sweeper over their ground.