

## Rasool And Ors. vs Ramzan Ali on 4 January, 1954

**Equivalent citations: AIR1954ALL668, AIR 1954 ALLAHABAD 668**

### JUDGMENT

Randhir Singh, J.

1. This is a defendant's second appeal arising out of a suit brought by the plaintiff for a mandatory injunction to require the defendant to close up a window opened by him in one of his rooms built on the upper storey on the ground that it overlooked the court-yard of the plaintiff's house and invaded the privacy of the occupants of the house.

2. The defence in the case was that the window in the new room was at the place where one existed in the tiled apartment which stood at the place where the new room was built. The trial Court came to the conclusion that the new window had been opened at the place where the old one existed in the tiled apartment. The Court, therefore, dismissed the suit. The plaintiff then went up in appeal and the learned Civil Judge of Barabanki who heard the appeal reversed the finding of the trial Court and decreed the plaintiff's claim for the closure of the window. The defendant has now come up in second appeal.

3. The question as to whether an old window existed at the place where the new window has been opened is concluded by a finding of the lower appellate Court as it is a question of fact. The learned Counsel for the appellant has, however, argued that the defendant had an absolute right to the enjoyment of air and light and as such he could not be restrained from having an opening in the shape of a window in the wall of his new room.

The right of privacy is recognised in this province for a very long time and has been the subject of judicial pronouncements in various cases. The leading case, -- 'Gokal Prasad v. Radho', 10 All 358 (A), has been followed in various other cases and in the latest pronouncement of this Court, in -- 'Nihal Chand v. Mt. Bhagwan Dei', AIR 1935 All 1002 (B), the earlier cases have all been reviewed and referred to. It has been held in this reported case that the custom of a right of privacy is of general prevalence and is commonly recognised and it is open to a Court to take judicial notice of such a custom in this province under Section 57 of the Evidence Act. In view of these decisions it is not open to the appellant to successfully raise the plea that no right of privacy, such as was claimed by the plaintiff in this case, existed.

4. The lower appellate Court found that it had not been proved satisfactorily that the new window existed exactly at the place where window existed previously and in view of this finding of the lower appellate Court this question of fact cannot be re-agitated in this Court. If the existence of an old window at the place where a new window has been opened has not been proved, and if the new window substantially invades the right of privacy of the plaintiff's house, the defendant cannot be

allowed to retain the window at its present location.

It has, however, been suggested by the learned Counsel for the appellant that the defendant may be allowed to have his window readjusted or to close a part of the window so that the court-yard of the plaintiff may not be visible to any one standing in front of the window. It is always open to the defendant to so readjust his window, or to close up the lower portion to a height so that no part of the plaintiff's courtyard becomes visible to a person standing in front of the window on the floor of the room, and there can be no valid objection to the opposite party to this. There is thus no force in this appeal. It is dismissed with costs. It will be open to the defendant to close the lower portion of the window or to readjust it so that the privacy of the plaintiff's court-yard is not invaded.