

Damodar Das Vs. Tilak Chand

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Court : Allahabad

Decided On : Jun-14-1915

Reported in : AIR1915All416; 30Ind.Cas.941

Judge : Tudball, J.

Appellant : Damodar Das

Respondent : Tilak Chand

Judgement :

Tudball, J.

1. The sole question in this appeal is whether the defendant has increased the burden within the meaning of Section 23 of the Easements Act. The facts are simple. The defendant had a single-storeyed house with a thatched roof. One portion of the thatched roof discharged the rain water on a small lane between the houses of the two parties. He has removed his thatched house and has now built a three-storeyed pukka house and he has put spouts on the roof of the house to discharge water on to the land between the plaintiff's wall and his wall. The Court of first instance held that there was really no increase in the burden except where the water from one spout fell on to the wall of the plaintiff's house. That spout, the Court ordered, should be altered in its direction. The lower Appellate Court has held that the spouts clearly threw an additional burden on the servant heritage. It seems to me that there can be no question that there is a considerable difference

between the burden which the servant heritage formerly bore and that which it now bears. In the first place double the quantity of water now falls upon it. The roof of the defendant's house was a sloping roof. Half of the water fell in one direction and the other half in another direction. It is now a flat roof and the whole of the water is discharged through five apertures and falls from a greatly increased height on to the land below it. In my opinion there has been a considerable additional burden placed upon the plaintiff's land and the order of the Court below in regard to the spouts on the roof on the second floor of the defendant's house is fully justified. If the defendant wishes to discharge his water on this land, he must so arrange that there is no addition to the burden which the servient heritage bore. The burden he has now placed upon it is a considerably increased one and in my opinion there is no force in this appeal. It is, therefore, dismissed with costs.

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