

Lala Balbir Singh Vs. Amar Singh

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Court : Allahabad

Decided On : Mar-30-1917

Reported in : AIR1917All380; 39Ind.Cas.590

Judge : George Knox, J.

Appellant : Lala Balbir Singh

Respondent : Amar Singh

Judgement :

George Knox, J.

1. The plaintiff in the suit out of which this second appeal has arisen is now appellant in this Court. In his plaint, after setting out the village of which he is the owner and the village of which the defendant is the owner, he goes on to say that the whole of the irrigation of the plaintiff's villages had from of old been made by means of a canal cut out of the river Koti. This right of irrigation has been a bone of contention between the plaintiff and defendant for sometime past; and it appears from the plaint that in 1885, when the question between them came up to this Court, a compromise was entered into between the parties and that compromise was incorporated in the decree of the High Court which followed on the terms of the compromise.

2. The contention of the appellant is that the defendant has contrary to the compromise between the parties taken water not from a place which is marked A in the map which is to be found on the record, but from a spot which he says is half a mile lower down and which is to be found marked B on the map. The plaintiff, therefore, asks for a declaratory decree to the effect that the defendant had no right to take water from any place of the new dam on the old canal, specially from any place above the plaintiff's dam, that the dam in dispute, i.e., the dam which has been built at B, may be destroyed, that a perpetual injunction may be issued restraining the defendant from interfering with the plaintiff's rights in future by making such a dam, and also prays for damages. It is admitted that the plaintiff occupies the place of a dominant tenement and the defendant that of servient tenement. The Court of first instance gave the following declaration, i.e., that the defendant had no right to make a dam at the point B on the map with the plaintiff and that he had lost his right to take water at the point A, and an injunction was issued ordering the dam at B to be destroyed and forbidding the defendant from making another dam. Rs. 150 were awarded as damages. The defendant went in appeal to the District Judge of Saharanpur. That Court agreed with the decision of the Court of first instance, so far that there was a custom that when kachcha dams of this kind burst and cannot be re-built at the same place, it was the custom for them to be re-built at a different place and it was not the intention of the parties that the dam should always necessarily be at the same spot. It further found that there was a general custom that when there is a right to dam a stream, that right is not confined to a particular spot, but when a dam bursts it may be re-constructed in another place and not far off. Incidentally it found that there was no addition to the stream between the points A and B and so it made no difference to the plaintiff whether a third of the water in it is taken at A or at B. Upon the evidence of the defendant's witnesses which the lower Appellate Court believed as regards the following question, it found that the defendant had not lost his rights under the compromise and that the plaintiff had not acquired the right to the whole of the stream at this point. It mentioned that the evidence of the defendant was borne out to some extent by admissions made by the plaintiff's witnesses. On the whole it held that the plaintiff had no cause of action and ordered that the plaintiff's suit be dismissed.

3. The plaintiff comes here in second appeal and contends that neither under the compromise, nor under any law or custom is the defendant-respondent entitled to make a new dam half a mile away from the old one and take the water through a new channel on the servient land; that there had been an error in the interpretation of the compromise. There is also a plea to the effect that the plaintiff, having become the owner of Koti village. has a right to object to defendant's making a new watercourse through his land and to restrict him to the old one. It is difficult to see how the plaintiff can remove the case out of the findings of fact at Which the lower Appellate Court has arrived; those findings are based on evidence. Great stress was laid on the words contained in the compromise, which will be found on the record paper marked 25 C. The exact words used in the vernacular are 'manga apne bandh se' and 'apne kol men', the contention being that those words confine the defendant to the particular spot marked A upon the map; that even if it be allowed that by these words the defendant was allowed to re-build at another place, it must be some place either above or below close to the original spot and that they could in no way be extended to embrace a distance of half a mile, and this is the distance, it was urged, the point B lies from the point A. In view of the finding of fact by the lower Appellate Court as regards the law and custom prevalent, I do not think the exact words used in the compromise were intended by the parties to fix down the particular spot at which the water was to be taken. I agree with the lower Appellate Court that this was not the intention, and after all the distance becomes a question of relative quantity. To my mind such a contention glides by and evades the real point which has to be considered by the Court, viz., the determining of the burden which the dominant tenement places upon the servient tenement and the precise manner in which that right may be exercised. Gale on Easements, 6th edition, page 439 See 8th edition, page 502--Ed lays down the following: By the civil law the owner of the dominant tenement had a right to do whatever was requisite to secure to himself the fullest enjoyment of his servitude, so long as he did not impose any additional burden upon his servient heritage.' The passage given in the notes to support this is a passage from Digest 8, 3, 15 and is even stronger than what the author infers from it. It appears fully consonant with justice and equity and I have not been shown anything which is in conflict with it and the decision should be on similar lines.

Similar rights are concerned in India. There is a distinct finding that no more burden has been imposed or caused by the change.

4. I, therefore, dismiss this appeal with costs, which will in this Court include fees on the higher scale.

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