

(1920) 11 PAT CK 0003
In the Patna High Court

Babu Ram Kripal Singh

APPELLANT

Vs

Hanuman Singh and Another and Pandit Singh and Others

RESPONDENT

Date of Decision : 15-11-1920

Acts Referred:

Citation : AIR 1921 Patna 51 : 59 Ind. Cas. 929

Hon'ble Judges : Das, J;Adami, J

Bench : Division Bench

Judgement

Das, J.—The plaintiffs claim the right to irrigate their lands in Mouza Barunda Rampur by means of a natural water channel issuing out of a hill and running into the plaintiffs' Pokhur No. 1643, and seek to restrain the defendants from erecting bundhs at the places marked in the sketch map filed with the plaint so as to deprive the plaintiffs of the advantage of the flow of the water in their own lands. The Courts below have concurrently come to the conclusion that there is a defined water channel from the hill up to the Pokhur, except in two blocks of paddy fields referred to in the judgments of the Courts below, and have granted the plaintiffs a decree substantially as claimed by them. Upon this, two arguments have been advanced before us on behalf of the appellant; first, that the stream emptying itself in the plaintiffs' Pokhur is, on the allegations of the plaintiffs made in the plaint, only an artificial stream and that the plaintiffs have no right to the water in the natural stream which terminates in the defendants' lands, and does not flow by the plaintiffs' lands and, secondly, that the rights of riparian owners cannot be claimed by the plaintiffs since, on the findings of the Courts below, there is no defined water channel in the two blocks of paddy fields mentioned in the judgments.

2. I will deal with these objections in their order. The first objection is based on the allegations in the plaint. These allegations are, that there is a natural stream from the hill up to the Bundh No. 327, which, it may be stated, is situated in the defendants' lands; that the Bundh No. 327 was constructed at a time beyond living memory when the ownership of the lands, now belonging to the plaintiffs

and the defendants, was in the same proprietors, and it was constructed so as to divert the water into a Pyne No. 322 that flowing into the Pyne No. 322, the stream passes through plots Nos. 253, 314, 305 and 306, when it is again diverted by Bundh No. 301; that, being diverted by means of Bundh No. 301, it flows into Pyna No. 302 and, passing through plots Nos. 1702, 1634, and 1639, it empties itself in plaintiff Pokhur No. 1643. These are the allegations in the plaint, and the defendants argue that the plaintiffs cannot claim the natural rights of riparian owner in respect of the natural stream which same to an end at Bundh No. 327 and never passed the plaintiffs' lands. Now, it may be conceded at once that the rights of riparian owners to natural streams are somewhat different from their rights to water flowing through artificial water courses. The natural rights do not depend upon a grant or upon the ownership of the soil of the stream, but are jure nature incident to the ownership of the soil of the land abutting upon the stream. The rights to water flowing through artificial water courses are rights of easements, and must rest on some grant or arrangement, either proved or presumed, from, or with the owners of the lands from which the water is artificially brought, or on some other legal origin. The defendants say as follows to the plaintiffs: On your own allegation in the plaint we are the owners of the lands abutting on the natural stream and you are not. It may be that you have acquired some right by easement to the use of such water as flows in the artificial stream running into your Pokhur, but how can you restrict us in the use of the water in the natural stream as to which you have no sort of right?

3. Now, it seems to me that the fallacy in the whole argument is in assuming that the stream passing through the plaintiffs' land has a different entity from the stream up to the Bundh No. 327. The natural stream does not come to an end at Bundh No. 327, but is merely diverted to another direction by human agency. The stream may be and probably is an artificial stream as it empties itself in the plaintiffs' Pokhur, but the problem can only be solved, not by assigning a particular came to the stream, but by asking ourselves the question, what is the character of a stream, which in its inception is a natural, stream and is afterwards diverted in a particular direction by artificial means? Does a natural stream, when it is diverted by the operation of man into an artificial channel, retain or change its original character? If it does retain its old character, then the plaintiffs must succeed in the action. If it changes its character, then, so far as the important relief in this action is concerned, they must fail,

4. Fortunately for me, the point is concluded by authorities. *Sutcliffe v. Booth* (1863) 32 L.J.Q.B. 136 : 9 Jur. (N.S.) 1037 : 139 R.R. 744 seems to be the leading case on the subject. That was an action by one riparian proprietor against another for the pollution and diversion of a water course. The watercourse in question was undoubtedly artificial as it passed the plaintiffs' land, but it was in its origin a stream and probably a natural Stream. On motion for new trial, it was held that it was a misdirection to tell the Jury that if the stream was artificial and made by the band of man, the plaintiff had no cause of action. In *Nuttall v. Bracewell* (1866) 2 Ex. 1 : 12 Jur. (N.S.) 989 : 15 L.T. (N.S.)

313 : 36 L.J. Ex. I : 143 R.R. 867 : 4 H. & C. 714 Channell, B., in dealing with the rights of the parties as regards a stream which was natural in its origin, but had been diverted by the hand of man into an artificial channel, said as follows:

5. "I see no reason why the law applicable to ordinary, running streams should not be applicable to such stream as this, for it is a natural stream or flow of water, though flowing in an artificial channel. It may be that the case of an entirely artificial stream, as one flowing from a mine for instance, would be different; but that an artificial stream may be on the same footing as a natural one as regards the rights of riparian proprietors is held in *Sutcliffe v. Booth* (1863) 32 L.J.Q.B. 136 : 9 Jur. (N.S.) 1037 : 139 R.R. 744." To the same effect are *Holker v. Positt* (1873) 8 Ex. 107 : 42 L.J. Ex. 85 : 21 W.R. 414 and *Baily & Co. v. Clark* (1902) 1 Ch. 649, 71 L.J. Ch. 396, 86 L.T. 309) 60 W.R. 511 : 18 T.L.R. 364 The law that I deduce from all these cases is that the proper inference from the user of the water of a natural stream though flowing in an artificial channel is that the artificial channel had been originally constructed upon the terms that all the proprietors of lands situated on the artificial channel should have the same rights in regard to the use of the water as they would have had if the stream had been a natural one. If that be so, then the plaintiffs, as riparian proprietor?, have an undoubted right to have the water come to them without obstruction in its ordinary and accustomed course, undiminished in flow, quantity and quality. I would accordingly overrule the first objection urged on behalf of the appellants.

6. The second objection is equally without substance. Now, in order to dispose of this objection, it is necessary to remember that, on the facts found by the Courts below, the channel continued as a definite water course up to the paddy fields in question, that it spread itself along the fields, and that, emerging from the fields, it ran again as a definite water course until it emptied itself in the plaintiffs' Pokhur. It is not suggested that the stream exhausted itself as a stream in entering the paddy fields in question. It is not suggested that the water dispersed itself over the fields without a definite water source so as to be regarded as drainage and surface water. If, indeed, the water had no definite course after it emerged from the fields and its supply, so far as the plaintiffs are concerned, was merely casual, the defendants would be entitled to get rid of it in any way they chose. But that is not the case here. In my judgment, the identity of the water was not destroyed because it spread itself over the fields, but must be held to have been preserved on proof that on emerging from the field", it ran in a definite course up to the plaintiffs' Pokhur That seems to be the effect of the decisions which were all considered in the learned judgment of the Madras High Court in *Villuri Adinarayanna, v. Polimera Ramudu* 17 Ind. Cas. 648 : 37 M. 304 : 12 M.L.T. 637 : 24 M.L.J. 17. In accordance with the decision of the Madras High Court in the case just cited, with which I entirely agree, I must overrule the contention advanced on behalf of the appellants.

7. I would dismiss this appeal with costs.

Adami, J.

8. I agree.