

(1980) 05 AHC CK 0006
In the Allahabad High Court
Case No : S.A. No. 963 of 1972

Man Shanker and Others

APPELLANT

Vs

Nanhey Lal and Others

RESPONDENT

Date of Decision : 02-05-1980

Acts Referred:

Citation : (1980) AWC 453

Hon'ble Judges : K.M. Dayal, J

Bench : Single Bench

Advocate : J.S. Gupta, for the Appellant; Devendra Swarup, S.A. Khan and I.H. Khan, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Dayal, J.—The Plaintiffs filed the present second appeal against the judgment and decree passed by both the courts below dismissing his suit. The Plaintiffs instituted a suit claiming damages for the cracks, developed in his building due to the leakage of water connection of the first set of the Defendants. The second set of the Defendants was the Water Works Department. In the plaint two specific averments were made for fastening the liability on the Defendants. Firstly, that the Defendant first set deliberately and wilfully allowed the water to escape from the connection as a result of which the house of the Plaintiff was damaged. The second ground was that due to the negligence of the Defendants Water Works Department, water escaped from the mains connection and damaged the building of the Plaintiff. The court below rightly observed that there was not a word in the evidence of the Plaintiff to suggest any deliberate act on the part of the Defendants first set. I have looked to the evidence of all the witnesses produced, by the Plaintiff and I find that the observations of the court below is correct. On the second point again I find that there is no allegation of negligence regarding the Defendants first set or the second set. It is not in evidence that the Defendants first set or the second set found water leaking and did not take any action. On the other hand, the evidence goes to suggest that

earlier there was leakage in the house of the Defendants 1st set and that was got mended by him. Even subsequently, when the house of the Plaintiff was damaged the Defendants did inform the Water Works Department about the leakage and the Water Works people came and disconnected the water supply till it was repaired. In the circumstances, there is absolutely no case for negligence on the part of either the Defendants first set or the Defendants second set.

2. The learned Counsel for the Appellants argued that because the damage has occurred due to the leakage in the Defendant's mains he must be responsible, I am unable to agree with him. The Defendant was not at all responsible for the leakage in the mains and if the argument of the learned Counsel is accepted, that will mean that if the house of "A" catches fire and the adjoining houses are burnt down, then "A" will be responsible for the loss of the other houses as well. This is absurd.

3. In the circumstances, the appeal has no force and is dismissed. There shall be no order as to costs.