

(1953) 09 PAT CK 0007
In the Patna High Court
Case No : A.F.O.D. No. 32 of 1947

Ramsewak Kazi and Others		APPELLANT
	Vs	
Ramgir Choudhury and Others		RESPONDENT

Date of Decision : 08-09-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 133, 147

Citation : AIR 1954 Patna 320 : (1953) 1 BLJR 61

Hon'ble Judges : Narayan, J;Ahmad, J

Bench : Division Bench

Advocate : Raj Kishore Prasad and K.P. Varma, for the Appellant; J.C. Sanyal, for the Respondent

Final Decision : Allowed

Judgement

Narayan, J.—The defendants are the appellants, and the appeal arises out of a suit in which a declaration was sought that the plaintiffs were entitled to irrigate their fields lying in four villages from the water of a river called eastern Sheoraha and that the defendants had no right to obstruct the course of the river. The plaintiffs are the residents of villages Gujra Motihari, Belwa alias Balua, Bairia alias Barheya and Turkolia, and they have got Jands in the first three villages mentioned above and in village Jamunia. The defendants are the residents of villages Mahui, Sonbarsa and Ban-katwa. The plaintiffs have instituted the suit in a representative capacity, that is, as representatives of the residents of the four villages, the lands of which are, according to them, irrigated by the water of eastern Sheoraha. The defendants also have been sued in a representative capacity, that is, as representing the residents of village Mahui, Sonbarsa and Bankatwa.

2. The case which the plaintiffs have sought to make out is that there is a natural stream called eastern Sheoraha, having its slope towards the south. This stream emerges from the jungles in the Himalayas, and after passing through Bankatwa and Sonbarsa flows to the south and to the villages of the plaintiffs mentioned

above. According to their allegation the lands of the four villages are irrigated from the water of eastern Sheoraha from time immemorial, no other source of irrigation being available to them. The cause of action for this suit is said to have arisen in Asarh 1351 when the defendant No. 1 after taking earth from his plots Nos. 51 and 52 of village Sonbarsa raised the level of that portion of the river which lies to the west and the south of survey plot No. 52 and constructed a bundh across the river Sheoraha to the northwest of plot No. 52. When the plaintiffs came to know of the construction of the bundh and the raising of the level of the river they took serious objection, with the result that the defendants got a proceeding u/s 144, Cr. P. C. started against them.

The plaintiffs then filed a petition before the Subdivisional Magistrate of Bettiah praying that a proceeding u/s 133, Cr. P. C. be drawn up, but the learned Subdivisional Magistrate by his order dated 13-9-1944 started a proceeding u/s 147, Cr. P. C. After taking evidence he made the rule absolute against the plaintiffs, and thereafter the present suit was instituted. The prayer in the plaint is for a declaration that the plaintiffs are entitled to irrigate their fields from the water of the river and that the defendants who are the residents of Mahui, Sonbarsa and Bankatwa have no right to obstruct the natural flow of the stream. It is further prayed that the defendants be ordered to remove the bundh and to bring the bed of the river to its original level, failing which the bundh be removed and the bed of the river brought back to its original level under the orders of the Court. A permanent injunction is also sought restraining the defendants from obstructing the natural flow of the river. Rs. 4500/- is claimed as compensation for the damages caused to paddy field lying in the villages of the plaintiffs.

3. The defendants resisted the plaintiffs' claim on various grounds, and the pleas on which they mainly rely are that the eastern Sheoraha is an ordinary nala and not a natural stream, that bundhs have to be constructed for utilising the water of the stream & the bundh mentioned in the plaint is not a recent construction and, that only the surplus water of eastern Sheoraha flows down the disputed bundh up to the lands of village Bairia where the stream terminates. It is, therefore, contended by the defendants that the plaintiffs had no cause of action for the suit and not entitled to any decree.

4. The suit has been decreed in part by the learned Subordinate Judge who has held that the plaintiffs are entitled to irrigate the southern portion of Belwa and Bairia and the lands lying north or pyne No. 216 in village Jamunia from the eastern Sheoraha. The learned Subordinate Judge has further directed that the disputed bundh will remain intact with its height at 3 feet and the surplus water of the river would flow down in its natural course for irrigating the plaintiffs' fields. The defendant No. 1 has been ordered to remove the earth from the portion of the stream lying just below the disputed bundh. The issue regarding damages has not been finally decided by the learned Subordinate Judge who acceded to the prayer of the plaintiffs that this issue should remain undetermined until the main issues were decided.

5. The defendants who have preferred this appeal against the decision of the learned Subordinate Judge have pressed the following three points before us:-- (1) The eastern Sheoraha is not a natural stream but an artificial water-course, and consequently the owners of the lands in the four villages, Gujra Kotihari, Belwa alias Balua, Bairia alias Barheya and Jamunia cannot be regarded as riparian owners. (2) Even if the eastern Sheoraha is held to be a natural stream, all the lands of the said four villages are not riparian lands. (3) Even if some of the lands lying in the villages of the plaintiffs are riparian lands, no declaration can be granted to the plaintiffs.

6. The plaintiffs have preferred a cross-objection which is directed against the order for maintaining the bundh up to a height of 3 feet. The cross-objection is also directed against the finding of the learned Subordinate Judge to the effect that the plaintiffs have not the right to irrigate all the lands of the four villages from the water of the river eastern Sheoraha.

6A. The only substantial point which calls for a decision in this case is whether the stream called eastern Sheoraha can be regarded as a natural stream. The other points will lose much of their importance if the finding is that the stream is a natural stream in view of the facts conceded by Mr. J. C. Sanyal, Counsel for the plaintiffs-respondents. In my opinion, there is no difficulty in holding that the stream which is called eastern Sheoraha is a natural stream. The Subordinate Judge made a local inspection in this case, and he says that he was shown several nalas issuing from Jharjhari jungle situate at the foot of a hill which forms part of the Himalayan range. The water issuing from these nalas has formed the stream called eastern Sheoraha. It could not be contended before us that the river has not got its origin in the Himalayas. The evidence adduced on behalf of the plaintiffs for proving that the river issues from the hills is very convincing. The witnesses have stated that the river starts from the Himalayas and passes through Jharjhari jungle, P.W. 2 has admitted that the eastern Sheoraha issues from the jungle of Hasti Bairya and that the jungle of Hasti Bairya is attached to the hills which are part and parcel of the Himalayas. He further admits that the rain water from the hills comes down through the jungles to the stream known as eastern Sheoraha.

7. As was pointed out by Lord Sumner in -- "Stollmeyer v. Trinidad Lake Petroleum Co., Ltd." AIR 1918 PC 60 (A), a river may be fed by the rains directly, without any intermediate collection of the water in the bowels of the earth, and still be a river, and a river which naturally runs during a good part of the year does not cease to be a river merely because at times it is accustomed to become dry. The river Vessigny, as appears from their Lordships' judgment, was formed by the water collected in a number of steep gullies or ravines in a hilly scrub-clad district in Trinidad and emptied into the Gulf of Paria. The contention urged before their Lordships was that the river was not such a river or natural water-course that its lower riparian proprietors could complain of anything that might be done in dealing with the water flowing down. It was found that sometimes

there was no water in the water-courses and sometimes whatever water there was could not be deemed to be a course. It was further found that the water-course was never fed by springs. But these circumstances were not deemed to be critical.

8. This Privy Council decision was followed by a Bench of this Court in -- Harihar Prasad Singh and Others Vs. Mt. Janak Dulari Kuer and Others, , and Meredith J. pointed out that it was quite a mistake to suppose that a natural stream must have its origin in a mountain spring, or that it must flow continuously throughout the year, and must at every single point of its course flow through a clearly defined channel. In this case the reasonable conclusion will be that the stream has its origin in the Himalayas. The obvious inference is that it is formed out of the water which comes down from the Himalayas through the jungles, & anybody who has got some idea of the conditions prevailing in the Himalayas will at once understand that in that biggest mountain range on the earth streams are formed out of the snow water flowing from the glaciers which may include the water of the rains falling on that big mountain; and, as was pointed out by Meredith J., even if such a stream does not flow continuously throughout the year it will be regarded as a natural stream. Here, it is not the defendants' case that it does not flow continuously throughout the year. There is, therefore, no reason for holding that eastern Sheoraha which emanates from the Himalayas cannot be regarded as a natural stream.

9. The case of -- AIR 1925 236 (Privy Council) appears to lay down that a water-course which is styled as a canal after having been widened and deepened and having been used in a way in which a natural stream is used could be regarded for all practical purposes as a natural stream, and riparian owners have the same right over it as they would have over a natural stream.

10. If it is held, as it must be held, that the eastern "Sheoraha is a natural stream, then the consequences are well-known. To quote the observation of Parke, B. in -- "Embrey v. Owen" (1851) 6 Exch 353 (D):

"The right to have a stream to flow in its natural state without diminution or alteration is an incident to the property in the land through which it passes; flowing water is "publici juris", not in the sense that it is a "bonum vacans" to which the first occupant may acquire an exclusive right, but that it is public and common in this sense only, that all may reasonably use it who have a right of access to it; that none can have any property in the water itself, except in the particular portion which he may chose to abstract from the stream and take into his possession, and that during the time of his possession only. But each proprietor of the adjacent land has the right to the usufruct of the stream which flows through it. This right to the benefit and advantage of the water flowing past his land is not an absolute and exclusive right to the flow of all the water in its natural state, but is a right only to the flow of the water and the enjoyment of it, subject to the similar rights of all the proprietors of the banks on each side to the reasonable enjoyment of the same gift of Providence."

11. The dictum laid down by Lord Kingsdown to -- "Miner v. Gilmour" (1858) 12 Moore 131 (E) has been quoted in several decisions, and in view of the defence which has been taken to this case has got great relevance here:

"By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land; for instance, to the reasonable use of the water for his domestic purposes and for his cattle, and this without regard to the effect which such use may have in case of a deficiency upon proprietors lower down the stream. But, further, he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided that he does not thereby interfere with the rights of other proprietors either above or below him. Subject to this condition, he may dam up the stream for the purpose of a mill, or divert the water for the purpose of irrigation; but he has no right to interrupt the regular flow of the stream if he thereby interferes with the lawful use of the water by other proprietors, and inflicts upon them a sensible injury."

12. The natural rights do not depend upon a grant or upon the ownership of the soil of the stream, but are "jure naturae" incident to the ownership of the soil of the land abutting upon the stream. There are cases in which the rights which the riparian owners of a natural stream enjoy have been extended to the owners possessing lands on the two sides of an artificial channel which had been made by the hand of man for diverting the water of the natural stream. See -- "Holker v. Porritt" (1876) 10 Ex 59 (F), and -- "Baily v. Clark" (1902) 71 LJ Ch 396 (G). Das J. while referring to these two decisions in -- Babu Ram Kripal Singh Vs. Hanuman Singh and Another and Pandit Singh and Others, , observed as follows:

"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 proprietors, 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."

13. In -- AIR 1932 46 (Privy Council) Viscount Dunedin observed that the rights of a riparian owner is a natural right not capable of being lost "non utendo" and the maxim "tantum prescriptum quantum possessum" has no application. The following observation of Lord Macnaghten was quoted with approval in this case:

"In the ordinary or primary use of flowing water a person dwelling on the banks of a stream is under no restriction. In the exercise of his ordinary rights he may exhaust the water altogether. No lower proprietor can complain of that. In the exercise of rights extraordinary, but permissible, the limit of which has never been accurately defined and probably is incapable of accurate definition, a riparian owner is under considerable restrictions. The use must be reasonable.

The purposes for which the water is taken must be connected with his tenement, & he is bound to restore the water which he takes and uses for those purposes substantially undiminished in volume and unaltered in character."

14. The stream known as "eastern Sheoraha" being a natural stream the riparian owners south of the place where the bundh has been constructed and the level of the river bed raised have the right to use the water of the stream for irrigating their lands. It is an admitted position that a bundh has been constructed across the river to the northwest of plot No. 52 which lies in village Sonbarsa. Plots Nos. 51 and 52 are kast lands belonging to the defendant No. 1 and what the defendant No. 1 or the other defendants have done is that they have raised the level of the bed of the river lying to the west and the south of survey plot No. 52 and have constructed a bundh completely obstructing the flow of the water downwards. There was a criminal proceeding after this construction in which the decision was against the plaintiffs and that has led to the institution of this present suit. The defendants had raised a plea that on account of natural causes this eastern Sheoraha had become filled up and cultivable, and that the defendant No. 1 after it had been filled up, had taken settlement of the cultivable portion about twelve years before the institution of the suit from a concern known as Narainpur concern. This alleged settlement has not been proved, but evidence has been adduced by the defendants for proving that bundhs are raised for making use of the water of the stream for irrigational purposes.

15. The real position with regard to the bundh appears to have been very truthfully stated by the plaintiffs' witnesses. We are getting it in the evidence of P. W. 3 that for irrigating their lands they have to put temporary bundhs in the river which are demolished as soon as the fields have been irrigated. There is no reason for disbelieving his statement that the entire water of the river is not obstructed by such a bundh and that only a portion of the water is taken out through the diversion into an attached pyne. Other witnesses also speak about the construction of temporary bundhs, and the position appears to have been very well clarified in the evidence that has been adduced by the plaintiffs.

16. There appears to be no truth in the statement of the witnesses that the bundhs are permanent bundhs. D. W. 3 had to admit that these bundhs give way every year and that they are repaired annually at the time of irrigation. No value can be attached to the statement of D. W. 5 that though the two other bundhs, namely, the bundhs in Hasti Bairya and Mahuawan are broken at places on account of rains and floods, the disputed bundh has not at all been affected by the rains and the floods. D. W. 14 has gone to the length of stating that the disputed bundh has been in existence since before his "hosh". According to D. W. 10 the bundh in Mahuawan is not even a complete bundh, and a portion of the river water is allowed to pass downwards through the river channel. He again stated that the bundh is right across a branch of the river and that another branch of it brings water downwards. But he had to admit that in the disputed bundh no arrangement has been made for allowing the water to go further down,

and D. W. 13 has substantially corroborated the statements of the plaintiffs' witnesses that the bundh in question is completely obstructing the flow of the water. He states as follows: "South of the disputed bundh there is high land for a certain distance. To its further south and to the north of the disputed bundh the river is deep."

17. These bundhs could not be permanent structures, and they are bound to be affected during floods and the rains. As a matter of fact, in a hilly stream the bundhs must be washed away every year, and for the purposes of carrying the water of the stream to their fields some arrangement has to be made by the cultivators of the riparian lands. It is, therefore, simply reasonable that we should accept the case that has been put forward by the plaintiffs so far as the bundh and the raising of the river bed are concerned, and there is no reason why the evidence of the plaintiffs' witnesses should not be preferred to the evidence of the defendants' witnesses on the point as to whether the bundh is a recent construction or has been in existence from long before. The learned Subordinate Judge made an inspection of the locality and it appeared to him to be an old bundh. The inspection was made by the learned Subordinate Judge in the month of November 1946 which must be after the rainy season, and with the greatest respect for the views of the learned Subordinate Judge I must say that it was very difficult for him to say whether this bundh was old or new.

18. The circumstances unmistakably go to show that bundhs have to be raised every year for diverting the water or for utilizing the water of the natural stream for irrigational purposes. And the rights of a riparian owner to divert water for the purpose of irrigation has been explained in the following manner by Lord Watson in -- "Debi Pershad Singh v. Joynath Singh" 24 I.A. 60 (J):

"The right of a riparian proprietor to divert and use water for the purpose of irrigation is certainly not understated in the plaint. The right claimed by the appellants in the first conclusion is not less broadly asserted in the body of the plaint, and is neither more nor less than a right on the part of an upper proprietor to dam back a river running through his land, and to impound as much of its water as he may find convenient for the purposes of irrigation, leaving only the surplus, if any, for the use of proprietors below. In the absence of a right acquired by contract with the lower heritors, or by prescriptive use, the law concedes no such right. The common law right of a proprietor in the position of the appellants is to take and use for the purpose of irrigation so much only of the water of the stream as can be abstracted without materially diminishing the quantity which is allowed to descend for the use of riparian proprietors below, and without impairing its quality. What quantity of water can be abstracted and consumed without infringing that essential condition must in all cases be a question of circumstances, depending mainly upon the size of the river or stream and the proportion which the water abstracted bears to its entire volume."

19. Undoubtedly, by the construction of the bundh and by the raising of the level of the bed the defendants have materially diminished the quantity which could

descend for the use of the riparian proprietors below. In fact, the bundh which the defendants insist on maintaining has completely obstructed the flow of water, and the act of the defendants must, therefore, be regarded as illegal and improper. They could take only so much of the water of the stream as could be abstracted without diminishing the quantity to which the proprietors below were ordinarily entitled. The evidence adduced by the plaintiffs as to the construction of the bundh and the raising of the level of the river bed has to be accepted in its entirety, and if this evidence is accepted, the conclusion is irresistible that what has been done by the defendants is prejudicial to the interest of the plaintiffs or the riparian owners below the point at which the bundh has been constructed. The riparian owners are, therefore, certainly entitled to have the bundh removed or demolished and to have the bed of the river brought to its original level. What has been done by the defendants is not sanctioned by law, and there is no justification for allowing this present bundh to stand. I have tried to quote the law on the subject with a view to making it clear that each riparian owner has the right to use the water provided he does not interfere with the quantity or the quality of the water to which the proprietors below are entitled. Certainly the quantity of water to which the defendants are entitled is a question of circumstances, but the defendants have to conduct themselves in a manner sanctioned by law, and they have no right whatsoever to cause any prejudice to the proprietors below who have the natural right to use the water of the stream for irrigational purposes.

20. In -- Secretary of State Vs. Kattari Nagayya Kama Rajendra Ramaswami Kamy Naicker Zamindar of Saptur, the High Court of Madras pointed out that even when a party acquires the right by prescription to maintain a dam, it does not obtain a kind of immunity in respect of all other obstructions that may arise in the natural course of things by reason of the existence of the dam. The obstruction caused to the free flow of water in the stream by accumulation of silt owing to existence of dam, amounts to a "nuisance" and the riparian owner who is injured thereby may take steps to abate it even by going on the other person's land, if only he can do it peacefully. If this is not permitted, his remedy is to sue for an injunction and for damages. Their Lordships further observed as follows:

"We may state at the outset that the acquisition by the defendant of a prescriptive right to maintain the dam will not of itself entitle him to all the waters intercepted by the dam but only to such water as he has been accustomed to take by the Sivaneri channel: see -- "John White & Sons v. J. & M. White" 190S AC 72 (L). If he is entitled to draw water through a channel with certain dimension, he cannot enlarge the dimensions of that channel: see -- "Brown v. Best" (1747) 1 WKB 174 (M)."

In this case we cannot hold on the evidence that the defendants have acquired the right by prescription to maintain a dam. I need not repeat that I have accepted the plaintiffs' version and the evidence of the plaintiffs' witnesses to

the effect that the bundh is not a permanent thing. The defendants' action is, therefore, absolutely unjustified.

21. The next point is whether the lands of the four villages can be regarded as riparian lands. The learned Counsel for the appellants has submitted that even if the eastern Sheoraha is held to be a natural stream, the lands of the four villages cannot be regarded as riparian lands. This point now presents no difficulty in view of the admission made before us on behalf of the plaintiffs-respondents. Mr. Sanyal, Counsel for the plaintiffs-respondents, conceded that in this particular case only the owners of the lands abutting on the stream and coming within the purview of the water shed of the river should be held to be the riparian owners and that a declaration should be granted only to this effect that the owners of the lands abutting on the stream and coming within the purview of the watershed can use the stream. Quite naturally, after this concession had been granted, Mr. Rajkishore Prasad, Counsel for the defendants-appellants, did not urge the second point. A declaration in this litigation would be granted only in terms as suggested by the Counsel for the plaintiffs-respondents, but still it is necessary to point out that no land of village Jamunia is on the bank of the river or the stream. The declaration, therefore, may not apply to village Jamunia.

But even though the declaration is not exactly applicable to the lands of village Jamunia, it is noteworthy that according to the "farde-ab-pashi" the water of the stream is utilized for irrigating the lands of this village, and the water is carried through pynes. The "farde-ab-pashi" of village Jamunia is exhibit D(3) & 3(c). Column No. 2 shows that the water is carried through, pynes, and the pynes have been indicated, in the maps. Column No. 8 shows that irrigation is done with the permission of the thikadars who are the proprietors of Kothi Narainpur, and column No. 9 shows that "the tenants decide mutually by means of the panchait system". On account of the concession so generously granted by the clients of Mr. Sanyal the declaration so far as Jamunia is concerned may mean that the rights as entered in the "farde-ab-pashi" are being recognized, though in view of the position taken before us it is not necessary to determine as to whether the water can be utilized for the irrigation of Jamunia lands through the pynes mentioned in the "farde-ab-pashi" or not.

22. The Counsel for the plaintiffs-respondents has further conceded that there is no pyne attached to the eastern Sheoraha for the irrigation of Gujra Motihari and that all the pynes of this village are connected with the western Sheoraha. But admittedly Gujra Motihari is on the bank of the river, and the rights which are "jure naturae" incident of the ownership of the soil of the land abutting on the stream are certainly available to the persons who have their lands abutting on the stream. The declaration in the form concerned can, therefore, be granted even with regard to Gujra Motihari lands.

23. The "farde-ab-pashi" of village Belwa is exhibit 3(e) and exhibit D(1). It shows that the water is brought from the river Sheoraha and that the tenants irrigate their fields without the permission of anybody. It is distinctly shown in

column No. 8 that they have got the right of irrigation. Belwa is certainly a riparian village and the irrigation of the lands of this village, as the maps show, must be done by the eastern Sheoraha. The eastern Sheoraha terminates at plot No. 171.

24. The "farde-ab-pashi" of village Bairia in exhibit D and exhibit 3(d), and column No. 2 shows that there are several pyne through which the water is taken. The entry in column No. 8 is that the water comes from the nala of village Mahui to the pyne of this village bearing khesra No. 70. A bundh is made on the bank of the river and water is brought to the pyne No. 13 and then to the other pynes of the village. The lands are irrigated without the permission of the malik. Pyne No. 13, as the map shows, is in this village.

25. The learned Subordinate Judge has held that only the southern portion of Bairia lying south of pyne No. 13 is irrigated by the eastern Sheoraha. Similarly, he has held that the northern lands of village Jamunia lying north of pyne No. 216 are irrigated by the eastern Sheoraha. With regard to Belwa his finding is that the southern portion of this village is irrigated from eastern Sheoraha. In view of the concession granted, the declaration will only be in the form suggested by the Counsel for the respondents, but, as I have already pointed out, the right of irrigation as entered in the "farde-ab-pashi" which has not been questioned before us will not be affected by the declaration made in this suit. The concession solves the difficulties which might otherwise have arisen in this case.

26. The judges and text writers have not been uniform as to the description of a riparian land, and I am inclined to agree with the view expressed in -- "Lakshminarasu Avadhannulu v. Secy. of State" AIR 1919 Mad 1152 (N), that in India riparian land must be confined to land which is on the bank of a stream and which extends from that bank to a reasonable depth inland. The learned Counsel for the respondents was careful enough to submit that the right would be confined to the owners of the lands abutting on the stream and coming within, the purview of the water-shed of the river, with respect, I would adopt the observation of Sadasiva Aiyar J. in the Madras case just cited which is to the following effect:

"Having however regard to the customs & necessities of a tropical agricultural country like India, Indian Courts should, it seems to me, be liberal in recognizing irrigational rights as natural rights of as strong a character as any other, provided, of course, the lower riparian owners are not injured to an unreasonable extent and "the equality and the wide participation of the benefits" of the natural stream are not interfered with to an unreasonable extent."

27. The plaintiffs, therefore, are entitled to a declaration in terms indicated above with regard to the lands of all the four villages. Point No. 3 as formulated by the Counsel for the appellants is thus decided on the basis of the concession made by the Counsel for the respondents.

28. The appeal as well as the cross-objection succeed in part in view of the findings recorded above. I have already given my reasons for holding that the present bundh ought to be removed and the river bed must be brought to its normal level.

29. The appeal and the cross-objection are therefore allowed in part, and the declaration is granted with regard to all the lands of villages Gujra Motihari, Belwa, Bairia and Jamunia abutting on the stream and coming within the purview of the water-shed of the river. If the bundh is not removed and the river bed is not brought to its normal level within one month from today, the plaintiffs will have that done with the help of the Court, and the costs thereof will be realised from the defendants. Parties will bear their own costs of both the Courts.

Ahmad, J.

30. I agree.