

Partap Singh and Others Vs Nand Kishore and Others

Court: Allahabad High Court

Date of Decision: April 18, 1928

Acts Referred: Easements Act, 1882 & Section 18

Citation: AIR 1928 All 591 : 113 Ind. Cas. 729

Hon'ble Judges: Dalal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Dalal, J.

This is a second appeal by defendant zamindars. The plaintiff Nand Kishore had been drawing water for irrigation from a kachcha

well in plot 476. He is a tenant. There was a partition between the zamindars, that is between the defendants and the immediate zamindar from

whom Nand Kishore held the land cultivated by him. Plot 476/2, in which the kachcha well existed, fell to the share of the defendants and not to

the share of the plaintiff's zamindar. Thereupon the defendants prevented the plaintiff from watering his field from the well, whereupon the plaintiff

sued for an injunction and damages. The suit was decreed by both the subordinate Courts, and hence the defendants have appealed. The plaint is a

document of merit and very carefully details the reasons for the claim. In para. 1 it is stated that the plaintiff is an occupancy tenant of certain plots

of land in the village. Formerly the land was situated in mahal Khushal Singh and the plaintiff had irrigated his cultivated land from kachcha well

situated in plot 476/5 according to the former nomenclature. Subsequently as stated in para. 3 this plot was divided into two portions, the portion

containing all the kachcha wells was allotted to mahal Partap Singh belonging to the defendants while the other portion having no wells was allotted

to the plaintiff's zamindar. It is specifically stated in para. 3 that no wells could be sunk in the portion of the land allotted to the plaintiff's zamindar.

In para. 5 the allegation made is that the plaintiff's cultivated land has been irrigated as a matter of custom for more than 50 years from the well

situated in present plot 476/2 and, therefore, the plaintiff had acquired at the partition of the zamindari property a customary right of easement to

irrigate his plots from water in that well. It is also explained in para. 5 that this particular plot is known as ""kohana"" (koh) meaning a layer of sand

designating a place where water would be found. This particular area is known as ""kohana"" to distinguish it from the other area where water would

not be discovered. In para. 8 again it is repeated that the claim is based on a customary right of easement.

2. It was argued here that a tenant cannot enforce any right of easement against his landlord. This is a proposition distinctly in teeth of the

provisions of Section 18, Easements Act (No. 5 of 1882). According to that provision of law, an easement may be acquired in virtue of a local

custom and such easements are called customary easements. The illustration narrates how a cultivator or a tenant may claim a customary right

against his own zamindar. By the custom of a certain village every cultivator of village land is entitled as such to graze his cattle on the common

pasture. A having become the tenant of a plot of uncultivated land in the village breaks up and cultivates that plot. He thereby acquires an easement

to graze his cattle in accordance with custom. Obviously this easement is acquired as against the zamindar owner of the common pasture. Ground

2 of appeal is that the customary right claimed was unjust, unreasonable and improper. In my opinion, the denial of such a right is unjust,

unreasonable and improper as it would lead to drying up of a cultivator's crops. Ground 3 deals with partition, and it was argued that at the time of

partition no right was reserved to the plaintiff to take water from a well situated in land allotted to a zamindar other than the plaintiff's own

zamindar. This argument overlooks the patent fact that the plaintiff was no party to the partition and cannot be punished for the neglect of his

zamindar. The other two grounds of appeal are merely argumentative.

3. In the case of Rajab Ali v. Rajjoo Khan [1914] 12 A.L.J. 963, Sundar Lal, J., considered the law on the subject and has explained it with great

lucidity. A zamindar came to Court alleging that certain occupancy tenants of the village had trespassed on waste land and desired their ejection.

The learned Judge held that the tenants had a customary right of easement as against the zamindar because by a village custom they were entitled

to use the plot of land for the purpose of pressing and boiling the sugarcane juice and for cognate purposes. Just as the crushing of the sugarcane

and the pressing and boiling of the juice in that case were considered incidental to agricultural operations similarly the irrigation of a field is

incidental and even more so, to the raising of crops for the purpose of agriculture. The rulings referred to by the learned Counsel for the appellants

have no bearing on the present case. In Gaddar v. Kalta [1919] 17 A.L.J. 672 both parties were zamindars who were parties to the partition, and

the point for consideration was an easement of necessity and not one based on custom. In Bahadur v. Khushi Ram [1914] 11 A.L.J. 990 the claim

was not based on custom. In Karan Singh v. Dal Chand AIR 1924 All. 159, a learned Judge of this Court pointed out, as I have done above, that

Section 18, Easements Act, expressly recognized that a tenant may have a customary right of easement against his landlord. He further laid down

that any kind of easement recognized by the custom of the provinces would fall within the meaning of the term ""customary right of easement."" He

further explained that the Full Bench ruling of Udit Singh v. Kashi Ram [1892] 14 All. 185, on which is based the ruling in the case of Bahadur

[1914] 11 A.L.J. 990, quoted above referred to an easement by prescription and not to a customary right of easement. Both the Subordinate

Courts have held that the custom was fully established and I agree.

4. I dismiss the appeal with costs.