

**(1961) 10 AHC CK 0013**

**Allahabad High Court**

**Case No:** Second Appeal No. 34 of 1954

Ghasi Ram

APPELLANT

Vs

Shiv Dayal

RESPONDENT

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**Date of Decision:** Oct. 31, 1961

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Easements Act, 1882 - Section 28, 29

**Citation:** AIR 1963 All 121

**Hon'ble Judges:** S.S. Dhavan, J

**Bench:** Single Bench

**Advocate:** G.P. Bhargava, for the Appellant; D.P. Agarwal, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

S.S. Dhavan, J.

This is a plaintiff's second appeal against the decision of the learned District Judge of Rampur dismissing his suit for an injunction to restrain the defendant-respondent from discharging water through three parnalas on the first floor of the latter's house. The plaintiff alleged in his plaint that the defendant's house adjoined his and till 40 or 45 years ago it was a single-storeyed house. The plaintiff admitted that the house contained three parnalas through which rain water was discharged on the roof of the plaintiff's house which apparently was on a lower level. About 40 years ago the defendant's ancestors constructed a second storey and the parnalas were removed to the roof of the top storey. The plaintiff admitted that the defendant had been discharging rain water through the new parnalas on the plaintiff's roof and conceded his right to do so. But he complained that recently the defendant had re-opened the old parnalas on the lower floor which had remained closed since the construction of the second storey, and had commenced discharging every kind of dirty water through those parnalas. The plaintiff remonstrated but the defendant ignored his protests; hence the suit for the injunction. The defendant alleged that

the old parnalas were never closed even after the construction of the second storey, but were used for discharging water from the floor of the new rooms. He claimed an easementary right with regard to these parnalas too.

2. The trial court believed the plaintiff's version and held that the old parnalas were closed up and had been recently opened by the defendant. It issued a permanent injunction restraining the defendant from discharging any water through the old parnalas. In appeal the learned Judge took a different view and held that the old parnalas had not been closed when the second storey was built and the defendant had been discharging the water used for the washing of the floors of the rooms through these parnalas. Accordingly, he held that the defendant had a prescriptive right of easement to discharge water through the disputed parnalas and dismissed the plaintiff's suit. The plaintiff has come to this court in second appeal.

3. Learned counsel for the appellant was unable to advance any reason which would entitle this court to reverse, in second appeal, the finding of the appellate court that the defendant had been discharging the water used for the washing of the floors of the rooms into the plaintiff's land. This finding, to my mind, is unsatisfactory and the learned Judge was not justified in interfering with the conclusions of the trial court which are far more cogent than his own. But, as held by the Supreme Court, this Court has no jurisdiction to interfere with any factual conclusion of the appellate court in an appeal u/s 100 C.P.C. I am therefore, bound by the finding that the defendant had been discharging the water used for the washing of the floors of the new rooms on the second storey into the plaintiff's land.

4. But accepting this finding, I think the plaintiff was entitled to a limited relief. He had complained that the defendant had commenced discharging water used for the washing of the floors of the rooms from the old parnalas. The defendant had established a prescriptive right to discharge water used for the washing of the floors, but no further. The defendant did not deny that he had been discharging all kinds of water mingled with filth from the latrines and refuse from the kitchen through these parnalas. This he had no right to do. The right to discharge water used for washing pucca floors cannot be enlarged to include water mingled with filth from latrines or refuse from the kitchen and the defendant illegally increased the burden on the servant tenement. The plaintiff is entitled to the assistance of the Court in repelling this additional burden on this land. The total dismissal of his suit by the appellate court would leave him helpless against the illegal addition.

5. I, therefore, allow this appeal in part and direct the issue of a permanent injunction restraining the defendant from discharging into the plaintiff's land any kind of water other than what is used for the washing of the floors of the new rooms on the second storey. It is made clear that the defendant is restrained from discharging any water from his lavatory or kitchen into the plaintiff's land.

6. As each party has a partial success in this dispute, I direct them to bear their own costs throughout.