(1912) 04 CAL CK 0053

Calcutta High Court

Case No: None

Kenaram Akhuli and Another		APPELLANT
	Vs	
Sristidhar Chatterjee and Another		RESPONDENT

Date of Decision: April 18, 1912

Citation: 15 Ind. Cas. 543

Hon'ble Judges: Mookerjee, J; Carnduff, J

Bench: Division Bench

Judgement

1. This is an appeal on be-half of two of the defendants in a suit for an injunction to restrain them from passing water from their land to to land of the plaintiffs, as also for recovery of damages. The plaintiffs are the owners of two parcels of land which adjoin a third parcel owned by the defendants. Towards'' the south of this property, there is a tank not owned by either of the parties to the suit. The case for the plaintiff is that (he defendants have lowered the level of then'' own land with the result that the water from this tank passes to the land of the defendants and subsequently overflows into the lands of the plaintiffs. The question, therefore, arises whether upon these facts the plaintiffs are entitled to a mandatory injunction against the defendants to compel them to raise an embankment for the benefit of the plaintiffs and also to recover damages already caused. The learned Vakil for the plaintiffs-respondents has con-tended, upon the authority of Rylands v. Fletcher L.R. 3 H.L. 330 : 37 L.J. Ex. 161 : 19 L.T. 220, that the defendants have no right to bring water upon their land which may subsequently flow out and cause damage to the land of the plaintiffs. The principle deducible from that decision is that the occupier of land who brings or keeps upon it anything likely to do damage, if it escapes, is bound at his peril to prevent its escape and is liable for all the natural and probable consequences of its escape even if he has been guilty of no negligence. In our opinion, this principle cannot be applied to the circumstances of the present case. It is not disputed and it cannot be seriously disputed that the defendants have not used their land in any artificial or unusual manner. They lowered the level of their

own land so as to make it culturable, and they were amply within their rights in what they did Smith v. Kenrick 7 C.B. 515 : 18 L.J.C.P. 172 : 13 Jur. 362. It cannot be suggested that they had recourse to any artificial structures for the purpose of storing water in their land Hurdman v. North Eastern Railway Company 3 C.P.D. 168 : 47 L.J.C.P. 368 : 88 L.T 339 : 6 W.R. 489; Broder v. Saillard 2 Ch. D. 692 : 45 L.J. Ch. 414 : 24 W.R. 1011 nor can it be suggested that they have freed water from their land into the land of the plaintiffs Whalley v. Lancashire Railway Co. 13 Q.B.D. 131 : 53 L.J.Q.B. 285 : 50 L.T. 472 :32 W.R. 711 : 48 J.P. 500. Under these circumstances, we are of opinion that the plaintiffs are not entitled to an injunction as against the defendants to compel the latter to raise a barrier for their protection. In support of this view, reference may be made to the case of Nield v. London and North-Western Railway Co. (1874) L.R. 10 Ex. 4 : 44 L.J. Ex. 15 : 23 W.R. 60 where it was ruled that an occupier is not bound to prevent damage to his neighbour by the natural escape of flood water from higher to lower levels. As Bramwell, B., observed--the neighbour is not entitled to say ''you have caused me an injury in law.'' The law allows what may be termed a kind of reasonable selfishness in such matters. It says "let every one look out for himself and protect his own interest." If this view were not adopted, the result would be that a man could not reasonably use his property lest some neighbour of his might complain that he had caused him an injury. The true principle is that where the owner of land, without wilfulness or negligence, uses his land in the ordinary manner, though mischief thereby accrues to his neighbour, he is not liable for damages, but if with a view to use the land in an unusual manner, he brings upon his land water which would not naturally have come upon it, he will be liable for damages for the escape of the water into the land of his neighbour. This doctrine was recognised in the case of Hodgson v. York Corporation 28 L.T. 836 : see also Chasemore v. Richards 7 H.L.C. 349 : 29 L.J. Ex. 81 : 5 Jur. (N.S.) 873 : 7 W.R. 685. We are of opinion, therefore, that although the plaintiffs may have suffered damage, no legal right of theirs has been infringed and they have no cause of action against the defendants.

2. The result is that this appeal is allowed, the order of the Sub-Judge discharged and the decree of the Court of first instance restored with costs both here and in the Court of appeal below. We assess the hearing fee in this Court at two gold mohurs.