

(1932) 08 MAD CK 0030
In the Madras High Court

(Allam) Narasimhulu and Others

APPELLANT

Vs

(Gutta) Bhadrappa and Others

RESPONDENT

Date of Decision : 23-08-1932

Acts Referred:

Citation : AIR 1933 Mad 10

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—These are connected appeals and arise out of a suit brought by plaintiff (respondents) for a declaration that only the

raiylats of the lands within the ayacut of Selavani and Karicherlavari tanks are entitled to use the water flowing through the suit Solavani channel and

that the defendants have no right to use that water for cultivating as wet their lands on either side of the channel and for an injunction restraining

them from taking the water of the channel to their lands for wet cultivation by putting up cross bunds or palmyrah spouts and also for directing the

defendants to restore the channel to its original condition. Both the lower Courts have found the plaintiffs' contention to be substantially true and

passed a decree in their favour, granting the reliefs asked for by them subject to a slight qualification, S.A. No. 470 of 1930 has been filed by

defendant 12 and 8. A. No. 334 of 1930 by some of other defendants, Plaintiffs and others own about 400 acres of manaoal wet land under the

ayacut of Solavani and Karicherlavari tanks. The source of supply for those tanks is Tammileru, which is doubtless a natural stream. From that

stream the suit channel called Solavani channel was cut in order to serve as a feeder to the afore-said tanks. After these tanks became full, the

water flowing through the suit channel used to be taken to two other tanks mentioned in the plaint. There is another tank called Kotta Cheruvu to

which water is supplied from Tammileru by means of a branch from Dondulur channel.

2. It is found by both the Courts below, that the defendants' contention that the water from Tammileru flows through the suit channel into Kotta

Cheruvu is false. Most of the defendants' lands lying on either side of the suit channel have been found to be dry, and it is only since 1917 or 1918

that the defendants have been trying to convert those lands into wet. Defendant 12's land alone is found to be mamool wet, but the finding of both

the lower Courts is, that that land is fed by Kotta Cheruvu and that no right to take the water of the suit channel for irrigating that land has been

established. There is no doubt that the plaintiffs and others who own wet lands under the ayacut of Solavani and Karicherlavari, tanks, have

permanent rights of occupancy therein, and the suit channel is a feeder for those two tanks. After a full consideration of the evidence and

circumstances of this case, it is found by both the Courts below that the raiyats holding wet lands within the ayacut of Solavani and Karicherlavari

tanks are entitled to the exclusive user of the water flowing through the suit channel and to the unobstructed flow of water through the same, in

order to fill up the aforesaid tanks for the purpose of irrigating their wet lands, within the ayacut. As observed by the learned District Munsif, the

rights so acquired can be traced to an implied grant by the zamindar and by reason of the long enjoyment of the entire quantity of water flowing

from the suit channel in the aforesaid manner, as of right, an easement by prescription or a customary right has been acquired even as against the

zamindar. These findings are amply borne out by the evidence and must be accepted in these second appeals.

3. It is however contended that the suit channel should be deemed to be a natural stream and therefore the defendants who own lands on either

side of it, are en-titled to riparian rights which could not be lost by mere non-user. The Courts below have held that the suit channel is not a natural

stream but only an artificial water course. That finding is challenged by setting up the contention that as the suit channel flows out of Tammileru

which is a natural stream, it must also be taken to be a natural stream.

4. But the opinion expressed by text-writers is against this contention. An artificial stream is a stream which flows at its source by the operation of man, or, if it flows at its source by the operation of nature, flows in a channel made by man. In the present case, water is made to flow in an artificial channel from a natural stream and such a channel is an artificial stream (vide p. 327 of the Law of Riparian Rights by L.M. Doss). Where a stream is artificial and flows in a channel made by artificial means through the lands of adjoining proprietors, the rights of such proprietors are not *prima facie* the same as those of proprietors on the banks of natural streams. The right to the enjoyment of a natural stream of water belongs to the proprietor of the adjoining lands as a natural incident to the right to the soil itself. He has a right to have it come to him "in its natural state, in flow, quantity and quality, and to go from him without obstruction. Such a right in no way depends on prescription or any presumed grant. But in the case of artificial water courses the acquisition of rights in them must be by grant or prescription: Vide pp. 106 and 107 of the Law of Waters by Coulson and Forbes, 4th Edn. The same view is expressed in Gale on Easements (10th Edn.) at pp. 274 and 275. The learned author says that in the case of an artificial water-course, any right to the flow of water must rest on some grant or arrangement either proved or presumed, from or with the owners of the lands from which water is artificially brought or on some other legal origin. The contention of Mr. Raghava Rao for the appellants seems to be that by reason of the artificial channel having been cut from a natural stream, the owners of lands on either side of the channel must be deemed to have the same riparian rights as in the case of natural streams. But I think it is too broad a proposition which practically obliterates the distinction between a natural stream and an artificial water course; and even the decisions relied on by him do not support such an unqualified proposition.

5. What those decisions appear to lay down is, that even in the case of an "artificial water course, special circumstances may be shown to exist so as to confer all such rights as a riparian owner would have had in the case of a natural stream. In *Nuttall v. Bracewell* (1867) 2 Ex 1, there were special circumstances for finding in favour of the acquisition of riparian rights in respect of an artificial stream-As a result of an agreement between

two riparian owners of lands abutting a natural stream, there was a diversion of the water of the natural stream through an artificial channel,

ultimately returning the water to the natural stream without doing any injury to any one. It was considered that it was within the competence of a

riparian proprietor-to grant a portion of his rights to another provided the latter did not make an un-reasonable use of the water so as to cause

sensible injury to the higher or lower down proprietor. In this case reference was made to *Sutcliffe v. Booth* (1863) 82LJQB 136, as an authority

for the position that an artificial stream may be on the same footing as a natural one as regards rights of riparian proprietors. But it is clear from the

decision in *Sutcliffe v. Booth* (1863) 82LJQB 136 that in order to acquire all the rights of riparian proprietors, it must be shown that a water

course, though artificial, was originally made under such circumstances and so used as to give all the-rights owned by the riparian proprietors, in

respect of a natural stream. There is nothing in the decision of the Patna High Court reported in *Krishna Dayal Giri v. Bhawani Koer* (1918) 3 Pat

LJ 51, which goes beyond the limitations prescribed in the aforesaid English decisions. The facts-established in that case led to the inference that

even in respect of the artificial water-course rights incidental to a natural stream have been acquired. Even in the decision in *Yesu Sakharam Pujari*

Vs. Ladu Nana Savant Bhosale, , the same principle has been adopted. The ordinary rule that in the case of an artificial water course any right of

the owner to the flow of the water must rest on prescription or grant from or contract with the owner of the land from which the water is artificially

brought was held to be subject to a qualification which as laid down by the Privy Council in AIR 1925 236 (Privy Council) , is as follows:

There is however a well established principle of law, namely, that a water course originally artificial may have been made under such circumstances

and have been used in such a way that an owner of land situate on its banks will have all the rights over it, that a riparian owner would have if it had

been a natural stream.

6. It is clear from the above mentioned authorities, that unless the defendants establish circumstances under which the suit channel was made and

the manner in which it was used so as to give rise to an inference that those who own lands on either side of this channel have all the rights of

riparian owners as such, the contention put forward by Mr. Raghava Rao must be held to be untenable. As both the lower Courts have found, the

water of the suit channel was never used for irrigating the lands on either side of it till 1917 or 1918 and it is only since then, attempts have been

made to make use of the water in violation of the rights owned by the ryots having lands under the ayacut of Solavani and Karicherlavari tanks.

7. I have therefore no hesitation to find that the defendants can claim no riparian rights in respect of the suit channel. It is also perfectly clear, that

even assuming that they have such natural rights, they were lost by reason of the acquisition of a right of easement to the exclusive user of the water

of the suit channel and of the uninterrupted flow of the same to the said two tanks, acquired by the ayacutdars who own wet lands under those

tanks. 8. A. No. 334 of 1930 is therefore dismissed with costs.

8. In the other appeal, a special contention is raised on behalf of defendant 12 by reason of his land being a mamool wet land. It follows from what

I have stated above, that he can claim no riparian right by reason of his land abutting the suit channel. If so, he must prove that by grant or

prescription or any other arrangement he has acquired the right to take the water of the suit channel for irrigating that land. Both the Courts below

have fully considered the evidence regarding defendant 12's claim and given an adverse finding. The learned District Munsif finds that there is no

sufficient reliable evidence to establish that defendant 12 and his predecessors have been taking water as of right from the suit channel for over the

statutory period for irrigating the land purchased by him under Ex. 8. The learned Subordinate Judge has taken the same view of the evidence and

come to the same conclusion. The concurrent finding of both the Courts below on a pure question of fact is to be accepted in second appeal,

unless there are adequate grounds for interfering with it. Mr. T.M. Krishnaswami Ayyar pressed an argument in order to show that finding is

vitiating by a misconstruction of the sale deed, Ex. 8, obtained by defendant 12 in 1920, which may be deemed to be his title deed for the land., I

need hardly observe that if by reason of a misconstruction of an important document the Courts below came to an erroneous finding on a question

of fact, this Court can interfere in second appeal. It has therefore to be seen whether Ex. 8 was really misconstrued or not. (The judgment after

considering the document held.) I am of opinion that the appreciation of the oral evidence by both the Courts below is not in any way vitiated by a
misconstruction of this document. The finding of the learned District Munsif is also supported by what he observed in the locality at the time of his
personal inspection. It is conceded by the plaintiff's that the water of Kotta Cheruvu was taken to defendant 12's land through a side channel and
a small sluice and by means of a palmyrah spout placed over the suit channel. There is, in my opinion, no adequate ground for interference with the
finding of the lower Courts. In the result, S.A. No. 470 of 1930 is also dismissed with costs.