

(1965) 12 AP CK 0009

In the Andhra Pradesh High Court

Case No : Second Appeal No. 472 of 1962

Chanti China Venkatareddi

APPELLANT

Vs

Kurasani Koti Reddy and Another

RESPONDENT

Date of Decision : 22-12-1965

Acts Referred:

Easements Act, 1882 — Section 44, 7
Limitation Act, 1908 — Section 26

Citation : AIR 1967 AP 81

Hon'ble Judges : Gopal Rao Ekote, J

Bench : Single Bench

Advocate : G. Venkatarama Sastry, for the Appellant; S.V. Maruthi, for the Respondent

Judgement

(1) The respondent-plaintiff filed a suit for declaration of the easementary right of the plaintiff to let off rain water discharged from the western plots A and A-1 towards east across the plots B and B-1 belonging to the defendants and for the issue of a mandatory injunction directing the defendants to remove the elevated portion CD as per plaint plan. It was contended that water used to flow in the natural way since a very long time from A, A-1 plots to B, B-1 plots towards east into the poramboke land. The lie of the land is from west to east and south to north. It was alleged that the defendants dug up two wells and dug channels also. The earth so removed was placed along the ridge CD thereby preventing the water from A, A-1 plots to flow into B, B-1 plots with the result that the water was stagnating and causing damage to the lands of the plaintiff.

(2) The contention of the 1st defendant, who is the appellant before me, was that the lie of the land is not from west to east, that the water never flowed in the way in which it is alleged by the plaintiff and that the plaintiff never exercised any easementary right. The CD ridge is an old ridge. The rainwater according to the 1st defendant flows from south-north upto the point of J and takes a turn towards east and flows into the 2nd defendant's land. The said defendant admits

that he dug a well about three years back and irrigated his lands, He also said that the plaintiff has not exercised the right within two years prior to the suit and as such the suit would be time-barred.

(3) I am not concerned with the defence set up by the 2nd defendant as nothing turns upon that. The trial Court after recording the evidence of the parties upheld the contention of the plaintiff and decreed his suit. The matter was then carried in appeal but the 1st defendant was not successful.

(4)The principal contention of the learned counsel for the appellant is that the ridge was in existence even according to the plaintiff's deposition, in 1950 and since the plaintiff stood by and never objected to it till the date of the suit, the defendant would be deemed to have acquired a right of resisting the flow of water and thus the plaintiff's right, if there be any, would be deemed to have extinguished. Reliance is placed in this connection on S. 44 of the Indian Easements Act and on the following two cases: -- Natabar Sasmal and Others Vs. Krishna Chandra Bera and Others, and U Po Thet v. A. L. S. P. P. L. Chettyar Firm, AIR 1936 Rang 282. I do not find any force in this contention. Section 44 of the Easements Act has no application to the facts of the present case. That section relates to the extinction of easementary right because of permanent alteration of servant heritage by superior force. It is not the defendant's case that the ridge channel and the wells were brought into existence by any superior force. The 1st defendant, in any case, who raised the bund and channel cannot be a superior force. Section 44 of the Act, therefore, has no relevance.

(5) Far from helping the defendant, the 2nd case of the Rangoon High Court relied upon by the learned counsel for the appellant distinctly does him dis-service. In that case, in order to destroy a natural right of the plaintiff to throw off the water in the natural way, the defendant most successfully set up a counter easementary right to resist and throw back the water coming from the plaintiff's land. It is plain that such a counter easementary right can be acquired only in the manner in which other easementary rights are acquired; that is to say, by its continuous unobstructed exercise of 20 years and two more years prior to the suit. That was not the case of the defendant. The defendant cannot acquire that right within 8 years. Since the defendant has not acquired any easementary right to resist the natural flow of water and throw it back, I do not find any substance in that contention.

(6) The other case of the Calcutta High Court is not also of much relevance in this regard.

(7) The same contention was put in another way by saying that when the plaintiff has admitted in his deposition that it was in 1950 that the wells were dug and the ridge erected, it would be deemed that the exercise of his easementary right was suspended more than two years prior to the suit. Hence the suit is time-barred. That point has been answered by the lower Appellate Court in two ways. Firstly, he found that the obstruction is created only within two years prior to the

suit. He discussed the evidence and was of the opinion that the witnesses gave various versions, but in the circumstances of the case, he reached the conclusion clearly that the obstruction was raised within two years prior to the suit. This being a question of fact, I cannot re-appreciated the evidence to find out whether that conclusion is correct.

(8) Secondly that S. 26 is applicable only to easementary rights and not to natural rights. According to S. 26 of the Indian Limitation Act the exercise of an easementary right must be within a period of two years of the suit. If it was not exercised during that period the suit would be time-barred.

(9) It must be remembered that an easement is a specific right subtracted from the general rights constituting ownership of one property and attached to the ownership of another property. In the language of the Act an easement is a restriction of a natural right. An easement, therefore, must be distinguished from natural rights. The latter, as their name imports, are those incidents and advantages which are provided by nature for the use and enjoyment of a person's property. They are part of the ownership rights. the illustrations to S. 7 of the Easements Act furnish instances of such natural rights. One of such natural rights is the right of every owner of upper land that water naturally rising in or falling on such land, and not passing in defined channels, shall be allowed by the owner of the adjacent lower land to run naturally thereto. Thus the right of the owner of a high land to drain off its surplus surface water to the adjacent lower lands is incidental to the ownership of the land.

(10) Section 26 plainly applies to the easementary rights. The right to drain off the rainwater according to the lie of the land in a natural way, is a natural right and is not restricted by any such limitation. I do not find, therefore, any reason to differ with the conclusion of the lower appellate Court.

(11) It was then contended that the plaintiff has no right to divert the natural flow of the water through a particular vent. I do not think that this argument is correct. The plaintiff has a right to either drain off the water in the natural way according to the levels of the lands or he can also collect and direct it through a particular vent, but while doing so he must take care that it should not cause more damage to the servient owner than what was caused when the water was flown in the natural way. In this case, this point does not arise. According to the lie of the land the water was flowing in its natural way. By a device the defendants seem to have obstructed it. Both the Courts below have directed that this device has to go away. The device was employed to create obstruction from Point X-1 all along the ridge. I do not think, therefore, that the decree granted by both the Courts below in favour of the plaintiff is in any way inconsistent with the findings of the Courts below.

(12) For these reasons, the second appeal fails and is dismissed with costs. No leave.

(13) Appeal dismissed.