

(1912) 10 MAD CK 0051
In the Madras High Court

Ethamukkala Konda Reddi and Another	APPELLANT
Vs	
Singampalli Venkata Subba Row and Others	RESPONDENT

Date of Decision : 04-10-1912

Acts Referred:

Citation : 18 Ind. Cas. 85

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. The suit was instituted by the plaintiff on behalf of himself and all the other villagers of Kavali. The lower Courts have found that the villagers have the right of passing through the defendant's field Survey No. 970 over a track traversing it from south-west to north-east. The survey plan of the year 1861 contains a mark of this track. We have had a good deal of evidence in the case read to us, and we think, on the whole, the evidence is in accordance with what is shown in the survey plan. No doubt, it appears that the persona passing along the field did not always use the track as marked in the plan. This was probably because the land itself was waste and it would be immaterial for the owner of the field whether the track shown in the plan was used or whether there was a deviation from it. One of the witnesses says that the Pantakalvai was sometimes crossed near the south-eastern corner of the field Survey No. 170. This does not, in our opinion, affect the evidence that the right of way existed from south-west to north-east along the whole field. It was argued that the fact that carts did not pass along the field during the cultivation season militates against the inference that the villagers used the way as a matter of right. We are unable to agree with this argument. If the owner of the field interrupted the passage of the villagers whenever he chose, that would, no doubt, afford good evidence that the way was not used as of right. But a right of way for carts may exist during one season only, or it may not exist during a particular season. The interruption being during a particular season only, it would be a proper inference to draw that the right was a restricted one and not that the use of the way was not as a matter of right at all. Nothing that was brought to our notice in the evidence goes to show that

the villagers did not use the way as of right. Substantially, therefore, in our opinion, the second appeal must fail. The decree, however, is not quite correct. The right is declared in favour of the plaintiffs and other persons interested in the path. This is vague and liable to lead to future disputes. The suit having been instituted on behalf of the villagers of Kavali, a decree can be passed only in their favour. For the words "other persons interested in the said path," therefore, must be substituted the words "other villagers of Kavali." With this modification, the second appeal must be dismissed with costs.