
(1910) 03 MAD CK 0031
In the Madras High Court

Kondapa Rajan and Others

APPELLANT

Vs

Dwarakonda Suryanarayna and Others

RESPONDENT

Date of Decision : 04-03-1910

Acts Referred:

Citation : (1910) 20 MLJ 803

Judgement

1. The plaintiffs were in enjoyment of a watercourse. For the purpose of this case we may assume that they had not acquired an easement by

prescription, for the enjoyment did not extend to 20 years. The defendants who have no manner of right to the water-course or the land over

which it flowed, obstructed the plaintiff's user. The District Judge has given the injunction asked for. It is argued by the learned Advocate-General

that the plaintiffs not having acquired a complete title they would not be entitled to restrain the defendants from interference. The law is well settled

that if the plaintiff was in possession of land for less than the statutory period, he would be entitled to protect that possession against any one but

the true owner. We do not think that there is any distinction in principle because the right now claimed to be protected is in the nature of an

incorporeal right in process of acquisition. Incorporeal rights are in many cases capable of possession just as much as rights to corporeal

hereditaments. In *Jeffries v. Williams* (1850) 5 Ex. Rep. 792 it was held by Baron Parke that a trespasser on adjoining land was not entitled to

cause a subsidence by working mines to the prejudice of the mines in the plaintiff's enjoyment though he had not acquired a title to the same. This

was followed in *Elizabeth Bibby v. Carter* (1860) 4. H. & N. 53 where the plaintiff who had not acquired a title was held to be entitled to sue for

damages against a trespasser on adjoining land who caused injury to the plaintiff's buildings. The principle of these cases had been extended in

India to cases of light where before the right had matured a trespasser interfered with it--see *Jooher Achanna v. Vanamala Venkamma* (1894) 5.

M.L.J 24 and *Dhuman Khan v. Mahammud Khan* ILR (1896) A. 153. We think that the District Judge is right in applying the same principle to

the present case of a water course enjoyed for less than the prescriptive period.

2. We must dismiss the second appeal with costs.