

(1894) 03 MAD CK 0014
In the Madras High Court

Madhava Rau

APPELLANT

Vs

P.M. Fernandes

RESPONDENT

Date of Decision : 29-03-1894

Acts Referred:

Citation : (1894) ILR (Mad) 368

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. On the facts found the decrees of the Courts below cannot be supported. It is conceded that the encroachment in the channel by plaintiff was

long before the defendant's encroachments. The Courts below are in error in supposing that plaintiff's suit must fail on the ground that he also

contributed to the injury. As in the case of contributory negligence, so also in the present case, plaintiff's encroachment could only be held to be

contributory if by the exercise of ordinary care defendant could not have avoided causing the injury. Government, on whose property both parties

are found to have encroached, may be entitled to require both parties to restore the channel to its original width; but as between plaintiff and

defendant it was the latter's recent encroachment that was the cause of plaintiff's land being submerged. This is a wrong against which plaintiff is

entitled to relief against the defendant.

2. We, therefore, set aside the decrees of the Courts below and call upon the Subordinate Judge to submit findings on the eighth issue, viz., to

what relief (if any) is the plaintiff entitled under the circumstance of the case, within one month from date of receipt of this order, and seven days

will be allowed for filing objections after the finding has been posted up in this

Court.

3. Accepting the finding, we reverse the decrees of the Courts below and direct that the channel and cattle lane be repaired by the defendant, or

else that he do pay plaintiff a sum of Rs. 30 (thirty) as costs of doing the work, and that defendant do pay plaintiff a further sum of Rs. 15 as

damages, and that he do also pay plaintiff proportionate costs on the above in all three Courts.