

**(2006) 10 KAR CK 0069**

**In the Karnataka High Court**

**Case No : Regular First Appeal No. 803 of 2004**

Ningappa

APPELLANT

Vs

R. Shankarappa

RESPONDENT

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**Date of Decision : 12-10-2006**

**Acts Referred:**

**Citation : (2006) 10 KAR CK 0069**

**Hon'ble Judges : K. Sreedhar Rao, J**

**Bench : Single Bench**

**Advocate : J. Prashanth and Mr. M. Jaganath, for the Respondent**

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## **Judgement**

K. Sreedhar Rao, J.—The appellant-plaintiff is the owner of Sy. Nos.275/3 and 275/4 measuring 4 acres 14 guntas. 4 acres is a cultivable land and 19 guntas is a kharab. The plaintiff got the cultivable land of 4 acres converted into non-agricultural purpose and has put up the structures and running a school.

2. The plaintiff says along side, there is a hillock. He has put up a wall to prevent soil erosion and percolation of rain and waste water. The defendant-respondent is the owner of the adjacent land bearing No.275/5.

3. The defendant took up levelling of upgradient portion of his land to enable cultivation. During the course of levelling, the compound wall which had enjoyed subsoil support, collapsed because of excavation of subsoil. The plaintiff therefore, filed a suit claiming easementary right of lateral support from the adjacent land of the defendant and seek permanent injunction.

4. The Trial Court found that the plaintiff owns 4 acres of cultivable land and 19 guntas of kharab claimed by him and he has no right over 19 guntas of land claimed by him and hence the plaintiff cannot maintain an action in respect of compound constructed in kharab portion and dismissed the suit.

5. The facts and the evidence disclose that the claim to the extent of 19 guntas of kharab forms part of the plain land available on the hillock. The other portion

of kharab of the same survey number forms part of defendant's land. The view taken by the Trial Court that the plaintiff cannot claim the right of possession over kharab is untenable. It is well-settled that kharab forms part of the cultivable land. Moreover, on account of natural location of kharab on the hillock which is on a higher ingredient, the other adjoining owner cannot have any access to 19 guntas of kharab which abuts the plaintiff's land. Kharab is to be held to be in possession and enjoyment of the plaintiff.

6. Provisions of Section 7 and illustration (e) of the Indian Easements Act, 1882 reads thus:

"7. Easements restrictive of certain rights. - Easements are restrictions of one or other of the following rights (namely) -

(a) Exclusive right to enjoy. - The exclusive right of every owner of immovable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto;

(b) Right to advantages arising from situation. - The right of every owner of immovable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustration (e). - The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person."

7. In the instant case, on account of peculiar location of the plaintiff's property for its beneficial use, the plaintiff has constructed a wall along hillock on its southern side. The excavation work on the part of the defendant, has resulted in denial of subsoil support to the compound wall which resulted in collapse. The above provisions of Easements Act declare the right to have lateral support from the subsoil of the adjacent owner. In that view of the matter, the appreciation of the evidence on the part of the Trial Court is thoroughly wrong. The conclusion arrived at by the Trial Court is bad in law and the same is liable to be set aside.

8. It could be seen from the facts that the excavation done by the defendant was for limited purpose of levelling his land. There was no malicious intention on the part of the defendant to damage the compound of the plaintiff. In that view, it appears that there is no further threat or danger to the compound of the plaintiff. The plaintiff is however entitled to reconstruct the collapsed compound wall without interference from the defendant. Accordingly, the appeal is disposed of.