

(1894) 07 MAD CK 0001
In the Madras High Court

Periakaruppan

APPELLANT

Vs

Palaniyandi

RESPONDENT

Date of Decision : 18-07-1894

Acts Referred:

Citation : (1895) ILR (Mad) 28

Hon'ble Judges : Muttusami Ayyar, J

Bench : Single Bench

Judgement

Muttusami Ayyar, J.—This was a suit for compensation due to defendant having wrongfully obstructed the flow of water to plaintiff's cowle

land, and the question raised for determination on revision is whether Sub-clause i, Clause 35 of the second schedule of the Provincial Small

Causes Courts Act does not bar the jurisdiction of the Court of Small Causes from entertaining such suit. The contest is as to whether obstruction

to the flow of water which is referred to by the Subordinate Judge in his judgment must be taken to imply necessarily a "diversion" of the water

within the meaning of the provision of law cited above. It is contended on behalf of the petitioner that mere obstruction does not amount to

diversion, and that the use by the Subordinate Judge of the words "obstructed the flow of water" was not felicitous. It appears from the record that

plaintiff has certain cowle lands in Sivaganga, that a channel led off from the Puthur tank to those lands, and that petitioner's obstructions prevented

the plaintiff from taking water along it, that loss of crop was the damage which resulted, and that the water obstructed flowed into Ayan channels.

This appears to me to be clearly a case falling under the clause of the Small Causes Act already cited. The contention that obstruction is not

diversion seems to be absurd, since when the flow of water to the cowle lands along the channel was obstructed, it must be diverted in whole or part from the cowle lands, and since it is immaterial whether the diversion was into the tank itself or into Ayan or zamin channels or elsewhere. It is enough that if by the obstruction the flow of water to plaintiff's cowle lands is diverted from them so as to diminish the water-supply and to cause damage.

2. I set aside the decree of the Subordinate Judge as one passed without jurisdiction, and direct that the plaint be returned to plaintiff for presentation to a Court of competent jurisdiction.

3. Plaintiff will pay petitioner's costs throughout.