
(1892) 09 MAD CK 0020
In the Madras High Court

Ramachandra		APPELLANT
	Vs	
Narayanasami and Another		RESPONDENT

Date of Decision : 02-09-1892

Acts Referred:

Citation : (1893) ILR (Mad) 333

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

Bench : Division Bench

Judgement

1. The Subordinate Judge has found that the channel in dispute was newly dug; that appellant's statement that an old channel had existed is not proved; that the diversion of water from the Pattatharam channel caused a material diminution in the supply necessary for the cultivation of plaintiff's lands, and that actual damage was sustained in consequence in fasli 1295. Upon these facts it is clear that the order of the Sub-Collector was in excess of the power possessed by him for the regulation of the supply of water for irrigation purposes among raiyats holding lands under Government. As observed in Krishna Ayyan v. Venkatachella Mudali 7 M.H.C.R. 60 the Government has an undoubted right to distribute the water of Government channels, but that power does not include the power to disturb existing arrangements to the prejudice of any tenant during the continuance of the tenancy. This is also the view taken by the Bombay High Court in The First Assistant Collector of Nasik v. Shamji Dasrath Patil ILR Bom. 209.

2. As regards the direction that appellant should pay the costs of the second defendant (the Collector) in the Court of First Instance, we cannot disturb the same, as appellant did not make him a party in the lower Appellate

Court.

3. The appeal fails therefore and is dismissed with costs--two set Section