
(1913) 02 MAD CK 0023
In the Madras High Court

Sankarappa Naicker and Others

APPELLANT

Vs

Rani Nachiar and Another and Kondama Naiker and Others

RESPONDENT

Date of Decision : 07-02-1913

Acts Referred:

Easements Act, 1882 — Section 7

Citation : (1915) ILR (Mad) 149 : (1913) 25 MLJ 276

Judgement

1. The plaintiffs and defendants are conterminous landholders engaged in agriculture, the former owning the upper, and the latter the lower land.

The plaintiffs allege that the defendants, who are the owners of the adjacent lower land, have erected a bund or wall which has the effect of

preventing the water that fell on his (that is the plaintiffs") land from flowing to the defendants" land as it has been doing from time immemorial. The

Subordinate Judge was of opinion that he was bound to dismiss the plaintiffs" claim in accordance with the rulings in Mahamahopadhyaya

Bangachariar v. The Municipal Council of Kunbakonam ILR (1906) M. 539 and Sangana Beddiar v. Perumal Reddiar (1910) M.W.N. 545. He

pointed out, however, that "" these rulings are real impediments to punjah cultivation which would be impossible if the adjoining owners put up

ridges and pen back water on to a man"s punjah The configuration of punjahs in the country have not provided every man"s punjah with an odai or

water course. The right of drainage for punjah is a right of necessity. The rulings in question no doubt leave out of consideration the inconvenience

pointed out above,"" but as he was bound to follow the decisions, he dismissed the plaintiffs" claim, observing that the hardship, if any, is a matter

for legislature to consider and not for the Courts. The right of the owner of an upper land to let his water run naturally into the adjacent lower land

is a natural right. It has been recognised by this Court in *Subramania Aiyar v. Ramachendra Bow* (1877) ILR 1 M. 335 and in a series of

decisions by the Calcutta High Court which are referred to in *Abdul Hakim v. Ganesh Dutt* ILR (1885) C. 323. See also illustration (i) to Section

7 of the Indian Easements Act. The English law on this point is stated in *Kerr on Injunction*, 4th Edn. p. 195 in the following terms. ""When land is

so located that water naturally or in the course of ordinary agricultural operations, such as by deep ploughing, descends from the estate of the

superior proprietor to the inferior estate, the owner of the latter cannot do anything to prevent the course of such water. If he build a wall at the

upper part of his estate so as to prevent the water from descending on it, whereby the land above is damaged, there is an actionable injury. The

owner of land lying on a lower level is subject to the burden of receiving water which drains naturally or in the course of ordinary agricultural

operations, such as by deep ploughing, from land on a higher level. The upper proprietor may drain his land, and the proprietor below must receive

the water so drained; but the upper proprietor may not by adopting a particular system of drainage, or by introducing alterations in the mode of

drainage, cause the drainage water to flow on his neighbour's land in an injurious manner, or obstruct the drainage of other lands by over loading

the ancient drains with water. "" This is also in accordance with the civil law, "" by which it was considered that land on a lower level owed a natural

servitude to that in a higher, in respect of receiving, without claim to compensation the water naturally flowing down to it "" . See *Smith v. Kenrick*

(1849) 7 C.B. 566.

2. It was argued before us on behalf of the defendants that the result of applying this principle would be to prevent the defendants from ever

improving their land. It may be pointed out, however that if the principle is not recognized, as pointed out " by the judge, it may prevent the

plaintiffs from carrying on their cultivation in the usual manner. It has also to be remembered that though the principle is to be maintained, it has to

be prudently applied as pointed out in *Kerr on Injunction*. Whether in any case the owner of the upper land has exceeded his right must be

determined upon the facts of each case. The decision in *Mahamahopadhyaya Rungachariar v. The Municipal Council of Kumbakonam* ILR

(1906) M. 539 has no application. In that case there was no damage caused to the plaintiffs, whereas the Subordinate Judge finds in this case that the bund put up by the defendants will have the effect of seriously interfering with the plaintiff's cultivation of his punjah land. Moreover in that case, there was a conflict of rights. The natural right of the plaintiffs was in conflict with the right of the defendants (see illustration (a) to Section 7 of the Indian Easements Act) to build on his land, which was in a town. There is no such natural right of the defendants in the present case. Both the learned judges who decided that case make special reference to this right of the owner of the lower land. We are therefore of opinion that that case does not apply. The case reported in Sangana Reddiar v. Perumal Reddiar (1910) M.W.N. 545 apparently refers to land which does not lie within the Municipality, but the learned judges who decided it follow the ruling reported in Mahamahopadhyaya Rangachariar v. Municipal Council of Kumbakonam ILR (1906) M. 539 without recognising the distinction to which we have adverted. We are therefore of opinion that the plaintiff is entitled in S.A. No. 1266 of 11 to an injunction against the defendants from interfering with the exercise of his natural rights. He is entitled to his costs throughout.

3. It was then argued before us in S.A. No. 1267 of 1911 that the plaintiff has erected a bund which would result in increasing the volume of water which would flow to the defendant's land. On this question the Subordinate Judge has no finding. As we have already pointed out, whether the burden has been appreciably increased or not is a question of fact which must be determined in each case. It is not the law that the owner of the upper land may not interfere with the flow of water at all. But he is not entitled to do anything that will throw on the defendant's land any water which would not have naturally gone there. See the quotation supra from Kerr on Injunctions and Smith v. Anderson 47 American Reports. 148.

4. The decree of the Courts below is reversed; the Subordinate Judge will restore the appeal to his file and dispose of it in accordance with the above observations. The appellant is entitled to his costs in this Court. The costs in the lower Courts will be disposed by the final decree.