
(1929) 11 MAD CK 0004
In the Madras High Court

Sinnana Gownden and Others		APPELLANT
	Vs	
Veerappa Gownden and Others		RESPONDENT

Date of Decision : 01-11-1929

Acts Referred:

Easements Act, 1882 — Section 7(i)

Citation : AIR 1930 Mad 676

Hon'ble Judges : Venkatasubba Rao, J;Madhavan Nair, J

Bench : Full Bench

Judgement

Venkatasubba Rao, J.—This case, we trust, has now reached its final stage. The late Chief Justice and Mackay, J., who heard the Letters

Patent appeal from the Judgment of Phillips, J., called for findings in a short order which runs thus:

"We direct that findings be recorded by the District Munsif on the following points:

(1) Has the plaintiff recently raised the level of his land so as to cast an additional burden on the defendant's land?

(2) Is the plaintiff entitled to discharge through the point R

(a) drainage water from the house; and

(b) water drawn from the well for washing purposes and thereafter thrown on the defendant's land?

2. This order does not bring out, we understand, that the dispute relates also to rain-water which collects on the plaintiff's land. Before the

partition, the two plots of land were owned by a common proprietor. The land on which the plaintiff's house stands is on a higher level. The

defendant owns the adjacent house on the lower land. Subsequent to the partition, a wall was built between the houses jointly by the two owners.

It was in that wall that an opening was made at the point R referred to in the order of the Bench.

3. I may mention that this opening was made at the time when the wall itself was constructed.

4. The right which the upper owner has to allow rain-water on his land to flow out to the adjacent tenement must be taken to be a natural right

under the Easements Act: see Section 7, Illus. (i). But then comes the question, is the right limited to allowing the water to flow out naturally and

spread itself on the land of the lower owner, or, can the upper owner send it out through an opening provided for that purpose? It is the former

view that found favour with Phillips, J., who heard the second appeal. His judgment was delivered on 19th January 1925. This is not consistent

with the view of the Full Bench in *Sheik Hussain Sahib v. Subbayya* AIR 1926 Mad. 449, decided subsequently. That case decides that the law

on this species of right is settled by the Judicial Committee in *Gibbons v. Lengesty* [1916] 113 L.T. 55. The Privy Council had to consider the

question in an appeal from the Royal Court of Guernsey, but the Full Bench, though it does not deal with this specific matter, regards the decision

as of binding authority. On this point with which we are concerned the law is thus stated in the judgment of the Judicial Committee in a passage

cited by the Full Bench:

Where two contiguous fields belong to different proprietors, one of which stands upon higher ground than the other, nature itself may be said to

constitute a servitude on the inferior tenement, by which it is obliged to receive the water that falls from the superior. If the water which would

otherwise fall from the higher ground insensibly without hurting the inferior tenement, should be collected into one body by the owner of the

superior in the natural use of his property for draining or otherwise improving it, the owner of the inferior is, without the positive constitution of any

servitude, bound to receive that body of water on his property.

5. I may also refer in this connexion to *Kasia Pillai Vs. Ganesamuthukumarasamia Pillai*, to which my learned brother was a party. I must therefore

hold that the plaintiff can send out the rain-water on his land through the opening R. It is urged for the defence that the plaintiff in thus sanding the

water cannot impose an additional burden upon the adjacent land. On the point of law raised, I express no opinion, for¹ the defendant has not

shown that any additional burden is involved, though it was open to him to make that out, as a question of fact.

6. I shall now proceed to deal with the well water referred to in question (2) (b) formulated by the Bench. Under the Act, this cannot be deemed a

natural right, but as the District Munsif in his latest order points out, it is a quasi easement u/s 13. The plaintiff claimed it as an easement of

necessity, but his claim cannot be supported on that ground. The right view is that taken by the District Munsif, for all the requirements of Section

13(f) are found fulfilled. The well in question was in existence before the partition and the plaintiff has a right to enjoy his share of the property

under that section in the same manner as he enjoyed it when the partition took effect. Moreover, it is conceded that the easement was both

apparent and continuous. From the foregoing, it will be seen that the plaintiff has a right to allow the well water referred to above accumulating on

his tenement to flow over to the defendant's land.

7. The last question then remains: Does the right of the plaintiff to discharge the water through the opening R extend to this water also? This is

foreign water brought to the plaintiff's land by artificial means and it is unnecessary to decide in this case whether the right claimed exists as a

matter of law or not. But I must take it that the effect of the finding is, that both the parties concurred in building the wall and making the opening.

From this, what is the natural and proper inference? It may be implied that the parties themselves by consent provided by making the vent in

question for the mode of enjoying the right. In this view the plaintiff can discharge any water drawn from the well and used for washing and

domestic purposes through the vent R in the wall in question.

8. Question 2 (a) relates to drainage water from the house and the plaintiff's learned Counsel has not pressed his case in regard to this.

9. In the result we issue an injunction restraining the defendant from interfering with the plaintiff's enjoyment of the right as found in this judgment.

10. Having regard to the course that this case has taken, we make no order as to costs.

Madhavan Nair, J.

11. I agree. On the first point, following the decisions in (O. Vogili) Ramakrishna Reddi Vs. Baddevolu Venkata Reddi, and Kasia Pillai Vs.

Ganesamuthukumarasamia Pillai, it must be held that the plaintiff in this case who owns the land standing on a higher level has a natural right to

drain off the rainwater falling on his land into the adjoining lower land of the defendant through the opening R, in the boundary wall. The decision in

(1915) in Gibbons v. Lengesty [1916] 113 L.T. 55, and the other decisions bearing on the point are referred to in Kasia Pillai Vs.

Ganesamuthukumarasamia Pillai, . to which I was a party. The question whether the right claimed by the plaintiff can be exercised only if no

damage is caused to the defendant, the owner of the lower land, does not arise for consideration in this case as that question was not raised in the

Courts below.