

(1935) 05 MAD CK 0019
In the Madras High Court

V. Raman Nayar

APPELLANT

Vs

Parameswaran Nambudri and Others

RESPONDENT

Date of Decision : 02-05-1935

Acts Referred:

Contract Act, 1872 — Section 70

Citation : AIR 1935 Mad 975 : 158 Ind. Cas. 8 : (1935) 42 LW 642

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—The question raised in this Letters Patent Appeal is whether the appellant (defendant 1) is liable to pay a rate water for taking water from an artificial stream or channel which runs through his land. This channel is part of an irrigation system constructed by one Pichu Aiyar at his own cost a good many years ago; and whatever rights Pichu Aiyar enjoyed have passed to the plaintiff. In order to discover what those rights were, it is necessary to ascertain what the original arrangement was, between Pichu Aiyar and the occupants of the lands through which the channel passes, as to the terms upon which they could take water from it. The conclusion reached by the first appellate Court upon this point, and accepted by "Varadachariar, J., in second appeal, is that the occupants of the lands must have agreed to pay something in return for the privilege of taking the water, and this conclusion has not been, and we think, cannot be disputed before us. We also accepted the finding on the question of rate. The only matter, in fact, raised in this appeal is with regard to the appellant's liability to this charge. The plaintiff has met with some difficulty in discovering a legal basis for his claim, having in a previous suit, which he was allowed to withdraw with liberty to bring another, unsuccessfully relied upon contract, custom, and Section 70 Contract Act.

2. The learned Judge has relied upon the judgment of the Privy Council in Ramessur Prasad Narain Singh v. Koonji Behari (1879) 4 Cal. 633 for the position that in the case of artificial streams whatever rights may be claimed by persons

through whose lands the channel passes must rest on some arrangement either proved or presumed. The particular instance referred to in the case cited was that of a water course constructed in a neighbour's land, but the same principle will apply. Unlike the right to take water from a natural water course, which is a natural right, the right in relation to an artificial channel must be acquired. The extent of that right will be fixed in accordance with the arrangement or understanding under which the channel was constructed. If, as in the case in *Morgan v. Kirby* (1878) 2 Mad. 46, there was no stipulation for, payment, a man may be free to make a reasonable use of water so flowing through his land. In the absence of such a stipulation, the presumption may be that he has the same rights as he would have in a natural stream, *Yesu Sakharam v. Ladu Nana* 1927 Bom. 251. If however there is an arrangement, for payment, he is bound by the arrangement, whether he was a party to it or whether he subsequently entered upon the land with knowledge of it. The inconvenient consequences of holding that as transferee from the original landholder would not be so bound almost afford sufficient justification for accepting this as necessarily the correct position. But we think that the case clearly falls u/s 40, T.P. Act. We do not propose to attempt the application of the para. 1 of that section, because, whether or not the arrangement may be held to be a restrictive one, it is not clear that it was designed "for the more beneficial enjoyment" of the plaintiff's land. The para. 2 runs thus:

Where a third person is entitled to the benefit of an obligation arising out of contract, and annexed to the ownership of Immovable property, but not amounting to an interest therein or easement thereon.

such right may be enforced against a transferee with notice. The plaintiff here, we think, is entitled to the benefit of an obligation, on the part of the persons taking water from his channel, to make payment for it, an obligation arising out of the original contract; and it seems reasonable to hold that that obligation is annexed to the ownership of the Immovable property", or is a covenant running with the land. The obligation, in fact, devolves" upon the defendant as owner of the land, and is inseparably connected with it. We dismiss the Letters Patent Appeal with costs.