

(1925) 09 MAD CK 0085
In the Madras High Court

(Vathi) Veerabhadrayya and Others

APPELLANT

Vs

Tangadu Sanyasi and Others

RESPONDENT

Date of Decision : 30-09-1925

Acts Referred:

Citation : AIR 1927 Mad 415

Hon'ble Judges : Viswanatha Sastri, J

Bench : Division Bench

Judgement

Viswanatha Sastri, J.—Appeal by plaintiffs against the decree of the Court of the District Judge of Ganjam, in Appeal Suit No. 32 of 1920.

2. The only question in this second appeal is whether the appeal was barred by res judicata by reason of the decision in Second Appeal No. 1103 of 1914. The suit out of which the appeal arises was for the removal of elevations of earth raised by the defendants in the Batte marked C in the plan not shown here and for a permanent injunction restraining the defendants from obstructing in any manner the free flow of water to the Versirikajola tank marked A in the plan, according to mamool, along the Batte C. Both the Courts have held that the decision in the previous litigation operated as res judicata.

3. The previous suit out of which Second Appeal No. 1103 of 1914 arose was instituted by the plaintiffs for possession of the Batte C after removing certain obstructions put up, and for a permanent injunction restraining the defendants from meddling with or causing any manner of damage as would cause any obstruction or hindrance to the free flow of water through the said Batte from the Balabanda tank to the Versirikajola tank. In that suit the District Munsif found that the Batte C to C-4 in the plan filed in that suit was a source of supply to the plaintiffs' tank of Versirikajola but he also found that the defendants were also entitled to the use of the water that flowed along the Batte for the irrigation of their eastern lands, and that the plaintiffs were entitled only to the remnant of the water, and as the suit was for a declaration of the plaintiffs' absolute rights and for an injunction restraining the defendants from taking water that flowed

along the batte, he dismissed the suit.

4. On appeal, the Subordinate Judge passed a decree in favour of the plaintiffs. On second appeal, this Court, after calling for a fresh finding from the Subordinate Judge, reversed his decision and restored that of the District Munsif. The restoration of the decision of the District Munsif in his opinion, indicates that the finding of the District Munsif with regard to the right of plaintiffs to use the water that flowed in the batte after defendants' lands were irrigated was upheld. This finding could not have been incorporated in the decree, because the suit had to be dismissed, once the plaintiffs' exclusive title was found against.

5. In the suit out of which the present second appeal arose, the plaintiffs claimed the right to water that flowed along the Batte C after the defendants had taken as much water as was required for the irrigation of their lands. It was also alleged that a dam was put up at the point marked D in the plan which completely blocked the flow of water into the plaintiffs' tank. It was also alleged that elevations were put up in the Batte C to prevent the flow of water by which the defendants' lands had been irrigated.

6. I fail to see how the decision in the previous suit operates as *res judicata*. The District Munsif says that, in the previous suit, the plaintiffs did not put forward their "natural rights" to the water (whatever the words "natural rights" may mean) and he states that in the present suit, they put forward their "natural rights." I am unable to understand the reasoning of the learned District Munsif. In the previous suit, the plaintiffs claimed exclusive use of the water that flowed along the Batte C but their rights were upheld only to surplus water which remained after the defendants lands had been irrigated. In the present suit the plaintiffs say that the flow of surplus water is obstructed by the putting up of another dam D and by further raising the level of the Batte C. The fresh dam D was put up after the decision of the previous suit and has caused an obstruction which has given rise for a fresh cause of action. The learned District Judge proceeds on the same reasoning as that of the District Munsif. In my opinion, there is no bar of *res judicata*. The appeal is, therefore, allowed and the decisions of both the Courts are reversed and the suit is remanded to the Court of first instance to be tried on all the issues excepting Issue No. 9. The appellants will have costs in this Court. The costs in both the lower Courts will abide and follow the result. The appellants will get refund of Court-fees both here and in the lower appellate Court. N. S. Appeal allowed.