

(1935) 08 MAD CK 0006
In the Madras High Court

Vuluchi Bashyakarlu and Another		APPELLANT
	Vs	
Ponnuri Perumallu and Others		RESPONDENT

Date of Decision : 28-08-1935

Acts Referred:

Citation : 161 Ind. Cas. 761 : (1936) 43 LW 330

Hon'ble Judges : Venkatramana Rao, J

Bench : Single Bench

Judgement

Venkatramana Rao, J.—The plaintiffs and defendants are ryotwari holders. The question in this case is whether the right of the plaintiffs to

the water in channel C marked in the plan Ex. C-1 has been interfered with by raising and altering the width of the bund D by the defendants. The

District Munsif was of opinion that the plaintiffs' right was infringed and the act of the defendants was such as would cause damage to the plaintiffs

in seasons of drought. He accordingly gave a decree to the plaintiffs for the relief claimed by them. The learned Subordinate Judge reversed that

decree, and in so doing, he observes that the plaintiffs have no cause of action, whatever the interference of the defendants might be, relying on a

case reported in Mahankali Lakshmiah v. Karnam Narayanappa (1918) M W N 276 : 45 Ind. Cas. 80 : 34 M L J 425 : 23 M L T 337. The

learned Judge has not correctly understood the law which regulates the rights inter se of ryotwari holders in regard to the supply of water they are

entitled to get from the Government. Of course as against Government the right of a ryotwari holder is to receive a supply of water sufficient for the

irrigation of his mamool wet lands according to the machinery or method provided by the Government and even the Government has no right to

interfere with this supply until they provide him with an equally efficient supply. But if that customary supply and manner of supply has been

interfered with not by Government but by private parties, such interference prima facie is an invasion of the plaintiff's right and will give rise to a

civil cause of action--Vide Malyam Patel Basavana Gowd v. Lakka Narayana Reddi 54 M 793 : 133 Ind. Cas. 507 : A I R 1931 Mad. 284 : 33

L W 681 : Ind. Rul. (1931) Mad. 747 : 61 M L J 563 and Raman Odayan v. Subramania Ayyar 31 M 171 : 18 M L J 178. Again, in order to

sustain an enforceable claim, the plaintiffs must prove actual damage or likelihood of damage. As Wallace, J. observed in Malyam Patel Basavana

Gowd v. Lakka Narayana Reddi 54 M 793 : 133 Ind. Cas. 507 : A I R 1931 Mad. 284 : 33 L W 681 : Ind. Rul. (1931) Mad. 747 : 61 M L J

563, "The plaintiffs have a cause of action apart from proof of actual damage and they have a right to an injunction if they establish probable

prospective damage". But the learned Subordinate Judge has found that the acts of the defendants do not cause either actual damage or are such

as are likely to cause damage. In view of that finding the plaintiffs will have to be nonsuited. But the plaintiffs' cause of action is recurring cause of

action. If at any future period they are able to show that they sustain actual damage, relief may still be open to them. The second appeal, therefore,

fails and is dismissed and I direct each party to bear their own costs in this appeal.