

different questions. We must decline, at this stage, to allow the question to be raised.

KONNA  
PANIKAR  
v.  
KARDNAKARA.

No good reason has been shown for interfering with the decision of the Lower Court, and we confirm it and dismiss the appeal with costs.

Defendants Nos. 1 to 4 put in a memorandum of objections against the disallowance of their costs. They set up a deed of agreement, to renew which was found to be a forgery, and the Subordinate Judge was quite right in disallowing their costs. \*

The memorandum of objections is dismissed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

RAMACHANDRA (DEFENDANT NO. 1), APPELLANT,

v.

NARAYANASAMI AND ANOTHER (PLAINTIFF'S REPRESENTATIVE  
AND DEFENDANT NO. 2), RESPONDENTS.\*

1892.  
September 2.

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*Irrigation channels—Power of Collector to regulate water-supply.*

In a suit between raiyats holding lands under Government, in which the Collector of the district was joined as second defendant, it appeared that the first defendant, in pursuance of an order of the Sub-Collector, made on a petition preferred by him, had opened a new irrigation channel, thereby materially diminishing the supply of water necessary for the cultivation of the plaintiff's land and causing damage to him. The Lower Court passed a decree for damages and issued an injunction directing that the channel be closed :

*Held*, that the order of the Sub-Collector was in excess of his powers.

SECOND APPEAL against the decree of T. Ramasami Ayyar, Subordinate Judge of Kumbaconam, in appeal suit No. 331 of 1890, confirming the decree of A. Kuppusami Ayyangar, District Munsif of Kumbaconam, in original suit No. 312 of 1886.

Suit for an injunction and damages. The plaintiff and defendant No. 1 were raiyats holding land under Government. The plaintiff alleged that he had suffered loss by reason of the act of defendant No. 1 in making an irrigation channel and diverting of water from his land to that of defendant No. 1. It appeared

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\* Second Appeal No. 1438 of 1891.

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SAMI.

that the channel had been made in pursuance of the order made by the Sub-Collector of Kumbaconam on a petition of defendant No. 1 and dated 30th September 1885. Defendant No. 2 was the Collector of Tanjore.

The District Munsif passed a decree for damages, and also issued an injunction that defendant No. 1 should close the new channel. This decision was affirmed on appeal by the Subordinate Judge, whose findings of fact appear sufficiently for the purposes of this report from the following judgment.

Defendant No. 1 preferred this appeal.

*Subramanya Ayyar* for appellant.

*Pattabhirama Ayyar* for respondent No. 1.

The Acting Government Pleader (*Subramanya Ayyar*) for respondent No. 2.

JUDGMENT.—The Subordinate Judge has found that the channel in dispute was newly dug; that appellant's statement that an old channel had existed is not proved; that the diversion of water from the Pattatharam channel caused a material diminution in the supply necessary for the cultivation of plaintiff's lands, and that actual damage was sustained in consequence in fasli 1295. Upon these facts it is clear that the order of the Sub-Collector was in excess of the power possessed by him for the regulation of the supply of water for irrigation purposes among raiyats holding lands under Government. As observed in *Krishna Ayyan v. Venkatchella Mudali* (1), the Government has an undoubted right to distribute the water of Government channels, but that power does not include the power to disturb existing arrangements to the prejudice of any tenant during the continuance of the tenancy. This is also the view taken by the Bombay High Court in *The First Assistant Collector of Nasik v. Shamji Dasrath Patil* (2).

As regards the direction that appellant should pay the costs of the second defendant (the Collector) in the Court of first instance, we cannot disturb the same, as appellant did not make him a party in the Lower Appellate Court.

The appeal fails therefore and is dismissed with costs—two sets.

(1) 7 M.H.C.R., 60.

(2) I.L.R., 7 Bom., 209.