

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Boddam.

RAJA OF VENKATAGIRI (PLAINTIFF), APPELLANT,

1904.
August 10.

v.

RAJA MUDDUKRISHNA AND ANOTHER (DEFENDANTS,
Nos. 1 AND 2), RESPONDENTS.*

Injunction—Water-course—Construction of new channel—Prior to construction water flowed naturally or percolated without definite course—Material alteration.

Plaintiff sued for an injunction to restrain defendant from making or using a water-channel. Prior to the construction of the channel, all the water that flowed from the defendant's land on to the plaintiff's found its way there by natural flow or percolation and was not carried down by any definite water-course. The effect of the channel was to collect water which formerly flowed from a large tract of land at different points into a definite channel and to throw it all into a particular part of the plaintiff's channel:

Held, that plaintiff was entitled to the relief sought. Even though no greater quantity of water might eventually be carried into plaintiff's channel than had hitherto run into it, the new channel effected a material alteration in the mode of the passage of the water from the defendant's land into that of the plaintiff. Such a change plaintiff was entitled to object to.

SUIT for a declaration that defendants had no right to make, maintain or use a new channel, for an injunction, for an order directing defendants to fill up the channel and for damages. The channel complained of was not an old channel but one recently dug by the defendants. Prior to its excavation, all the water that flowed from the defendant's lands on to plaintiff's found its way there by natural flow or percolation, and was not carried down by any definite water-course. The effect of the channel was to collect water which formerly flowed from a large tract of land at different points into a definite channel and to throw it all into a particular part of plaintiff's channel. The District Munsif held that defendant had no right to open or use the channel and he directed him to close and fill it up and to restore the site of the channel to the condition in which it was before the channel was dug. Defendant

* Second Appeal No. 1224 of 1902, presented against the decree of T. M. Swaminadha Ayyar, Esq., Acting District Judge of Nellore, in Appeal Suit No. 84 of 1901, presented against the decree of M.B.Ry. Y. Janakiramayya Garu, District Munsif of Nellore, in Original Suit No. 187 of 1899.

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appealed to the Acting District Judge, who reversed that decree and dismissed the suit.

Plaintiff preferred this second appeal.

V. Krishnaswami Ayyar and S. Subrahmania Ayyar for appellants.

Messrs. *T. Venkatasubba Ayyar and Narayana Sastri* for respondents.

JUDGMENT.—The facts found are that the channel in dispute is not an old channel but one recently dug by the defendants. Prior to its excavation, all the waters that flowed from the defendant's lands on to the plaintiff's found their way there by natural flow or percolation and were not carried down by any definite water-course. In these circumstances, even though no greater quantity of water might eventually be carried into the plaintiff's channel than hitherto ran into it, it is clear that the new channel effects a material alteration in the mode of the passage of the water from the defendant's land into that of the plaintiff. Such a change the plaintiff is entitled to object to (see *West Cumberland Iron and Steel Company v. Kenyon*(1)). In truth, the excavation of the present channel is an attempt to create a right of easement where none such existed. This, without the consent of the owner of the land affected by the new work, is, of course, not lawful. *Gopal Reddi v. Chenna Reddi*(2) has no bearing upon the present case as here there is no question of work done for the protection of one's own land against extraordinary flood in a natural stream. *Whalley v. The Lancashire and Yorkshire Railway Company*(3) referred to and relied on by SHEPPARD, J., in *Gopal Reddi v. Chenna Reddi*(2) is also, so far as it goes, an authority against the conclusion of the District Judge, as there the Railway Company was held liable because it had concentrated in a particular channel the flow of the water which even otherwise would have escaped on to the plaintiff's land but with less damage to that property.

It is scarcely necessary to say that the collection of the water which formerly flowed from a large tract of land at different points into a definite channel and the throwing of it all into a particular part of the plaintiff's channel, must lead to consequences

(1) L.R., 11 Ch.D., 782.

(2) I.L.R., 18 Mad., 158.

(3) L.R., 13 Q.B.D., 131.

very different from those which had been produced in the previous state of things. We must therefore reverse the decree of the District Judge and restore that of the District Munsif with costs in this and in the lower Appellate Court.

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APPELLATE CRIMINAL.

Before Mr. Justice Subrahmanya Ayyar and Mr. Justice Sankaran Nair.

VENKATRAMA CHIETTI (APPELLANT), PETITIONER.

1904.
July 13, 19.

v.

EMPEROR, RESPONDENT.*

District Municipalities Act—(Madras) Act III of 1889, s. 4—Allowing offensive matter to flow into a 'street'—Discharge into drains not forming part of street—Definition of 'street'.

A defendant was charged under section 4 of the Madras District Municipalities Act with allowing offensive matter to flow from his house into a street. The matter flowed into a drain or ditch constructed along the side of the roadway. On the question as to whether any offence had been committed:

Held, that a 'street' is any way or road in a city having houses on both sides; and that in consequence this definition excluded the drain or ditch on either side of the roadway; that the drain was not part of the 'street', and that the offence charged had not been committed.

CHARGE of letting offensive matter from a house flow into a street, under section 4 of (Madras) Act III of 1889. The defendant was convicted and ordered to pay a fine of Rs. 2 and in default to undergo simple imprisonment for two days. The conviction and sentence were confirmed on appeal. Defendant preferred this criminal revision petition. The facts are sufficiently set out in the judgment.

* Criminal Revision Case Nos. 64 and 65 of 1904, presented under sections 435 and 439 of the Code of Criminal Procedure praying the High Court to revise the judgments of M.R.Ry. V. Chappan Menon, Deputy Magistrate of Erode Sub-Division, in Criminal Appeals Nos. 119 and 120 of 1903, presented against the convictions and sentences of M.R.Ry. P. Tangavelu Mudaliar, Stationary Second-class Magistrate of Dharampuram, in Calendar Case Nos. 361 and 362.