

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Burn, Mr. Justice King and Mr. Justice Venkataramana Rao.

1936,
November 25.

SRI VUPPALAPATI SURYANARAYANESWARA JOGI
JAGANNADHARAJU AND ANOTHER (DEFENDANTS 2 AND
3), APPELLANTS,

v.

THE RAJA OF VIZIANAGRAM, REPRESENTED BY THE ESTATE
COLLECTOR OF VIZIANAGRAM APPOINTED UNDER THE COURT
OF WARDS ACT (PLAINTIFF), RESPONDENT.*

Water—Riparian owner—Right of—Tank and stream supplying water to it both belonging to plaintiff and defendants—Stream itself fed by tributary streams rising entirely in defendants' village and having their course entirely with defendants' lands—Plaintiff's right to flow of water in customary manner to tank through the stream and the tributary streams which feed it—Interference by defendants with—Actionable wrong, if—Tributaries natural streams whose water flows in well-defined channels.

A tank in a village in the plaintiff's zamindari received a supply of water from a stream called Pedda Gedda which took its rise in a jeroyti village of the zamin and passed through the defendants' mokhasa village. During its passage through the defendants' village the Pedda Gedda received tributary supplies from four streams which took their rise entirely within the defendants' village and whose course was entirely with the defendants' lands. It was found that the tank and the Pedda Gedda belonged both to the plaintiff and to the defendants and that the water of the tributary streams flowed in well-defined channels and that those were natural streams.

Held that the rights of the defendants, whatever they might be, were subject to the right of the plaintiff to have the water of the Pedda Gedda and its tributaries flow in the customary manner down to him and that interference with such

* Second Appeals Nos. 1060 and 1061 of 1932.

flow was an actionable wrong, especially in a case where the flow was totally cut off.

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Perumal v. Ramasami, (1887) I.L.R. 11 Mad. 16, referred to.

APPEALS against the decrees of the District Court of Vizagapatam in Appeal Suits Nos. 426 and 442 of 1929 respectively preferred against the decrees of the Court of the District Munsif of Vizianagram in Original Suits Nos. 505 and 284 of 1927 respectively.

The facts of the case and the arguments of Counsel appear sufficiently from the judgment of the Full Bench.

S. Subramania Sastri, P. Somasundaram, S. Kasturi Seshagiri Rao, S. Ramamurthi and P. Suryanarayana for appellants.

S. Venkatesa Ayyangar for respondent.

The JUDGMENT of the Court was delivered by BURN J.—The defendants are the appellants. The plaintiff, the Raja of Vizianagram, filed two suits, Original Suits Nos. 284 of 1927 and 505 of 1927, the subject of which was the supply of water to a tank called Vooracheruvu in the village of Kottavalasa in the Vizianagram Zamindari. The facts have been fully stated by the learned District Munsif and by the learned District Judge. The two suits were tried together by consent of both parties. The zamindar's complaint was that the defendants had interfered with the supply of water to Vooracheruvu which it received through a stream called Pedda Gedda. This stream takes its rise in a jeroyti village of the zamin and passes through the defendants' mokhasa village. During its passage through the defendants'

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village, it was receiving tributary supplies from four streams which take their rise entirely within the defendants' village. In or about 1924 the defendants intercepted the courses of three of these streams and put up a long bund so as to form a tank, thereby cutting off the supply of water which was formerly flowing through these tributaries into the Pedda Gedda. In Original Suit No. 284 of 1927 the plaintiff prayed for a mandatory injunction to compel the defendants to remove the obstruction to the courses of the natural streams. Original Suit No. 505 of 1927 was concerned with the course of the same stream further south. It was alleged by the plaintiff that the course of the stream had been diverted towards the west and that this diversion caused damage to Survey Numbers 17, 18, 19 and 20 of Kottavalasa and also to the Malapalli Survey Number 21-B. The plaintiff prayed for a direction in this suit that the defendants might be compelled to close the portion of the channel newly diverted towards the west and to restore it to its original condition. The learned District Munsif dismissed both the suits holding that the rights claimed by the plaintiff were rights of easement and that the plaintiff must fail because those rights had been interrupted more than two years before the suits were filed. On appeal, the learned District Judge disagreed with the learned District Munsif on this point of law and granted the plaintiff the mandatory injunctions which he sought. His finding with regard to the applicability of section 15 of the Easements Act has not been challenged before us in appeal.

In Second Appeal No. 1060 of 1932, Mr. Somasundaram, who appears for the appellants, concedes that the findings of fact are against him and does not seriously press this appeal. It is found as a fact that the course of the stream was diverted towards the west and that the diversion has caused damage to the plaintiff's lands and in these circumstances it cannot be said that the injunction given by the learned District Judge is in any way wrong. Mr. Somasundaram has addressed almost the whole of his argument to the question of the blocking up of the tributary streams with which Original Suit No. 284 of 1927 was concerned. As to this, it is found by both the lower Courts that the tank Vooracheruvu and the stream Pedda Gedda which supplies it belong both to the plaintiff and to the defendants. Mr. Somasundaram has criticised the learned District Judge for describing the plaintiff as a "riparian owner" of the stream. We do not think that much turns upon the adjective "riparian". It was definitely admitted by the defendants in their written statements in both the suits that the plaintiff and the defendants were both owners of the tank and of its feeder called Pedda Gedda. It is also found as a fact that the water of the tributaries was flowing in well-defined channels and that these were natural streams. That being so, the plaintiff is entitled to have the water flowing in its accustomed course not only through the Pedda Gedda but also through the tributaries which feed it; vide *Perumal v. Ramasami*(1). Mr. Somasundaram relied upon the fact that

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these tributaries rise on the defendants' lands and that the course of them is entirely with the defendants' lands. But this does not really improve his position, since, according to his own admission, he is a riparian owner and his rights are limited to those of a riparian owner. The cases which have been quoted by Mr. Somasundaram lay down that a riparian owner is not entitled to impound the water flowing in defined natural channels but is entitled only to use it as it passes. The rights of the defendants, whatever they may be, are subject to the right of the plaintiff to have the water of the Pedda Gedda and its tributaries flow in the customary manner down to him. The learned District Judge is quite right in holding that interference with such flow is an actionable wrong, especially in a case like this where the flow is totally cut off. We think the view of the law taken by the learned District Judge is correct.

The injunction granted by the learned Judge orders that the bund of the tank newly put up by the defendants shall be breached at the points in the Commissioner's plan marked I, II, III and IV in order to allow the water to flow in its usual courses. The plan shows that, if breaches are effected in the bund at these points, the object will be achieved. The injunction granted by the learned Judge in Original Suit No. 284 of 1927 seems to us therefore to be proper.

In the result, both the appeals are dismissed with costs.

A.S.V.
