

(1) Number of pages 10

(2) Date of repair 12-8-1965

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE

Government of Madras

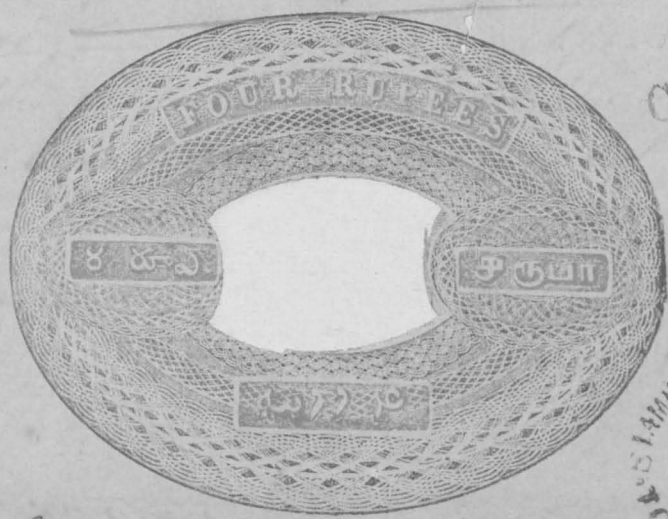
Rev

DEPARTMENT

G.O. No.	<u>189</u>	~~Press~~
B.P. No.		Mis.
Dated	<u>24.4.1972</u>	195

Not to be folded or roughly handled

Rt 26/1871



COURT FEES



4 MY 1871

In the High Court of Judicature at Madras.
Friday, the ninth day of
February, One thousand eight
hundred, and seven by
two.

Present:

The Honorable Mr Justice Innes.
The Honorable Mr Justice Hannan.

Regular Appeal No 26 of 1871.

Kristniens and others.
Appellants.

(Plaintiffs)

V. Vankatachella Mudali, & others.
Respondents.

(Defendants)

Regular Appeal against the Decree of the
Civil Court of Muziris in Original Suit No 21 of
1869.

Grounds of Appeal.

- I. That the said Decree is against the weight of evidence and con-
trary to law.
- II. That the opening of the new channel is an invasion of the plain-
tiffs rights irrespective of any actual loss or substantial injury sus-
tained by them.
- III. That the channel in question cannot but be detrimental to plaintiffs'
rights.
- IV. That the Civil Judge finds that the plaintiffs' rights have been
recognized from 1863.
- V. That the Civil Judge admitting plaintiffs claim is wrong in dis-
missing suit on the grounds that plaintiffs failed to prove actual
damage.
- VI. Plaintiff is entitled to the relief sought for.

Decree — This Regular Appeal coming on for hearing, before
perusing the grounds of Appeal, the judgment and Decree of
the Lower Court and the material papers in the suit, and
upon hearing the arguments of Mr. Miller, Counsel and
Mr. Rama Rao.

1st Sheet.

Panna Pans. Vakil for the Appellants, and of Mr. Govern-
ment Pleader for the Respondents; this Court doth order
and decree that the decree of the Lower Court be and
the same hereby is, confirmed, and this Appeal dismissed,
and this Court doth further order and decree that the
Appellants do pay to the Respondents Rs 23--2 for
their costs in opposing this Regular Appeal.

1 signed L. C. James. } Judges.
1 " 1 James Herman }

Memorandum of Costs.

	Rs	As	P.	Rs	A	P.
Respondents' (1st Dept) Costs.						
Pleaser's fee	10	—	"	10	—	"

Respondents' (2 nd & 3 rd Depts) costs.						
Government Pleaser's fee	10	—	"	10	—	"
Value of 1 Printed copy purchased	3	—	"	2	13	—
To be paid by Appellants (Plffs)	23	—	"	2		

1 signed H. Wigram,
Acting Registrar,
Appellate Seco.

(True Copy)

2nd & last sheet


Deputy Registrar,
Appellate Seco.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th April 1872.
Read the following Memorandum from the Government Pleader, to the Sub-Secretary to the Board of Revenue, dated Madras, 22nd March 1872, No. 39:—
WITH reference to the Official Memorandum to the Sub-Secretary to the Board of Revenue, noted in the margin, the undersigned has the honour to forward,
Dated 26th February 1872, No. 26.
for the information of the Board, copies of Decree and Judgment of the High Court, in Regular Appeal No. 26 of 1871, therein alluded to.
(Signed) J. W. HANDLEY,
Government Pleader.

ENCLOSURE No. 1.

In the High Court of Judicature at Madras, Friday, the 9th day of February 1872.
PRESENT.—The Honourable Mr. Justice Innes and the Honourable Mr. Justice Kernan.
Regular Appeal No. 26 of 1871.

Kristnien and five others, Appellants (Plaintiffs).
Venkatachella Mudelli and two others, Respondents (Defendants.)
Regular Appeal against the Decree of the Civil Court of Trichinopoly, in Original Suit No. 21 of 1869.

This Regular Appeal coming on for hearing, the Court delivered the following:—
JUDGMENTS.

Mr. Justice Innes.—The relief sought for in this suit is an injunction directing the defendants to close an irrigation channel which was opened in 1869, and to remove the sluice.
The channel called Kaduvai, branches off into channels for the supply of the village of Ariyur (plaintiff's village) and the villages of Kilambil and Sengarayur respectively. The village of Partikal, that of the 1st Defendant, up to the date of the opening of the new channel, had received its supply by the Mallattar channel. The supply from this was insufficient and the Public Works Department designed the new channel from the Kaduvai to supplement the deficiency of the Mallattar. The water of the Kaduvai is diverted into the new channel at a point above the point of divergence of the branch channels from the Kaduvai to the several villages of Ariyur, Kilambil and Sengarayur. The relief was prayed for in the Court of First Instance, on the ground that the supply by the Kaduvai has never been sufficient for the wants of the village, and that the new channel must necessarily cause a still further deficiency. The Civil Judge found that the plaintiffs had sustained no loss by the opening of the new channel, and dismissed plaintiffs' suit. In appeal the point is taken that the opening of the new channel is an invasion of plaintiff's right to the uninterrupted flow of water by the Kaduvai, and entitles the plaintiffs to the injunction prayed without proof of actual damage, and that though no damage is proved to have yet resulted, the new channel must necessarily be detrimental to plaintiffs. The 2nd Defendant, the Superintending Engineer (it is urged) while stating that the arrangements are that Partikal is not to receive water by the new channel till Ariyur has had its full supply, admits that the regulation of the supply to each village is entirely in the hands of the villagers. That 1st Defendant can therefore at any time divert the water from the Kaduvai before the village of Ariyur has had its full supply, and that the supply of water to Ariyur is thus rendered precarious. What plaintiffs really claim as was admitted at the hearing in appeal is an easement to the uninterrupted flow of water by the artificial channel called the Kaduvai. The Government, the common landlord of plaintiffs and 1st Defendant, alters the distribution of water in a manner which plaintiffs consider to be prejudicial to them; plaintiffs step in and claim a right to the continuance of the old mode

Recd. 13/1/72
L. G. M. 13/1/72

of distribution. It is elementary law that an easement cannot be claimed in respect of a tenement, but by the owner of that tenement, and plaintiffs are in no sense owners of the village lands or of any portions of the village lands in respect of which they claim this right. The plaintiffs are tenants from year to year, and though custom or contract may practically attach to each several tenancy, the incidents of a permanent holding defeasible only for non-payment of the assessment which may from time to time be imposed, they have nothing approaching to an absolute estate in the land. Now an easement implies an absolute estate in the land. Now an easement implies an absolute outright grant to some person of an incorporeal right as appurtenant to his corporeal property. Such a grant cannot be conceived as made to a mere tenant in respect of a tenement in which his interest is precarious. A grant of this kind therefore cannot in such a case be implied, or in other words there can be no easement claimed by a tenant as against his landlord. But there is nothing in the nature of the plaintiffs' relations with the Government to prevent their possessing, as tenants, rights limited by the duration of their interest in the land. Such rights however, must arise either by the express contract of letting or by implication from that contract. The question therefore now presents itself whether the plaintiffs under their several contracts of letting can claim a right to prevent any diversion of the water of the Kaduvai channel for the use of the ryots of other villages. In letting irrigable land with existing conveniences for the supply of water for the purposes of irrigation, the landlord, no doubt, impliedly engages, if nothing to the contrary is expressed, that the existing arrangements for the supply of water will not be interfered with to the prejudice of the tenant during the continuance of the tenancy; and as the plaintiff's tenancies are from year to year, it may be taken that this engagement is yearly renewed. But I do not think that anything beyond this can be implied from the nature of the tenancy. The case reported in V. H. C. Rep. P. 6 which was quoted to us by the learned Counsel for the plaintiffs (Appellants) has no analogy to this. That was a case in which the plaintiff was the Proprietor of the tenement in respect of which he claimed the easement, and was therefore in a position to claim it, which the plaintiffs are not. That case therefore may be dismissed from consideration. Limiting plaintiffs' right to this, that they are entitled to demand in respect of their several tenancies, that no new arrangements for the distribution of water shall be made to their prejudice during their tenancies, and applying this proposition to the admitted facts of the case, are the plaintiffs entitled to the relief prayed? The Government, whom the 2nd Defendant represents, has the undoubted right to regulate the distribution of water supplied to its ryotwary villages. A great portion of the water flowing through the Kaduvai channel admittedly still runs to waste over the dam into the Coleroon, at the point at which the old branch channels are led off to the plaintiffs and other villages. It is clear that the utilising this surplus water by turning it into a new channel can work no breach of the contracts with plaintiffs. But it is said there is danger through the new channel of the proper supply to Ariyur being diminished. To this the answer on the part of the Government is "our arrangements are that the villages hitherto supplied from the Kaduvai channel shall be first supplied, and no water shall be diverted to Partikal by the new channel till those villages have received their full supply." So far as appears therefore there is no reason for apprehending any breach of their contract on the part of the Government. In what they have done they have merely acted in accordance with their rights as landlord, and with their duty as guardian of the interests of the community. It is true that the due working out of the arrangements for the use of the new channel depends upon the compliance of the village officers with the orders sent. This is so in all irrigated villages, and we cannot assume that the village officers will not do their duty nor have we any right to assume as against 1st Defendant, the Mirasidar tenant of Partikal, that he will cause the water to be diverted before he is entitled to take it, or to such an extent as to diminish the due supply to plaintiffs' village. I think therefore that no case has been made out for granting an injunction, either (as originally prayed) for the closing of the channel, or (as it is now contended plaintiffs are at least entitled to) for the restraining defendants from diminishing the supply to plaintiffs' village or restraining the 1st Defendant from diverting the water to his

village until plaintiffs have had a full supply. The first would be to establish a right of easement in the plaintiffs, which does not reside in them, and for injunctions in the nature of the two last, no case of prospective damage has been made out upon the facts. Plaintiffs have their remedy in damages, should damage occur. The appeal must be dismissed with costs.

Mr Justice Kernan.—The plaintiffs in this case filed their plaint in the Civil Court of Trichinopoly, stating the following facts, viz., that they are shareholders in, and are the Heads of the villages of Arialore and Kurivikudi, containing 600 acres. That the defendant is the sole Mirasidar of the village of Partikal, containing 100 acres. That plaintiffs' villages have been supplied with water by the Kaduvai channel, which not taking its rise in any river is a channel of surplus water, that the defendant's village has been supplied with water by the Mallattar channel, that plaintiffs' village is a high one, and the water of Kaduvai does not freely flow, and is quite dry in November and December; that there is a deficiency every year in the supply of water; that the defendants' village is a low one, and is always fully supplied with water by the Mallattar: that the 1st Defendant under an order of the 2nd Defendant (representing Government) without plaintiffs' knowledge, opened a new channel to his village by making a head on the left bank of the Kaduvai, and by building a sluice on the road 5 or 6 yards to the west of plaintiff's sluice. Plaintiffs allege that if the channel should be opened, there shall be a great deficiency of supply of water to their villages, and the lands shall be left waste.

Plaintiffs pray that the new channel may not be opened, and that the portion opened may be filled up, and the sluice built, removed.

The 1st Defendant in his written statement, alleges that the supply of water to his village Partikal, is only surplus water of a channel called the Aiyar channel, that the surplus water of that channel ought to flow into the Kaduvai and Mallattar channels, and thence to his village—that his village could not be fully supplied with water by the channel which has its head in the Kaduvai, and that the water of the Kaduvai channel falls over into the Coleroon river, and is waste; that in order to utilize the water so going to waste, the 2nd Defendant allowed the head and channel in dispute to be opened; that the Kaduvai can be supplied by water direct from the Coleroon. The 2nd Defendant, in his statement alleges, that the Kaduvai receives not only the surplus water of the lands irrigated by the Northern and Southern channels, but that those two channels form the Kaduvai above the place where the plaintiffs' channel is made; and that the Aiyar channel has its head on the west of the upper anicut, and therefore that the Kaduvai cannot be considered one of surplus water; that the water flows over the dam of the Kaduvai, where plaintiffs' channel is, into the Coleroon and is waste; that the Mallattar having a smaller supply than Kaduvai, irrigates larger quantity of land; that the Mallattar does not fully irrigate the land under its irrigation; that the Mallattar joins the Kaduvai on the west of the dam, where the Ariyur (plaintiffs') channel rises, and that the village of Partikal, lower down, to the east, has a right to receive the water from that dam. That the head of the Aiyar channel has been transferred to the upper anicut, 10 miles to the west of its former position, and the supply of water in the Kaduvai greatly increased. The 2nd Defendant then claims that as such work was done solely by Government, Government has a right to distribute the water in the Zillah at their option, but that at all events, Government has a right to distribute the water so supplied, to the lands under irrigation of Kaduvai channel at their option for their own benefit and that of the several people. The 2nd Defendant also states that as some of the Ariyur lands are high, the supply of water at times of scarcity should be impeded by the Partikal channel in dispute, and that it is objectionable to open a channel for Partikal except with a sluice at the head, that by building such sluice the supply of water to the Partikal channel may be regulated, according to the wants at different times, and the supply of water to those lands can be regulated at times when there may be no sufficient water to flow freely through the Kaduvai to the lands including plaintiffs'.

The following issues were framed:—

1. Whether by the work complained of, the plaintiffs have sustained loss, and if so to what amount?

SUBMITTED to Government with reference to G. O., No. 2, dated 4th January 1872, and in continuation of Proceedings No. 433, dated 9th March 1872.

(True Copies and Extract.)

J. H. Remington
Sub-Secretary.

To the Officiating Chief Secretary to Government, R. D., with one enclosure.

Copy to the Government Pleader.

„ to the Collector of Trichinopoly.

Ed. G. A. Turton.

Board of Rev. Des 26 April

*24 May 1872 No 2 Rev.
22 March 1872 - 141 de.*

Board of Revenue

MADRAS.

4-1371

PROCEEDINGS, 11th April 1872, No. 573.

24/12/1872 4/1/72

Encl. 1

Received 194.

APRIL

No. 573.

Suit—Regular Appeal, No. 26 of 1871—
filed in High Court against decree of Trichinopoly Civil Court, in Original Suit No. 11 of 1869, regarding an irrigation channel—Massandum from Government Pleader forwarding copies of Decree and Judgment in—, submitted to Government.

RECORDED

8-189