

Shankariah and ors. Vs. Ramiah

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Court : Karnataka

Decided On : Dec-16-1953

Reported in : AIR1954Kant184; AIR1954Mys184; ILR1954KAR354

Judge : Mallappa, J.

Acts : [Easements Act, 1882](#) - Sections 13

Appeal No. : Second Appeal No. 466 of 1953

Appellant : Shankariah and ors.

Respondent : Ramiah

Advocate for Pet/Ap. : E. Kanakasabhpathy, Adv.

Judgement :

1. The point for consideration in this appeal is whether the learned Subordinate Judge was right in holding that the plaintiff-respondent has a right to take water from the well situated in the land that has fallen to the share of the defendant and in awarding damages of Rs. 200/- on the ground that the appellant-defendant prevented the plaintiff from taking water to his land and thus caused his garden to dry up.

2. It is not disputed that the entire land which belongs to the plaintiff and the defendant who are brothers was fed not only by tank water but also by the water

from the well situated in the portion of the land that has fallen to the share of the defendant. In fact there is Ex. A Uttar copy which clearly shows that both portions are entitled to water from both sources. It has to be noticed that the defendant could only get water through a channel situated in the plaintiff's land while the plaintiff has to take water from the well situated in the land that has fallen to the share of the defendant. There is nothing to show that at the time of the partition either the right of the defendant to take water through the plaintiff's land or the right of the plaintiff to take water from the well situated in the land that fell to the share of the defendant was curtailed and in the absence of any such curtailment, it has to be taken that the two lands are entitled to take water in the manner stated in the survey records. In fact this would be the case even in a case of grant of land. As observed in -- '9 Mys LR 168 (A)':

'We have had a considerable number of cases cited to us, and out of them I think that two propositions may be stated as what I may call the general rule governing cases of this kind, (i.e. cases of implied grant or reservation of quasi easements). The first of these rules is that, on the grant by the owner of a tenement or part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which of course I mean quasi easements) or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owner of the entirety for the benefit of the part granted.

The second proposition is that if the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly. Those are the general rules governing cases of this kind, but the second of these rules is subject to certain exceptions. One of those exceptions is the well known exception which attaches to cases of what are known as ways of necessity.'

These observations are applicable with greater force to a case of partition. Both the brothers in this case were entitled to equal rights and both portions of the lands were entitled to get water not only from the tank, but also from the well. This has been, as already observed, specifically stated and recognised in the Survey

records. After partition, in cases of this kind, the rights which the parties had at the time of partition will continue unless any such right is specifically taken away at the time of the partition. It is not the case of the defendant that the right of the plaintiff to take water from the well has been taken away by any such agreement.

The learned Munsiff is wrong in thinking that the plaintiff should have proved an agreement by which he got a right to take water from the well, situated in the portion of the land that has fallen to the share of the defendant. In fact no such agreement was alleged in the plaint and it was unnecessary to prove any such agreement. The learned Subordinate Judge was therefore right in holding that the right of taking water to the plaintiff's land from the well situated in the land belonging to the defendant continued to exist as before even after partition and it is in evidence that the plaintiff continued to enjoy us right even subsequent to the partition. The defendant was wrong in preventing the plaintiff from taking water to his land from the well in question and as such the plaintiff was rightly awarded damages.

As regards the quantum of damages, it may be remembered the plaintiff's land is an areca garden and the damage caused to it by the defendant's illegal obstruction is such that the learned Subordinate Judge is correct in awarding Rs. 200/- as damages.

3. The appeal stands therefore dismissed without notice to the respondent.

4. Appeal dismissed.

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