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Court : Chennai

Decided On : Mar-31-1959

Reported in : AIR1960Mad124

Judge : Ramaswami, J.

Acts : Indian Easements Act - Sections 13

Appeal No. : Second Appeal No. 589 of 1957

Appellant : Ramaswami and ors.

Respondent : Muniswami and ors.

Judgement :

(1) This second appeal is preferred against the decree and judgment of the learned District Judge of North Arcot at Vellore in A.S. No. 49 of 1955, confirming the decree and judgment of the learned District Munsif of Vellore in O. S. No. 502 of 1953.

(2) The facts of this case have been fully set out in the judgments of the Courts below and need not be recapitulated. The only point for determination is a point of law.

(3) Both Courts below have come to the conclusion that a well which is the subject-matter of the controversy was the substantial source of irrigation for the

lands which are now held by the defendants and which at one time along with the lands now held by the plaintiffs constituted one tenement. Is this substantial source of irrigation for the defendants;' lands an easement of necessity or a quasi-easement giving the defendants a right to use the said well

(4) The learned District Judge came to the conclusion that this cannot be described as an easement of necessity but that it could be described in the circumstances of this case as a quasi-easement and in regard to which he held that on account of the irrigation of this well water being discontinuous though it was apparent, the defendants could not claim the quasi-easement right.

(5) I entirely agree with the learned District Judge that this is not an easement of necessity. In two recent judgments of mine I have discussed the requirements of an easement of necessity distinguishing it from a quasi-easement and reviewed the English American and Indian law on the subject: See Badrakali Ammal v. Poovalinga Konar, S. A. No. 1362 of 1955 (Mad) and Vairappan Ambalam v. Ulaganathan S. A. No. 209 of 1956 (Mad). See Halsbury's Laws of England third edition Vol. 12 page 527 paragraph 1141; 28 Corpus Juris Secundum page 692; K. N. Joshi Easements and Licenses 3rd edition pages 61 and 62.

(6) In regard to the requirements of quasi-easement and the right of irrigation, the following information can be gathered from Katiar's Law of Easements and Licenses in India (Third edition), pages 145 to 155; K. N. Joshi's Easements and Licenses, Third Edition, page 65 and following; Gale on easements, Twelfth Edition, page 60 and following; Peacock on Easements (T. L. L.) Third Edition, page 352 and following; and Goddard on Easements, Eighth Edition, page 38; While clauses (a), (c) and (e) of S. 13 of the Indian Easements Act deal with what are known as easements of necessity, clauses (b), (d) and (f) have as their subject matter quasi-easements.

The meaning of the term 'quasi-easement', which occurs in many modern authorities is as follows. Where Blackacre and Whiteacre both belong to A, the common owner, and during his ownership an accommodation or privilege is enjoyed by Blackacre over Whiteacre, and A subsequently parts with Blackacre to B but retains Whiteacre, there passes to B in certain cases a right to the above

accommodation. This accommodation as it existed during the common ownership cannot in the strict sense be described as an 'easement' but is usually described as a 'quasi-easement'. Blackacre is sometimes described as the quasi-dominant tenement, and Whiteacre as the quasi-servient tenement.

(7) Apparent and continuous easements which are necessary for the enjoyment of the dominant tenement in the state in which it was enjoyed at the time when it was severed from the servient tenement are called quasi-easements. Before such severance they are only the ordinarily rights of property and assume the character of rights of easement on such severance only provided they fulfil certain specified conditions, namely, (1) they are apparent; (2) they are continuous; and (3) they are necessary for the enjoyment of the tenement for which they are claimed, in the same state in which it was enjoyed before severance from the tenement on which their liability is thrown.

(8) The qualification that it should be necessary for the enjoyment of property in the state in which it was enjoyed before, should be distinguished from the qualification of absolute necessity which is necessary for the acquisition of easement of necessity under clauses (a), (c) and (e) of S. 13. The necessity involved in the latter case is absolute, i.e., without which the property cannot be enjoyed in any way or in any state much less in the way or state in which it was enjoyed before; while the necessity in the former case is not absolute, but only a qualified necessity, i.e., without which the property, though it may be enjoyable otherwise, is not enjoyable in the way in which it was enjoyed before.

So if the necessity involved is absolute the right claimed is an easement of necessity and the case falls under clause (a), (c) or (e), but it is qualified, the further conditions i. e., the right claimed must be a right to an apparent and continuous easement, must be fulfilled before clause (b), (d) or (f) will apply. The twenty year rule does not apply to quasi-easements.

(9) There is ample authority for the proposition that right of irrigation being both apparent and continuous emerges as a quasi-easement on the severance of tenements. In the leading case of Morgan v. Kirby ILR 2 Mad 46, it was held that the right to irrigate passed by presumption of law as being apparent, continuous

and necessary to enjoy the tenement as it was enjoyed before the Government had granted the lease to Kirby. In the absence of a stipulation to the contrary, a transferee is entitled to the same facilities of irrigation that used to be attached to the transferred land, because such an easement is apparent, continuous and necessary to enjoy the transferred land as it was enjoyed before and the fact that some other sources of irrigation are available for the several portion is immaterial.

See also Kuttah Krishnan v. Chathu Menon, ILR 33 Mad 207. Gangulu v. Jagannatham AIR 1924 Mad 108, is authority for the proposition that the existence of vents is sufficient evidence of the easement being apparent and continuous and the fact that the vents may be closed as a temporary measure after irrigating the filed will not make the easement discontinuous first as the closure of a drain for clearing silt or effecting repairs will not take away from its character as a continuous easement.

It was further observed in this case that the fact the plaintiff could obtain some supply of water from some other source as well did not prevent the creation of easement by presumption of law on severance. Similarly, it has been held in Krishna Ayyar v. Ayyappa Naik : AIR1925 Mad577 , that where a channel is proved to have existed for thirty years before the partition, in the absence of any statement to the contrary in the partition deed, an easement to take water will be deemed to have passed to the respective allottees. In Chhatarmal v. Jugal Kishore : AIR1930 All313 , the plaintiff had a well situated in their own lands and they had to take the water from that well to a land of their across the intervening plots belonging to the defendants.

All the lands had formerly belonged to the family before partition. The plaintiffs made out their case that they had been taking the water from the well across the defendant's lands; and they were granted an injunction on that basis. In Shankariah v. Ramaiah Air 1954 Mys 184, there was a dispute between two brothers after partition. The plaintiff claimed the right to take water from the well situate in the land which fell to the share of the defendant in the partition. It was found that besides the tank water the well water had also been used for irrigating the plaintiff's land prior to the partition. On those facts it was held that the plaintiff

had made out his right.

(10) peacock refers to the earlier decision I Ramessur Prasad Narain Singh v. Koonj Behari ILR 4 Cal 633 where the Privy Council upheld the plaintiff's claim for the purposes of irrigation to have the flow of water in an artificial channel from the defendant's estate to his own without diversion by the defendant and Raja Suraneni Venkata Pappayya v. Secretary of State ILR 26 Mad 51, where, on the Government having purchased certain villages at a sale for arrears of Government revenue, it was held that it had acquired an easement under S. 13(b) to have the lands in such villages irrigated from the same source of irrigation in another village belonging to the same zamindari as had been in use at the time of the sale. The learned author cites at page 352 the decisions relating to quasi-easements in artificial flow of water to dominant tenement. Nicholas v. Chamberlain (1606) Cro Jac 121: Sury v. Piggott (1626) Pal 444; Watts v. Kelson, (1871) 6 Ch A 166 : ILR 2 Mad 46 supra.

(11) In the result, the decrees and judgments of the Courts below proceeding upon a wrong construction of quasi-easements under the Indian Easements Act, namely that the right to irrigate well water is a discontinuous though apparent and hence not a quasi-easement cannot be supported as they stand. The decrees are modified by stating that besides the plaintiffs and the sixth defendant, defendants 1 to 5 also have a right to take water from the suit well as a quasi-easement. This second appeal is allowed in part and in the circumstances the parties will bear their own costs.

(12) Appeal allowed partly.

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