

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 439 OF 1992
IN
REGULAR CIVIL APPEAL NO.297 OF 1986
IN
REGULAR CIVIL SUIT NO.149 OF 1982

1. The State of Maharashtra
 2. The Secretary (Irrigation Department)
Government of Maharashtra,
Mantralaya, Mumbai
- .. Appellant.
(Org.Opponent)
- V/s

Shri Dhondiram Tanvanappa Chivate
Age : 76 years, Occ. Agriculture
and Editor, 'Kisan' resident of Miraj
Since deceased through his Legal heirs :-

1. Smt. Kasturibai Dhondiram Chivate
Age : 75 years, Wife.
R/a. Guruwar Peth, Miraj
District. Sangli.
2. Dr. Shantikumar Dhondiram Chivate
Age : 59 years. Son
R/a. C/o. Jivan Jyoti Hospital,
Satyam Apartments, Opp. Shahu Market
Naupada, Dist. Thane-400 062
3. Shri. Ramesh Dhondiram Chivate
Since deceased through his legal heirs

3a. Smt. Ranjana Ramesh Chivate,
Age : Adult, occ. Household

3b. Mast. Rohit Ramesh Chivate
Age 17 years.

3c. Miss. Shital Ramesh Chivate
Age : 12 years, daughter

(Respondent Nos. 3b & 3c) are minor
through her guardian mother 3a)

All are r/a. Guruwar peth, Miraj.

Dist. Sangli.

(Amendment carried out as per
Court order Dt.16/08/2004 in

C.A.No.1090/03 in S.A.No.439/92 .. Respondents.
(Orig. Claimants)

Mr. Amit Palkar, AGP, for Appellants.

Mr.T.S. Ingale, for Respondents No.1, 2, 3a to 3c.

Coram : Smt. R.P. SondurBaldota, J.

Date : 27th February, 2015

JUDGMENT :-

1). This Second Appeal is directed against the judgment and order dated 10th June, 1992 passed by the District Court, Sangli in Regular Civil Appeal No. 297 of 1986. The appellants are the original defendants to Regular Civil Suit No. 149 of 1982 filed by the original respondent. Appellant no.1 is the State of Maharashtra and

appellant no.2 is the Secretary, Irrigation Department, Government of Maharashtra. The original respondent to the present appeal was one Dhondiram Chivate on whose death, during pendency of the appeal, the present respondents have been brought on record.

2). Dhondiram filed Regular Civil Suit No. 149 of 1982 against the Collector, Sangli District and Secretary, Irrigation Department, Government of Maharashtra for recovery of damages and perpetual injunction. The trial Court, by its judgment and decree dated 13th January, 1986 dismissed the suit. The District Court, Sangli by its order impugned herein, decreed the suit, awarding the damages of Rs.5,000/- to Dhondiram and giving certain directions to the appellants.

3). The undisputed facts of the case are that, Dhondiram was the owner and possessor of the agricultural land at Gat No. 287, admeasuring 3 Hectares & 50 Ares situated at Village-Nilaji in Miraj Tahsil. In the year 1975, the State of Maharashtra through the Irrigation Department, undertook "Crash Irrigation Programme" under the Lift Irrigation Scheme for lifting water from Krishna River and channeling it through pipeline for the benefit of agriculturists. Dhondiram was not a beneficiary under the scheme. But the pipeline of the Scheme ran over the boundary line of his Gat No. 287. There is a streamlet running through his land. One chamber of the pipeline is

in the bed of the streamlet at a place near the boundary of Gats no. 284 and 285.

4). In the year 1977, there was leakage in the pipeline near the land of Dhondiram and a portion of his land admeasuring 2 acres was flooded with water. Consequently, Dhondiram was unable to cultivate that portion and suffered losses. He had immediately complained orally to different authorities about the water flooding and damage to his land with a request to them to repair the pipeline. At his request, Tahsildar, Miraj directed the Circle Officer, Miraj to visit the field and draw panchanama of the site of flooding. The Circle Officer on 18th July, 1981 visited the land and drew panchanama of water logging on the land of Dhondiram and the damages caused to him. Surprisingly, no action was taken by the appellants on the basis of the panchanama. Then, Dhondiram by his advocate's notice dated 10th August, 1981 called upon the Collector, Sangli, Secretary (Irrigation Department), Government of Maharashtra and Executive Engineer, Miraj Irrigation Department to repair the pipeline so as to save his land from continuous damage. Even the Advocate's notice did not move the authorities into action. Finally, Dhondiram by his letter dated 12th March, 1982 requested Tahsildar, Miraj to once again inspect the site of leakage and filed Regular Civil Suit No. 149 of 1982 in the Court of Civil Judge Senior

Division, Sangli for recovery of damage of Rs.9,000/- for the loss caused to him and a mandatory order directing for permanent injunction to restrain appellant no.2 to repair the pipeline.

5). Despite panchanama by their own officers, the appellants resisted the suit denying all the allegations made by Dhondiram. They denied that there was leakage in the pipeline in the year 1977 and claimed that the pipeline was in good condition. They further alleged that, Dhondiram had constructed a bandh in the streamlet which had caused obstruction to the flow of the water from streamlet leading to spreading of water on his land. They denied that Dhondiram suffered any loss, damage or injury due to leakage to the pipeline.

6). When parties went for trial, Dhondiram examined himself (P.W.1), a Clerk from Tahsildar Office (P.W.2), Circle Officer, Miraj (P.W.3) and Talathi (P.W.4). The solitary witness of the appellants was, their Sectional Engineer (Irrigation Department).

7). Dhondiram in his deposition stated the details of his case and claimed damages of Rs.9,000/-. He produced correspondence with different authorities, panchanama drawn by Circle Officer on 18th July, 1981, the application made by him to Tahsildar, Miraj on 12th March, 1982 and the advocate's notices. He was subjected to extensive cross-examination and has withstood the

same.

8). P.W.2 was only a production witness. P.W.3 at the relevant time, was working as Circle Officer at Miraj. He deposed that, he had seen the land of Dhondiram and was present at the time panchanama of the land was drawn on 18th July, 1981. At that time, one Shri. Kore, the then Talathi, Nilaji was present alongwith two panchas who had drawn panchanama which records the leakage of water through pipeline near the borders of Gat no.284 and 285. The water was saturated on the land of Dhondiram. The depth of water was about 7 to 8 feet and water was spreadover the area of 25 gunthas of land. He further deposed that, the land of Dhondiram was fertile land with black soil. In the cross-examination, he admitted that some agriculturists on the eastern side of the property of Dhondiram, had constructed a bandh in the streamlet causing saturation in the streamlet. But, the bandh was at a distance of about 50 feet from the land of Dhondiram. He admitted that, though it was his duty to ask the villagers to remove bandh, he has not done so.

9). P.W.4, Talathi deposed that land of Dhondiram is fertile and bagayat land. There is well water available on it and he takes bagayat crop like sugarcane, fodder, banana etc. from the suit land. The net income from the land of Dhondiram is Rs.4,000/- to Rs.5,000/- per acre. It was his evidence that, on account of leakage

of the pipeline, the water had spread over the area of about 25 to 28 gunthas of the land of Dhondiram. He supported the evidence of P.W.3, that in the year 1980-81, Tahsildar, Miraj had directed the Circle Inspector to draw panchnama of the land and that he had accompanied the Circle Inspector. Two panchas had been called at that time and the panchanama was drawn. The panchanama refers the depth of the water collected as about 7 to 8 feet. This witness was also subjected to searching cross-examination and has withstood the same.

10). During pendency of the suit, trial Court at the request of the parties directed inspection of the land of Dhondiram by Site Inspector. The inspection was carried out on 19th October, 1985 and notes of inspection form part of record. The Inspector deposed about the pipeline running over bandh of Dhondiram and chamber in the bed of the streamlet. He was unable to inspect the Chamber, because it was submerged in water.

11). As against the above evidence led by Dhondiram, the evidence led by the appellants was of a Sectional Engineer from the Irrigation Department, who had no personal knowledge of the facts of the case. He was not working with the Irrigation Department prior to July, 1983. He deposed on the basis of the record. His evidence, infact, corroborated the evidence of Dhondiram. The relevant facts

stated by him are that, Dhondiram had, since the year 1977, made complaints to his department about leakage of water through pipeline. When he had personally inspected the spot, the height of water on the land of Dhondiram was 5/6 ft. Further, there was scarcity due to rainwater in the area from 1982. There is a Well on the land of Dhondiram and he draws crop of sugarcane from his land by using water from the Well. The next relevant fact deposed by him was that, in June 1985 his department transferred the pipeline of Lift Irrigation Scheme to Shetkari Sahakari Sakhar Kharkhana, Sangli for maintenance.

12). On the above evidence, the trial Court found that, though Dhondiram established that a portion admeasuring about $\frac{1}{2}$ to $\frac{3}{4}$ acre of his cultivable land was submerged in water, he failed to establish that the same was on account of leakage of the pipeline. He also failed to establish that, he suffered damages on account of the negligent act of the appellants.

13). The Appellate Court, on re-appreciation of the evidence found that, the negligent act of the appellants was the proximate cause for loss of agricultural income to Dhondiram and he was entitled to damages at the rate of Rs.1,500/- per annum and general damages of Rs.500/-.

14). This Second Appeal was admitted on 17th August, 1992

on grounds no.5 and 12 as the substantial questions of law which are reproduced below :-

“1. The important legal question involved in this case is whether the judge can inspect the spot and record notes in inspection and can use them to appreciate the evidence on record.

2. It is an important question of law whether the principles of Res-Ipsa-Loquitur applied to the facts of the present case.”

15). The first substantial question of law in fact, does not arise in the facts of the case since the Appellate Court has not based its judgment on the spot inspection notes of the trial Court Judge. It has in fact rejected it. The relevant observations at para-13 of the impugned judgment read as follows :-

“ . It is not a fair practice to make a spot inspection by Judge in such a case. It is laid down in case of 'Raghuvir Harish Salgaonkar Vs. Smt. Saraswati Kundlik Salgaonkar' : AIR 1984 Bombay 284, that such a practice must be deprecated. His Lordship Ginnwala, J., has observed that :

“It is obvious that such memorandum or notes of the inspection based on the observations of the Judge, cannot be treated as evidence in the suit or the proceedings and cannot be on par with any evidence, because in that case, the Judge himself would be witness and the party against whom the memorandum or notes go, would not have any opportunity of cross-examining the Judge.”

. In the light of this authority, I am not inclined to attribute much significance to the spot inspection notes

prepared by learned Civil Judge and have no hesitation in holding that he committed error in relying upon the observations made by himself.”

16). The second substantial question of law, is about application of principle of Res-Ipsa-Loquitur. According to the appellant, the principle cannot be applied to the dispute raised in the suit and the facts of the case. In order to appreciate this question of law, a brief reference will have to be made to the facts that were taken into consideration by the Appellate Court, as the facts speaking for themselves. The facts that can be separated in three categories are as follows :-

. The pipeline runs through the streamlet. When the valve was fixed in the pipeline, there was no water in the streamlet. The area of Village-Nilaji is known to be a scarcity area with least percentage of rainfall. The crash programme of laying down water pipeline was undertaken by the Irrigation Department because of scarcity of rainfall in the area. There was no natural flow of water in the streamlet. The adjoining land owners had constructed bandh so as to prevent overflow of water from Dhondiram's land to their land. Dhondiram was not the beneficiary of the Irrigation Scheme. He cultivated his land with the water from a well on his land.

17). The second set of relevant facts is that, prior to the year 1977, there was no complaint from Dhondiram of water saturation on

his land. When there was leakage in the pipeline, Dhondiram had ventilated his grievance at the first possible opportunity.

18). The third set of facts taken into consideration by the Appellate Court was that, the appellants had not taken immediate action after receiving complaint from Dhondiram. The appellants had failed to produce any file of the enquiry conducted into the complaint.

19). The above facts, the Appellate Court held that, speak so clearly for themselves that there was nothing more for Dhondiram to establish in order to claim the reliefs in the suit. The first set of facts, made it clear that, it is improbable that the saturation of water on the land of Dhondiram was due to natural overflow of the streamlet and there was no question of obstruction to the water being caused by the adjoining land owners. The second set of facts corroborated the first set of facts. The third set of facts established the negligence on the part of the appellants.

20). On noticing the above facts, the Appellate Court held that the concerned officers of the Irrigation Department were responsible for the loss caused to Dhondiram. It has deprecated their inaction in strong words by saying that, they had shown callous attitude towards the repeated complaints of Dhondiram. Apart from the carelessness shown to the travails of Dhondiram, the officers of

Irrigation Department were thoroughly careless in allowing the water to be wasted, which water was valuable for the agriculturists in the area. The officers of the Irrigation Department were unmindful of the duty owed by them to the public.

21). In my opinion, there is no infirmity whatsoever on the application of principal of Res-Ipsa-Loquitur by the Appellate Court, while deciding the appeal and the inferences drawn thereupon. Therefore, the second substantial question of law is answered in the negative. Further, even if the principle is ignored, the admitted and established facts lead to the same inference. Consequently, the Second Appeal deserves to be and is dismissed with costs.

22). It is unfortunate that the callous, careless and thoroughly negligent attitude of the officers of the Irrigation Department spilled over to the court proceedings. Despite the existence and availability of their own reports as regards the flooding, the appellants contested the suit on uncontestable grounds. When the Appellate Court corrected the decision of the trial Court, the appellants challenged the same by filing the present appeal. Shockingly, after filing the Second Appeal, the appellants, applied for interim stay of the Appellate Court's direction to the Irrigation Department to repair the leakage in the pipeline. Fortunately, for Dhondiram during the intervening period, the Irrigation Department had handed over the

pipeline for maintenance to the sugar kharkhana nearby and since then the same has been maintained properly. But this fact was not brought to the notice of this Court by the appellants. These facts paint an extremely sorry picture of the entire State Government machinery. Apparently, nobody in the machinery is accountable to anybody for discharge or rather non-discharge of his duties. As fate would have it, during the long pendency of the proceedings, Dhondiram expired and his heirs have been brought on record. Thus, the suffering of Dhondiram could not be alleviated during his lifetime. The respondents, therefore, will be entitled to compensatory costs. The appellant shall pay costs quantified at Rs.1,00,000/- (Rs. One Lakhs only) in one set to the respondents.

(SMT. R.P. SONDURBALDOTA, J)