

Thalayasingham and Others

v.

Nagaratnam and Another

COURT OF APPEAL
SOZA, J., AND L. H. DE ALWIS, J.
C. A. 800/75
D. C. JAFFNA CASE NO. 4268/L
NOVEMBER 30, 1979.

Servitudes – Rural (or rustic) servitude of aquae ductus – Does the right of water course include the right to draw the water along a pipe-line ?

The rural (or rustic) servitude of aquae ductus includes the right to lead the water along a pipe-line.

APPEAL from judgment of the District Court of Jaffna.

Appellants absent and unrepresented.

K. Kanag Isvaran for respondents.

November 30, 1979

SOZA, J.

In this case the plaintiffs sue the defendants for a declaration that they are entitled to a share in the well and right of way and water course as shown in the sketch filed of record bearing the District Court's date stamp 6.8.71. On 28.9.73 when this case was taken up for trial it was admitted that the plaintiffs were entitled to a share of the well and right of way and water course from the well. The right of water course is the rural (or rustic) servitude of aquae ductus in Roman-Dutch Law. This is the right of leading water over another man's property. As Hall and Kellaway say in their work on **Servitudes** (1942) p. 79:

"An aqueduct usually takes the form of a furrow, although it may consist of concrete or metal structures such as flumes or pipe-lines. If it exists in the shape of an open furrow the dominant owner may substitute a pipe for the water course provided he does not prejudice the servient owner by doing so".

The right of water course includes in our view the right to draw the water along a pipe-line. In the circumstances of this case no prejudice will be caused to the servient tenement by the use of a pipe-line.

The plaintiffs seek a permanent injunction restraining the defendants, their servants, heirs, agents and dependants from closing the entrance leading to this well, which is shown as "X" in the sketch. On the basis of the plaintiffs' entitlement to the share in the well, right of way and water course the plaintiffs' prayer has been rightly granted. The plaintiffs are entitled to shares in the well and a right of way and water course as claimed and are entitled to use these rights without let or hindrance and all obstructions including the obstruction at "X" in the sketch should be removed. This appeal is dismissed with costs.

L. H. DE ALWIS, J.

I agree

Appeal dismissed