

(1929) 11 MAD CK 0041
In the Madras High Court

A. Venkatasami Naidu-Plaintiff		APPELLANT
	Vs	
Agaram Chenga Reddi and Others		RESPONDENT

Date of Decision : 14-11-1929

Acts Referred:

Citation : AIR 1930 Mad 621

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The original suit was for ejectment of the defendants and for a permanent injunction restraining them from interfering with the plaintiff's possession of the suit land. The suit land is in the ryotwari village of Machampattu. It was registered in the Government village registers as channel poramboke. In 1922 it was transferred by Government to assessed waste and assigned to the plaintiff on darkhast. The plaintiff alleges that he was put in possession at the time of the darkhast and that the defendants subsequently trespassed on it and dug a channel in it. The defence was that the darkhast of what was channel poramboke was fraudulent and invalid, and that the channel has been in use all along for taking water from the river Palar to irrigate the defendant's lands. The trial Court held that the darkhast was valid and binding on the defendants and decreed the plaintiff's suit. The lower appellate Court in not a very clear judgment has decided that the "ryots" have acquired a right to preserve the channel as against the Government, and that the grant on darkhast in derogation of the defendant's rights is invalid. It therefore dismissed the suit; and the plaintiff appeals.

2. Both the Courts agree that the allegation of fraud has not been made out. That part of the defendant's case is therefore concluded and has not been (sic) here. The decision of the lower appellate Court is based on the consideration that because the land has been registered all along as channel poramboke and because the revenue authorities who inspected it in 1911 and other years, who say that the land was overgrown with prickly pears which the ryots said they

would clear away, did not say that it had ceased to be a channel or was entirely unfit to be used as such, it must have been registered at the resettlement in 1916 as channel poramboke because the ryots wanted it to be reserved for channel. The Subordinate Judge concludes that the ryots have acquired a right as against Government to have the land reserved for a channel because the Government registry was a recognition of the fact that the ryots are entitled to make use of the land as channel. He admits that the channel is not a recognised source of irrigation to any lands in the village but holds that the defendants have, what he calls a "customary right or a right by prescription" to make use of the suit land as a channel. He also finds that the land has not been used as channel since 1903 when it was silted up by an overflow of the river Palar, but he decides that the non-user in the period between 1903 and the suit (1922) does not amount to an abandonment of the right of user.

3. It is contended for the defendants that this is a finding of fact not to be canvassed in second appeal. It seems to me a mixed question of fact and law, and in any case, as the Subordinate Judge has based his finding entirely on the settlement registry of the land as channel, it appears to me that even if the finding be taken to be one of fact, it rests upon no evidence. The mere registry of the land as poramboke is no evidence which can be used for the purpose of establishing a case of immemorial user as channel. In the first place, such registry does not necessarily imply that the channel is an irrigation channel, although the lower appellate Court assumes so. There are obviously other kinds of channels in a village than irrigation channels; for example, supply channels to tanks or surplus channels from tanks. But apart from that it is now well settled law that the mere registry of land in a village as a particular kind of poramboke creates no vested right in the villagers to hold it as such against Government. Such registry implies no kind of dedication or trust or any recognition of a vested right or user. I have lately considered the law on this subject at some length in my judgment in S.A. No. 692 of 1926, a case of grazing ground poramboke, and I need not repeat here what I have said there. The latest reported case on the subject is *Secy. of State v. Trustees of Sri Kuthalanathaswami Temple* AIR 1928 Mad. 1176, wherein (at p. 31 of 52 Mad.), it is laid down that the classification of porambokes, including channel, in village registers is merely by way of description and confers no title. The defendants seek to make out that the registry of this channel in the Settlement of 1916 was a special kind of registry, because in 1911, the special Revenue Inspector took a statement from the ryots (Ex. 11-A) that they would dig up the channel soon. It is contended that this was a sort of recognition of the immemorial user of the land for an irrigation channel. With that I am unable to agree. The statement itself does not even claim any such user. I see nothing special in the entry of the land as poramboke in 1916 settlement register. No records of the settlement itself are produced to support this view.

4. The defendants contend further that channel poramboke stands in a class by itself, that the registry of it by Government implies that Government has

recognized a customary right to take water for irrigation through that land, which right the Government cannot take away, that it implies that the land has been used and is required for the supply of water to wet lands, which lands are in law entitled to a sufficient supply of Government water. Government is no doubt bound to supply water to wet fields, but the ryots have no vested interest in the maintenance of any particular channels for their supply. This is also well settled law: see *Fischer v. Secy. of State* [1909] 32 Mad. 141; *Mahanakali Lakshmiah and Another Vs. Karnam Narayanappa and Others*, . It follows that the ryots cannot claim as against Government any right to take water to their fields by any particular channel. The defendant's present contention is really the general contention once a poramboke, always a poramboke and this contention cannot be accepted. I have already pointed out this has been negatived in *Secy. of State v. Trustees of Sree Kuthalanathaswami Temple* AIR 1928 Mad. 1176. The Subordinate Judge's view on this point is therefore erroneous.

5. It is admitted that the suit channel is not and has never been, so far as records show, a recognised source of irrigation for the defendant's lands, or, for the matter of that, for any land in the village. There is no suggestion in this case that Government has not supplied and is not supplying sufficient water to the defendant's fields by the recognised channels entered in the village register as their sources of irrigation. But even if it were so, the defendant's remedy would lie in a suit against Government, and even if they made out their case that the supply was insufficient, it could not be open to them to claim that Government must give them their supply through this particular channel. They cannot dictate to Government that any particular channel shall be the source of their irrigation. The plea that they had not been receiving a sufficient supply of water through the recognised sources can hardly be advanced in view of the fact that this channel has been discussed since 1903, and that, although the ryots themselves promised to put it right in 1911, they have never taken the trouble to do so. It is true that there is a claim in the written statement and a certain amount of evidence by the defence witnesses that the channel was being used all along up to the date of the suit, but the trial Court rejected that evidence and the lower appellate Court ignores it and evidently does not rely upon it, and very properly as it is obviously false. Had it been true, such petitions as Exs. E-2 and 3, as lastly as 1921, in which the ryots admit that they had until then given up the idea of digging the channel and were then (in 1921) digging it up, could not have been put in. Nor could there have been such unanimity in the reports of the revenue authorities that the channel as a channel had ceased to exist: see, for example, the evidence of the Tahsildars and the Revenue Inspectors, D.W. 6 in 1911, P.W. 5 in 1920 and P. W's. 1, 2 and 4 in 1923. Both the lower Courts in fact agree that since 1903 the channel has been out of use as such. There has therefore not been any withdrawal of any real source of irrigation which has recently been used as such. In these circumstances, it was open to Government, having due regard to the needs of the village, to decide that this land was no longer required as a channel and to transfer it to assessed waste and assign it

under the rules contained in the Board's Standing Orders. There is no suggestion in the case that the assignment was not in accordance with the rules or was in this sense ultra vires.

6. It is contended but not really pressed, that Government should have been a party to the suit and therefore the suit is bad for non-joinder. The trial Court held that Government was not a necessary party. No ground of appeal on this part of the case was taken by the defendants before the lower appellate Court. I am not able to see how defendants have been prejudiced by the Government not being a party, and I therefore see no reason to interfere on the ground of non-joinder. The decree of the lower appellate Court, for these reasons, cannot be supported. I reverse it and restore the decree of the District Munsif with costs to the plaintiff throughout in all the Courts.