
(1991) 09 MAD CK 0067
In the Madras High Court
Case No : Second Appeal No. 2088 of 1991

Ayyanna Gounder and others	Vs	APPELLANT
Ramasami Gounder and 4 others		RESPONDENT

Date of Decision : 03-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1991) 09 MAD CK 0067

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : Sethuratnam for Mr. A.S. Venkatachalamurthy, for the Appellant; R. Sundaravaradhan for Mr. A.K. Kumaraswamy, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The plaintiffs are the appellants. They filed the suit for a permanent injunction restraining the defendants from laying

underground pipe to take the Kalingarayan Channel water from the suit channels to their well in O.S. No. 392/A-1 of Nanjai Uthukkuli. It is the

specific case of the plaintiffs that themselves and about 32 others own 40 acres of lands both at Kurukkupalayam and Nanjai Uthukkuli villages

Erode Taluk, irrigable with Kalingarayan Channel water through "Kanni Vaikkal" bearing Survey Numbers 193 and 195 of Kurukkupalam village.

The plaintiffs stated that the defendants dug up a well and installed a 7 1/2 H.P. electric motor and pump set and they were not entitled to irrigate

their lands with the water flowing in the "Kanni Vaikkals". It is also the case of the plaintiffs that the defendants on 26-8-1975 attempted to lay

underground pipes to tap unlawfully the water running in the "Kanni Vaikkal" to their well. It was alleged in the plaint that if the defendants

succeeded in their unlawful activities, the crops in 40 acres belonging to the plaintiffs would wither away and the water running in the "Kanni

Vaikkals" would be sufficient only to cultivate their 40 acres of land. The cause of action for the suit is said to have arisen in the plaint on 26-8-

1975 when the defendants attempted to lay underground pipes. After the filing of the suit, defendants 4 and 5 were impleaded as parties. They are

the State of Tamil Nadu represented by the District Collector, Coimbatore and the Executive Engineer, P.W.D. Canals, Kalingarayan Channel,

Erode. The trial Court dismissed the suit as against defendants 4 and 5 for want of notice under S.80 of the Code of Civil Procedure, while

granting a decree as against the other defendants. On appeal, the learned Subordinate Judge, Erode reversed the conclusion of the trial Court and

dismissed the suit in entirety.

2. It is not necessary for me to refer in detail to the evidence adduced. The appellate Court has referred to the evidence on record and come to

certain conclusions on the facts. It is found as a fact by the appellate Court that the cause of action alleged by the plaintiffs to have taken place on

26-8-1975 is not true. It is found that the defendant had been taking water through underground pipes even long prior to the date of suit and not as

alleged in the plaint. It is further found by the appellate Court that the plaintiffs failed to establish that there would be diminution of water in the suit

channel if the defendants diverted water to their well. The appellate court has held that there was no evidence in support of the said claim made by

the plaintiffs.

3. Apart from the matters referred to by the appellate Court, I would make a reference to one or two passages in the depositions of the witnesses

examined by the plaintiffs in order to show that the findings of the appellate Court are not assailable. P.W.1, the second plaintiff has deposed that

the suit was filed by collecting Rs. 50/- per acre and that the total amount collected was Rs. 500/-. That would mean that collection was made only

for 10 acres. According to P.W.1 the remaining amount was not collected and there was a promise by the owners to pay the same. It should be

pointed out that nowhere in the evidence the plaintiffs have set out the 40 acres of land, which, according to them, are the ayacut lands, nor have

they placed before the court the details of the other 32 persons who are said to

be the ayacutdars along with the plaintiffs. Even the second plaintiff, who has given evidence has not spoken the truth. With regard to his land, he has stated in his evidence that he is having 50 cents of land to which there is direct irrigation. He adds that he has got a water permit. If he is an ayacutdar, there is no question of his getting a water permit to take water to irrigate his lands. It is further deposed that he is given permit for having direct irrigation from the channel According to him his land is situated on the right hand side of the Kalingarayan Channel, and the lands situated on the right hand side of the channel are entitled to direct irrigation. That evidence is contradicted by P.W.3 who is the Assistant Engineer in the Public Works Department, Namakkal. According to P.W.3 the land of the 2nd plaintiffs is on the left hand side of the channel and direct irrigation is available only to lands situated on the left hand side of the channel. The claim of P.W 1 is, therefore, contradicted by the evidence adduced on his side.

4. P.W.1 has also deposed that the plaintiffs, have no objection to the defendants" taking water to their well if water flows to the full level in the "Kanni Vaikkals". According to him. "Kanni Vaikkal" join the main Kalingarayan channel once again after flowing through the plaintiffs" lands. He admits that D.W.4 dug up a well seven years back and there would be always water in the well. He also states that if the Government grants water permit to the defendants, the plaintiffs will have no objection to their taking water. Thus, the case put forward in the plaint that there would be diminution of supply to the plaintiffs" lands if water is taken to the defendants" land is falsified by the evidence of P.W.1 himself.

5. P.W.2 makes a very significant admission. According to him, so far there was never any deficiency of water for cultivation of their lands and there was no damage to the cultivation. He adds that in two or three years, some crops would get dried, towards the end of the season and the crops were never fully dry. According his evidence, "Kanni Vaikkal" never rejoins the main channel. Thus, he contradicted the evidence of P.W.1, P.W.2 is not in a position to state as to who are the persons who have direct irrigation from the channel. His evidence is that the elders used to say that there were 21 acres of lands which had direct irrigation. Neither P.W.1 nor P.W.2 has deposed that there would be diminution of supply to

the plaintiffs lands in the event of the defendants taking water through their pipes to their well.

6. P.W.3 is an Assistant Engineer in Public Works Department. His evidence does not help the parties very much. He speaks only about the notice

issued to the defendants on receipt of a complaint from the plaintiffs that the defendants were taking water unlawfully through pipes to their well.

He does not speak to holding any enquiry as to whether water was being taken by the defendants unlawfully. According to him, four or five

persons are irrigating their lands with well water. He admits that he never verified the facts with the records. He admits that about thousand people

take water from the Kalingarayan main channel just like the defendants and take them to a distance of half or one mile through pipes. According to

him, the department has taken action against some of the persons.

7. The totality of the evidence let in by the plaintiffs does not make out that the plaintiffs have suffered any damage. The essential facts which ought

to have been proved by the plaintiffs to get-reliefs in the suit have not been established. The plaintiffs ought to have furnished the details of the

ayacutdars and the lands which come under the ayacut. The plaintiffs have not produced any evidence to show the nature of the lands or the

number of crops that are raised in the lands. Nor the plaintiffs have proved by letting in evidence the required quantity of water that is necessary for

the purpose of irrigation of their lands and raising crops. As pointed out by me, there is no evidence even to prove that the averment that the ayacut

consist of 40 acres belonging to the plaintiffs and others.

8. In the circumstances, I have no option but to confirm the judgment of the lower appellate Court dismissing the suit.

9. Learned Counsel for the appellants relied on the decision in C.N. Maduranayakam Pillai v. Secretary of State 49 L.W. 15 : AIR 1939 Madras

386. It was held in that case that in the Madras Presidency the ryott is entitled to receive the water which his lands have been accustomed to for

irrigation purposes without interference by the Government or anyone else and the Government cannot be required to supply water when none is

available. Similarly, in Annaswami Naicken and others v. C. Manicka Mudaliar and others 46 L.W. 472, Venkataramana Rao, J. held that a

ryotwari tenant is entitled to receive from Government the necessary and

sufficient supply of water for the irrigation of his wet lands, subject to the Government right to regulate the method and manner of such supply. In this case, on the facts, the plaintiffs have failed to prove the nature of their lands, the extent of the lands and the quantity that is required for irrigating their lands. The quantity of accustomed supply of water has not been proved in this case.

10. Learned Counsel for the respondents refers to the decision in *Lachuma Goundan v. Pandiyappan alias Annamalai Goundan* 1950 II MLJ 658.

Viswanatha Sastri, J. has elucidated the law thus:

The Government in exercising its prerogative right of distribution of water flowing in Government channels should not inflict sensible injury on

ryotwari proprietors who have been accustomed to receive a supply of water sufficient for the purposes of irrigating their wet lands. Subject to the

aforesaid conditions, it has been recognised by decisions that the Government has the right to change the source of irrigation or the method of

distribution by which ryotwari proprietors have been supplied with water and also to regulate the use of the waters flowing in artificial channels

constructed by or belonging to the Government so as to ensure a fair and equitable distribution of water among all the ryotwari proprietors

depending on the anaycut of the channel. A ryotwari proprietor could not plead, as against the Government that he has an absolute right to all the

volume of water flowing through a particular channel acquired either by grant or by prescription; nor can he object to the Government allowing

other ryotwari proprietors to utilise the water of a Government channel, unless, the usual supply of water necessary and sufficient for the cultivation

of the wet lands of the former, is prejudicially interfered with. It may here be observed that though the ryotwari proprietor is ordinarily spoken of as

being entitled to the usual and accustomed supply of water, there is no corresponding obligation on the part of the Government to find the required

supply of water at any cost on pain of being held liable in damages for default. The obligation of the Government is to supply water necessary and

sufficient for the accustomed requirements of the ryotwari proprietor so long as such supply is not adversely affected by natural causes such as a

deficiency of rain fall or scarcity of water in the rivers from which the supply channels take off. From this it follows that the ryotwari proprietor has

a claim against the Government only when the Government diverts, to his prejudice, water which is available in the channel so as to materially diminish the supply of water that he had been accustomed to receive from the channel for the cultivation of his wet lands. In other cases, the interference by the Government with the existing rights of irrigation from artificial channels constructed by Government is not an actionable wrong and the ryotwari proprietor is not entitled to insist that the entire volume of water which had been flowing through the artificial channel should, for all time, be allowed to run along the channel without diminution or diversion by the Government. In other words, damage to the ryotwari proprietor, actual or inevitable is the gist of the action as well as the basis of Government's liability.

When the finding of the lower appellate court is that no damage has occurred or is likely to occur, no relief can be granted to the plaintiffs in the present proceedings. In the circumstances, the judgment and decree of the learned Subordinate Judge, Erode is confirmed and the second appeal is dismissed. The parties are directed to bear their respective costs.