

(1935) 09 MAD CK 0038
In the Madras High Court

Chalatan Narayani and Another

APPELLANT

Vs

Ponmalari Korothe Krishnan Nambiar and Others

RESPONDENT

Date of Decision : 12-09-1935

Acts Referred:

Citation : AIR 1936 Mad 128

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The subject matter of this appeal is a plot of land measuring 3.38 acres granted by Government to the plaintiff in 1920, plaintiff's ease being that after he had enjoyed the land for a year or two it was trespassed upon by the tenants of defendant 12 the karnavan of the Chirakkal Kovilagam. The land according to plaintiff and the Government (impleaded as defendant 10) was originally part of the bed of the Varom river in North Malabar, and came into existence as land as the result of an exceptionally high flood season in 1907. When plaintiff filed his suit to recover possession of the land in 1925 it was contested by defendant 12 mainly on the ground that it never formed part of the river bed, but was a part of defendant 12's property on the bank of the river. The District Munsif of Cannanore found against this plea and decreed plaintiff's suit. On appeal the Subordinate Judge of Tellicherry remanded the suit for fresh disposal, after framing five additional issues relating to the nature of the river and of the land in the matter of its formation. The District Munsif of Cannanore then held on remand that the river was tidal and navigable, that the land was formed in 1907 adjoining the land of defendant 12, but that defendant 12 could not claim it as an accretion. The suit was therefore again decreed in plaintiff's favour. On appeal a further remand was ordered. "The learned District Judge of North - Malabar confirmed the two findings of fact (1) that the land was originally part of the river bed and (2) that the river was tidal and navigable, but held nevertheless, on the authority of the Privy Council ruling reported in Secretary of State v. Rajah of Vizianagaram 1922 45 Mad 207, that the Government had no title to it after it became land, as it was an accretion to the land of defendant 12.

He then remanded the suit for a decision on the issue whether defendant 12's rights had become barred by adverse possession. Against this order of remand the present appeal has been filed. The only point for me to decide is whether this finding in favour of defendant 12's title is sound or not. If it is not, plain-tiff's suit must succeed.

2. The main argument in appeal is that there are vital features which distinguish *Secretary of State v. Rajah of Vizianagaram* 1922 45 Mad 207 from the present case, and it is therefore necessary to examine the former decision closely. That case related to the ownership of a lanka in the river Godavari which was first formed in 1850 and after undergoing various vicissitudes in area had attained an extent of about 1,000 acres by 1912. In 1884 there had been an accretion to the extent of 610 acres, and it was argued for Government that this accretion could not be deemed to be "gradual, slow and imperceptible" so as to give title to the Rajah of Vizianagaram whose title to the original "nucleus" of the lanka had been upheld in previous litigation. This contention was repelled in the High Court : see *Secretary of State v. Rajah of Vizianagaram* 1918 40 Mad 1083 and it was pointed out that in applying the rule of English law which required accretions to be of that particular kind due allowance must be made for the different physical characteristics of Indian rivers. Ayling, J., put the matter thus:

It seems to me the recognition of title by alluvial accretion is largely governed by the fact that the latter is due to the normal action of physical forces; and the different conditions of Indian and English rivers is such that what would be abnormal and almost miraculous in the latter is normal and common place in the former.

3. The High Court's decision in favour of the Rajah of Vizianagaram was upheld by the Privy Council. In stating the facts in para. 1 of his judgment Lord Carson says:

The extent of the river and the operation of its currents in forming alluvial tracts during the flood season must be borne in mind with reference to questions arising in this case,

and then refers to *Sri Balasu Ramalakshamma v. The Collector of Godavari District* (1899) 22 Mad 464 for a description of the river. That description stresses the breadth of the Godavari, and the annual changes which take place in its bed as the result of the flood season. Later in the judgment Lord Carson quotes with approval the passage from Ayling, J.'s judgment given above; and finally he refers to the absence of all evidence in rebuttal of statements that the formation of the disputed part of the lanka was gradual.

4. Now what is the situation in regard to the river Varom in North Malabar? There is nothing whatever to show that lanka or any extensive tracts of sand are ever formed in it. In breadth it is insignificant in comparison with the Godavari and what is most important of all, no changes at all are spoken to by the witnesses in any year except 1907. Even the learned District Judge himself has omitted to

give any positive finding that this particular accretion was gradual while, no doubt, speaking of a gradual accretion in summarising the law as laid down in *Secretary of State v. Rajah of Vizianagaram* 1922 45 Mad 207 he goes on to omit the word altogether and to say:

So it is well established that in case even of a navigable river where the bed belongs to the Government if the accretion is lateral and not vertical, the accretion belongs to the riparian owner and not to the Government.

5. I am thus unable to hold that the principles of *Secretary of State v. Rajah of Vizianagaram* 1922 45 Mad 207 can be invoked by the respondent on the facts of the present case. The gradual formation of lankas - their appearance, disappearance, increase in size, decrease in size-is the inevitable. and inevitably recurring result of the nature of the Godavari itself. Here in Malabar the Varom undergoes no change, except in years of quite abnormal flood of which 1907 is the only year in the 20 years before the suit. The emergence of these three acres of land cannot therefore in the words of Ayling, J., be said to be due to the normal action of physical forces." I have been referred to another Privy Council decision reported in *Secretary of State v. Foucar & Co.* 1934 12 Rang 136 but that case also does not help the respondent. It deals with, an island in the river Pegu which began to form in 1892, and for the next 30 years was subject to various changes in area. Similarly in two cases referred to by Ayling, J., in *Secretary of State v. Rajah of Vizianagaram* 1918 it is stated that accretions took about 15 years to form. No ease can be cited in which an accretion formed in a single season and remaining unchanged thereafter has been held to belong to the riparian owner, and indeed, to say in 1935 that this land which was formed once for all nearly 30 years ago in the course of a single flood season, is a gradual" accretion seems a contradiction in terms.

6. In the result I must allow this appeal, set aside the order of remand, and decree plaintiff's suit with costs throughout, payable by defendant 12 and defendant 13. Leave to appeal refused.