

(1935) 10 MAD CK 0092
In the Madras High Court

Decca Ramanna

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 28-10-1935

Acts Referred:

Citation : AIR 1936 Mad 299

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellant brought a suit against the Secretary of State claiming a declaration of his title to certain land, a declaration that the Government have no right in that land and a permanent injunction restraining the defendant from interfering with the plaintiff's rights therein. There was also a matter of penal assessment with which we are not now concerned. The land in question consists of what is alleged to be an encroachment on the bed of a madugu or lake which lies partly within the boundaries of three villages each of which is situated in a different estate. In this appeal we are concerned, however, only with the portion of the madugu which lies in one village and one estate. The lower Courts have found that the plaintiff encroached on this land in Fasli 1333 and has no title therein that the land forms part of the bed of the madugu and is set apart for communal purposes. The lower appellate Court held that though the water of this madugu is only occasionally used for drinking and irrigation by the adjoining land owners, it serves a necessary purpose as a natural drain to receive water discharged by the neighbouring lands and its existence is necessary for the ordinary enjoyment of these lands and that it is therefore communal property. It is argued in appeal firstly that because the madugu lies partly in three different villages and in three different estates, Section 20, Madras Estates Land Act, has no application. It seems to me there is no substance in this argument, for we are now concerned with lands lying in one village and one estate and the fact that similar lands forming part of the same madugu lies in another village or in another estate in no way affects the legal position.

2. It is also argued that this madugu cannot be considered to be land set apart for the common use of the villagers because it is a natural feature and because the user of it is the exercise of a natural right existing in the holders of the adjacent lands. I have no doubt that the words "set apart" indicate some reservation or earmarking of land either by Government or by the proprietor or the village community. But it seems to me quite unnecessary, and in the majority of cases impossible for a party to adduce positive proof of the precise circumstances in which communal land was originally set apart for communal purposes. It is sufficient to show that there has been some setting apart and that the land is so used. Nor do I think it necessary to assume that Section 20 only applies to land which has been artificially made available for communal use. It is a feature of village life that the village community takes advantage of the natural features of the ground in the conduct of their agricultural pursuits. Thus a high rock is used as a threshing floor though its natural features have not been altered in any way by the village community when they decide to use it for that purpose or by the proprietor when he decides to recognize that user by a classification.

3. In the same way a pond may be used as a drinking source without any alteration in its natural characteristics and without any act of man other than the decision to use it for the purpose for which it is naturally suited and to reserve it for that object. I do not see why a communal use should be any the less a communal use because it is a natural use. If it is convenient for the owners of land situated in the neighbourhood of a depression to reserve that depression as a drain or receptacle for the water flowing or percolating from the higher lands, that user is a common use just as much as it would be if the villagers had dug a hole in the ground for a similar purpose. As to the setting apart, the mere fact that land which is in actual use for common purposes has been earmarked by classification in the registers of the estate as communal poromboke is a sufficient indication of the reservation or setting apart such as is contemplated in Section 20. I do not think that it was the intention of Section 20 to restrict the reservation to land which has been artificially made fit for communal purposes and as there is a finding of fact of both the lower Courts that this land has been set apart for the common use of the villagers by reason of the facility for draining water from higher lands into this depression, I am precluded from going into the question whether there has been in fact a reservation or whether there is in fact a common use. In this view I dismiss the appeal with costs. Leave to appeal refused.