

(1935) 10 MAD CK 0007
In the Madras High Court

Docca Ramanna

APPELLANT

Vs

The Secretary of State for India in Council

RESPONDENT

Date of Decision : 28-10-1935

Acts Referred:

Madras Estates Land Act, 1908 — Section 20

Citation : 162 Ind. Cas. 50

Hon'ble Judges : Wadsworth, J

Bench : Single Bench

Judgement

1. 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 their 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 landowners, it serves the 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.

2. It is argued in appeal firstly that because the madugu lies partly in three different villages and in three different estates, Section 20 of the 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.

3. 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 land. I have no doubt that the words "set apart"

indicate some reservation or ear-marking of land either by the 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. If it is a feature of

village life that the village community take advantage of the natural features of the ground in the conduct of their agricultural pursuits. Thus a high

rock is used as a thrashing 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 that the proprietor when he decides to recognise that user by a classification. In the same way a pond may be used 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 ally 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 a receptacle for

the water flowing or percolating from the higher land, 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 ear-marked by

classification in the registers of the estate as communal porom-boke is a sufficient indication of the reservation or setting apart such as is contemplated in Section 20.

4. 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.