

(1910) 02 MAD CK 0089
In the Madras High Court

Gorigala Pitchi Naidu and Others

APPELLANT

Vs

Vallur Veeriah and Others

RESPONDENT

Date of Decision : 02-02-1910

Acts Referred:

Citation : 5 Ind. Cas. 853

Hon'ble Judges : Arnold White, C.J;Krishnaswamy Aiyar, J

Bench : Division Bench

Judgement

1. The suit land was unassessed waste part of the defendants' village of Lakkarajapalle, hamlet of Minagallu. It was rented on darkhast in 1901 to the plaintiffs ryots of Mahimalure. They complained of obstruction and dispossession by the defendants and seek to recover it. The defendants in their written statement do not set up title in themselves or adverse possession against the Government. They plead enjoyments of the land for pasture from time immemorial and deny the right of Government to grant it on darkhast. The District Munsif decreed the plaintiffs' claim. On appeal the District Judge has confirmed the Munsif's decision. He came to the conclusion that most of the plots in dispute were pattah lands till 1873, that the defendants did not hold the land for pasture from time immemorial or as of right against the Government, and that they had no rights in unassessed waste against Government. The defendants appeal and set up various contentions. It is unnecessary to set them out at length, for we are of opinion that the only plea that was raised in the written statement was as regards the right of pasture and that has been negatived by the Appellate Court. There being no plea of adverse possession, it is unnecessary to consider the cases as to what would constitute possession according to the nature and character of the property in question. See, however, Lord Advocate v. Lord Blantyre (1879) 4 A.C. 770, Lord Advocate v. Young North British Railway Co. v. Young (1887) 12 A.C. 544 and Van Diemen's Land Co. v. Cape Marine Board (1906) A.C. 92 : 75 L.J.P.C. 28 : 93 L.T. 709 : 54 W.R. 498 : 22 T.L.R. 114. Nor is it necessary to determine whether proof of possession for a certain number of years should not lead to the presumption of anterior

possession extending to more than the statutory period against the Government. See *Sivasubramanaya v. The Secretary of State for India* 9 M. 285, and *The Secretary of State for India in Council v. Nellakutti Siva Subramania Tavar* 15 M. 101 : 18 I.A. 149. There are no statutory provisions in this Presidency as Bombay with reference to the grazing rights of villagers over adjoining Government waste. See *The Collector of Thanna v. Bal Patel* 2 B.. 110 and *Trimbak Gopal Rahalkar v. The Secretary of State for India* 21 Ba. 684. It is, however, contended that the defendants have acquired a right of pasturage over Government waste, and reference is made to the passage at page 221 in *The Secretary of State for India v. Mathurabhai* 14 B. 213, where Chief Justice Sargent speaks of "the right of free pasturage, which certain villages enjoy according to the recognized custom of the country." But the learned Chief Justice proceeds to qualify this recognition of such a right by the statement that the right is not necessarily conferred on a particular piece of land but may merely amount to having sufficient land set apart for the purpose of the village. Nor can it be said that the right of pasture excludes the owner's right to the possession and enjoyment of the property-over which such a right may exist. See *Ram Saran Singh v. Birju Singh* 19 A. 172. It may perhaps be doubted whether in the case of Government waste the owner has no use for the property and is not present on the spot to resist any acts of trifling enjoyment on the part of another, see *Lord Advocate v. Lord Blantyre* (1879) 4 A.C. 770. The mere pasturing of cattle by the adjoining ryot would amount to an enjoyment as of right so as to create a prescriptive title--see *Wali Ahmed Chowdhry v. Tota Mea Chowdhry* 31 C. 397. We do not think we have sufficient materials in this case to enable us to determine the question whether the defendants have acquired a right of pasture and if so, on what extent of the suit land. The plaintiffs are clearly entitled to possession. We dismiss the second appeal with costs.