

(1910) 02 MAD CK 0006
In the Madras High Court

Gorijala Pitchi Naidu and Others

APPELLANT

Vs

Vallur Veeriah and Another

RESPONDENT

Date of Decision : 02-02-1910

Acts Referred:

Citation : (1911) ILR (Mad) 58

Hon'ble Judges : Arnold White, C.J;Krishnaswami Ayyar, J

Bench : Division Bench

Judgement

1. The suit land was unassessed waste, part of the defendant's village of Lakkarajupalle, hamlet of Minagallu. It was granted on darkhast in 1901

to the plaintiffs, ryots of Mahimalur. They complain 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 enjoyment 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 lands 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 negated 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 Company v. Young (1887) 12 A.C. 544, and Van Diemen's Land Co. v. Table Cape Marine Board

(1906) A.C. 92. "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 Sivasubramanya v. Secretary of State for India ILR

(1886) Mad. 285. The Secretary of State for India in Council v. Nella Kutti Sivasubramania Tevar ILR (1892) Mad. 101). There are no statutory

provisions in this Presidency as in Bombay with reference to the grazing rights of villagers over adjoining Government waste, (see The Collector of

Thana v. Bal Patel ILR (1878) Bom. 110, and Trimbak Gopal v. The Secretary of State for India ILR (1897) Bom. 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

case of The Secretary of State for India v. Mathurabhai ILR (1890) Bom. 213, where Sargent, C. J., 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 ILR (1897) All. 172). It may perhaps be doubted whether in the

case of Government waste where 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. Tola Meah Ghosh ILR (1904) Cal. 405). 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.