
(2007) 03 MAD CK 0009
In the Madras High Court
Case No : S.A. No. 1704 of 1995

K. Sundaram Pillai and Manoharan

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 24-03-2007

Acts Referred:

General Clauses Act, 1897 — Section 3
Transfer of Property Act, 1882 — Section 3

Citation : (2007) 03 MAD CK 0009

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : M. Saravanan, for the Appellant; D. Gandhi Rajan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Claiming fishing rights in Periya Kanmoi in Koilpapakudi Village, and aggrieved against the concurrent findings of the

Courts below, dismissing Plaintiff's suit for permanent injunction, the unsuccessful Plaintiffs/ Ayakatdars of the said tank have preferred this second appeal.

2. Periya Kanmoi in Koilpapakudi Village [in short, "the suit tank"], belongs to the Government and is vested with the Public Works Department.

The case of Ayakatdars is that though the tank belonged to the Government, the fish in the tank was harvested by Ayakatdars and the income

derived from it was used for the maintenance of the tank and celebration of festival and right of Ayakatdars is recognized even in Village Settlement

Register in the year 1820. Further case of the Plaintiffs" is that they are in long, continuous and open enjoyment and are paying "Pasi Vari" and

Plaintiff's have acquired fishing right by being in enjoyment for more than the statutory period. Challenging the proposal of Government to hand

over the tank to Madurai District Fish Farmers Development Agency and alleging that the Defendants are trying to interfere with the fishery rights

of Plaintiffs, Plaintiffs/Ayakatdars have filed the suit for declaration that the Plaintiffs have fishery right over the suit tank and for permanent injunction.

3. Resisting the suit, the Defendants have filed Written Statement contending that only as a temporary arrangement, the Government collected "Pasi

Vari" and allowed Ayakatdars to fish in the tank and in the District Gazette dated 05.11.1986, the fishery right given to Ayakatdars of the tanks

had been taken over for the purpose of intensive fish culture and marketing scheme. Thus the permission granted to Ayakatdars to fish was

abolished and therefore, Ayakatdars cannot claim any right over the tank and hence the Plaintiffs are not entitled for any declaration and injunction

sought for in the suit.

4. Both parties adduced oral and documentary evidence. Defendants have produced G.O.Ms. No. 1286 dated 09.11.1984 and Ex.B-3 - Gazette

dated 05.11.1986, taking over fishery right given to the Ayakatdars of the tanks. In consideration of the evidence adduced, holding that suit tank

had been entrusted to the second Defendant Department even in 1987 and finding that fishery rights given to the Plaintiffs had been taken over, the

trial Court dismissed the suit.

5. Confirming the findings of the trial Court, the Appellate Court held that Ayakatdars were only permitted to fish as licensees and that they did not

prescribe any right in the immovable property. The first Appellate Court was of the view that once licence is revoked, Ayakatdars cannot claim

any right in the suit tank.

6. The second appeal was admitted on the following substantial questions of law:

1. Whether the Courts below were correct in dismissing the suit filed by the Plaintiff for declaration of title to fish holding that the right to fish is

movable property as per the decision in W.P. No. 1943/1986 dated 14.03.1986, while the Supreme Court has held in Ananda Behera and

Another Vs. The State of Orissa and Another, that the right of catching and carrying away fish from specified portion of a lake is profit from

immovable property ?

2. Whether the Courts below failed to consider the case of the Plaintiffs that the Plaintiffs established their title over the Suit Property by adverse possession ?

7. Challenging the concurrent findings, the learned Counsel for the Appellant/ Ayaktdars contended that the Courts below erred in holding that

Government withdrew levy of "Pasi Vari" and the right was only permissive. Placing reliance upon Santosh Jayaswal and another Vs. State of

M.P. and others, , it was submitted that right of fishery is an interest or benefit derived from immovable property and hence to be construed as

immovable property and that Plaintiff's have been openly enjoying fishery rights and the Plaintiff's have prescribed title to fishery rights in the suit

tank by adverse possession. It was not properly appreciated by the Courts below. The learned Counsel further submitted that even assuming that it

is a licence, such licence is coupled with grant to catch and carry fish and it is a profit prendre, which is to be recorded as a benefit that arises out

of land and as such, it is a right in immovable property.

8. Countering the arguments, the learned Government Advocate has submitted that permission granted to Ayaktdars to fish in the tank after

collection of "Pasi Vari" was abolished and that Ayaktdars have no fishery right in the tank. Laying emphasis upon Exs.B-1 to B-3 and evidence

of DW-1, learned Government Advocate has submitted that after the tank was entrusted to Public Works Department, much men power and

resources have been invested in growing fish and taking advantage of interim Order, the Plaintiffs have harvested the fish.

9. Case of the Plaintiffs that the Ayaktdars of the Plaintiffs village nominate important Ayaktdars as village heads, who used to fish either by

themselves, as representatives of the Ayaktdars, or used to lease out the right of catching fish in the tank in public auction and the amount derived

from it would be utilized in celebrating village festivals, after meeting the maintenance expenses of the tank and that practice is in vogue from time

immemorial and the villagers are enjoying fishery right in the said tank without any interruption or intervention. It is the further case of the Plaintiffs

that right of Ayaktdars in Periya Kanmoi in Koilpapakudi Village is specifically mentioned and recognized in the Village Settlement Register,

prepared in or about 1920 and in view of such long, continuous and official enjoyment of the fishing rights, the Ayakatdars of the Plaintiffs' village

have acquired an indefeasible right to the fisheries and in recognition of the same, the Government has also collected fisheries rent i.e. "Pasi Vari"

from them.

10. Placing reliance upon Santosh Jayaswal and another Vs. State of M.P. and others, , the learned Counsel for the Plaintiffs contended that right

to catch fish is a prendre and benefit arising out of land is immovable property and by long and continuous enjoyment of the fishery right, the

Ayakatdars have prescribed right to the fisheries. In the said decision, referring to Section 3 of Transfer of Property Act, and Clause (26) of

Section (3) of General Clauses Act, the Supreme Court has held that it cannot be controverted that catching fish from the tank would be a benefit

arising out of land and therefore it is an immovable property.

11. There could be no two views that catching fish from the tank would be a benefit arising out of land and therefore, it is an immovable property,

lease of which is compulsorily registrable. But in this case, the question is, whether Plaintiffs have any fishing right over the suit tank. Prior to 1980,

the Government has taken up the scheme through Department of Fisheries, on the ratio that Government shares income with the members who are

engaged for fishing and the rest of the share was realised as income to the Government. Prior to 1980, Government had permitted Ayakatdars to

fish in the tank. Since there was no improvement in fish production, in the year 1980's, Government has introduced a scheme to utilize its own

property for the welfare of the common man, who gets employment and revenue. As per G.O.Ms. No. 1286, Forest and Fisheries Department

dated 09.11.1984 [Ex.B-1], this new scheme of intensive fish culture and marketing was started as a pilot scheme in Madurai and South Arcot

District.

12. In G.O.Ms. No. 1286, orders were issued, among other things, to the effect that the Intensive Inland Fisheries Development Scheme is to be

implemented by the Fisheries Department, by taking over all inland Waters for fishery exploitation, in Madurai and South Arcot District. Based on

the said G.O., fisheries is conserved and exploited with the help of members of Fishermen Cooperative Society on 50:50 basis and that scheme is

being implemented in Madurai and South Arcot District from 1984-85 onwards. Under Ex.B-2 proceedings of Madurai District Collector dated

28.05.1986, Collector has ordered to hand over the tanks for intensive fish culture and marketing scheme. Annexure to the list of tanks includes

Periya Kanmoi in Koilpapakudi Village. It is clear from the oral and documentary evidence that the tank has been handed over by Madurai North

Taluk Tahsildar on 22.08.1986, to the Assistant Director of Fisheries Intensive Fish Culture and Marketing, Thirumangalam. As per Ex.B-3,

handing over of tanks was also published in the Madurai District Gazette dated 05.11.1986. In the Gazette publication, it is categorically stated

that the fishery right given to the Ayakatdars of the tanks are withdrawn and that collection of "Pasi Vari" from the Ayakatdars of those tanks

stands cancelled. When the suit tank has been handed over to the second Defendant for intensive fish culture, Plaintiffs/ Ayakatdars have no fishery

right in the tank when the Government has introduced a new scheme to utilize the tanks for fishing and the Ayakatdars cannot claim to be in long

enjoyment of fishing right over the tank.

13. In his evidence, DW-1 - Fishery Inspector has stated that after taking over of the tank, fishing was conducted in suit tank by the Fisheries

Department in June 1987 and about 24,400 numbers of quick growing variety of fish seeds has been stocked by the Fisheries Department.

Members in the village belonging to Anaiyur Fishermen Cooperative Society were engaged as watch and ward of the tank through out the fish culture period.

14. The entires in Ex.B-7 - Stock Register for Fish Seeds discloses that on various dates viz., 14.10.1987, 27.10.1987, 07.11.1987 and

22.11.1987, variety of fish seeds have been stocked in Periya Kanmoi in Koilpapakudi Village. Though the Fisheries Department have stocked

Quick Growing Varieties of fish seeds, they could not harvest the same because of the interim injunction obtained by the Plaintiffs.

15. It appears that taking advantage of the interim orders obtained from the Court, Plaintiffs have been harvesting fish, grown by the fisheries

department. The oral evidence adduced by the Plaintiffs that they have been auctioning fishery rights in the tank and the amount realised were

utilized for the celebration of village festival, is not substantiated by any

acceptable evidence. When Plaintiffs have no subsisting right over the fishing rights, their permissible enjoyment of fishery rights for a few years will not confer any right upon them, much less enjoying statutory right.

16. Main contention of the Plaintiffs is that they have perfected right as they were in enjoyment of the same for more than the statutory period. This contention cannot be countenanced both factually and legally, as rightly submitted by the learned Government Advocate. After the suit tank was handed over to the Fisheries Department, "Pasi Vari" is not collected from the Ayakatdars. Government is maintaining the tank. Government has entrusted the maintenance of the tanks and repairs works to the channels to the Public Works Department. While the Government is maintaining tanks and growing variety of fish seeds, the contention of the Plaintiffs that they have fishery right and they have prescribed their right, is unacceptable. The Plaintiffs are not entitled to the equitable relief of declaration and permanent injunction.

17. From the Written Statement it is seen that after the pilot scheme in Madurai and South Arcot District was introduced, there were a few initial hiccups in implementation of the scheme. Taking over of fishery rights by the Fishery Department was challenged by way of Writ Petition before the High Court in W.P. No. 1949/1986, which was dismissed. Writ Appeal preferred against that order in W.A. No. 441/1986 was also dismissed. It was brought to the notice of this Court that several suits filed by Ayakatdars in Madurai District Munsif Court and Melur District Munsif Court, challenging taking over of tanks were dismissed. Referring to Ex.B-1-G.O.Ms. No. 1286 and oral and documentary evidence, the Courts below have rightly recorded concurrent findings that Plaintiffs cannot challenge taking over of the tanks nor have they any prescriptive right. The concurrent findings do not suffer from any serious error of law or infirmity calling for interference.

18. In the result, the concurrent Judgment and Decree of the Courts below in A.S. No. 16/1994 and O.S. No. 193/1988 are confirmed and this second appeal is dismissed. No costs. Consequently, interim stay granted in C.M.P. No. 18960/1995 is vacated.