

(1895) 09 MAD CK 0014
In the Madras High Court

Krishnayya

APPELLANT

Vs

Secretary of State for India

RESPONDENT

Date of Decision : 23-09-1895

Acts Referred:

Citation : (1896) ILR (Mad) 24

Hon'ble Judges : Shephard, J;Best, J

Bench : Division Bench

Judgement

Shephard, J.—It seems to me desirable before we decide this appeal, which raises an important question, that we should have before us

more distinct findings on the facts. It appears from the District Munsif's judgment that several questions of fact were raised before him and the

District Munsif records his opinion upon them. In the judgment of the District Judge there is only one of the fourteen paragraphs of which it

consists, which touches the particular facts of the case.

2. Without any discussion of the evidence, the District Judge finds that the rainfall was insufficient and that the water which flowed to plaintiff's field

did in fact save the crop and produce a harvest, whereas the Munsif finds that the plaintiff was neither a gainer nor a loser by the water. In my

opinion, however, the circumstance that the plaintiff was in fact a gainer is not sufficient to justify the dismissal of the suit, or to distinguish the case

from Venkatappayya v. The Collector of Kistna ILR 12 Mad. 407. The facts of that case are not very clearly stated in the report. Apparently, the

plaintiff there, was, by reason of the submersion of his lands, driven to growing tiruvarangam paddy--a crop requiring irrigation. The crop failed,

but it is not said that it failed in consequence of the excess water. The ratio

decidendi appears to be that the plaintiff was practically compelled to use the water in order to obtain any crop. According to this decision, the question is not whether in the result the plaintiff derives benefit from the water, but under what circumstances he came to use it. If he had no choice in the matter, then, as I understand the decision, he cannot be said to have used the water within the meaning of the Act. I think the District Judge should be asked to return a finding on the question whether the plaintiff used the water for purposes of irrigation within the meaning of the Act.

Best, J.

3. The finding of the Judge is that mosadum paddy--a crop of which was raised and reaped by the plaintiff--though it can be cultivated with an abundant rainfall, must be irrigated if the rain be not sufficient to make water stand on the field; that in the year in question the rainfall was deficient and that it was by the help of the water that flowed to his land that plaintiff reaped a crop. The case is, therefore, distinguishable from Venkatappayya v. The Collector of Kistna ILR 12 Mad. 407 where there was a failure of the paddy crop which the raiyat endeavoured to raise, to avert, if possible, the loss that would otherwise be incurred by reason of the land being rendered unfit for dry cultivation. The learned Judges who decided that case are careful to limit their decision to the "facts found in the case" and upon those facts they held--and rightly so--that to compel the then plaintiff to pay the cess would be to violate the rule that requires the construction to be placed on statutes to be reasonable, for it is clear from the preamble of Act VII of 1865 (Madras) that the cess is only payable on account of the "increased profits" derivable from lands irrigated by the works referred to therein. Stress is laid on behalf of appellant on the following passage in the judgment above referred to. "The appellants did not apply for the water and it was not allowed to flow to their land by reason of such application and we cannot therefore say that water was supplied inasmuch as the expression implies in its ordinary sense a previous request, express or implied." These last words are significant. It is not necessary that there should have been an actual request for the water, the request can be "implied." Immediately afterwards, in considering the word "used," the learned Judges say "the term ordinarily presupposes freedom either to use or abstain from using the water and the

language of the section does not suggest an intention to exclude this freedom,"" and further at p. 410 they say "" the reasonable construction is that

the use contemplated by the Act is a voluntary use though not preceded by an application."" A previous request can be implied therefore if there has

been a voluntary use of the water. I concur in remitting for trial the issue suggested by my learned colleague.

4. The District Judge is requested to submit his findings within one month from the date of receipt of this order, and seven days will be allowed for

filing objections after the findings have been posted up in this Court.

5. In compliance with the above order, the District Judge, F.H. Hamnett, submitted the following findings:

The appellants had no choice but to use the surplus water or to run the risk of serious damage, if not the total loss of any dry crops they might

attempt to raise on the lands. The use of the water was not, therefore, optional, inasmuch as the appellants had no freedom to either take or refuse

the water.

I now consider the question whether the appellants had the intention of deriving an increased profit by the use of the water.

What should, in my opinion, be the real important question is whether the appellants derived any increased profits by the use of the water as

compared with the profits they would ordinarily have got by raising dry crops. There is no clear evidence on this point, but it may be presumed that

wet crops, if properly irrigated, yield a much larger return than dry crops, otherwise the raiyats would not pay an extra tax of Rs. 4 an acre over

the dry assessment for the use of Government water. This would be a legitimate inference to draw if water was obtained in the way it is usually

supplied to wet fields. In the present case the tax imposed was eventually reduced to Rs. 2 an acre and I gather from Exhibit III that this tax must

have been imposed on the ground that the crops raised were wet crops irrigated by drainage water, of which the jamabundy officer (or his

superior, the Collector) was satisfied; the supply was too precarious to allow of the cultivation of a regular wet crop. We start then with the fact

that the supply is a precarious one. It is very doubtful whether wet crops raised with such a precarious supply would be more remunerative than

good dry crops raised on the same land. The Revenue Inspector proves that the

lands in these particular cases only yielded 2½ tooms an acre as compared with 15 tooms, the average yield of ordinary wet lands. The value of 2½ tooms would not be more than about Rs. 5, and this is not in excess of what the lands might have yielded if cultivated with dry crops, the assessment of the lands (as dry lands) being Rs. 2 an acre and the assessment being supposed to be about half the nett yield of the lands. It is urged that fasli 1300 was a bad year and that the appellants would probably have got no dry crops at all. This might be so, but in June or July, when the appellants planted their mosadum crops, it was too early for any one to predict whether the rains were going to fall or not. When they planted the crops, therefore, they could have had no intention of deriving an increased profit from the use of Government water, which they could not have realized from dry crops, assuming that dry crops were cultivable in spite of the flow of surplus water over the lands. I find, therefore, that there is no proof that the appellants derived any increased profit or intended to derive any increased profit as compared with the profit which their lands, if capable of cultivation as dry lands, would have yielded in an ordinary season, and that, on this ground, there was no use of the water for irrigation purposes within the meaning of the Act, which presupposes that the tax is only paid for use of water which is intended to yield increased profits.

I have also found above that the use of the water was not optional but compulsory.

JUDGMENT

6. It is now found that it was practically impossible for the plaintiff to divert the water and prevent it coming over his land and that no increased benefit was derived from the water.

7. The inference drawn by the Judge is that the use of the water was not voluntary. On these findings, following the decision in Venkatappayya v.

The Collector of Kistna ILR 12 Mad. 407 we must allow the appeal, reverse the decree of the District Judge and restore that of the District

Munsif.

8. The appellant is entitled to costs throughout.