

(1942) 04 MAD CK 0014
In the Madras High Court

M.A. Subramania Aiyar (died) and Another	APPELLANT
Vs	
The Province of Madras	RESPONDENT

Date of Decision : 07-04-1942

Acts Referred:

Tamil Nadu Land Encroachment Act, 1905 — Section 14

Citation : AIR 1942 Mad 660 : (1942) 2 MLJ 223

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This appeal arises from a suit filed by the owner of part of two islets in the Mammili river in South Malabar against the

Government for a declaration of his title to certain other portions of these islets which have, according to the findings of the learned District Judge,

come into existence in more recent times and for an injunction restraining the Government from assessing him to any land revenue on these portions

of the islets. The suit has been dismissed by the first Court and dismissed again in appeal by the learned District Judge of South Malabar on two

grounds, firstly on the merits because the plaintiff has failed to prove that he is entitled to the newly formed portions of the islets, and secondly

because the suits were barred by limitation. Both these points were argued in second appeal before me.

2. It seems to me that on the question of limitation the Courts below are wrong. They say that the suit was barred because it was not brought

within six months of the 12th February, 1931, on which date according to the plaintiff his cause of action arose. That was the day on which a

notice was served upon him that the Government intended to levy penal assessment. Section 14 of the Madras Land Enroachment Act no doubt

says that if any one deems himself aggrieved by any proceedings under the Act he shall not be prevented from applying to the Civil Courts for

redress, but that he must do so within six months from the date on which the cause of action arose. If, therefore, the sending of the notice

constitutes the plaintiff's grievance, his suit will be out of tune; but there is an explanation to Section 14 which says that where the cause of action is

in respect of any assessment or penalty it shall be deemed to have arisen on the date on which such assessment or penalty was levied. By the word

levied"" is meant ""collected"" as been held in *Kesava Chetty v. Secretary of State for India* (1918) 36 M.L.J. 222 : ILR 42 Mad. 451. It is

therefore impossible that in this case, if Section 14 of the Madras Land Encroachment Act is applied, there can be any question of limitation at all,

because, as I have been informed, the assessment has never in fact been paid. The sending of the notice does not of itself constitute any grievance

at all. It is only the levying of the penalty that really constitutes the grievance, as has been recognised in *Narayana Pillai Vs. The Secretary of State*

for India in Council, . Here no doubt the plaintiff has stated that his cause of action arose on this particular day in 1931. In other words it was by

their action in sending the notice that the Government unmistakably intimated to him that they were questioning his title. It is the questioning of his

title that gives him the right of suit. It seems to me in these circumstances that Section 14 of the Madras Land Encroachment Act cannot possibly

apply to the present case and that the only article of the Limitation Act which is applicable is Article 120 and that under that article the suit was

filed well within time.

3. On the merits, however, I can see no reason to differ from the Courts below. The findings of fact are that the portions of these islets which are

now in dispute were formed in the year 1924 as the result of unprecedented floods in Malabar District. There is nothing to show that there had

been any accretion before 1924 over a period of at least thirty years. There is a finding by the learned District Judge of further accretions having

taken place in the year 1932 after the suit was filed. But there again the learned Judge has stated that there is no evidence to show that these

accretions were natural as opposed to artificial. It seems to me impossible to hold that where an accretion has been formed in one season and one

season only the process of accretion can be described as gradual. No doubt as has been pointed out in *The Secretary of State for India v. Rajah*

of *Vizianagaram* ILR (1916) Mad. 1083, different considerations apply to rivers in India from those applicable to rivers in England, and the words

gradual accretion"" must be viewed with special reference to the conditions which prevail in Indian rivers. Mr. Justice Ayling in that case said that

where it was the normal action of physical forces which brought about the accretion, then the accretion could come within the English rule of law

and this principle was approved subsequently on appeal by the Privy Council. It seems to me, however, as I have already stated in another

somewhat similar case reported in *Narayani v. Krishnan Nambiar* 1936 M.M.N. 473, that the expression "normal action of physical forces"

cannot apply to circumstances like these in which on the occurrence of abnormal floods in a single year the whole of the accretion has been

formed. It is perhaps possible that if the attitude of the plaintiff had been different in this case, he might have been able to convince the learned

Judges who tried the suit and heard the appeal of his title; but unfortunately for him, his case in the plaint was that there had never been any

accretion at all, and that the islets as they existed in 193] had always existed. Naturally enough with a case of this kind he made no attempt to

prove that there was any gradual accretion and when I find that the learned District Judge on a question of fact has held that the whole of the

accretion took place in one season I am unable to see that he can be said to be wrong when on these facts he says that there has been no gradual

accretion.

4. In the result, therefore, I am of opinion that this appeal must fail and it is accordingly dismissed with costs.