

(1963) 12 MAD CK 0016
In the Madras High Court
Case No : Second App. No. 184 of 1961

Mottayyan alias Palaniyandi Goundan	APPELLANT
Vs	
K.G. Ramaswami Iyer and Others	RESPONDENT

Date of Decision : 17-12-1963

Acts Referred:

Citation : AIR 1964 Mad 493 : (1964) ILR (Mad) 538 : (1964) 77 LW 470

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : S. Mohan Kumaramangalam and S. Palanisami, for the Appellant;
K.G. Srinivasa Iyer, P. Sherfuddin, M.R. Krishnan, K.S. Bhaktawatsalam, M.R.
Narayanawami, Doraiswamy and R. Ganesan and K.A. Basheer Ahmed, Govt.
Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—The sole question in this second appeal is, whether the first defendant, who is the appellant, is entitled to let into

Sundaresan Kannar surplus water through a siphon from the lands of his situate to the west of Raja Vaikkal. Both, the courts below found that he

was not so entitled and concurred in granting a declaration that Sundaresan Kannar was not a Poromboke but owned in common by the

Ayacutdars on either side of that Kannar, and also a preventive injunction.

Sri Mohan Kumaramangalam for the appellant contends that the finding of the lower appellate Court as if some of the sate deeds and mortgage

deeds referred to by it purported to convey or deal with the Kannar as part of the conveyance or mortgage is not correct. I think, as the contention

goes, it is correct. The boundaries in none of the sale deeds or mortgage deeds would take in the Kannar as part of what was dealt with under the

relevant deeds. They have only described the Kannar as one of the boundaries. But this concurrence of mine with, the contention of the learned counsel, does not take the matter further.

2. The courts below were right in applying the presumption that Sundaresan Kannar being an artificial channel running through patta lands, it cannot be regarded as poromboke, unless the contrary is established by cogent evidence. Where, a natural river channel or rill runs through patta lands, I

think it may be assumed that the bed is a poromboke; for, private ownership of the bed in such rivers, channels or rills, is not a common feature.

But the case of artificial channel particularly serving purposes of irrigation for agricultural lands in this country, stands on a different footing. Often,

patta lands lying over vast stretches will have to be irrigated from the main supply channel by means of branch artificial channels dug up through

patta lands. Such channels are not porombokes but continue to be the private property of the pattadars.

It may be that while making a conveyance of parcels of lands, the Kannar or channel supplying the land with water is not made part of the

conveyance. This is because such channel or kannar is treated as property owned in common by practically all the pattadars and in a sense the

conveyance of a part of the kannar adjoining the land conveyed is not on the same footing or does not serve the same purpose as the conveyance

of the land itself. The Kannar adjoining the land is subject to restriction, arising out of the fact that the Kannar is owned in common by the

pattadars. There being thus a presumption that an artificial irrigation channel running through patta lands is not poromboke but private property

owned in common by the pattadars, the lower appellate court was right in invoking it and confirming the decree in favour of the plaintiffs.

3. The matter also does not stand on mere presumption. The lands lie within the limits of a Mitta, which has since been taken over as an estate

under the provisions of Madras Act XXVI of 1948. The Mitta accounts, particularly the Kandam accounts, maintained by the erstwhile mittadar

did not treat the artificial channel or kannar in question as a poromboke, while there was abundant evidence to show that the main Raja Vaikkal

was a poromboke. There is also the further fact that after the mitta was notified and taken over, the Government which has been made a party

defendant to the present litigation, has also not treated the Kannar as a poromboke. The second appeal is dismissed but with no costs. No leave.