
(1928) 11 BOM CK 0007
In the Bombay High Court
Case No : Second Appeal No. 566 of 1926

Raoji Vasudeo Girap

APPELLANT

Vs

Tukaram Vishnu Kurla

RESPONDENT

Date of Decision : 22-11-1928

Acts Referred:

Citation : (1929) 31 BOMLR 329 : 117 Ind. Cas. 335

Hon'ble Judges : Madgavkar, J

Bench : Single Bench

Judgement

Madgavkar, J.—The question in this appeal is, whether the defendants-appellants are entitled to exclude the plaintiffs respondents from fishing at a certain spot on the shore at Vengurla and from using the foreshore within their limits. The defendants claimed this exclusive right by prescription and usage for over twenty-eight years. The plaintiffs denied the prescription and claimed that in any case the open sea could not be the Subject-matter of any exclusive right. Both the lower Courts upheld this contention of the plaintiffs-respondents and made a declaration accordingly. The defendants appeal.

2. Whatever the possibility of private rights to the exclusion of others in tidal navigable creeks and rivers, as laid down, for instance, by their Lordships of the Privy Council in 18 CWN 1217 (Privy Council) or Mehta Jethalal v. Jamiatrarn Lalubhai I.L.R.(1887) . 12 Bom. 225 and Viresa v. Tatayya I.L.R.(1885) Mad. 467 as regards the open sea, the view enunciated by Sir Michael Westropp since 1876 in Baban Mayacha v. Nagu Shravucha I.L.R.(1876) . 2 Bom. 19 is in accordance with the English view and has been accepted by other Courts as in Abhoy Charan Jalia v. Dwarka Nath Mahto I.L.R.(1911) Cal. 53. It is as follows : The right of the public to fish in the sea is common and is not the subject of property, and members of the public exercising the common right to fish in the sea are bound to exercise that right in a fair and reasonable manner and not so as to impede others from doing the same.

3. Whether, therefore, or No. the appellants have been exclusively and

continually using this portion of the sea over twenty-eight years, a point which is, in my opinion, doubtful, it cannot furnish the basis of the legal right they now claim, to exclude the plaintiffs or any others and to confine the use of that portion of the sea for fishing for themselves. The appeal is, therefore, dismissed with costs.

4. But as the words " by turn " in the decree of the trial Court might give rise to misunderstanding and perhaps fresh litigation, the decree will be amended by a declaration as follows:

5. The plaintiffs like the defendants and other members of the public have the right of fishing by rapan and by boats in the place in dispute and to perform any other acts incidental to such fishing. No party can claim an exclusive right there to fish.

6. The plaintiffs will obtain an injunction to enable them to dry and spread their nets by the foreshore and an injunction to restrain the defendants from obstructing the plaintiffs from fishing.