

(1946) 07 MAD CK 0003
In the Madras High Court

R.M.L. Natarajan Chettiar (deceased) and Another	APPELLANT
Vs	
A.L.A.R. Rm. Vellayyan Chettiar (deceased) and Others	RESPONDENT

Date of Decision : 17-07-1946

Acts Referred:

Madras Estates Land Act, 1908 — Section 20, 21

Citation : AIR 1947 Mad 421 : (1947) 1 MLJ 180

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—This is an appeal filed by the second defendant against the decree of the lower Court dismissing the suit which was one to set

aside an order passed by the Collector under Sections 20 and 21 of the Madras Estates Land Act. The subject-matter of the suit is an oranai or a

tank which is how admitted to be intended exclusively for the villagers to take drinking water from. In the plaint it was alleged that the oranai or the

tank, the bund and the land all round the oranai were the private and absolute properties of the plaintiffs and of defendants 2 and 3.

2. A petition was filed in 1937 before the Collector for action under Sections 20(1) and 21. u/s 20(1) the Collector is empowered on the

application of the landholder or other person interested, to decide any question as to whether and land is or is not of the description mentioned in

Sub-clauses (a), (b) or (c) of Clause (16) of Section 3. Section 3, Clause (16) defines ryoti land to mean cultivable land in an estate other than

private land and it does not include (a) beds and bunds of tank and of supply, drainage surplus or irrigation channels. We are not concerned with

(b) and (c) of Clause (16), Section 3. If a particular land in an estate is a tank, then it comes under Clause (16)(a), so do the bed, and the bunds of

the tank. Section 20(1) also empowers the Collector "" to decide any question as to the customary rights in the user of any land which is of any such description, as existing at the commencement of this Act."" Under this part of Section 20(1) the Collector is empowered to decide as to the customary rights in the user of the tank and the tank bund. u/s 21 any person occupying any of the lands mentioned in Sub-clauses (a) and (6) of Clause (16) of Section 3 for any purpose other than that for which they are so set apart can be evicted by the Collector in the manner provided by the Madras Land Encroachment Act, if such user commenced not more than thirty years before the date of the suit. In the present case the complaint before the Collector was that contrary to the purpose for which the tank was set apart, the appellant and the members of his family allowed several persons to construct shops and sheds. It was alleged that the erection of these shops and sheds rendered the tank water unfit for drinking purposes. The Collector agreed with these contentions after an elaborate enquiry and held that the land in question answered the description in Section 3, Clause (16)(a) that the villagers were entitled to use the tank exclusively for taking water for drinking purposes, that the tank cannot be put to any other use, that the plaintiffs were not the owners of the tank, and that on the other hand the tank was one set apart for the common use of all the villagers. u/s 21 he found that the tank bund was being used for purposes other than that for which it was set apart. In the result he passed an order for evicting the persons who had erected shops and sheds and also directed eviction of the appellant and the members of his family, that is, the plaintiffs and defendants 2 and 3 in the lower Court. The second defendant who is one of the members of the plaintiffs' family has preferred this appeal. He is entitled to prefer the appeal, being a person having a common interest with the plaintiffs in the action.

3. Dealing with the merits of the appeal we are of opinion that there is no substance in the claim that the property in question is the private and absolute property of the appellant and his family. The plaint started with saying that the tank was constructed by an ancestor of theirs called Karuthan. As the lower Court has pointed out, there is no reliable evidence, oral or documentary, in proof of this contention. No doubt it is not

possible to expect direct evidence ; but the lower Court has given sufficient reasons to come to the conclusion which it did. In particular we may

refer to one point made by the lower Court that in an earlier litigation of 1916, the then members of the plaintiffs' family never even stated that the

tank itself was constructed by an ancestor of theirs. No reference was made to Karuthan who is said to have been the ancestor and the person

who constructed the tank. All that we have in this case is that from 1902 or thereabouts, the authorities and, in one or two instances, the members

of the contesting defendants' family, treated members of the plaintiffs' family as the hukdars or the trustees of the tank. The expression "hukdars

used in some of the documents does not seem to indicate anything more than mere persons who were in management of the affairs of the tank. It is

unnecessary to refer to the various documents in detail because the effect of it is well summarised in the judgment of the lower Court, and it has not

been suggested to us that there is any document in which the plaintiffs are referred to as the owners of the tank or in which the tank was referred to

as the private property of the plaintiffs. That the villagers have been using this tank for taking water for drinking purposes is not challenged before

us and it cannot be challenged on the evidence as it stands. We agree with the lower Court that the land in question is a tank and tank bund set apart

for the common use of the villagers and that it answers the description contained in Section 3, Clause (16)(a) of the Madras Estates Land Act.

4. As pointed out by the lower Court, it is clear that the erection of the shops and sheds must necessarily affect the quality of the water in the tank

and there is no doubt therefore that the erection of these buildings amounts to putting the land to a purpose other than that for which it was

intended. We may also remark that the lessees of the shops and sheds against whom there was an order of eviction made by the Collector have not

been even made parties to the present suit and. they have not chosen to challenge the correctness of the order made by the Collector. It is only the

plaintiffs and defendants 2 and 3 that challenged the correctness of the lower Court and their main ground is that the property is their absolute

property. That claim is found against and on the finding that the user for the last 15 years or so is contrary to the purpose for which it was intended,

the order of eviction upheld by the lower Court against the plaintiffs and defendants 2 and 3, must also stand. If the plaintiffs had honestly come

forward with the case that they were trustees of this oranai, then things might have been possibly different, but as it is, we are unable to do anything

more than maintain the decree of the lower Court.

5. The appeal fails and is dismissed with costs.