

(1926) 11 MAD CK 0010
In the Madras High Court

S. M. S. Gopala Aiyar

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 01-11-1926

Acts Referred:

Citation : AIR 1927 Mad 1116

Hon'ble Judges : Waller, J

Bench : Division Bench

Judgement

Waller, J.—The appeal is by the plaintiff who seeks to recover a sum of money levied from him by way of water cess. His suit was decreed

by the trial Court, but dismissed on appeal. The case is a perfectly simple one. The main question at issue was whether the plaintiff had used the

water of a particular channel which he denied having done. Both parties went to trial on the mutual assumption that this channel was a surplus

channel and on an admission of the plaintiff that his source of irrigation was another channel called Chinnamadaï. The real question was, therefore,

as I have already observed, whether the plaintiff had used the water of the surplus channel. The Munsif allowed himself to be misled, to the extent

of finding that the channel was not a surplus channel at all and that the real issue on the case was misleading and unnecessary. Matters were put

right by the lower appellate Court. Mr. Subramanya Iyer argues that the lower appellate Court was wrong in interpreting the pleadings too strictly

and cited a number of rulings to show that, where the parties have been allowed by the trial Court, to let in evidence on case not set up on the

pleadings, the appellate Court should not reverse the decision of the trial Court merely on the ground that the case set up at the trial varied from

that set up in the pleadings I have yet to come across a case in which a plaintiff has been allowed, without amending his plaint, to succeed on a

case which directly negated everything he had alleged in his plaint. In any event, even if the point was good one, it would be absurd to remand the

appeal. The District Munsif went completely wrong on the question of fact. Plaintiff's own evidence and the commissioner's report show with

complete clearness that the channel has no water in it except when the tank is full, in other words, it is a surplus channel.

2. Mr. Subramanya Iyer's next argument is that, as the registered source of irrigation is the tank itself and the water in the channel in question

comes from the tank, his client has been wrongfully, penalized. His client has admitted in his plaint that his authorized source is the Chinnamadaï

and his admission is confirmed by Ex. IV. The argument therefore fails. The last point taken is that, as under the Irrigation Cess Act no penalty can

be levied unless the water was sufficient for the crop and in the fasli in question the crop failed, no penalty should have been imposed. That

however, is a matter to be settled by the Collector whose opinion as to the sufficiency of the water is final, subject to an appeal to the proper

authority: vide Secy of State v. Swami Naratheeswarar [1910] 34 Mad. 21.

3. The appeal is dismissed with costs.