
(1926) 08 MAD CK 0065
In the Madras High Court

(Sanampudi) Venkayya and Others

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 27-08-1926

Acts Referred:

Citation : AIR 1927 Mad 207 : (1926) 24 LW 833

Hon'ble Judges : Curgenvan, J

Bench : Division Bench

Judgement

Curgenvan, J.—The plaintiffs are proprietors of a shrotriem inam or kandriga forming a portion of the Kanupur village, Nellore District. A jungle stream called the Surepalli Vagu, which rises in a shrotriem village to the west of the plaintiff's property, enters the kandriga and the plaintiffs have been in the habit of using it for irrigation purposes. Government served them with a notice under Madras Act 7 of 1865 that they were liable to pay water cess in respect of the unauthorized use of the water of this stream. The plaintiffs therefore filed this suit for a declaration of their right to make use of the water without the payment of water cess. The Additional District Munsif of Nellore granted the relief prayed for on finding that the plaintiffs are the owners of the stream. The learned Subordinate Judge has reversed this decree and dismissed the suit and the plaintiffs now file this second appeal.

2. The question in issue has to be decided according as it is found that the bed of the stream is owned by the Government or by the grantees of the inam. The terms of the original grant are not now ascertainable but the Inam Fair Register of 1861 shows upon what terms it was then confirmed. According to the entry (Ex. 6) in this register the inam consisted of 289'06 acres. The recommendation of the Inam Commissioners runs as follows:

This is a Grama Garbba Kandriga. In the present accounts the extent of poramboke also is included under the head of pullari waste. The minha land is said to be isavadu lands and lands occupied by a tank and about 4 or 5 houses. As the whole is situated within the boundaries of the kandriga, it does not signify

under what head it is entered. The wet land is irrigated under tank belonging to the kandrigars. No sircar water is supplied. So I recommend the whole to be confirmed as dry. Nearly 20 gortus are cultivated with dry crops and only one or two gortus with wet crops. The lands are cultivated by the Inamdars themselves. According to the classification of fasli 1215 the tharam assessment of dry (42 gortus) amounts to Rs. 296 charging for the wet lands (Rs. 3-10-0) at the highest dry rate, it amounts to Rs. 32, charging for the remaining unclassified lands at one rupee per gortu the total assessment amounts to Rs. 374. But the Inamdars and Karnams positively say that the kandriga does not yield so much as to pay up the jodi but I have no ground on which I can give a deduction to the tharam assessment. However on the statement of the Karnams I propose to give a deduction of Rs. 75 and adopt Rs. 300 as the value of the kandriga.

3. So far as I understand the terms of this note, the whole of the poramboke and other uncultivated land was taken to be included in the grant. "Pullari waste" means, I am informed, land fit for pasturage but not for cultivation. And it appears probable that stream beds which are usually dry for a great part of the year, were included as poramboke in that classification. The view seems to be borne out by the method by which the total assessment of Rs. 374 is arrived at; because it will be seen that no portion of the land within the boundaries of the inam is excluded as not liable to assessment. I think that the effect of this entry is clearly to negative the theory that there was any reservation made of land, whether as stream bed or other, within the boundaries of the inam either at the time of the original grant or at the time of the inam settlement.

4. The law with regard to the ownership of the bed of a water-course either adjoining or running through a private property has been examined in the Full Bench case, Venkata Lakhminarasammu v. Secretary of State [1918] 41 Mad. 840. The question that arose there was whether any part of the Tungabhadra river, upon the bank of which were lands granted to a certain temple could be held to be comprised within the grant. Sir John Wallis, C. J, on behalf of the Full Bench, expressed the opinion that the result of the authorities as regards grant of land in India described as bounded by a non-navigable river, was that the onus of showing that the grant did not cover the bed *ad medium ffilum aquae* is on the grantor, the presumption being strong or weak according to the circumstances of the particular case. It was not considered desirable to attempt to lay down any more definite rule. It need, I think, scarcely be added that, when a water-course not merely bounds but flows through the land of the grantee, the presumption must necessarily be stronger, and, where no express reservation exists, it lies on the grantor to show that that presumption should not prevail. A case more similar to the present one is Neelakhandan Nambudripad v. Secretary of State [1920] 12 L. W. 371 where a South Malabar Jenmi sued the Secretary of State to obtain a declaration that the bed of a stream running through his property belonged to him and that the Government had no right thereto. Following Venkata Lakshminarasamma v. Secretary of State [1918] 41 Mad. 840 it was held that the presumption was in favour of the landholder as riparian owner and

that the Government had failed to rebut the presumption by proof of an alleged local usage according to which even non-navigable and non-tidal rivers belonged to Government.

5. Similarly in the present case we start with the presumption in favour of the plaintiffs and the Government are unable I think to show by reference to the terms of Ex. 6 that that presumption is displaced by any proof that the stream-bed was specifically excluded. The District Munsif was accordingly in my opinion right in his conclusion and I allow the appeal and restore his decree with costs to the plaintiffs in the lower appellate Court and here.