

(1921) 12 PRI CK 0004

In the Privy Council

Secretary of State

APPELLANT

Vs

Raja of Vizianagaram and another

RESPONDENT

Date of Decision : 19-12-1921

Acts Referred:

Citation : (1922) AIR(PC) 105

Hon'ble Judges : Ameer Ali, John Edge, Carson, Buckmaster, JJ.

Advocate : Douglas Grant, India Office, George Loundes Raikes, Upjohn, Brown, De Gruyther, for the Appearing Parties.

Judgement

Lord Carson

The question in dispute in this action is as to the ownership of a certain lanka formed by alluvion in the bed of the river Godaveri. It consists at the present time of an island being surrounded on all sides by the river, and in extent consists of about 1000 acres. At the place where this lanka is situated the Godaveri is both navigable and tidal, and it is not disputed that the bed of the river at that place belongs to the Government of India.

The extent of the river and the operation of its currents in forming alluvial tracts during the flood season must be borne in mind with reference to questions arising in this case. A description of this river will be found at Balasu Ram Lakhmma v. Collector of Godaveri (1899) 22 Mad 464 : 26 IA 107 : 7 Sar 534 (PC).

The Maharajah of Vizianagaram, the first respondent, has for some years been in possession of this property; the other respondent is a trustee of the Vizianagaram estates.

The defendant (appellant), as representing the Government of India, treating the Maharajah and his tenants as being in unlawful occupation of the lands in question, proceeded to levy penal assessment in respect of them amounting to Rs. 9,029. This sum the Maharajah paid under protest and has brought the present action claiming a declaration of title to the said lands and repayment of

this penal assessment.

The main questions raised by the pleadings and issues, and to which the evidence was directed in the trial Court before the Temporary Subordinate Judge, were whether the lanka in question was an accretion formed laterally as an adjunct to or in continuity with any lanka or other property belonging to the Maharajah and became his property, or was formed vertically as an island in the bed of the Godaveri and was therefore the property of the Government.

The Subordinate Judge before whom the action was tried held that the lanka in question was formed by alluvion in contiguity with the Maharajah's land and was subsequently separated therefrom by the river, and gave a decree for the respondents.

On appeal the High Court of Judicature at Madras, on the 15th November, 1916 confirmed the decree of the Lower Court and dismissed the appeal, concurring with the finding of the Temporary Subordinate Judge that land in dispute was formed as a lateral extension of the Maharajah's lanka, or at least of the site of his lanka.

There are therefore, concurrent decisions upon this, the main question raised, and their Lordships see no reason for dissenting from the conclusion arrived at. The further question, however, and indeed the main one argued on behalf of the appellant before this Board, was that even if the lands in question were accretions to lands of the Maharajah the process of accretion was not such as to give him title to them.

In dealing with the great rivers in India and comparing them with the rivers in this country, it is necessary to bear in mind the comparative rapidity with which formations and additions take place in the former.

It was claimed by the appellant's Counsel that by the settled law of England, which he argued was the law applicable to Madras, land to be an accretion must be formed by gradual, slow and imperceptible degrees as laid down in the case of *Rex v. Yarborough*, (1824) 3 B and C 91 : 1 Dow and Cl. 178 : 2 L JKB 196 : 107 ER 668 and other English authorities, and he alleged that the accretions in the present case were not formed by "gradual, slow and imperceptible degrees."

On the other hand, the Board were referred to Sect. 4 of Bengal Regulation XI of 1825, the only requirement of which is that this accretion should be "gradual" - not that it should be slow or imperceptible. That Regulation was promulgated to be in force throughout the Provinces subject to the Presidency of Fort William and did not apply to the Presidency of Madras. It has, however, been contended that this regulation embodies the law of accretion as applicable generally to the rivers of India.

Their Lordships do not find it necessary to decide whether the law as to accretions promulgated in the Bengal Regulation coincides with the law as to accretions in the Presidency of Madras or elsewhere in India, nor to discuss the

exact meaning of the word "perceptible" in the English rule which provides that all accretions must be "gradual, slow and imperceptible," for assuming the applicability of the English rule, "slow" and "imperceptible" are only qualifications of the word "gradual," and this word with its qualifications only define a test relative to the conditions to which it is applied.

In other words, the actual rate of progress necessary to satisfy the rule when used in connection with English rivers is not necessarily the same when applied to the rivers of India. The application of the rule is, in their Lordships' opinion, correctly laid down in the judgment of Mr. Justice Ayling in the present case when he says :-

"It seems to me the recognition of title by alluvial accretion is largely governed by the fact that the latter is due to the normal action of physical forces; and the different conditions of Indian and English rivers is such that what would be abnormal and almost miraculous in the latter is normal and commonplace in the former, as pointed out by their Lordships of the Privy Council in *Srinath Roy v. Dinabandhu Sen* AIR 1914 PC 48: 42 Cal, 489 : 41 IA 221 (PC)

Their Lordships observe that neither in the plaint nor the defendants' written statement, or what is still more important in the issues as settled, is there any question raised as to the accretion being "gradual" "slow" or "imperceptible."

Further, in their memorandum of appeal to the High Court, the Government did not make the decision on this point a ground of objection. An examination of the evidence given before the trial Judge, shows that although several of the witnesses proved that the said lankas or parts of them "arose gradually " (p. 219 of record), or increased "gradually" (p. 229), or "gradually extended "" (p. 240), or had been gradually growing in size" (p. 282), no question challenging this evidence was put upon cross-examination, nor was any evidence given on behalf of the appellant to attempt to displace such evidence.

Some attempt was made to show by a comparison of farm leases and accounts of different years (which were put in evidence on behalf of the Maharajah to prove contiguity) that there must have been extensive accretions at a particular date, but such a comparison does not, when examined, show the contents of the lanka but only what land in the place was cultivated in each year.

Further, the judgment of Mr. Justice Srinivasa Aiyangar has pointed out that throughout the long dispute which has led to the present suit the Government had never suggested that the land in question "was not an accretion in the sense of a gradual formation."

Their Lordships doubt whether under these circumstances it is upon to the appellant to raise the contention under consideration, but assuming that it is, their Lordships see no reason to doubt that, applying the principles already explained, the accretion must be held to have been "gradual, slow and imperceptible," and to be the property of the Maharajah.

The order appealed for must therefore be confirmed, and this appeal dismissed with costs.

Their Lordships will humbly advise His Majesty accordingly.