
(2017) 01 MAD CK 0030
In the Madras High Court
Case No : 883 of 1997

S.Ganesan, & Anr.

APPELLANT

Vs

Murugaiah Rajaliar, & Ors.

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Constitution of India, Article 39(1) -
Certain principles of policy to be followed by the State
Code of Civil Procedure, 1908, Section 80 -
Tamil Nadu Irrigation

Citation : (2017) 01 MAD CK 0030

Hon'ble Judges : G.Jayachandran

Bench : SINGLE BENCH

Advocate : G.Jayachandran

Final Decision : Dismissed

Judgement

1. Water, which is gift of nature, contrary to its character, burns while asked to be shared. Water sharing is presently the most vexed question all

over the world. Dispute over water has become a common phenomena among nations and inter-state. Even hamlets within the State are not

spared from this malady. The subject matter of this second appeal is one such case, where two villages of erstwhile Thanjavur District, the rice

bowl of Tamil Nadu, fighting for their share of water for irrigation.

2. The Moovanallur Villagers are the plaintiffs. The suit is filled in the representative capacity on behalf of the Moovanallur Villagers to declare the

ryots of Moovanallur Village, Mannarkudi Taluk have right to draw water from Kondiyar to irrigate their lands and to grant permanent injunction

restraining the defendants and their men from interfering the customary reparian

right of Moovanallur villagers over the waterflow.

3. Against the concurrent finding of the Courts below, the aggrieved plaintiffs are before this Court by way of Second Appeal.

4. For the sake of convenience, the parties are referred to as per their status and rank shown in the original suit.

5. The case of the plaintiffs is that, in Mannarkudi Taluk, the Kondiyar river ("VERNACULAR MATTER OMITTED"), which is a tributary of

Vennar ("VERNACULAR MATTER OMITTED") branches at Vasudevamangalam and flows through Moovanallur village. The said Kondiyar

river is the source for Soriyan Eri ("VERNACULAR MATTER OMITTED") at Moovanallur Village. From time immemorial, the Kondiyar river

water used to be stored at Soriyan Eri as reservoir for Moovanallur village irrigation. Except the water from Kondiyar river, the ryots of

Moovanallur village have no other source of water to irrigate their lands. While so, after the Cauvery Water Regulation Scheme, there is persistent

dispute between Kalanjimedu villagers and the plaintiffs' villagers in sharing the water. On 17.08.1986, when both the first and second defendants

from Kalanjimedu village by force tried to prevent the plaintiffs' villagers from drawing water from Kondiyar river for their irrigation, the plaintiffs

filed a suit in O.S.NO.499/86 before the District Munsif Court, Mannarkudi. Later, the said suit was dismissed as withdrawn with liberty to file a

fresh suit, after serving notice under Section 80 of the Civil Procedure Code to the District Collector and other Government Officials. The present

suit in O.S.No.183 of 1993 was filed, after serving notice to the defendants 3 and 4 under Section 80 of the Civil Procedure Code.

6. The first defendant in his written statement contested the suit on the ground that, the plaintiffs are not the real representatives of Moovanallur

Village. They do not have enough holdings to represent the Village. The Kondiyar river is not the only source of water for Moovanallur Village.

The irrigation memoir/ ayacut Register is the basis for distribution of water under the Cauvery River Scheme. As per the Scheme, from B-17 sluice

at R.S.No.419, land to an extent of 126.19 acres comprising in R.S.Nos. 56 to 66 and E.S.Nos. 217 to 242 alone is entitled to draw water for

irrigation through a vent of 1" x 1" measurement. As per the Scheme, the Moovanallur Village has no right to draw water from B-17 sluice.

Through their political strength, the plaintiffs' villagers are tampering the sluice and indulging in vandalism, resulted in convening peace meet by the

Police and Revenue Authorities. Moovanallur village is not included as ayacut of Kondiyar River Channel. Soriyan Eri is fed by rain water and

other sources and not through Kondiyar River Channel as averred by the plaintiffs. No channel flows from Kondiyar River to Soriyan Eri directly.

The defendants 1 and 2 are not the representatives of the Kalanjimedu Village. The suit is not maintainable for not impleading the necessary parties

viz., Kalanjimedu villagers. It is the prerogative of the Government to distribute water for irrigation from the reservoirs it maintains. The plaintiffs

cannot demand any particular source of irrigation claiming non-existing customary right and by taking law into their hands. The defendants 3 and 4,

without maintaining the Ayacut Register properly, colluding with the plaintiff villagers and acting detrimental to the interest of Kalanjimedu Villagers.

7. The third defendant, in its written statement, while denying the averments found in the plaint, has averred that, as per Revenue Records in

Moovanallur Village, the total irrigable ayacut of Moovanallur village is 407.95 acres. Through Moovanallur Eri otherwise called as ""Soriyan Eri"",

238.15 acres of land are irrigated and the remaining 169.80 acres are irrigated directly from Kondiyar River. The Moovanallur tank receives its

supply through Kondiyar River through the drainage carrier, which runs by the side of Moovanallur Tank and Village. The Moovanallur tank is a

rain fed tank. It gets water drained from Kondiyar River and not through irrigation channel as averred by the plaintiffs. The plaintiffs have no

customary right to draw water from Kondiyar River Channel through Soriyan Eri. The sluice B-17, which is situated at S.No.419, lies in

Rayapuram Village of Nidamangalam Taluk. It is a channel porambokku maintained by the Government through the Public Works Department.

The head sluice and channel in S.No.419 at Rayapuram Village are intended and designed only for the irrigation of 126.19 acres of land in

Kalanjimedu Village. The plaintiffs villagers are tampering the sluice and damaged the B-17 MelaKondiyar Channel Head Sluice by force. After

the peace meeting, with the consent of both villagers temporary bed dam using sand bags was put up. The previous suit in O.S.No.499 of 86 was

dismissed for default and no notice for fresh suit under Section 80 of Civil Procedure Code was served on the third defendant. Hence, the suit is

not maintainable and liable to be dismissed.

8. The trial Court, based on Ex.B-4 Sketch and deposition of P.W.1 to P.W.3 held that, water from Kondiyar River is fed to Soriyan Eri through

separate regulator directly and the Moovanallur Village gets water for irrigation only from Soriyan Eri fed by Kondiyar River and not through

Kondiyar River Channel. The trial Court dismissed the suit holding that, the plaintiffs have failed to prove that the lands of Moovanallur Village are

irrigated through the water drawn from Kondiyar River Channel.

9. Aggrieved by the dismissal of the suit, the plaintiffs preferred appeal in A.S.No.84 of 1996 alleging that the trial Court failed to appreciate the

irrigation memoir Ex.A-3, which clearly indicates that from Kondiyar River the plaintiffs' Village Moovanallur is entitled to draw water for 3 days

and the defendants' village is entitled to draw water for 4 days. The fact that Soriyan Eri is fed from Kondiyar River through the Sluice B-17,

though admitted by DW-1, the trial Court failed to consider the admitted fact. The customary right of the plaintiffs' village was not properly

appreciated by the trial Court and the judgment of this Court reported in C.S.Maruthanayagam Pillai v. Secretary of State reported in AIR 1939

& 386 not at all considered.

10. Pending the appeal, the first appellate Court, on application by the appellants admitted three additional documents and marked them as Ex.A-4

to Ex.A-6. On re-appreciation of evidences in the light of the additional documents, the first appellate Court has held that, the sketch-Ex.B4 =

Ex.A6 indicates that from B-17 sluice, two vents, one vent towards east carrying water to Kalanjimedu village for irrigation and another vent

towards south carrying the surplus water to join Kondiyar River. There is no evidence to show that from B- 17, the water flows through Kondiyar

River channel for irrigation at Moovanallur village. Contrarily, Kalanjimedu village alone is linked to the irrigation vent from B-17 point.

11. This Court, while admitting the Second Appeal has formulated the following Substantial Questions of Law for consideration :-

1.Are not the Courts below erred in not considering that the raiyats have acquired the right of water to the irrigation especially when the law

requires such customary supply to the raiyats should not be disturbed?

2.Is it not the duty of the Lower Appellate Court to re-examine the evidence of

customary rights adduced by parties and come to a finding whether such a right of irrigation has been established or not?

12. The learned counsel for the appellants submitted that, the Courts below failed to appreciate the revenue documents and irrigation memoirs, which goes to show that the appellants' village was enjoying the customary right of irrigation through Kondiyar River. There is recorded evidence by way of irrigation memoir marked as Ex.A-3, which proves the right of irrigation to the appellants' village for 3 days in a week. Further, learned counsel submitted that pending the second appeal, this Court has passed an interim order on 24.09.1998 based on the report filed by the Executive Engineer, Public Works Department and by virtue of the arrangement made, pursuant to the interim order both the Moovanallur village as well as Kalanjimedu village are supplied water for irrigation from B-17 point. This arrangement is resented by the Kalanjimedu villagers for no valid reasons. There are few documents such as, the irrigation memoirs of the years 1899 and 1931 which re-inforce and supports the cause of the appellants.

13. Per contra the learned Government Pleader representing for the respondents 3 and 4 submitted that the suit itself is not maintainable, in view of Section 3 of Tamil Nadu Irrigation Tanks (Improvements) Act 1949. Secondly, the earlier suit in O.S.No.499/1986 was dismissed for default and no leave to file fresh suit was granted by the Court as alleged by the plaintiffs. Therefore, on the ground of res judicata also, the suit is liable to be dismissed. Thirdly, the plaint does not contain the schedule of the property with proper description as mandated under the Civil Procedure Code, for that reason also, the suit is bad. The State is the appropriate Authority to decide and distribute water equitably to the ryots. The pattadars have no right to demand or dictate the manner and source of irrigation. The Courts below have rightly dismissed the claim of the plaintiffs and there is no ground to interfere with the concurrent findings of the Courts below.

14. Maintainability:

The question of maintainability of the suit is raised for the first time at the second appeal stage by the learned Government Pleader (CS) referring

Sections 3 and 4 of the Tamilnadu Irrigation Tanks (Improvement) Act, 1949. Under Section 4 of the Tamilnadu Irrigation Tanks (Improvement)

Act 1949, no Court shall entertain any suit or application for the issue of an injunction to restrain the exercise of any powers conferred on the

Government by Section 3 the Tamilnadu Irrigation Tanks (Improvement) Act 1949. As far as, this case is concerned, the relief sought is to declare

an existing right and injunction is against the unlawful interference of the existing right and no injunction is sought against the Government action on improving the irrigation tank.

15. For better understanding Sections 3 and 4 of the Tamilnadu Irrigation Tanks (Improvement) Act 1949 are extracted below:

Section 3- Power to take measures for increasing the capacity or efficiency of irrigation tanks:-

(1)Notwithstanding anything contained in any other law for the time being in force, the Government shall have power to raise the full-tank level of

any tank or to take any other measures for increasing its capacity or efficiency, wherever it may be situated and whether in a ryotwari, zaminadari,

inamdari or other areas.

(2)The owner of a tank not belonging to the Government shall not be required to bear any portion of the cost of carrying out any measures in

respect of the tank under Sub-section(1)

(3)Where, in pursuance of sub-section (1), any measures are carried out, in respect of a tank, the cost of carrying them out or such portion of the

cost as the Government may specify, may be recovered by the District Collector from the owners of the lands and other properties benefited by

the work in such proportions, and in such manner, as may be prescribed.

4. Suit and applications for injunctions barred:-

No Court shall entertain any suit or application for the issue of any injunction to restrain the exercise of any powers conferred on the Government

by Section.

16. In Judgment of the Hon"ble Supreme Court in Y.Lakshmi Narayana Reddiyar and others -vs- State of A.P and others reported in AIR 1965

SC 580, when a similar issue arose, the Supreme Court held in para 6 that:

6. Very briefly put, the object of the Act is to increase the capacity and efficiency of irrigation tanks in the State of Madras and S.3(1) gives the

State Government power to take measures for the purpose of increasing the

capacity or efficiency of irrigation tanks, whether the irrigation tanks be situated in a ryotwari, zamindari, inamdari or other area. Obviously, the purpose is to increase facilities for irrigation of agricultural lands for irrigation tanks.....

17. In the light of the above observation of the Hon"ble Supreme Court, looking at the relief sought for in this case is not against the improvement purported to be made by the Government in connection with irrigation. Therefore, the suit as framed does not fall under the scope and ambit of Section 4 of the Tamilnadu Irrigation Tanks (Improvements) Act 1949.

18. Declaration of irrigation right:

The relief sought in the suit is to declare and protect the alleged customary right, which the plaintiffs village was enjoying eversince 1899 through the irrigation memoir and further, reiterated in the irrigation memoir of the year 1931. The point for consideration before the Courts below was, whether the plaintiffs have proved the so called customary right of drawing water from the source, they claim. Both the Courts below have negatived the plaintiffs" claim based on evidence.

19. There is no dispute over the fact that the Soriyan Eri of Moovanallur village is the source for irrigating the plaintiffs" village land. The claim of the plaintiffs that from ages, they were getting water for irrigation from the MelaKondiyar channel at B-17 point is proved to be false through documentary evidence. The irrigation memoir of the year 1931 marked as Ex A-4 refers Kondiyar channel as one of the irrigation source for the Moovanallur village. The other two sources referred in Ex.A-4 are Soriyan Eri and Pudhu Eri. These two sources are water reservoirs (tanks) for irrigating registered wet lands of plaintiffs" village, while the Kondiyar channel, which takes off from Vennar is for irrigating some manavari and poramboke lands in the village. So, even during the year 1931, when the irrigation memoir Ex A-4 was drawn, the plaintiffs village was depending only on the Soriyan Eri and Pudhu Eri to irrigate its registered lands. Ex.A4 also provides us the details regarding the total extend of land under cultivation in the year 1931. According to Ex.A-4, out of total extend of 1736.54 acres of irrigable ayacut, the porambokku land under cultivation was only 309.48 acres and that alone was irrigated from the Kondiyar channel.

20. At this juncture, it is relevant to refer the written statement of the third defendant, which states that, the total extend of land under irrigable

ayacut in the plaintiffs village during 1990's was only 407 acres. This fact is not contraverted by the plaintiffs. Therefore, after lapse of few

decades, it is evidently clear that the plaintiffs villagers have shrunked their area of cultivation and Kondiyar channel has not been their source of

irrigation any more. Thus, customary right, if any, had extinguished long back.

21. The learned counsel for the appellants relying upon the observation made by this Court in Rao Sahib Maruthanayagam Pillai -vs- The

Secretary to State, reported in Vol 49 LW 151 , submitted that, the ryots are entitled to receive the water from the tank, which the lands have

been accustomed to for irrigation purpose, without interference by the Government or any one else. The only obligation of the Government is to

make an equitable distribution of water in the years of shortage. However, this observation of the High Court cannot be taken advantage by the

appellants, since they were not able to establish the continuance of their customary right, when the suit was filed. Further, after the enactment of

Tamilnadu Irrigation Tanks (Improvements) Act, 1949 and after Article 39 (1) of the Constitution of India came into force, the law has undergone

a sea change. The march of law in this aspect has been vividly explained by the Division Bench of this Court in State of Tamilnadu , Rep by its

Collector, Madurai -vs- V.A.Abdul Karim and another reported in 1997-1-L.W.592 in the following lines:-

9. We have carefully considered the submissions of the learned counsel appearing on either side. In 1950 (2) M.L.J. 658 (Lachuma Goundan v.

Pandiyappan), Viswanatha Sastri, J. held that the obligation of the Government is to supply water necessary and sufficient for the accustomed

requirements of the ryotwari proprietor so long as such supply is not adversely affected by natural causes such as deficiency of rainfall or scarcity

of water in the rivers from which the supply channels take off. It was also held therein that in other cases, the interference by the Government with

the existing rights of irrigation from artificial channels constructed by Government is not an actionable wrong and the ryotwari proprietor is not

entitled to insist that the entire volume of water which had been flowing through the artificial channel should, for all times, be allowed to run along

the channel without diminution or diversion by that despite the rights of the ryot to receive from the Government supply of water necessary for

irrigation of his registered wet lands, as an incident to the Ryotwari tenure, the prerogative right of the Government to regulate the same in the

larger interest of the society is equally beyond challenge.

10. In 1939 (1) MLJ 176=49 LW 151 (Maduranayakam Pillai v. Secretary of State for India in Council) while dealing with the claims of ryots for

supply of their accustomed requirement for two crops, who felt aggrieved on account of the schemes implemented to supply water to the City of

Madras from two reservoirs or tanks as they are called viz., Cholavaram Tank and Red Hills Tank, a Division bench of this Court in sustaining

their right to one crop, has held that the needs of the city of Madras are of very great importance and there could be no complaint about the policy

of the Government in giving the large city such as Madras, a preference in the supply of water. The learned Judges also noticed the fact that the

rights and obligations as between the State and the ryot in this country, so far as supplying water for irrigation purposes was concerned rested

largely on unrecorded custom and practice. In AIR 1936 Mad. 923=44 LW 388 (Secretary to State v. P.S.Nageswara Iyer and Others). A

Division Bench of this Court observed that it has generally been stated that the ryotwari holder is only entitled to claim that the supply of water

required for the cultivation of his registered wet lands should not be materially diminished by any act of the Government and subject to this

condition, the government in this country has claimed absolute right to change the source of irrigation or the method of irrigation by which the ryot

has been supplied and to regulate the use of the waters of all public or natural streams in the best interests of the people. It was also held therein

that the significance of the registry as single crop or double crop or as "compouled" lies mainly in fixing the quantum of the liability of the ryot in

the matter of land revenue and when the liability has been thus fixed he can only depend upon the possibility of securing a remission if the revenue

authorities are satisfied that there has been a failure of crops on account of the failure of the water supply and that it may also follow that the lands

registered as "double crop" lands are entitled to water for second crop in preference to lands registered as "single crop" under the same source,

when the holder of the single crop lands proposes to raise a second crop on it. While making it clear that it is common knowledge that second crop is freely permitted to be raised subject, of course, to the ryot taking the risk of the failure of water supply and subject to the liability to pay assessment for the second crop, it was also held that the power of the State to interfere with customary supply of water to ryotwari holders ought not to be determined with reference to the registry, but only with reference to the nature of the accustomed user"".

22. From the facts and evidence, this Court finds that the plaintiffs' village had no customary right existing to draw water through Kondiyar Channel. Their customary right to draw water from Kodiya river and Soriyan Eri has never been disturbed either by the Government or by the Kalanjimedu villagers. Therefore, the Substantial Questions of Law formulated by this Court at the time of admitting the second appeal are not sustainable and the second appeal is liable to be dismissed.

23. Be that as it may. Pending the second appeal, this Court has directed the Executive Engineer(Public Works Department) to prepare report so as to work out an amicable solution for the dispute, so as to provide required water for both the villages, without detrimental to each other. Pursuant to this direction, a report has been filed on 27.08.1998. Taking note of the said report, this Court has modified the earlier interim order to the effect that the interim arrangement indicated in the report of the Executive Engineer, dated 27.08.1998 shall continue subject to the direction of ensuring the entire ayacut of the respondents village (Kalanjimedu) supplied with water, of course without affecting the rights of the appellants.

24. In view of the above stated subsequent event, it is made clear that the second appeal is dismissed only on the point of law. On facts, due to change in circumstances, if the order passed in C.M.P.No. 12596/1998, dated 24.09.1998 or any modified arrangement works satisfactorily to the best interest of the general public, it is always the prerogative right of the State to continue it.

25. In the result, the Second Appeal is dismissed. No order as to costs.