

(2001) 03 KAR CK 0112

In the Karnataka High Court

Case No : Regular Second Appeal No. 372 of 1997

Shankaraiah and Another

APPELLANT

Vs

Smt. Savithramma and Others

RESPONDENT

Date of Decision : 29-03-2001

Acts Referred:

Karnataka Irrigation Act, 1965 — Section 69 (5)

Citation : (2002) 1 KCCR 80

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : M. Ram Bhat, for the Appellant; Vagdevi Associates, for the Respondent

Judgement

H. Rangavittalachar, J.—This is a Plaintiffs second appeal.

2. Plaintiff filed the suit OS 421 of 1997 against the Respondent/Defendant for a decree of permanent injunction by restraining the Defendant from wrongfully using the water flowing in the channel towards southwest of his lands.

3. It is the case of the Plaintiff before the Trial Court that he and his wife (Plaintiff No. 2) are owners of certain lands stated in the plaint at Yadagalli Village, Sringeri Taluk. A Government channel exists from time immemorial towards the southwest of these lands and the natural stream of water flowing in this channel was being drawn for irrigating the Plaintiffs lands from a very longtime. Defendant who is an upper (sic) owner wrongly constructed a house in his land, has been drawing the water from this channel both for his domestic purpose and for agricultural purpose, thus reducing the quantity of water flowing to his land which is seriously damaging his crops. Therefore has sought for injunction.

4. The suit was contested. Defendant contended that like the Plaintiff he was also drawing water for irrigating purpose from time immemorial. The channel is situated in a Government land and the water flowing in it is a from a natural

source, Plaintiff cannot prevent the Defendant from using the water which does not belong to him.

5. Trial Judge has dismissed the suit as not maintainable in view of Section 69(5) of the Karnataka Irrigation Act. Trial Judge has held relying on the definition of "Irrigation Work" occurring u/s 2(h) and the power and control of such Irrigation Works exclusively vesting in the Government, A dispute regarding drawing of the water, only the Irrigation Authorities have to decide, Civil Court's jurisdiction is ousted.

6. Aggrieved by the said judgment and decree, Plaintiff appealed. Appellate Judge on the same reasonings of the trial judge dismissed the appeal. These two judgments and decrees are under challenge.

7. This Court at the time of admitting the appeal has framed the following substantial question of law as arising for consideration:

Whether the provisions of Karnataka Irrigation Act apply and whether the suit is barred u/s 69(5) of the Irrigation Act?

8. Sri Ram Bhat learned Counsel appearing for the appellant submitted that the provisions of the Irrigation Act has no application to the case on hand. According to him, unless the Irrigation Department notifies by gazette notification bringing within its jurisdiction any water ways, streams, tanks, canals, provisions of the Act are not applicable. No such notification is issued covering the water flowing in the present canal from the natural source, therefore Courts below were not justified in invoking the provisions of Irrigation Act. This contention does not find support from the provision of the Act.

9. Karnataka Irrigation Act of 1965 provides for construction, maintenance and regulation of Irrigation Works, supply of water and certain other matters pertaining to irrigation in the State of Karnataka. Section 2(h) of the Act defines an "Irrigation Work" which reads as under:

Section 2(h): "Irrigation work" includes-

(i) All reservoirs, tanks, wells, anicuts, bandharas, ponds, springponds, canals, field channels, talaparige, pipes, channels aqueducts and sluices constructed, maintained or controlled wholly or partly by Government for the supply, conveyance or storage of water;

(ii) all works, embankments structure, supply and escape channels, connected with such reservoirs, tanks, anicuts, bandharas, channels, canals, pipes, sluices and all roads constructed for facilitating the construction or maintenance of such reservoirs, tanks, anicuts, bandharas, canals, channels, pipes and sluices;

(iii) all drainage works and flood embankments;

(iv) any part of river, stream, like, natural collection of water or natural drainage channel with State Government may supply the provisions of Section 5 or of

which the water has been applied or used before the commencement of this Act, for the purpose of any existing irrigation works;

(v) all lands appropriated by the State Government for the purpose of such reservoirs, tanks, anicuts, bandharas, canals, channels, pipes, sluices and all buildings, machinery, fences, gates and other erections upon such lands.

10. By a reading of Section 2(h) (i) and (iv), it is manifest that even natural collection of water collected through any channel is an Irrigation Work.

11. Section 4 of the Act prohibits any person from controlling wholly or partly any reservoir, spring, pond, canal, field channel etc. without the previous sanction of the State Government.

12. Section 4 of the Act reads as under:

Section: CONSTRUCTION CONTROL AND MAINTENANCE OF IRRIGATION WORKS ONLY WITH CONSENT OF GOVERNMENT AND SUBJECT TO CONDITIONS:

(i) No person shall construct control or maintain wholly or partly any reservoir, tank, anicut bandhara pond spring pond canal, field channel talaparige channel or aqueduct except with the previous sanction of the State Government or such other authority as may be authorised by the State Government in this behalf and subject to such conditions as the State Government or such authority may impose.

(2) Where the State Government is of the opinion that in the interest of proper irrigation from any irrigation work constructed or proposed to be constructed it is necessary to control the construction of wells in any area, or the areas the State Government may by notification specify such areas; and thereupon no persons shall within such area construct any well except with the previous sanction of the State Government or other authority authorised by the State Government in this behalf and subject to such conditions as the State Government or such authority may impose.

Section 69(5) of the Act bars the jurisdiction of the Civil Court in respect of the control, regulation etc. of any Irrigation Work. Section 69(5) reads as under:

Section 69(5): Save as otherwise expressly provided in this Act, no Civil Court shall entertain any suit in respect of any matter to which this Act applies.

13. Thus by a reading of the provisions of the Irrigation Act extracted above, there is no doubt that the water flowing in the Government Channel utilised by the Plaintiff for irrigating his land is an Irrigation Work within the meaning of the Karnataka Irrigation Act and the Regulation of the use of such water can be dealt with only by the Irrigation Officers. A Civil Court cannot decide such a question. The question of law there is answered holding that the suit is barred u/s 69(5) of the Irrigation Act.

14. Since the suit is barred under the Irrigation Act, and since Plaintiff has a

remedy for redressal of his grievances, under the Act it is obvious that the dismissal of the suit cannot come in the way of the Plaintiffs seeking his remedy under the Irrigation Act.

15. Appeal dismissed.

16. In the facts and circumstances of the case, there will be no order as to costs.