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**(1945) 12 MAD CK 0019**  
**In the Madras High Court**

Sri Kallalagar Devasthanam

APPELLANT

Vs

Karuppa Pillai and Others

RESPONDENT

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**Date of Decision :** 14-12-1945

**Acts Referred:**

**Citation :** AIR 1946 Mad 451 : (1946) 1 MLJ 252

**Hon'ble Judges :** Yahya Ali, J

**Bench :** Division Bench

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## **Judgement**

Yahya Ali, J.—The questions involved in these two appeals are common. The suits out of which these appeals arise were instituted by the proprietor of Amaradakki village in Melur division of Madura district for recovery of rent from his tenants, the defendants, for falsis 1349 to 1351. Two matters were in dispute in the suits. The first was in relation to the water charge claimed by the proprietor for the second crop raised on the lands in the occupation of the defendants which had been registered as single crop wet lands. The second question concerned fishery rents which is not now pressed by the learned advocate for the appellant.

2. As regards the water charge for the second crop, the Deputy Collector of Melur division found that the plaintiff was not entitled to levy the same and on appeal the learned District Judge affirmed the Deputy Collector's decree. After having heard both sides I am of the opinion that the view taken in the Courts below is correct. Various questions have been argued, but there is one matter which clinches the issue and which I shall refer to presently. At one time the Amaradakki tank comprised a large extent and had a bund of considerable size with a sluice and other arrangements. After the erection of the Periyar Dam, supply from that source was provided. In consequence a considerable portion of the tank bed was assigned for wet cultivation. The only extent remaining was the extent of 3 acres 91 cents comprised in S. No. 30 of 1933 on which it would appear that there are still a large portion of the old bund and the sluice without shutters and a temple without a structure. The Periyar water would appear to pass through the course on the inside of the old bund and flow out through the

unshuttered hole in the sluice. The defendants contended that the tank had ceased to be in existence as such and that what remained was nothing but a mere channel course for the Periyar water to flow directly to the defendant's fields. Both the lower Courts upheld that contention. On the plaintiff's side reliance was placed on the decision in *The Madura Kallalagar Devasthanam Vs. N. Subbiah Ambalam*, , but the learned District Judge distinguished it on the ground that in that case the Government water had come into the tank belonging to the landholder and had got mingled with the landholder's water, which feature does not obtain in the present case. Apart from those grounds the matters seem to me to be altogether clinched by the fact that in the Re-settlement Register, Ex. P-i, the entire extent of S. No. 30/3, is registered as ryoti land and is assessed to rent and stands as ryoti land in the name of the deity Sundararajaperumal. In that connection the Deputy Collector said in his judgment:

Above all, the more important document Ex. P-i (Re-settlement Register) reveals that the tank poramboke S. No. 30/3 stands in the holding of Sundararajaperumal--the deity under holding No. 2 classed as Dry and the extent of 3.91 acres bears an assessment of Rs. 4-6-0 with the remark. In the face of this record the plaintiff has no case for him. There is no tank and no water spread area, with stagnation of water, since the entire extent having been assessed to rent. Even assuming that the classification on ground is tank there could only be a narrow strip of land for the Periyar water to flow through the open sluices on the tank bund for the irrigation of the suit lands which have been permitted for irrigation by water permits issued by the Government. The entire extent having been treated as ryoti land and assessed with an annual rental value, there is no case of the plaintiff to claim any ownership over the solum of the water course.

3. I entirely agree with this view of the matter. The right to levy water charges of this description rests on the principle that the solum of the source from which water is supplied vests in the landholder qua landholder. In this case the land having been converted into ryoti land and assessed to rent, the very foundation upon which water charges can be levied, disappears.

4. The second appeals are dismissed with costs. Advocate's fee one set. Leave to appeal is refused.