

(1913) 05 CAL CK 0024

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2108 of 1909

Srimantu Bagdi

APPELLANT

Vs

Bhagwan Jalia

RESPONDENT

Date of Decision : 14-05-1913

Acts Referred:

Citation : (1913) 05 CAL CK 0024

Final Decision : Dismissed

Judgement

1. This suit relates to certain fishery rights in a river. These rights are claimed by the Plaintiffs on one side and the Defendants on the other. The learned Judge before whom this Second Appeal first came, remanded the case to the lower Appellate Court for the determination of two questions of which we need now only mention one. That question is "whether the river is a tidal and navigable river." The learned Subordinate Judge has submitted his judgment on remand in which after dealing with the evidence he has come to the conclusion that the river is tidal but not navigable. That conclusion is a conclusion of fact and cannot be now contested. What is said however, is this. The controversy being whether the Plaintiffs have proved their title to the fishery it is contended that they have not shown that they have derived any title from the Government whether by grant or by prescription, and then it is argued that a fishery in a river prima facie belongs to the Government not only when the river is both tidal and navigable but also when it is only tidal and that the evidence of title adduced is therefore insufficient and the suit ought to fail on that ground. The argument takes two forms, firstly, that the words "Tidal" and "Navigable" are really interchangeable and, secondly, that the true test is that of tidality and not that of navigability. We are of opinion that neither of these propositions can be supported. As we conceive, the principle is most broadly as well as most accurately expressed in the form that Government is prim facie the owner of the fishery rights in all waters which come within the description of public navigable waters. The rights of the Government have been maintained by the Courts in respect of large rivers which are navigable but not tidal. The law is settled and the cases are collected by

Mr. Lal Mohan Doss at pages 109-113 of his "Law of Riparian Rights" (Edition 1891). Reference may also be made to the observations of the Privy Council in regard to the river Godavert in the case of Sri Balusu v. Collector of Godaveri I. L. R. 22 Mad. 464 (1899). In Bengal the rights of Government in those large rivers depends to some extent on the wording of Regulation XI of 1825 and similar reasoning leads us to suppose that the rights of fishery in small rivers such as the river now in question which are tidal but not navigable belong to the proprietors through whose estates they run. In point of fact navigability does not necessarily follow tidality" so that the two terms cannot be regarded as equivalent. The loose expressions to be found in the judgments in some cases which seem to identify "tidal" with "navigable" were employed, so far as we are aware, with reference to waters as to which there was no doubt that they were both tidal and navigable, the language employed must be interpreted with reference to the facts of those cases and cannot be understood as laying down as matter of law that what is tidal is always navigable or that the only test is tidality. The true test and the true distinction for purposes such as the present is, as we conceive, whether a river is or is not navigable. If a river is tidal, there may be a presumption, weaker or stronger as the case may be that it is also navigable but here, as we have said it has been found positively that the river is tidal but not navigable. Government is not a party to the suit and it is not suggested so far as we are aware that Government ever claimed this fishery. The defence to the suit with which we have dealt seems to rest on no solid foundation. No other question of law arises and the appeal therefore fails and must be dismissed. Plaintiffs-Respondent are entitled to their costs of the Appeal.