
(1913) 01 MAD CK 0025
In the Madras High Court

Syed Tajuddin Sahib and Another

APPELLANT

Vs

Shaik Ali Ahamad Sahib and Others

RESPONDENT

Date of Decision : 10-01-1913

Acts Referred:

Citation : 18 Ind. Cas. 358

Hon'ble Judges : Ralph Benson, J; Miller, J

Bench : Division Bench

Judgement

1. It is conceded that the District Judge is wrong in saying that there is no satisfactory evidence that the appellants before him prevented the plaintiffs' men from catching fish; the written statements contain admissions of obstruction by the defendants.

2. The plaintiffs then have laid a foundation for their claim for an injunction, if they could show that they had established a right to take fish from the tank to the exclusion of the defendants. The case for the defendants was that all the villagers having lands in the Ayacut were entitled to rights in the

fishery- and there is evidence on both sides, to which the District Judge has not referred. He refers to Exhibit XVIII and Exhibit D but merely to

dismiss them with the remark that Exhibit D is not binding on the defendants, because they were not parties to Exhibit XVIII. This, it is alleged

before us, is incorrect; the defendants, it is said, were represented among the Jeevita Maniyamdars in the former suit, and Exhibit D, though it is not

claimed to be conclusive against them would in that event be important evidence; whether they were parties or not is therefore, a matter to which

the District Judge will have to give further consideration; but even if the defendants were not parties, the judgment and decree may be relevant as

showing what were the claims of the Jeevita Maniyamdars at the time. They may also be important as showing that the Jeevita Maniyamdars held

as grantees from the Inamdars and, consequently, that there is no presumption that they had any rights in the fish from the Government as the

District Judge suggests. The District Judge thus appears to us to have excluded from his consideration on insufficient grounds, evidence of which he

ought to have considered the effect and so far as we are able to judge from his very brief judgment has also failed to consider other evidence in the

case which may be important. We are unable, in these circumstances, to accept his findings against the plaintiffs and must ask him to return revised

findings on all the issues, on the evidence on record.

3. The findings should be submitted within six weeks from this date and seven days will be allowed for filing objections.

JUDGMENT

4. The plaintiffs claimed the land forming the tank-bed as their own by virtue of their purchase in 1896; the defendants alleged that that purchase

gave them only a joint ownership along with them. The 1st issue as framed does not deal with the title to the tank-bed, but only with the ownership

of the trees, grass and other produce. From the pleadings, however, and the way the issue has been tried in both Courts, we must take it that the

title to the tank-bed was investigated under the 1st issue and that the finding on the 1st issue as to the ownership of the trees and other produce is

in effect a finding that the owners of the produce are owners by virtue of their title to the tank-bed. That being so, we may proceed to consider the

District Judge's findings. On the 1st issue, he finds that the plaintiffs have not made out an exclusive title to the produce and as the issue was

framed, it follows that the defendants are jointly entitled to it with them, though that is not expressly found. The District Judge goes on to find that

the plaintiffs have by prescription acquired a title to the trees and grass and other produce except the fish. That finding purports to be his decision

on the issues 1 to 3, but none of these issues raises the question and there is no assertion in the plaint of the acquisition of a title by prescription.

As, however, the question has been decided, we may accept the finding in the plaintiffs' favour as a finding that they have been in exclusive

possession of the trees, grass and other produce except the fish for more than

12 years.

5. That, however, is not enough to enable them to succeed. The District Judge has found that they are co-owners with the defendants of the

produce in question, and this ownership, as we have observed, is referable to the ownership of the land, and the plaintiffs would, therefore, to

succeed, have to show that their possession was adverse to the defendants and, to do that, would have to prove some open assertion of a title

hostile to the defendants. *Bhaiji Shamrao v. Hajimiya Mohamad Amin* 14 Bom. L.R. 314; 15 Ind. Cas. 500 or some fact which would show that

their possession could not be referred to their legal title as co-owners. Vide *Corea v. Appuhamy* (1912) A.C. 230 ; 81 L.J.P.C. 151.

6. The District Judge does not find any such assertion or fact, and the evidence to which we have been referred is not sufficient to prove either.

7. The result is that the appeal is dismissed with costs.