

(1939) 10 MAD CK 0041
In the Madras High Court

The Madura Kallalagar Devasthanam

APPELLANT

Vs

N. Subbiah Ambalam

RESPONDENT

Date of Decision : 24-10-1939

Acts Referred:

Citation : AIR 1940 Mad 455 : (1940) ILR (Mad) 745 : (1940) 51 LW 81 : (1940) 1 MLJ 160

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellant is a landlord and supplies water to his tenants from his own tank. The respondent is one of the tenants, and previous to fasli 1343 he took sufficient water from the tank for the cultivation of one crop on his holding. In faslis 1343 and 1344 and 1345 without his landlord's permission he took water for the raising of a second crop. As the result, the appellant filed a suit in the Court of the Deputy Collector, Melur, for the recovery of water rate on the basis of the two crops which the respondent had raised in each of the years mentioned. The Deputy Collector decreed the suit. An appeal then followed to the District Judge of Madura who reversed the Deputy Collector's decision in so far as it related to the additional charge claimed as the result of the tenant using water for the raising of second crops. Throughout it has been common ground that the water in the appellant's tank was augmented by water which Government allowed to flow into it from channels leading from the Periyar dam, which is a Government source. The respondent's case was that he had raised the second crop from water belonging to Government flowing from the appellant's tank. It may be taken that the raising of the second crop was only possible as the result of the increase in the water in the tank resulting from the supply which the tank received from the Periyar dam. The District Judge held that the landlord was not entitled to rent based on the second crop unless he could show that he had increased the capacity of the tank by deepening it or widening it or raising its bunds to receive Periyar water so that it might be available to the tenants to raise second crops. The landlord had not done this,

but even if he had he could not, it was said, get anything extra unless he applied u/s 30 of the Madras Estates Land Act, 1908, for enhancement of rent. The District Judge also held that the water which the respondent had used for the raising of the second crops was not the landlord's water, but water belonging to Government. He expressed the opinion that the extent of the water passing through the landlord's tank could not confer on the landlord any special rights in the absence of proof that he had contributed something for the purpose of facilitating the supply. The appellant, having lost before the District Judge, filed the present appeal which in the first instance came before Patanjali Sastri, J., who considered that the question was one which should be decided by a Bench.

2. The decision of the District Judge is erroneous on both the points which I have mentioned. I will take the second point first. The fact that the Government water flowed into the appellant's tank did not mean that when that water got there it remained Government water. It mingled with the appellant's water and it must be regarded as being the appellant's water. I agree with the remarks of Patanjali Sastri, J., in his referring order that on no conceivable theory can the water in an estate tank, the solum of which is vested in the landholder, be said to belong to the Government and even under the wide and sweeping language of the Madras Irrigation Cess Act the right of the Government to levy water cess depends not upon the water belonging to the Government but upon its coming from a source belonging to the Government. The Government, if it had so desired, could no doubt have prevented its water flowing into the appellant's tank, but it allowed its water to get there and once it got there it passed out of its control and must in law be regarded as the property of the appellant.

3. When the District Judge delivered his judgment the decision of the Full Bench of this Court in Kotta Venkatraju Garu Vs. Sri Rajah Sahib Maharban Dostan Sri Raja Ravu Kumara Mahipathi Surya Rao Bahadur Garu, Sirdar, Rajahmundry Sircar and Maharaja of Pithapuram and Others, had not been given and the legal position had therefore not then been clarified. In that case, as in this, extra water for a second crop had been taken by a tenant from a landholder's tank without the landholder's permission and the landholder filed a suit before the Deputy Collector for the recovery from the ryot of a sum of money for water taken without his permission. It was held that "rent" as defined in Section 3(11) of the Act included money payable for water taken without permission and the suit was not a suit for enhancement of rent. The decision in Kotta Venkatraju Garu Vs. Sri Rajah Sahib Maharban Dostan Sri Raja Ravu Kumara Mahipathi Surya Rao Bahadur Garu, Sirdar, Rajahmundry Sircar and Maharaja of Pithapuram and Others, , clearly governs the present case and the appellant's contention that he is entitled to recover the amount claimed by him for the water taken from his tank for the raising of the second crops in the three years mentioned must be upheld.

4. The fact that under the Madras Irrigation Cess Act, 1865, the Government has power to levy from the respondent a water cess makes no difference. Section 1-

A(4) provides that nothing in the section shall affect the rights and liabilities of the landholder and the ryot inter se under any contract express or implied, in regard to the payment of water cess. Therefore, the Act leaves the position of the landholder and the tenant inter se entirely unaffected. The respondent having taken water for the second crop from the appellant's own tank must pay for it.

5. The appeal will be allowed and the order of the Deputy Collector restored with costs here and in the lower appellate Court.