Sree Rajah Vasireddi Venkata Lakshmi Narasamma Bahadur Sultan Garu,dharmakartha of Bhava Narayanaswamy Devastanam Vs. the Secretary of State for India in Council Represented by the Collector

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Court : Chennai

Decided On : Apr-17-1918

Reported in : (1918)35MLJ159

Appellant : Sree Rajah Vasireddi Venkata Lakshmi Narasamma Bahadur Sultan Garu,dharmakartha of Bhava Narayanaswa

Respondent : The Secretary of State for India in Council Represented by the Collector

Judgement :

1. In Bengal Regulation XI of 1825, the legislature, acting, as recited in the preamble, on reports from the law officers as to the provisions of the Muhammadan and Hindu laws and on a consideration of the decisions of the Sudder Adalut, proceeded in Section 4 to make a distinction as to the ownership of churs in navigable and non-navigable rivers, which, in the opinion of Sir M.R. Westropp, C.,T. in Baban Mayacha v. Nagu Shravucha and Ors. I.L.R. (1876) Bom. 19 raised an inference, though not conclusive, that the beds of non navigable rivers are generally private property. The observation of the Judicial Committee in Doe Dem Rajah Seeb Kristo and Ors. v. The East India Go. (1856) 6 M.I.A. 267 appears to proceed upon the same view. The law was laid down in the same way in Rajah Neelanund Singh and Ors. v. Rajah Teknarain Singh (1862) Cal. S.D.A.R. p 160 and by the Calcutta High Court in Hunooman Das alias Nunne Baboo and Ors. v. Shamachurn Bhatta and Ors. 2 Hay 426 and Bhageeruthee Debia and Ors. v. Greesh Ghunder Chowdhry 2 Hay, 541 where the Court held that 'by the common law of this country the right to the soil of the bed of a river, when flowing within the estates of different proprietors belongs to the riparian owners, ad medium filum aquae.

2. In this Presidency the decisions of the Sudder Court in Sree Bajah Oppalapaty Jogee Jaganadheruze v. Sub-Collector of Rajahmundry (1858) S.D.A, p 180 and of the High Court in Subbaya and Ors. v. Yarlagadda Anhinidu (1833) 1 M.H.C.R. 255 were to the same effect. It is only in the case of navigable rivers that the presumption has been laid down the other way by the Judicial Committee in Ekowri Sing v. Hiralal Seal (1868) 2 Beng. L.R. 4 Felix Lopez v. Maddan Thakoor (1870) 5 Beng. L.R. 521 and in Nogender Chunder Ghose v. Mahomed Esof (1872) 10 Beng. L.R. 406 while in Forbes v. Meer Mahomad Hussein (1873) 12 Beng. L.R 210 it appears to be assumed that in the case of non-navigable rivers the ownership of the bed is in the riparian owners. The decision of the Judicial Committee in Kali Kissen Tagore v. Jodoo Lal Mullick (1879) 5 C.L.R. 97 and in Khagendra Narain Chowdury v. Matangini Debi I.L.R. (1890) Cal. 814 appears to proceed on the same basis. In Sri Balusu Ramlaksnmamma v. The Collector of the Godavari District I.L.R. (1899) Mad. 464

where the appellant before them sought to base her title to the lanka in question on the presumption arising from the fact that she was the owner of both banks of the river, their Lordships observed that such a claim was not made by the pleadings or by the issues, and was one about which much evidence might and probably would have been given if it had been raised and they accordingly declined to discuss thequestion because it was not relevant to the case made by the plaintiff, and merely observed that, having grave doubts whether the presumption applicable to little English rivers applies to great rivers such as the Godavari, they would require to know much more about the rivers in question before deciding as to the presumption or its rebuttal. This reservation, in a case in which the question in their Lordships' opinion did nit arise and in which the authorities abover referred to were apparently not cited, cannot be taken as a ruling that the presumption is generally inapplicabel in the case of non navigabel rivers in this part of India. Certain dicta as to the ownership of river beds were also cited from recent cases in this Court, but they are far from uniform , and in none of these cases was the present question considered in teh light of the authorities. We therefore consider it unnecessary to refer toe them. The result of the authorities in our opinion is that, as regards a grant of land in India described as bounded by a non navigable river, the onus of showing that the grant did not cover the bed ad medium filum aquae is on the grantor. The presumption may be strong or weak according to the circumstances of the particular case, and the amount of evidence required to rebut it will vary accordingly. We do not think it desirabel to attempt to lay down any more definite rule. Reference has been made to The Madras Land Encroachment Act, (III of 1905), but that Act cannot affect the pre-existing rights, if any , of the grantee in this case.