

The Secretary of State for India in Council Vs. Gopisetti Narayanaswami Naidu Garu, Receiver, Nidadavole and Meedur Estate

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Court : Chennai

Decided On : Apr-29-1910

Reported in : (1911)ILR34Mad151

Judge : Miller and ;Munro, JJ.

Appellant : The Secretary of State for India in Council

Respondent : Gopisetti Narayanaswami Naidu Garu, Receiver, Nidadavole and Meedur Estate

Judgement :

1. Under Section 25 of Act XXVIII of 1860 (Madras), the starting point of limitation for the appeal by way of suit allowed by that section was the passing of the Survey officer's decision, and in Annamalai v. Cloete I.L.R. (1883) Mad. 189 and Seshama v. Sankara I.L.R. (1889) Mad. 1, it was held that the decision was passed when it was communicated to the parties.

2. The language of Section 13 of Act IV of 1897, Madras, is somewhat different. The starting point is the date of the decision of the Survey officer, and in the present case that is a decision to which the provisions of Section 24 are applicable, and Section 13 is made by Section 25 to apply, mutatis mutandis, in the case of a final decision passed under Section 24. The starting point is therefore the date of the decision passed under Section 24. We find no difficulty in holding that the date of the decision is the date on which the decision is passed, and therefore that the starting point is the date of the passing of the decision. The precedents seem therefore to be in point, there being no material difference between the earlier and the later Acts so far as the present matter is concerned.

3. Section 24 of Act IV of 1897 requires the decision to be-recorded in writing with its reasons and communicated to the parties, but these provisions do not very greatly help us to determine on what date the decision is passed. Both sides rely on Section 11 (3) read with 12 (a), the Government Pleader as showing that there is a difference between the date of the order and the date of communication thereof and Mr. Sundara Ayyar as making it plain that it is only a communicated order that sets limitation running. The somewhat peculiar provisions of Section 12(a) may perhaps be explained by the fact that in Section 11(3) the making of the order and its communication are intended to be practically simultaneous--the communication is to be 'forthwith.' Though, therefore, this provision supports the Government Pleader to the extent that it shows that the date of the order and the date of communication may in the contemplation of the legislature be different dates, still it does not support the more important inference that the Act contemplates the starting of limitation before

the communication of the order to the parties.

4. There is some difficulty in the matter, but on the whole we think we ought to follow the authorities to which we have referred which hold that the date of a decision is the date of its communication to the parties. A decision cannot properly be said to be passed until it is in some way pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing what it contains. Till then, though it may be written out, signed and dated, it is nothing but the decision which the officer intends to pass. It is not passed so long as it is open to him to tear up what he has written and write something else.

5. We do not say that in all cases the decision under Section 24 of the Act (IV of 1897) is passed on the day on which the information required by that section reaches the party to whom it has to be given. There seems to be nothing to prevent the Survey officer from giving parties sufficient notice of the day on which he will pass his decision, to enable them, if they choose, to be present and hear it, and if that is done limitation would run from that day if the decision is announced on that day. That is the date of communication, though the parties may not care to listen.

6. But if the course adopted in the present case is taken, and the Survey officer publishes his decision by sending copies of it to the parties, the date of communication will be different. It will not necessarily be the date on which the copy actually comes into the hands of the party, and on that point the Government Pleader had something to say. But we do not think we ought now to institute an inquiry as to what is the true date of communication in this case; it seems to have been accepted in the Court below that the date of receipt of the order is the date of communication. We therefore overrule the contention of the Government Pleader that the suit is barred by limitation.

7. On the merits we are not prepared to say the District Judge has come to a wrong conclusion. It is the case of both parties that two channels, Enugakodu and Mattavanikodu, formerly existed, and the decision of the question at issue turns upon the position of Mattavanikodu. We find now on the ground a drainage channel dug by the Department of Public Works some five years prior to the Survey officer's enquiry, and also a channel some distance to the north. It is between these channels that the land in dispute lies. The plaintiff's case is that the drainage channel occupies the bed of the Mattavanikodu. The case for the first defendant is that Mattavanikodu was further to the south. But no such channel is now in existence, nor is there any evidence that any such channel ever existed. On the other hand, there is evidence to support the plaintiff's case and one of the first defendant's witnesses admitted that the drainage channel might have been dug on the site of Mattavanikodu. As to the relative positions of Enugakodu and Mattavanikodu there is no doubt, for exhibits H and K show that the former was north of the latter. Again, according to the Survey officer the drainage channel was dug along the lowest; line of country, and he assumes, and the assumption is reasonable, that there was along the line an important stream. If this were so, and the stream was known as Enugakodu, we should expect to find it given as the northern, boundary of Amadalapali, just as it is given as the northern boundary of villages to the west. We think therefore that all the probabilities point to the present drainage channel as the site of Mattavanikodu and to the northern channel being Enugakodu. This would also fit in quite well with the boundaries given in the old account for the village of Amadalapalli.

8. The appeal is therefore dismissed with costs. This decree should be satisfied within three months from this date.

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