

THE
OFFICIAL
ASSIGNREE
OF MADRAS
v.
PALANIAPPA
CHETTY.
SPENCER, J.

Singji v. Vadilal Vakhat Chand(1) and *Sankakrishnamurthi v. The Bank of Burma*(2).

In the result, I agree with the learned Chief Justice that the respondent could have been declared insolvent in respect of debts, if any, incurred during his majority, but that debts incurred before that event should not be taken into account in the adjudication proceedings.

King and Partridge, Solicitors for appellant.

P. Kandasami, Solicitor for respondent.

K.R.

APPELLATE CIVIL—FULL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Oldfield,
Mr. Justice Sadasiva Ayyar, Mr. Justice Spencer and
Mr. Justice Bakewell.*

VENKATA LASHMINARASAMMA (PLAINTIFF), APPELLANT

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL
(DEFENDANT), RESPONDENT.*

1917,
December
10 and 13
1918
April 8, 9
and 17.

Grant, construction of—Grant of land by Government as bounded by a non-navigable river—Right of grantee to half the bed of the river, presumption as to—Onus of proving contrary, on grantor.

Held by the Full Bench:—(1) that in the case of a grant of land by Government described as bounded by a non-navigable river, the presumption (which may be strong or weak according to circumstances of each case) is that the grant passes to the grantee the bed of the river *ad medium filum aquae*, and

(2) that the onus of showing the contrary is on the grantor.

SECOND APPEAL against the decree of A. SAMBAMURTI AYYAR, the Temporary Subordinate Judge of Guntūr, in Appeal No. 187 of 1915, preferred against the decree of V. PURNAIYA, the Additional District Munsif of Bapatla, in Original Suit No. 10 of 1913.

In this suit the plaintiff, a trustee of a certain temple, alleged that the defendant, viz., the Government, granted to the temple, as inam, the lands in dispute, on both the banks of the river

(1) (1896) I.L.R., 20 Bom., 61

(2) (1912) I.L.R., 35 Mad. 692.

* Second Appeal No. 1824 of 1916.

Tungabhadra, that he had possession of the same for a long time, including the entire bed of the river, by rearing babool trees, grass, etc., thereon, and that the defendant unlawfully trespassed upon the bed of the river alleging that it belonged to Government. The plaintiff prayed for a declaration of his ownership as to the entire bed of the river within the limit of his inam lands, for the possession of the same and for injunction. The defendant denied the plaintiff's right to the bed of the river and pleaded that the inam title-deed did not convey to the plaintiff the bed of the river and that the same was always owned and enjoyed by the Government. Both the lower Courts dismissed the plaintiff's suit. The plaintiff preferred this second appeal.

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T. V. Venkatarama Ayyar and *R. Rajagopala Ayyar* for appellant.

V. Kamesam, the acting Government Pleader, for respondent.

This second appeal coming on for hearing in the first instance before *SESHAGIRI AYYAR* and *NAPIER, J.J.*, the following Order of Reference to a Full Bench was made by :—

SESHAGIRI AYYAR, J.—This is a suit by the trustee of a temple for a declaration that the lands belong to him and that the Secretary of State is not entitled to put up the grass thereon to auction or to interfere in any manner with the rights of the plaintiff. The plaint as originally instituted contained the statement that the inam granted to the temple comprised lands on both sides of the Tungabhadra river and that consequently the entire bed of the river belonged to the temple. It has been found by the Subordinate Judge, and we see no reason for not accepting that finding, that the boundary of the inam village is the river itself and that no lands on the other side of the river were granted to the temple. On this finding it has been argued before us that the plaintiff is entitled to half the bed of the river. The learned Government Pleader took exception to this change of case on the part of the plaintiff; but we think that in the circumstances of the case the plaintiff should not be refused relief because he put his case too high.

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The point for consideration therefore is where a grant is made fixing one of the boundaries of the lands granted as a river, whether the grantee is entitled to half the bed of that river. The decisions of the English Courts seem to be uniform in this

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respect. *Lord v. The Commissioners for the City of Sidney*(1), *David Maclaren v. Attorney-General of Canada*(2), and other cases referred to in these two decisions have accepted the principle that where the lands are bounded by a river the grantee is entitled to lands *ad medium filum aquae*. In *City of London Land Tax Commissioners v. Central London Railway*(3), the House of Lords applied this principle to the case of highways. All the learned Lords who took part in the decision affirm that it is an established principle of law that the

“ownership of frontages on either side of the street extended *ad medium filum viae*, just as, had the division or boundary between two subjects been a stream, the ownership of the riparian proprietors would have extended *ad medium filum fluminis*.”

In *Whitmores (Edenbridge) Limited v. Stanford*(4), this rule was extended to artificial channels. In this country, *Balbir Singh v. The Secretary of State for India in Council*(5) accepts the principle of the English decisions. *Powel v. Powel*(6) is to the same effect. In *Secretary of State for India v. Kadirikutti*(7) the learned Judges say that the rule that riparian proprietors are entitled to the bed of the river *ad medium filum* is not applicable to navigable rivers. That is an indication that if it is a non-navigable river the principle of English Law would be applied in this country. In *S. Sundaram Ayyar v. The Municipal Council of Madura and The Secretary of State for India in Council*(8) BASHYAM AYYANGAR, J., extended the doctrine to highways. The matter was recently discussed by three Judges of this Court in *The Secretary of State for India v. Janakiramayya*(9). Mr. Justice OLDFIELD seems to doubt whether the principle referred to is applicable to India. Mr. Justice SADASIVA AYYAR, on the other hand, apparently sees no objection to the applicability of that doctrine to India. Mr. Justice BAKEWELL expressed no opinion on that question. The learned Government Pleader referred us to two cases decided by the Judicial Committee as throwing some doubt upon the applicability of a similar principle to Indian conditions. In *Sri Balusu*

(1) (1859) 12 Moo. P.C., 473.

(2) (1914) A.C., 253.

(3) (1888) 13 A.C., 364.

(4) (1909) 1 Ch., 427.

(5) (1900) I.L.R., 22 All., 96.

(6) (1916) 14 All. L.J., 684.

(7) (1880) I.L.R., 13 Mad., 369.

(8) (1902) I.L.R., 25 Mad., 635.

(9) (1915) 29 M.L.J., 389.

Ramalakshamma v. The Collector of the Godavari District(1) the decision turned upon the fact that the ownership of the bed of the river was not the question raised for decision in the Courts below. In rejecting the contention which was put forward for the first time before the Board, Lord HOBHOUSE made use of these observations :

“The result is that their Lordships, having grave doubts whether the presumption applicable to little English rivers applies to great rivers such as the Godavari, would require to know much more about the river in question and the mode in which it has been dealt with, before dealing as to the presumption or its rebuttal.”

In a more recent case reported in *Srinath Roy v. Dinabhandu Sen*(2), in which the question related to the right of fishery possessed by a riparian proprietor, Lord SUMNER in delivering the judgment of the Judicial Committee says at page 531, after reviewing at considerable length the English and American Law on the subject,

“In proposing to apply the juristic rules of a distant time or country to the conditions of a particular place at the present day, regard must be had to the physical, social and historical conditions to which that rule is to be adapted.”

Having regard to the observations of the Judicial Committee and to the difference in opinion between two learned Judges of this Court we do not think it desirable that we should finally dispose of this matter. The question is of very great importance to the Government as well as to private proprietors, and we think it desirable that the opinion of the Full Bench should be invited on the subject. We therefore propose the following questions for the opinion of the Full Bench :—

Whether when Government makes a grant in India of a village which is described as bounded by a non-navigable river the right of the grantee extends to half the bed of the river, and

Whether the onus of proving that the grant did not cover the bed of the river is on the grantee or on the grantor.

This last question has become necessary having regard to the observations of Lord HOBHOUSE in *Sri Balusu Ramalakshamma*

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v. *The Collector of the Godavari District*(1) wherein he says the question of *presumption or its rebuttal* in a country like India would depend upon considerations different from those which obtain in England.

ON THIS REFERENCE,—

T. V. Venkatarama Ayyar and *R. Rajagopala Ayyar* for appellant.—The first question must be answered in the affirmative. In English law and in the law of the Colonies the presumption is to the effect that the grantee owns half the bed of the river; see *Lord v. The Commissioners for the City of Sidney*(2) and *David Maclaren v. Attorney-General of Canada*(3), though in Quebeck there was a statute resembling Madras Act III of 1905. This principle has been applied in the case of a highway in *City of London Land Tax Commissioners v. Central London Railway*(4) and in the case of a non-navigable creek in *Kali Kissen Tagore v. Jodoo Lal Mullick*(5); see also *Hunooman Doss v. V. Shamachurn Bhutta*(6), *Bhageeruthee Dabea v. Greesh Chunder Chowdry*(7), Doss on Riparian Rights, pages 113 and 114, *Khagendra Narain Chowdury v. Matangini Debi*(8), Peacock on Easements, Second Edition, pages 26 and 215, Bengal Regulation XI of 1825, section 4 (3) (based on the common law of the country) and *Micklethwaite v. Newlay Bridge*(9). The last case is followed in *Balbir Singh v. The Secretary of State for India*(10); see also *Doe dem Seebkristo and others v. The East India Company*(11), *Powel v. Powel*(12), *Buban Mayacha v. Nayu Shravucha and others*(13), *Secretary of State for India v. Kadirikutti*(14) and *S. Sundram Ayyar v. The Municipal Council of Madura and the Secretary of State for India in Council*(15) (as to highways). There is nothing against this view in *Meenakshi Amma v. Secretary of State for India*(16), *Srinath Roy v. Dinabhandu Sen*(17) and *Sri*

(1) (1899) I.L.R., 22 Mad., 464. (2) (1859) 12 Moo. P.C., 473 at pp. 497, 498.

(3) (1914) A.C., 258 at pp. 272, 273, 275, 276, 279.

(4) (1888) L.R., 13 A.C., 364 at pp. 371, 379.

(5) (1879) 5 O.L.R., 97 (P.C.) at p. 100. (6) (1862) 1 Hay, 426 at p. 427.

(7) (1863) 2 Hay, 541 at p. 547.

(8) (1890) I.L.R., 17 Cal., 813 at p. 814.

(9) (1886) 33 Ch. D., 133 at p. 144.

(10) (1900) I.L.R., 22 All., 96.

(11) (1866) 6 M.L.A., 267 at p. 288.

(12) (1816) 14 A.L.J., 684.

(13) (1878) I.L.R., 2 Bom., 19 at p. 40.

(14) (1890) I.L.R., 13 Mad., 369 at pp. 373, 374.

(15) (1902) I.L.R., 25 Mad., 635.

(16) (1914) 26 M.L.J., 385 at pp. 388, 389.

(17) (1915) I.L.R., 42 Cal., 489 at p. 525 (P.O.).

Babusu Ramalakshamma v. The Collector of Godavari District (1). See also *The Secretary of State for India v. Junakiramayya* (2), *Secretary of State for India v. Maharaja of Bobbili* (3) and *The Secretary of State for India v. Ambalavana Panarasannadhi* (4). There is nothing in Indian conditions to show that the rule or presumption of English law should not apply.

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V. Ramesam for respondent.—The question referred to does not arise as a whole village was not granted as inam but only a portion of a ryotwari village.

[*T. V. Venkatarama Ayyar*—Even then my argument is the same.]

In the case of a grant of a whole village we may presume an intention in Government not to reserve any rights to itself, but not when the inam is a portion of a ryotwari village. It is always a question of intention and the English technical rule of construction raising a presumption need not be applied in India. If a property is said to be bounded by a certain land, that land is outside the property and does not belong to it. Similarly in this case; *Micklethwaite v. Newlay Bridge* (5). *Marquis of Salisbury v. Great Northern Railway Co.* (6) lays down the circumstances when a grant does not pass half the highway; similarly *Simpson v. Dendy* (7), *Plumstead Board of Works v. British Land Company* (8) and *Pryor v. Petre* (9), see also *Ecroyd v. Coulthard* (10) and *Lee v. Jack* (11), as to what exactly the rule is and when it arises. The Bengal Regulation XI of 1825 does not support the appellant's contention; moreover there is no such Regulation in this Presidency. In *Doe dem Seebkristo and others v. The East India Company* (12) and *Kali Kissen Tagore v. Jodoo Lal Mullick* (13) there is no decision on the present question. Madras Act III of 1905 does not really decide this question as it saves private ownership, if any, in rivers. In this Presidency beds of rivers are vested in Government; see *Narayanasawmy Naidu v. Secretary*

(1) (1899) I.L.R., 22 Mad., 464. (2) (1915) 29 M.L.J., 389 at pp. 392, 399.

(3) (1916) 30 M.L.J., 163. (4) (1917) 33 M.L.J., 415 at p. 428.

(5) (1886) 33 Ch. D., 133 at pp. 144, 145, 150.

(6) (1858) 5 C.B., N.S., 173; 141 E.R., 69 at p. 84.

(7) (1860) 8 C.B., N.S., 433; 141 E.R., 1233 at p. 1249.

(8) (1874) L.R., 10 Q.B., 16 at p. 24. (9) (1894) 2 Ch., 11 at p. 16.

(10) (1897) 2 Ch., 554. (11) (1879) L.R., 5 Eq., 264 at p. 273.

(12) (1856) 6 M.L.A., 267 at p. 283. (13) (1879) 5 C.L.R., 97 (P.C.) at p. 101.

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of State for India(1), *Krishna Bhatta v. Secretary of State for India*(2), *Meenakshi Amma v. Secretary of State for India*(3), *Ambalavana Pandarasannadhi v. Secretary of State*(4) and *The Secretary of State for India v. Janakiramayya*(5). The case of *Sree Rajah Ooppalapaty Jogee Jaganadheruze v. Sub-Collector of Rajahmundry*(6), is an old decision of the Sudder Court. In *Durga Prasad Singh v. Rajendra Narain Bagchi*(7). Doss, J. holds that it is a question of intention when there is a difference between description and boundaries. That is the rule that ought to be applied in India. *Maclaren v. Attorney-General of Canada*(8), speaks of the presumption as an "English presumption" and does not treat it as one applicable everywhere. In *Farnham on Waters*, Volume I, pages 165 to 167, it is said that the presumption in England has a long history dating from the time of Edward the Confessor and Henry III. There is no such history in India. Madras Act III of 1905 shifts the onus from the State. English rules of construction do not apply to the construction of Crown grants in India; *Secretary of State for India v. Maharaja of Bobbili*(9) and *Secretary of State for India v. Ambalavana Pandarasannadhi*(10). He distinguished *Lord v. The Commissioners for the City of Sidney*(11), *Hunooman Doss v. Shamachurn Bhutta*(12), *Bhageeruthee Debea v. Greesh Chunder Chowdhry*(13), *City of London Land Tax Commissioners v. Central London Railway*(14) and *Powel v. Powel*(15).

T. V. Rama Ayyar was not called upon to reply.

The OPINION of the Court was delivered by

WALLIS, C.J.

WALLIS, C.J.—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 Adalat, 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 MICHAEL WESTROPP, C.J., in *Baban Mayacha v. Nagu*

(1) (1913) 24 M.L.J., 36.

(2) (1913) 25 M.L.J., 161.

(3) (1914) 26 M.L.J., 385 at p. 404.

(4) (1911) I M.W.N., 119.

(5) (1915) 29 M.L.J., 389 at pp. 399, 420, 422.

(6) (1858) Mad. S.A.D., 188.

(7) (1910) I.L.R., 37 Cal., 293.

(8) (1914) A.C., 258 at pp. 268, 272.

(9) (1916) 30 M.L.J., 163.

(10) (1916) 30 M.L.J., 415.

(11) (1859) 12 Moo. P.C., 473 at p. 496.

(12) (1862) 1 Hay, 426 at p. 427.

(13) (1863) 2 Hay, 541 at p. 547.

(14) (1888) L.R., 13 A.C., 364.

(15) (1916) 14 A.L.J., 684.

Shravucha and others(1) 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 Seebkrsto and others v. The East India Company*(2) appears to proceed upon the same view. The law was laid down in the same way in *Rajah Neelanund Singh and others v. Rajah Teknarain Singh*(3), and by the Calcutta High Court in *Hunooman Doss v. Shamachurn Bhutta*(4), and *Bhageeruthee Debea v. Greesh Chunder Chowdhry*(5), 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*."

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In this Presidency the decisions of the Sudder Court in *Sree Rajah Ooppalapaty Jogee Jaganadheruze v. Sub-Collector of Rajahmundry*(6) and of the High Court in *Subbaya and others v. Yarlagadda Ankinidu*(7), 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*(8), *Felix Lopez v. Muddan Thakoor*(9) and in *Nogender Chunder Ghose v. Mahomed Esuf*(10) while in *Forbes v. Meer Mahomed Hussein*(11) 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*(12) and in *Kandhendra Narain Chowdhry v. Matangini Debi*(13) appears to proceed on the same basis. In *Sri Babusu Ramalakshamma v. The Collector of the Godavari District*(14) 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

(1) (1878) I.L.R., 2 Bom., 19 at p. 40.

(2) (1856) 6 M.I.A., 267 at p. 288. (3) (1862) Cal. S.D.A. Reports, 160.

(4) (1862) 1 Hay, 426.

(5) (1863) 2 Hay, 541.

(6) (1858) Mad., S.A.D., 188.

(7) (1863) 1 M.H.C.B., 255.

(8) (1868) 2 B.L.R., 4.

(9) (1870) 5 B.L.R., 521.

(10) (1872) 10 B.L.R., 481.

(11) (1873) 12 B.L.R., 216.

(12) (1879) 5 C.L.R., 97.

(13) (1890) I.L.R., 17 Cal., 814.

(14) (1899) I.L.R., 22 Mad., 464 (P.C.).

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been given if it had been raised ; and they accordingly declined to discuss the question 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 Gōdāvāri, 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 not arise and in which the authorities above referred to were apparently not cited, cannot be taken as a ruling that the presumption is generally inapplicable in the case of non-navigable 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 the light of the authorities. We therefore consider it unnecessary to refer to 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 desirable 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.

N. R.