

APPELLATE CIVIL—FULL BENCH.

*Before Sir Owen Beasley, Kt., Chief Justice,
Mr. Justice Varadachariar and Mr. Justice King.*

1936,
December 17.

THE SECRETARY OF STATE FOR INDIA IN
COUNCIL REPRESENTED BY THE COLLECTOR,
WEST GODAVARI, (APPELLANT), APPELLANT,

v.

BAYISETTI VEERANNA AND FOUR OTHERS (RESPONDENTS),
RESPONDENTS.*

*Madras Irrigation Cess Act (VII of 1865) as amended in 1900,
sec. 1, Proviso 2—“Irrigated by using without due
authority”—Meaning of—Ryotwari holder—Wet lands of
—Water flowing into, without his knowledge—Liability for
water cess in respect of.*

The expression “irrigated by using without due authority” in the second proviso to section 1 of the Madras Irrigation Cess Act of 1865 as amended in 1900 can reasonably be held only to contemplate a voluntary user, that is, with a preconceived purpose or at least an intention so to use the water.

Where it was found that the wet lands of a ryotwari holder received water for about twenty-four hours through a breach in a channel while the source of irrigation assigned to those lands was a sluice in the channel but that he had nothing to do with the breach and was not even aware of it,

held that he was not liable to be charged to water cess.

Interpretation of the second proviso in *Kanniappa Mudaliar v. Secretary of State for India*, (1936) I.L.R. 59 Mad. 107, as regards the immunity of ryotwari holders of land classified as wet, approved.

APPEAL under Clause 15 of the Letters Patent against the judgment of PANDRANG ROW J. dated 23rd October 1935 and passed in Second Appeal No. 1433 of 1931 preferred to the High Court against the decree of the Court of the Subordinate Judge

* Letters Patent Appeal No. 10 of 1936.

of Ellore in Appeal Suit No. 213 of 1930 preferred against the decree of the Court of the District Munsif of Kovvur in Original Suit No. 562 of 1927.

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Government Pleader (K. S. Krishnaswami Ayyangar) for appellant.

O. T. G. Nambiar as *amicus curiae* for respondents.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—This Letters Patent Appeal arises out of a suit for recovery of water cess which the plaintiff alleges was illegally levied from him. The facts found are that the wet lands of the plaintiff who is a ryotwari holder received water for about twenty-four hours in August 1926 through a breach in the channel while the source of irrigation assigned to these lands was a sluice in the channel and that the plaintiff had nothing to do with the breach and was not even aware of it. On these findings of fact, our learned brother PANDRANG ROW J., before whom this second appeal came in the first instance, followed the judgment of a Divisional Bench since reported as *Kanniappa Mudaliar v. Secretary of State for India*(1) and held that the plaintiff was not liable to be charged to water cess. This Letters Patent Appeal was posted before a Bench of three Judges as it was represented on behalf of the Government that the decision in *Kanniappa Mudaliar v. Secretary of State for India*(1) required further consideration.

VARADACHARIAR J.

The matter has now been argued before us fully by the learned Government Pleader; and we are indebted to Mr. Nambiar who had kindly

(1) (1936) I.L.R. 59 Mad. 107.

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agreed to represent the other side as *amicus curiae*. It is not disputed that the case is directly governed by the decision in *Kanniappa Mudaliar v. Secretary of State for India*(1) so far as the effect of the second proviso to section 1 of the Madras Irrigation Cess Act is concerned. There are certain observations in that judgment, bearing upon the relative scope of clauses (a) and (b) of section 1 of the Act and their relation to each other, to which the learned Government Pleader took exception. It is not necessary for the purposes of this case for us to express any opinion upon the correctness or otherwise of those observations. Assuming for the moment that the present case falls under clause (b), it is sufficient to say that we agree with the opinion of the learned Judges so far as their interpretation of the second proviso to the section is concerned, namely, the one relating to the immunity of ryotwari holders of land classified as wet.

The expression "irrigated by using without due authority" can reasonably be held only to contemplate a voluntary user, that is, with a pre-conceived purpose or at least an intention so to use the water. In substance, the provision in respect of unauthorised or improper user is one in the nature of a penalty and the mere fact that sub-clause (b) of the enacting portion of the section was intended to apply even to cases of involuntary irrigation will not justify putting upon the language of the proviso a construction which is wholly at variance with the implication of the word "use" or the reference to "due authority".

(1) (1936) I.L.R. 59 Mad. 107.

As pointed out by the learned Judges who decided *Kanniappa Mudaliar v. Secretary of State for India*(1), a course of decisions in this Court had uniformly held that the word "used" appearing in different portions of the Act clearly contemplated voluntary user. When in 1900 the Legislature proposed to enable the Government to levy cess even in respect of involuntary irrigation, the Legislature did not indicate its intention to depart from the proper or declared significance of the word "used" but adopted different phraseology in clause (b) to cover cases of involuntary irrigation. We are, therefore, of opinion that even the policy of the legislation of 1900 would not justify us in putting upon the expression "using without due authority" a different interpretation from that adopted in the earlier cases. The Letters Patent appeal fails and is dismissed.

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CHARIAR J.

A.S.V.

APPELLATE CRIMINAL.

Before Mr. Justice King.

NANU NAIR (COUNTER-PETITIONER), PETITIONER,

v.

PUTHAN VEETIL KARTHYAYINI AMMA,
(PETITIONER), RESPONDENT.*

1937,
February 26

Code of Criminal Procedure (Act V of 1898), sec. 488—Adoptive father—Liability of, to pay maintenance to adopted child.

An adoptive father is not liable to pay maintenance to his adopted child under section 488, Criminal Procedure Code.

(1) (1936) I.L.R. 59 Mad. 107.

* Criminal Revision Case No. 654 of 1936 (Criminal Revision Petition No. 609 of 1936).