Appellate Jurisdiction. (a)

Regular Appeal No. 133 *of* 1872.

VENKATA REDDY and 4 others........... *Appellants.*

A. LISTER, Esquire, Head Assistant Collector of South Arcot, and 18 others................................. *Respondents.*

The plaintiffs, who were ryots under the Government, brought the suit to restrain the defendants, the Agents of the Government and others, from so altering a calingula as to diminish the quantity of water which the plaintiff were entitled to receive for the irrigation of their lands, and the plaintiffs alleged that the supply of water had been materially diminished by reason of the acts of the defendants. The only ground upon which the plaintiffs claim was put was that they had received the water for a long time. The District Court held that the Government were authorised to regulate the distribution of water in such cases. *Held,* on regular appeal.

Per HOLLOWAY, J. That no legal right was shewn by the plaintiffs which could have been violated by the defendants, and that if such right were established there was nothing to shew that a decree for damages would not have been the proper remedy.

Per INNES, J. That the evidence did not shew any diminution of the supply of water below the quantity to which the plaintiffs were entitled.

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THIS was a Regular Appeal against the decision of R. Swinton, the Acting Civil Judge of Cuddalore, in Original Suit No. 6 of 1871.

The plaintiffs, who are seven of the cultivating inhabitants of the village of Padarapuliyur, in the Tindevenam taluq, brought the suit against sixteen cultivating inhabitants of the village of Chendur and against Mr. Lister, the Head Assistant Collector in charge of that part of the district, and Mr. Graham, the Assistant Engineer. The object of the suit was to have cancelled by the Civil Court an order made by the Head Assistant Collector, and confirmed upon appeal by the Board of Revenue, and directing that the calingula, or outlet sluice, in the plaintiff's tank bank should be lowered. The plaintiffs asserted that by so lowering the calingula, the water supply in their tank was diminished so as to hold only three-fourths of the water it ought to hold, and that they had a right that their water should spread back over 149 kanies of the lands of Chendur. The prayer of the Plaint was as follows :—

(a) Present: Holloway and Innes, JJ.

This suit is brought by the plaintiffs to set aside the Board's order passed upholding the 1st defendant's order, to restore the calingula, constructed a long time ago consistent with the level of the capacity of the tank, valued at Rupees 1,461-10-2 to its original position and state, to cause the 143 and odd cawnies within the boundary of the defendants village of Chendur to be made use of as formerly and according to mamul for the waterspread of the said tank, and to prevent the defendants from interfering therewith.

The defendants answered that the Government were entitled to make what alteration they considered useful and beneficial to all concerned, and that the order of the 1st defendant was necessary to correct encroachments by the ryots of the plaintiff's village.

The following was the Judgment of the District Court :—

I found that the issues had been settled and the evidence in this case heard by my predecessor, the third issue being 'whether the 1st and 2nd defendants as agents of Government are vested with any authority, and. if so, to what extent, to regulate the supply of water for the purposes of irrigation;' and this being a matter of law, the question of my settling the case, if able to do so, upon the former evidence, was not raised, and the pleaders were directed to confine themselves to it.

The only decision pointed out (by the plaintiff's pleader) was that in the case of *Ponusamy Tevar* v. *The Collector of Madura*, Madras High Court Reports, Vol. V, page 6, but it was found not to apply to two common Ryotwari Government villages in which the repair and construction of the irrigation works were completely under the Collector and Engineer; from a portion of the judgment (that at the bottom of page 19) it may be inferred that what is termed the arbitrary power of Government could in such a case be maintained; and of all cases most suitable for the exercise of the authority and discretion of the Revenue authorities, this appears to be one,—the regulation of the waterspread behind one tank-bund so that it should not reach back upon

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the irrigated land behind it in juxta position and belonging to another village. Neglect or inability of the cultivators of the area of land originally supposed to be under a tank or channel might encourage those in front to increase their waterspread by lengthening their embankment or raising it, or they might do so finding the level of their tank being raised by deposit of silt, or, *vice versâ*, those behind might take advantage of a lessened waterspread in front to extend their cultivation, although there may have been originally an estimate of what the area under each tank ought to be; as these works are in propinquity, I believe in practice, they are extended and altered to suit natural causes, or the necessities or abilities of the people to cultivate; and the Collector and the Engineer of the district have always superintended this upon the complaint or representation of either party.

The plaint does not allege any breach of any regulation against the revenue officer; it is more as a regular appeal to this Court against the decision of the Board of Revenue, for which both parties were contented to wait.

Their remedy, if they have a wrong, would be now to apply to Government; whether the actual revenue is increased or diminished by the change made in the calingula seems to me utterly immaterial; the dispute is essentially one between the two villages.

How far Government can exercise its functions without having a law made to enable it to do so, is a nice matter, but in this case it appears to me that it was so unquestioned that the Revenue authorities had always decided such matters so that no precise law was thought necessary. Regulation XII of 1816 in the preamble laid down that the determining in the Adawlut of the Zillah of Suits respecting the cultivating and irrigating of land, as between proprietors or renters and their ryots, was inconvenient, and required Collectors to refer them to Panchayet, and presumably to decide those they did not refer, but these people of both villages are proprietors or ryots, and Section 18 of Regulation I of 1822 which extended the provisions of Regulation XII to all

disputes between ryot and ryot, was repealed by Act VIII of 1865 as if the object of that Regulation I of 1822 had only been to recover rent, and nothing has been provided but some Magisterial powers in the Criminal Procedure Code.

My finding upon the third issue is that the Head Assistant Collector and the Revenue Board had power or jurisdiction over the irrigation of both villages, so that their order to lower the calingula cannot be questioned in a Civil Court; there is no separate or any cause of action against the other defendants; and the suit is dismissed with costs.

The plaintiffs appealed to the High Court for the following reasons:—

The decree is contrary to law in that,—

1. The Government have no such power in the matter of irrigation as the Civil Judge imagines.

2. The appellants have had for a very long time the calingula in question of a greater height than now allowed by the Revenue Authorities.

3. The lowering of the calingula is calculated to cause serious loss to the plaintiffs.

4. The Civil Judge was wrong in disposing of the case on the 3rd issue only.

R. Báláji Rau, for *Sunjiva Rau* for the appellants, the 2nd to 5th and 7th plaintiffs.

The Government Pleader, for the respondents, the defendants.

The Court delivered the following Judgments:—

HOLLOWAY, J.—This is an application by tenants from year to year to prevent practically by injunction any alteration in a calingula, which has existed for some time.

It is unnecessary to advert to the difficulties which would be in the way of granting it on account of the relief sought being much more extensive than could in any circumstances be granted, because I am of opinion that the case has not a single ingredient necessary to the granting of such a remedy.

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I am unable to understand upon what ground the right is put. It cannot be upon prescription.

It does not stand upon express contract and from a letting from year to year it is impossible to imply a term as against the lessor that he will for all time leave unchanged not only the object let but every thing how remotely soever connected with it.

I am unable, therefore, to see any clear legal right which could have been violated by the acts of the landlord's agents.

If it were otherwise the case must fail, for there is not a particle of evidence that, if the changing of the state of things were an injury, it is one which could not be compensated by damages.

In my judgment the case of plaintiff fails on all points and should be dismissed with costs.

The original judgment put the right of the Revenue Board upon the executive authority of the Government, and with that doctrine we were unable to agree. If the acts had proved any violation of a contract by one of the contracting parties, we might have retained the suit and given permission to bring an action for damages.

INNES, J.:—Without at all departing from the principles upon which my judgment proceeded in the case reported at page 60 of Volume VII of the High Court Reports, I am satisfied that the evidence in this case does not show any diminution by the agents of the landlord (the Government) of the supply of water below the quantity to which plaintiffs are entitled for the purpose of carrying on their cultivation as heretofore. The Appeal must be dismissed with costs.

Appeal dismissed.