

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 5341

DATED 13th Oct

[Despatch Abstract.]

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Revenue (1897) Department.

CURRENT No. 8641

From The Board of Revenue
(Madras)

Order (no.) no. 5341 of 13th Oct 97

Recorded

No. 3659 Mis.

Dated 29 September 1897

Received 6-10-97

Registered 7-10-97

Enclosures

Spare copies.

SUBJECT.

Coming to the (Director of Prisons) in continuation of P.S. 2644 of 15-7-97 the Govt. Pleader's letter forwarding copies of the Decree & judgment in H.S. No. 191 of 1895 on the file of the High Court and sanctioning payment of Rupees 266-9-4 being the Government Pleader's fee in the case.

and

CR. 11 Oct 97

BACK PAPERS.

G.O.	No.	Department.	Date.
90	4797	—	2-7-97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

In the High Court of Judicature at Madras.

Friday, the ninth day of July, one thousand eight hundred and ninety-seven.

Present :-

The Honorable Mr. Justice Subrahmania Aiyar, C.I.E.,
and
The Honorable Mr. Justice Benson.

Appeal No. 191 of 1895.

- | | |
|---|---|
| 1. Sangili Veera Pandia Chinna Thambiar,
Zemindar of Sivagiri (died) | } Appellants
(Plaintiff and his
representative) |
| 2. Ramalinga Varaguna Rama Pandia Chin-
na Thambiar, minor, by the Collector
of Tinnevely, the agent to the Court
of Wards-Vide order on C.M.P.No. 137
of 1897 dated 27-1-'97.----- | |
| 1. Sundaramier, 2. Sundarappanikkan and
3 The Secretary of State for India
in Council represented by the Collec-
tor of Tinnevely ----- | } Respondents
(Defendants 1 to 3) |

Appeal against the Decree of the Subordinate
Judge's Court of Tinnevely in original suit No. 40 of 1893.

Grounds of Appeal

1. The Decree of the Lower Court is contrary to law and against the weight of evidence.
2. The Subordinate Judge has misunderstood the scope and effect of the proceedings under the Madras Forest Act V of 1882.
3. There was no adjudication by the Forest Settlement officer of the rights now claimed by the plaintiff, and it is unnecessary for a Settlement Officer to consider and define the full extent of rights of easement set up before him.
4. It is beyond the province and jurisdiction of a Settlement Officer to adjudicate upon the relative claims of private parties in respect of easements existing over reserved forests.
5. The Lower Court is wrong in holding that the plaintiff is not competent to seek remedy in the ordinary Civil Courts while the order of the Forest Settlement Officer has not been appealed against and is subsisting.

6. The Sub-Judge is wrong in holding that the present suit is barred by Sections 11 and 13, C.P.C.

7. The Sub-Judge is wrong in holding that the Plaintiff ought to have got the order Exhibit I set aside and that he having failed to pray in the plaint for such relief his claim is barred under article 14 Schedule II of the Limitation Act.

8. The opinion of the Subordinate Judge that the channel in dispute had come into existence more than 12 years before the suit and that the Defendants have been using the water of the river for such period by storing the same in a tank, is erroneous and against the weight of evidence.

9. The Sub-Judge has failed to give due effect in Exhibit D.

10. Defendants' Exhibit IV series V to XI are unreliable, and even if they are reliable the Sub-Judge has given undue weight to the same.

11. The Lower Court having found that the Plaintiff had the exclusive user of the water of the river all along until 1879, ought to have decreed the Plaintiff's Suit. The Lower Court is wrong in holding that a user by Defendants 1 and 2 of the waters of the river in question for a period of 12 or even of 6 years is sufficient to invest them with rights as against the Plaintiff.

12. The finding of the Sub-Judge on the 6th issue in so far as it is against the Plaintiff is contrary to law.

13. The finding of the Sub-Judge on the question of damages is contrary to law and against the weight of evidence.

14. The Lower Court was wrong in not having allowed the Plaintiff an opportunity to examine an important witness.

15. The Sub-Judge is wrong in holding under issue 7 that the suit is barred by limitation.

16. The interests of Government and Defendants 1 and 2 being substantially identical, the Lower Court was not justified in awarding separate sets of costs to Defendants."

Decree :- This appeal coming on for hearing on Monday and Tuesday, the 5th and 6th instant; Upon perusing the grounds of appeal, the judgment and Decree of the Lower Court and the material papers in the suit; and upon hearing the arguments of Mr. M. R. Ramakrishna Ayyar and Mr V. C. Sessa Chariar, Vakils for the 2nd Appellant and of Mr. R. Sivarama Ayyar, Vakil for the 1st and 2nd Respondents and of the Government Pleader for the 3rd Respondent and the case having stood over for consideration till this day this Court doth order and decree that the Decree of the Lower Court be, and the same hereby

is confirmed and this appeal dismissed, and this Court doth further order and decree that the 2nd appellant do pay to the Respondents Rs. 356-15-0 for their costs in opposing this appeal.

Memorandum of costs

Respondent's (1 to 3rd Defendants) costs	
Stamp for Vakalatnama-----	2 - 0 - 0
Pleader's fee on Rs. 5829-----	266 - 9 - 4
One printed copy purchased -----	87 - 11 - 8
Translation charge-----	0 - 10 - 0
To be paid to the Respondents (1st to 3rd Defendants) by the 2nd Appellant (Plaintiff's representative)-----	356 - 15 - 0

/signed/ D.W.G. Cowie,

Registrar, High Court.

/True Copy/

Md. R. H.

L. Swamikannu
6 OCT 1897
Asst Secretary

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the ninth day of July,

One thousand eight hundred and ninety-seven.

Present:-

The Hon'ble Mr. Justice SUBRAHMANYA AYYAR C.I.E.,

and

The Hon'ble Mr. Justice BENSON.

Appeal No. 191 of 1895.

1. Sangili Veera Pandia Chinna Thambiār, Zenindār
of Sivagiri (died) } Appellants
2. Ramalinga Varaguna Rama Pandia Chinna Thambiār, } (Plaintiffs and
minor, by the Collr. of Tinnevely, the Agent to - } his representa-
the Court of Wards. Vide Order on C.M.P. No. 137 of } tive).
1897, dated 27th January 1897.

1. Sundaramier. } Respondents
2. Sundarappanikān, and } (Defendants 1 to
3. The Secretary of State for India in Council re } 3).
presented by the Collector of Tinnevely.

Appeal against the decree of the Subordinate Judges
Court of Tinnevely in original suit No. 40 of 1893.

This appeal ^{coming on} ~~coming on~~ for hearing on Monday & Tues-
day, the 5th & 6th instant, and having stood over for consideration
till this day, the Court delivered the following

Judgment.

The question in this appeal relates to the rights
of the parties to the use of the natural stream called kattar or -
Puthukulam.

The stream rises in, and flows through, Government --
lands, before it empties itself into the Puthukulam Tank, which is --
situated within the Zenindār of the plaintiff.

The defendants 1 & 2 are persons who hold land in--
der Government, which land is now partly irrigated by a channel ta-
ken off from the said stream within the limits of the Government --

land

Above the Zemindari.

The 3rd defendant is the Secretary of State for India in Council.
Plaintiff sues ^{to} establish his exclusive right to the waters of the stream and for an injunction to restrain the defendants from in any way interfering with that exclusive right.

This claim to exclusive right to the water was put forward before the Forest Settlement Officer in 1886 and was by him disallowed after due enquiry under Act 5 of 1882 (The Madras Forest Act).

The plaintiff did not appeal against that decision, and it therefore became final.

The Subordinate Judge, therefore held that the plaintiff was precluded from re-agitating the question in this suit.

The plaintiff, as appellant before us, contends that the Subordinate Judge was in error, on the ground that the Forest Settlement Officer had no jurisdiction to give an adjudication on the question. The appellant's argument is that the exclusive right which he now claims over the water is not one of those rights which are specified in section 10 or 11 of the Act, and in regard to which alone the Forest Settlement Officer had jurisdiction. We cannot accept this contention. As a mere riparian proprietor the plaintiff could only have a right to the lawful use of the water flowing through his land subject to the similar rights of other riparian proprietors, but his claim to the exclusive use of the water shows that he ^{claimed} ~~claimed~~ more than the rights of a riparian proprietor. Now ^{a claim} ~~claim~~ to use the water of a natural stream in a manner not justified by natural right is undoubtedly a claim to an easement. (Gale on Easements, p. 20 6th edition).

In other words, the right claimed by the plaintiff was, in the language of Lord Watson in Dalton vs. Angus, "a right of property in the owner of the dominant tenement—not a full or absolute right—but a limited right or interest in land which belongs to another whose plenum dominium is diminished to the extent to which his estate is affected by the easement". 6. Appeal Cases 830.

It seems, therefore, clear that the right claimed by the plaintiff was a right in respect of water flowing in a defined channel on Government land, that is of a water-course, and, therefore within the jurisdiction of the Forest Settlement Officer under section 11.

It is contended by the Appellant that the rights of way, pasture and Forest

Forest produce referred to in clauses (a), (e) and (d) of the section are rights to be exercised on the land itself, and that, by analogy, the right to a water-course referred to in Cl. (b) must be of a similar or a similar restricted kind. There is, in our opinion, no ground for such a limitation, but even if it were otherwise, the right which the plaintiff claims was such as falls within the words "a right in or over any land" in the first line of the section, and was, therefore, a right in respect of which the Forest Settlement Officer had jurisdiction to adjudicate under section 10. In a word, the right claimed was one on which the Forest Settlement Officer had a right to adjudicate either under section 10 or section 11, and in either case, the appellant's objection that he had no jurisdiction fails. The result is that on this ground alone the decree of the Subordinate Judge dismissing the suit must be upheld.

It was, however, urged that even if the plaintiff had not an exclusive right to the water of the stream, he had a right as a lower riparian proprietor to obtain an injunction to restrain the defendants from using the channel inasmuch as such user was in excess of the 3rd defendant's right as a higher riparian proprietor. In regard to this view we observe that neither in the plaint, nor when framing issues, did the plaintiff rely on his rights as a riparian proprietor, or raise any issue as to whether the defendants had used the water in a manner not justified by their riparian rights, and the question has not been tried. Considering how long the matter has been in dispute we do not think we should be justified in allowing the plaintiff to raise at this stage a fresh issue of fact which he might and ought to have raised in the Lower Court.

We must therefore dismiss the appeal with costs.

By the Court

/sd/ D.W.G. Cowie

To the Subordinate Judge of Tinnevely

Registrar

(with record & six spare copies of printed judgment).

(True Copy)

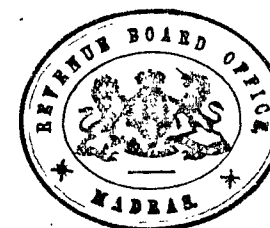
(sd) J. I. Gillespie,
Ag. Dy. Registrar,

Appellate Side.

(True Copy)

L. Swamikannu

6 OCT 1927



Proceedings of the Board of Revenue
(Land Revenue).

No. 3659 Misc., dated 29th September 1897.

Read the following letter from the Government Pleader, Madras dated 23rd September 1897, No. 794, to the Secretary to the Commissioners of Land Revenue, Madras.

In continuation of this office No. 512 of the 12th July 1897, I have the honor to forward herewith copies of the Decree and judgment in A.S. No. 191 of 1895 on the file of the High Court and to request that you will be so good as to obtain the Board's sanction for Rs 266-9-4 being my fee in the same.

-----00-----

Resolution.

Communicated to the Collector of Tinnevelly in continuation of Board's Proceedings No. 2614 Mis., dated 15th July 1897.

2. The payment of a fee of Rs 266-9-4 to the Government Pleader is sanctioned.

(True copy & Extract)

Ree
Secretary.

To the Collector of Tinnevelly, with the copies of the judgment and decree

Copy to the Government Pleader

" Accountant-General

" Secretary to Govt. R.D. for information with reference to the correspondence ending with P.B. 5720 his 15-11-95 with copies of the decree & judgment

* will follow

C.B.
15-11-95

When given for copying _____
 When copied _____
 When examined _____
 When signed _____

189.

READ AGAIN G.O., No.
 139

DATED

C. No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

N.B.—

A = Copy in full.
 B = Not to be copied.
 P = Copy abstract only.
 Q = Copy heading only.