

S. Srirama Raja and ors. Vs. the Secretary of State for India in Council, Now the Province of Madras, Represented by the Collector of Chingleput District

S. Srirama Raja and ors. Vs. the Secretary of State for India in Council, Now the Province of Madras, Represented by the Collector of Chingleput District

SooperKanoon Citation : sooperkanoon.com/794572

Court : Chennai

Decided On : Sep-25-1942

Reported in : AIR1943Mad85; (1942)2MLJ800

Appellant : S. Srirama Raja and ors.

Respondent : The Secretary of State for India in Council, Now the Province of Madras, Represented by the Collecto

Judgement :

Alfred Henry Lionel Leach, C.J.

1. The appellants are the shrotriendars of Pudupakkam in the Chingleput district. Their binds are watered from a tank at Padur. Padur is a Government village and shares with Pudupakkam the water of this tank. In other words, the tank is owned jointly by the appellants and by the Government. In 1913 the tank was in need of repair and the Collector caused an estimate to be prepared. The shrotriem ayacut watered by this tank measures 454.10 acres and the Government ayacut measures 554.94 acres. The total cost, according to the estimate, was Rs. 3,630, and the appellants' share came to Rs. 1,633-9-10. On the 20th November, 1913, the Collector wrote to the appellants stating that the proportionate share payable by them in- respect of the cost of the repairs to the tank was Rs. 1,633-9-10, and a copy of the estimate was sent to them. They were requested to pay the amount in

the treasury and if they had any objections to offer to state those objections within a month. The appellants replied to this letter on the 17th December, 1913. They did not object to the estimate or to the work being carried out, but they objected to making any contribution to the cost of the repairs. They stated that repairs to the tank had been undertaken twice before and they had not been called upon to pay anything. They also considered that as they had paid the water cess for the second crop which for the previous ten years averaged from Rs. 60 to Rs. 70 it was unjust of the Government to make any demand in connection with the repairs which were to be undertaken. On the 27th. August, 1914, the Collector addressed a further communication to the appellants. This document has not been exhibited, but it apparently required them to pay the Us. 1,633-9-10. On the 17th September, 1914, the appellants replied to this further demand on the lines of their letter of the 17th December, 1913. The repairs were completed by the month of April, 1918, but no further demand was made upon the appellants until the 13th March, 1934. The matter had apparently been overlooked in the meantime.

2. On the 30th October, 1935, the Government instituted in the Court of the District Munsiff of Chingleput the suit which has given rise to this appeal, claiming the payment of the sum of Rs. 1,345 which was the proportionate share of the appellants of the actual cost of the repairs. The claim of the Government was not subject to the law of limitation and the District Munsiff heard and decided the case on its merits. The District Munsiff considered that the appellants were liable and consequently decreed the suit. The appellants appealed to the District Judge who concurred in the judgment of the District Munsiff on the ground that the case was governed by the decision of 'this Court in Saptkarishi Reddiar v. Secretary of State for India : AIR1915 Mad1081 . Thereupon they appealed to this Court. The case came before Kuppuswami Ayyar, J., who considered that there were certain decisions of this Court in conflict with the judgment relied on by the District Judge and therefore it was desirable that the case should be heard by a Bench,

3. The facts in Saptharishi Reddiar v. Secretary of State for India : AIR1915 Mad1081 are identical with, the facts of this case. There, Ayling and Tyabji, JJ., held that the defendants who owned a tank jointly with the Government were liable to contribute to the cost of repair by reason of the provisions of Section 70 of the

Indian Contract Act. The Court recognised that the provisions of this section, are wider than the English law. Under the English law the defendants would not be liable, but the Court could only have regard to the Indian statute law and the section made them liable to contribute.

4. Section 70 of the Indian Contract Act reads as follows:

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Therefore when a person lawfully does something for another person and does not intend to do so gratuitously the other person is bound to pay compensation if he enjoys the benefit of what has been done.

5. In *Saptharishi Reddiar v. Secretary of State for India* : AIR1915 Mad1081 , it was held that in carrying out the repairs the Government had acted lawfully, that it, had not intended to carry them out gratuitously and that the defendants had enjoyed the benefits of the repairs. That is exactly the position here. It is not suggested that in carrying out the repairs the Government was doing something which was unlawful. it is not denied that the repairs were necessary, and it is obvious that if they had not been carried out the appellants' lands would suffer. In fact without the water they would not be capable of cultivation and as the result of the repairs they have had the benefit of water drawn from this tank. We agree with the decision in *Saptharishi Reddiar v. Secretary of State for India*. All the conditions of Section 70 have been fulfilled in the present case and the Court must, in these circumstances, award compensation to Government.

6. We have examined the cases which Kuppuswami Ayyar, J., had in mind when he referred this appeal to a Bench. In some of these cases there are observations which would be in conflict with *Saptharishi Reddiar v. Secretary of State for India* : AIR1915 Mad1081 , if the facts were the same, but the facts in the other cases were Very different and we do not consider that it is necessary to go beyond *Saptharishi Reddiar v. Secretary of State for India* : AIR1915 Mad1081 For

instance, there has been much discussion on the meaning of the word 'enjoys' in Section 70. Here, there can be no doubt that the appellants have enjoyed the benefit of the work done by Government and this being the case they must contribute to the cost of the work which Government has carried out. (Consequently we hold that the suit was rightly decided by the Courts below.

7. A regrettable feature about this case is the delay which has taken place in the enforcement of payment it is certainly hard on the appellants that the Government should have left matters in abeyance for so long. The Government has however chosen to enforce the claim and, as the law stands, it is entitled to a decree, but in dismissing the appeal we grant no costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com