

Case Note: A non-tidal and non-navigable river ran between the lands of the plaintiff and the defendants. There was an abnormal flood in the river, with the result that there was a sudden and marked change in its course. The plaintiff claimed to follow the river to its new course and to take possession of all the intervening lands including the whole of the old river bed. The court held that as the change in the river bed was due not to gradual accretion but to the sudden and violent effects of an unprecedented flood the plaintiff was not entitled to the relief claimed, apart from one-half of the old river bed.

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(1927)29BOMLR1405

IN THE HIGH COURT OF BOMBAY

Decided On: 11.07.1927

Shri Shushilendratirth Swami

v.

Secretary of State for India

Hon'ble Judges:

Amberson Marten, Kt., C.J. and Crump, J.

JUDGMENT

Amberson Marten, Kt., C.J.

1. This is a dispute between the plaintiff as inamdar of the inam village of Khyad on the one hand, and the Secretary of State and others as owners and occupiers of the Government village of Manneri on the other hand, with reference to the river Malaprabha in the Bijapur District, which was formerly the dividing line between these villages, but which has since changed its course and shifted towards the Manneri side. The substantial question in effect is whether the plaintiff is entitled to follow the river to its present course, and to claim all the intervening lands including the whole of the old river bed.

2. The defendants contest this claim, and say that at the most the plaintiff is entitled to the western half of the old river bed. One main point is whether there was a gradual accretion to the land of the plaintiff by gradual alteration of the course of the river to its present position as the plaintiff contends, or whether there was, as the defendants contend, a violent change in 1914 as the result of an unprecedented flood which in effect caused the river to take a new course. The learned Judge accepted the latter view and dismissed the suit. The plaintiff appeals.

3. Now the parties here had the advantage, and we have the advantage, of a patient and careful trial in the trial Court, and of a judgment which leaves nothing to be desired in the way of lucidity, if I may be allowed to say so. We have not thought it necessary to hear

the pleaders for the respondents, and accordingly we are content to take the case on the findings of fact arrived at by the trial Judge. The learned Judge's conclusions are summarised at p. 12 of his judgment. In effect he found that, contrary to the story set up by the defendants, there was up to 1905, over a period of some forty or fifty years, a gradual accretion to the land of the plaintiff. But after 1905 he finds that the evidence of further accretion is very weak, and he expressly accepts the case set up by the defendants that in 1914 there was this abnormal flood which caused the river substantially to alter its course. He is prepared to assume that there was some slight accretion after 1905, but his finding is that the change which took place after the flood in 1914 is so great that it cannot possibly be accounted for by any process of ordinary normal accretion. He, accordingly, held that so far as any normal accretion was concerned, the western half of the river bed which the defendants had ceded to the plaintiff represents the maximum which the plaintiff could fairly claim.

4. We have listened carefully to the arguments put forward by the learned pleader for the appellant, and have carefully considered the points which he has urged on behalf of his client. He has asked us to accept the village records kept by the inamdar, or kept for the inamdar, as showing that the accretion went on gradually from time to time. We have weighed all that, but it is undoubtedly very unfortunate that no proper map was ever prepared of the inam land, and that even at the trial the inamdar did not furnish a proper map prepared by a surveyor and drawn to scale.

5. Under those circumstances the map, Exhibit 134, drawn by the Government surveyor at a much later date has been accepted as showing the position as it existed at the trial of the suit. The plaintiff does not accept the northern boundary of Survey No. 87 of the inam lands, nor, so we understood at the end of his pleader's argument, did he accept the western boundary of the old river bed as being shown correctly. But, apart from that, the map shows the position approximately, the pink being the normal site of the present river, the yellow the old site, and certain intervening white lands Nos. 1 and 3 being part of the lands in dispute. Incidentally I may here observe that according to the learned Judge's notes of inspection, Exhibit 154, made by him on the occasion of his visit on August 24, 1903, which was in the monsoon, part of those white lands 1 and 3 were then under water.

6. The crux of the case seems to me to be this. Was there an extraordinary flood in 1914, or was there not ? And is it a fact that there was then a sudden and marked change in the course of the river? In my judgment the learned Judge was correct in answering both those questions in the affirmative. [His Lordship after discussing the evidence continued.]

7. There being, then, in my judgment, ample evidence to justify the learned Judge, who had the advantage of seeing the witnesses and also making a local inspection, in coming to the conclusion which he in fact did, what then ought our findings in law to be ? As regards that, he states in answer to issue No. 3: "It has not been suggested that the plaintiff could have any right to the plaintiff lands if they are not gradual accretions to their lands." Now the word "gradual" comes to us from English law coupled with one or two other epithets like slow and imperceptible, It has also found its way into one of the Regulations affecting Bengal, and later on, Oudh. We have not got that expression in the

old Regulations affecting our own Presidency. But nevertheless, as has been pointed out in the cases, it is useful to note what has been applied as being good law in other parts of British India.

8. In applying, then, the law of accretion or other parts of the law relating to changes in a river affecting various rights, such as fishery rights and so on, it has been recognised that different tests or standards of what is "gradual" may have to be applied when you are dealing with mighty rivers like the Ganges in India, or say the Missisipi in the United States, as compared with some of the more placid rivers in England. In particular in *Lopez v. Muddun Mohun Thakor* (1870) 13 M.I.A. 467 and *Srinath Roy v. Dinabandhu Sen* (1914) L.R. 41 I.A. 221, s.c. 16 Bom. L. R, 901 we have the decisions of their Lordships of the Privy Council dealing with the Ganges. In *Secretary of State for India v. Raja of Vizianagaram* (1921) L.R. 49 I.A. 67 we have a decision with relation to the Godavari. Here we have not got a tidal or navigable river. It is a non-tidal non-navigable river, and it cannot in any way be compared in volume or in behaviour with mighty rivers like the Ganges and the Godavari. All the evidence in this case goes to show that for some forty or fifty years prior to 1914 there was nothing violent in the action of this river in this particular locality, and that there were no such violent changes as one reads of in connection with really large Indian rivers.

9. The case, therefore, seems more to resemble that of *Thakurain Ritraj Koer v. Thakurain Sarfaraz Koer* (1905) L.R. 32 I.A. 165 I.L.R. 27 All. 655, s.c. 7 Bom. L.R. 872, where the Board had to deal with a non-tidal river the Gogra, and where they held on the facts that there had been there a sudden change in the course of the river, and that consequently there was no gradual accretion within the meaning of the Regulation applicable to Oudh.

10. On the facts then of this particular case I have no hesitation in holding that the authorities as to gradual accretion do not apply. I mean that there was no gradual accretion on the facts of this case within the principles laid down in the various authorities. Therefore the concession which was made in the lower Court as to the law on the point was correct.

11. I fully recognise the importance of this ease to the plaintiff because as presented to us, and without hearing what the respondents have to say, it would appear that the plaintiff is now cut off from the normal site of the now river bed. On the other hand, it would seem hard on the owners of the old Manneri lands that they should be deprived of their lands because of a violent change in the course of the river. Indeed if I understood the argument of the appellant correctly, he could claim to follow the river, no matter how far it was deflected, and to take possession of all the intervening lands. In my judgment, he must be content with the half side of the river bed which he has already got. And if any concessions as to water rights are to be obtained in relation to the new river course, that must be a matter of negotiation between him and the persons who can give him those rights.

12. I would, accordingly, dismiss this appeal with costs.

Crump, J.

13. The river Malaprabha flows between the inam village of Khyad and the Government village of Manneri in the Badami taluka of the Bijapur District, The plaintiff in this suit is the inamdar of Khyad, and the defendants are the Secretary of State for India in Council and certain land owners in the village of Manneri. The plaintiff's case as set out in his plaint is that the above river for a period of some forty-three years has been gradually changing its course, and as it has proceeded from west to east, the land which is left behind it is in the nature of accretion to the plaintiff's land, and, therefore, becomes his property according to the law of alluvion. The exact nature of his case may be best understood by a reference to the map, Exhibit 134, which is accepted by the parties as correctly representing the present state of affairs, though the plaintiff does not admit that the former situation of the river bed is correctly shown in the map. What then the plaintiff says is that the river has been gradually moving in an easterly direction from its original course which is shown in yellow in the map, and that the land which is left behind it is in the nature of an accretion to his property and therefore is also his property. Now that case postulates that there has been no sudden change in the course of the river. The defendants on the other hand urge that the yellow colour in the map shows the course of the river bed in the year 1905, and that that course remained practically unaltered up to 1914 when owing to a sudden violent flood the river cut a new channel as shown by the pink colour in the map.

14. Now it is fundamental to the plaintiff's case to prove that the process of accretion was gradual. I do not mean by the word "gradual" to indicate that it was necessarily slow, because the law of alluvion as applied to this country does not require that that should be the case. But the plaintiff in my judgment must show that the change in the bed of the river was a gradual change in the sense that it was not per saltum. For if the river suddenly moved from the course shown yellow in the map to that shown pink, it could in no sense be held to have gradually changed its course and therefore there would be no accretion to the plaintiff's land within the ordinary meaning of that term. That, therefore, is the main point in the present case, and in approaching it our labours have been much lightened by the full and careful judgment of the District Judge, and also by the fact that his findings have to a large extent been accepted by the appellant before us. The learned Judge has found that up to 1905 there was a process of gradual accretion on the Khyad side of the river. But he has found that the land shown in the map between the old and the new course of river cannot possibly be ascribed to gradual accretion between 1905 and 1914; and it is to this latter part, of his findings that objections have been taken in the argument before us. Plaintiff would have it that the process continued up to 1914 and that there was no sudden and rapid change in the course of the river in that year. But in view of the evidence on the record, it is impossible to displace the finding of the learned District Judge upon that point. There is a practical consensus on the part of witnesses for the plaintiff that in the year 1914 there was a flood of unprecedented violence, and some of them go so far as to admit that the river changed its course owing to that flood. If that is so, if the river suddenly cut through the land of the defendants as shown by the course marked red on the plan, I know of no principle of law on which the defendants can be deprived of the portion of their land which has been severed from the Manner side by the

sudden change in the course of the river. Certainly the law of alluvion will have no place in dealing with a case like this.

15. In the judgment of the learned Chief Justice the evidence upon this point of the flood has been discussed, and I do not propose to add much to it, [His Lordship after referring to some facts continued:] It is impossible to doubt that the District Judge has come to a correct conclusion upon the most important point for decision in the present case. If there was a sudden change in the course of the river, that alone goes far to negative the case set up by the plaintiff in his plaint which, as I have said, postulates that the river moves gradually for forty-three years from its old bed marked yellow to its new bed shown in pink. I have (?aid the plaintiff does not accept the old bed shown in yellow as being correct. The learned Judge has fully discussed that matter at p. 9 of the printed judgment, and it appears to me that the reason which he gives for holding that Exhibit 134 shows the western bank of the old river bed as it was in 1905 with reasonable correctness has not been successfully impugned in the appeal before us. The plaintiff, on the other hand, has put forward no counter theory, and that being so, I am content to accept the District Judge's finding upon this point, and to hold that the old bed of the river in 1905 is correctly shown.

16. I propose starting from that point to discuss briefly the evidence on which the plaintiff has relied in proof of the accretion which he alleges, I have already said that a sudden flood in Khyad and the new change thereby caused in the Manneri lands dispose conclusively of the theory of gradual accretion. But even upon the plaintiff's own statement of his case it may be doubted whether he can be held to have made out the theory of gradual accretion to the extent which he now alleges. [His Lordship after discussing evidence continued :] Thus the substance of the matter is. this that the plaintiff has failed to show by any clear and unimpeachable evidence that accretion to the extent which he now claims could possibly have taken place even if there had been no sudden change in the course of the river. It seems to me that the District Judge is perfectly correct when he says: "I do not deny the possibility that there may have been some further accretion to the plaintiff's lands, by a gradual process, after 1905, but this further accretion, if any, was probably small. I could not possibly hold on the evidence that it Extended beyond the centre line of the old river bed". That finding in itself would be enough to dispose of the plaintiff's case.

17. Taking the matter as a whole and giving full weight to the arguments that have been advanced before us, it would be impossible on such grounds as have been made out to displace the full and careful judgment of the learned Judge in which every circumstance in favour of either party has been weighed with scrupulous exactitude.

18. I, therefore, concur in holding that these appeals must be dismissed with costs.

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