

Case Note: Case involving the construction of a permanent structure on the river in order to divert its water by a riparian land-owner. The Court held that the landowner had a right to build temporary structures as the right to do the same had accrued to them due to prescription but not to construct a permanent structure.

This document is available at www.ielrc.org/content/e2901.pdf

(1930)32BOMLR492

IN THE HIGH COURT OF BOMBAY

Decided On: 08.11.1929

Hota Virabhadrayya Garu

v.

Sri Raja Manyam Mahalakshmanna Garu

Hon'ble Judges:

Buckmaster, Viscount Dunedin, Tomlin, George Lowndes and Binod Mitter, JJ.

JUDGMENT

Buckmaster, J.

1. For the purpose of the few remarks that are necessary to dispose of this matter, the Board assumes, in accordance with the instructions of counsel, that the map before them is a map which is north and south, east and west, according to the square of the paper. So regarded, it appears that there were originally two estates, one known as the Gutala estate on the south and the Polavaram estate on the north of a river known as the Kovvada river. The river does not form the actual boundary of the estates, for in part it flows wholly through the Polavaram estate, a small strip of Polavaram being left to the south, but the above description is roughly accurate. The Kovvada river comes first from the north down to the south and then due west to east, and runs through the greater part of its course in the Gutala estate. The Polavaram estate had another river running through, which was called the Pedrala river.

2. In 1829 it became of considerable consequence to try and arrange, as between these two estates, how the waters from these streams could be best adjusted for the purpose irrigating the lands through which they flowed, and there would appear to have been an agreement made for that purpose. What the agreement was it is now unnecessary to determine, because of the events that have subsequently occurred. It is stated that its purpose was to enable the owner of the Gutala estate and the owner of the Polavaram estate respectively to erect permanent dams across their various rivers for the purposes to which reference has been made. The agreement is not in existence, and the circumstances

that have happened since show that, even if it did contain the terms which it is alleged were there, the owner of the Gutala estate has completely lost the right to erect permanent dams across the bed of the Kovvada river. The Gutala estate ultimately got divided, and it is now in part called the Gutala estate, and in part the Gangole estate, the Gutala estate being that part furthest to the east. The Gangole estate is the one which occupies the greater part of the bed of the river, and it is the one in respect of which the difficulty mostly arises, for in that estate there is a bend in the Kovvada river, off which there runs a stream called the Sagipadu stream, which, according to this map, fills the tanks and irrigates the land that lies to the south of the Kovvada river. The Gangole estate claimed j that they were entitled to put a permanent structure across the Kovvada river, and they in fact appear to have attempted this from time to time and to have erected in 1911 a masonry structure called a Valanka, that runs some 200 yards out into the river.

3. Their right being disputed, they started proceedings for a declaration claiming their right in these terms, and although they asked in their plaint for such other relief as the Court might grant, their clear plain claim was to erect permanent structures.

4. Now both the Courts have held that such a claim cannot be maintained ; that, whatever may have been the contents of the original agreement, for more than twenty years before the commencement of this suit, the owners of the land and the stream that lie below the Gangole estate have enjoyed the water free entirely from any such interruption as these structures would create, and it follows, therefore, that that claim must fail. The High Court has held that that in substance is the whole dispute and, that claim failing, they have dismissed the suit. It is a possible view to take of the litigation, but it appears to their Lordships that it is not the one that ought to be taken in the circumstances of this case. Both Courts, the High Court and the Court of first instance, hold that there has been from time to time an interruption of the water of Kovvada through the erection of structures put up by the owners of the Gangole estate at the point of junction of the Sagipadu and Kovvada streams. The exact character, extent and nature of these structures are not very clearly defined, but that they were there and that they were used for the purpose of feeding the Sagipadu stream with water from the Kovvada river is beyond dispute. That right has been exercised for twenty years before the beginning of these proceedings, and their Lordships think that it is important that it should be preserved. It might be jeopardized if in fact the course taken by the High Court were adopted and the action were dismissed without more. The right, therefore, which the evidence shows that the Gangole estate people possess is a right to such interference with the water of the Kovvada stream as has been effected by continual use of what are described as temporary structures at the junction of the two rivers, Kovvada and Sagipadu, and that right their Lordships propose to preserve to them. And in 1911 the temporary structures were changed and a permanent one was erected, this permanent structure, which ought not to be there, must not be considered in measuring the appellant's rights.

5. Their Lordships think, therefore, that they will do justice in this case if they declare that the plaintiff, Hota Virabha-dravya, is entitled to divert water from the Kovvada stream so as to secure a flow in the Sagipadu channel for the purpose of irrigation by the erection of temporary structures at the point of junction of the stream and channel, the

nature and size of such structures and the conditions of their erection to be determined by ascertaining the character of those used during the twenty years before the commencement of the suit, but disregarding for this purpose the permanent cross-dam and valanka erected in 1911, and, in the absence of agreement, the nature and size of the structures to be erected pursuant to this declaration and the conditions of their erection are to be settled by the Government Agent at Godavari.

6. Mr. DeGruyther has suggested that all such a declaration establishes is the security of the natural right possessed apart from prescription. It may or may not be so; but it is possible that the use of these structures has given a larger right than the natural right, and it is that larger right that their Lordships think ought not to be lost or jeopardized.

7. In those circumstances they think that the above declaration should be substituted for the order that has been made, and, for the purpose of simplicity, it seems that it would be better if all the orders were discharged and this Board made one order in both actions, declaring in the terms above indicated with the addition that there was no right whatever to erect any permanent cross-dam or Valanka which the appellants claim the right to erect; and that the masonry or Valanka that has already been erected should be taken down; and this order should be substituted in the place of the other orders.

8. There only remains the question of costs. The form of action, in their Lordships' opinion, certainly lends support to the judgment that was delivered by the High Court. It was because the High Court refused to exercise a power that they possessed to modify the relief that the plaintiff asked that their Lordships have thought it right to interfere, and therefore they do not think the order of the High Court as to costs should be interfered with. It must be remembered that, from beginning to end, the plaintiff Hota Virabhadrayya sought rights that he was not entitled to enjoy.

9. As to the costs in the proceedings before this Board, their Lordships think that there should be no order as to costs at all. Apart from the circumstances to which attention has already been called, there does remain the fact that for over three years the record has been in the Privy Council Office, and no adequate reason is offered as to why that time has elapsed before this matter has been set down for trial. Their Lordships think it is of the utmost importance that the people in India should realise that the statements their Lordships have made, as to the essential duty on the part of litigants to use all reasonable speed to bring their cases to trial, are not mere empty phrases; and their Lordships mean to enforce and make them effectual by the only instrument in their hands, by dealing with the question of the costs on the appeal where the delay arises.

10. For these reasons their Lordships will humbly advise His Majesty to make the order indicated in this case; there will be no interference with the orders as to costs in the Court below; and there will be no costs of these appeals.

Note: This document has been provided online by IELRC for the convenience of researchers and other readers interested in water law. IELRC makes no claim as to the accuracy of the text reproduced which should under no circumstances be deemed to constitute the official version of the document.