

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Sri
Balsu Ramalakshamma v. The Collector of
Godaveri District, from the High Court of
Judicature at Madras; delivered 24th March
1899.*

Present :

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

Delivered by Lord Hobhouse.

The Plaintiff in this case, who is now the Appellant, brought the present suit for the purpose of establishing as against the Collector who represents the Government, her title to a formation of land in the river Godaveri. The formation is called a lanka, which term, as their Lordships understand, not only includes islands more generally known as churs, but also accretions to the banks of rivers. The lanka in dispute is one formed in contact with an island called the Tatapudi lanka.

The Plaintiff and the Government are neighbouring owners of land. Each possesses a village and lands on both banks of the Godaveri, the Government village Tatapudi being higher up stream than the Plaintiff's village which is called Kapileswapuram. The river is very broad; said to be in some places hard by four miles broad. At this spot, their Lordships gather from some measurements made in 1866 that it was then not less than two miles broad. It is above the flow of the tide, but is used for navigation, whether at all times or only when the waters are high does not appear.

At some time not precisely specified an island was formed commencing at a point in the river between the banks which are owned by the Government, and extending gradually till its lower extremity protruded between the banks which are owned by the Plaintiff. The Government took possession of this island. The Plaintiff's predecessor in title claimed it in the year 1847, and the Collector rejected his claim. He sued for possession in the year 1859, but his suit was barred by time. This island is Tata-pudi lanka, and it has ever since been the property of the Government without dispute. The Plaintiff now sues to recover the later formation which is in contact with Tatapudi lanka, alleging that it is within the village of Kapileswapuram. The Collector alleges that it is an accretion to Tatapudi lanka. He also alleged that it is formed in the bed of a tidal navigable river, but it has been found against him that the river is not tidal at this point.

Issues were framed of which the important ones are as follows:—

“ (1.) Whether the land in dispute is within the boundaries of the Kapileswapuram village ?

“ (2.) Whether by reason of being within the boundaries of the Kapileswapuram village, the land in dispute is the property of the Plaintiff ?

“ (3.) Whether the plaint land is the property of the Plaintiff by right of accretion to Kedarlankagedda and Nadimtippa ? Framed on allegations made by Pleader at first hearing.

“ (4.) Whether the plaint land is the property of the Defendant by right of accretion to Tatapudi lanka ?

“ (5.) Or, whether it is the property of the Defendant as a formation in the bed of a tidal navigable river ? ”

On the first issue the District Judge found that if two imaginary straight lines were drawn connecting the two eastern boundaries of Kapileswapuram and its two western ones on each bank, the disputed lanka would lie between those lines, and in that sense it is within the limits of Kapileswapuram. But then he went

on to point out that Tatapudi lanka falls within the same limits; and he accordingly finds on the second issue that the disputed lanka is not the property of the Plaintiff simply by reason of its lying within the aforesaid imaginary lines.

He states that each party asserts the disputed land to be not an island which has sprung up in the bed of the river, but a gradual accretion to previously formed land; the Defendant says to Tatapudi lanka, and the Plaintiff says to a lanka of hers called Kedarlanka-Gedda. It is therefore the third and fourth issues which comprise the substance of the dispute; and after examining the evidence closely the District Judge finds "that the land is not the property of the Plaintiff by right of accretion of Kedarlanka-gedda and Nadimtippa, but that it is the property of Defendant by right of accretion to Tatapudi lanka." On that finding he dismissed the suit.

On the fifth issue the District Judge found that the land is an accretion to a lanka in the bed of a tidal navigable river; but on this point the High Court directed further enquiry, after which they decided that the disputed land is not in tidal waters.

The High Court agreed with the District Judge in holding that the Plaintiff's test of drawing mathematical lines from bank to bank was a fallacious one because it included in the Plaintiff's land Tatapudi lanka which is Defendant's land. They then addressed themselves to the claim which the Plaintiff urged to be owner of the whole bed of the river between the banks owned by her, and therefore of every formation of soil on that bed. Upon that claim their Lordships observe that it is not made by the pleadings or by the issues settled by the District Judge. The 3rd and 4th issues relate simply to accretion to some previously existing

dry land, and the question raised was whether that was the Plaintiff's land or the Defendant's. The subaqueous ownership now claimed by the Plaintiff raises a totally different question on which much evidence might and probably would have been given; and that question was not tried by the District Judge. The High Court would have been quite justified in refusing to entertain the question until raised by proper issues and evidence. The practical result was no more favourable to the Plaintiff. The learned Judges point out that they are called on to decide a very important and difficult question on very meagre evidence. It is indeed hard to say that there is any evidence at all. None has been mentioned by Mr. Mayne, and the learned Judges say that the whole case of the Plaintiff rests on the presumption of English law founded on the character of English rivers. The difference between them and such rivers as the Godaveri are obvious. Their Lordships do not travel into that interesting discussion because it is irrelevant to the case made by the Plaintiff.

The view of the High Court is that at the highest the principle relied on by the Plaintiff is only a presumption, and that the ownership of Tatapudi lanka by the Government rebuts the presumption. They then find concurrently with the District Judge that the lanka is an accretion to Tatapudi and not a vertical accretion in the bed of the river. That carries the case in favour of the Defendant. There does not appear to be in Madras, as in Bengal, an express law embodying the principle that gradual accretion enures to the land which attracts it; but the rule, though unwritten, is equally well established. It is hard to see why it should not apply to land which the river washes on both sides, as well as to land which is washed only on one side. If the *terra firma* of Tatapudi pushed

out a promontory by gradual imperceptible deposits, that would in the absence of special circumstances to show title in another, enure to Tatapudi. It is the same with an island which is part of the Tatapudi estate.

The result is that their Lordships, having grave doubts whether the presumption applicable to little English rivers applies to great rivers such as the Godaveri, would require to know much more about the river in question and the mode in which it has been dealt with, before deciding as to the presumption or its rebuttal. The Plaintiff must abide in this suit by the case she has presented. The case is that the disputed lanka was formed by gradual accretions to definite visible portions of her land. That is found against her by the concurrent decisions of the Courts below; and without examining the matter further their Lordships must hold that her claim has failed. Their Lordships will humbly advise Her Majesty to dismiss the appeal, and the Appellant must pay the costs.
