1971 KHC 177
Kerala High Court
V. R. Krishna Iyer, J.
MYTHIANKUNJU v. PAREETHKUNJU
S. A. No. 798 of 1969
15 October, 1970

Boundary - When the trees are on the boundary and applying the law correctly they must belong to both equally (Para 2)

P. C. Chacko; P. Krishnamoorthy; For Appellants
S. Narayanan Poti; N. K. Varkey; For Respondents

JUDGMENT

1 Two anjili trees and 3 1/4 cents of land constitute the magnificent subject matter of this appeal. Luckily, the land which is covered by the B schedule does not disturb me seriously because the plaintiff who sought relief in respect of that tiny bit has been refused relief concurrently by both the courts on the score that he has not made out a subsisting title thereto. To appreciate the question of ownership of the two trees, a few facts need mention. Admittedly, the plaintiff was the owner of S. No. 12809 and the defendant of S. No. 12787. The plan, Ext. D2, discloses that the two anjili trees are situate in the plaintiff's plot S. No. 12809. Even so, it is noticed by the commissioner that the trees are on the boundary line dividing the portion of survey plot 12809 which has been upheld in favour of the plaintiff and the triangular portion, on the western side, of that survey plot which has been denied to the plaintiff on account of absence of possession with him for a long time beyond the period of limitation. In short, the location of the two trees, as seen from the plan and as can be gleaned from the report of the commissioner, is on the boundary line between the two ownerships. The nice question of law that arises then is as to the ownership of the trees themselves.

2 The courts below have followed the directions in which the roots travelled and have reached conclusions somewhat divergent but sharing the common feature of excluding commonsense. When two trees stand on the boundary line the arboreal ownership cannot be fixed by chasing branches or nationally splitting the trunk or burrowing into the course of the roots. Simple sense tallies with the plain law of the matter as has been neatly expressed in Hunt's Boundaries and Fences. The author states the law thus:

"*With respect to the ownership of trees, standing on or near the boundaries of property, the rule, generally adopted in the United States of America, is that trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of the adjoining owner, and that trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common; and the rule is at once reasonable and simple.*"

I am not prepared to be drawn into the delicate difference in the location of the two trees with reference to the dividing line. Viewed broadly, both of them are on the boundary and applying the law correctly they must belong to both equally.

3 Counsel for the respondent pressed before me that both the courts have upheld his claim to one of the two anjili tress and so, that finding, acquiring the sanctity attached to concurrent

findings, should not be disturbed. If they were pure questions of fact, I should myself concur in the proposition, but, where the conclusion has been reached innocent of the law that applies, finality cannot be imparted to it. As I have always said, non interference with concurrent findings of fact should not be treated as a legal superstition. Here is a case where neither court applied the correct law which I have already set out earlier and I am inclined to think that both the trees must be treated on a par and must be held to belong to both the plaintiff and the defendant. There is yet another principle which was in the mind of the appellant when he attacked the reversal by the appellate court of the award in his favour of the ownership of one tree. There is a limitation on appellate power a limitation which is implied by the law that a finding challenged in appeal should be interfered with not in every case where it is not right but only in such cases as where it is wrong. In the present case, I am not sure on reading the appellate judgment whether this limitation was present in the mind of the Subordinate Judge. However, since I am disposing of the appeal on the principle of law I have already laid down, there is no need to pursue this matter further.

4 I hold that A. S. No. 39 of 1963 has been rightly dismissed and A. S. No. 33 of 1963 wrongly allowed. I declare the trees to be owned equally by both the plaintiff and the defendant. As a matter of expediency and to avoid future friction, to the extent possible, I think it right to allot the northern tree to the defendant. I direct that the northern anjili tree as noted in Ext. D2 shall belong to the defendant and the one south of it to the plaintiff. The parties will bear their costs in this court.
