

(1948) 05 PAT CK 0002
In the Patna High Court

Hardeo Missir

APPELLANT

Vs

The Commrs. of Gaya Municipality and Another

RESPONDENT

Date of Decision : 04-05-1948

Acts Referred:

Citation : AIR 1949 Patna 132

Hon'ble Judges : Shearer, J;Reuben, J

Bench : Full Bench

Judgement

Shearer, J.—This second appeal arises out of a suit which has been dismissed on the ground that it is not maintainable by reason of the provisions contained Section 22, Calcutta Survey Act, 1887. That section is in these terms:

No suit shall be brought to set aside any demarcation of boundaries made under the provisions of this Act unless brought within one year from the date of the notification mentioned in the last preceding section.

2. The survey of the Gaya Municipality under the provisions contained in the Calcutta Survey Act, 1887, was made in 1914. The subject-matter of the suit was a narrow strip of land situated between the houses of the plaintiffs on the one hand and of one Kedar Nath on the other. This Kedar Nath is or was an employee of the Gaya Municipality. Apparently, the plaintiffs wished to build on this strip of land or on a portion of it and this was resented by Kedar Nath. The Gaya Municipality then prosecuted the plaintiff on the ostensible ground that he had encroached on a municipal nali or drain. There is a nali or drain which runs from east to west in front of the houses of the plaintiff and Kedar Nath. The land which is the subject-matter of the suit runs from north to south and joins this nali or drain. The ground on which the prosecution instituted by the municipality was sought to be justified and, indeed, the ground on which the present suit has been dismissed, is that there is no line in the municipal survey map to show where exactly the land in suit, which admittedly was used as the sole means of ingress and egress from the houses of the plaintiff begins. In other words, it can, perhaps with a certain amount of plausibility be contended that the land, in suit

is really part and parcel of the municipal nali or drain, or, at all events, that it appears to be so as shown in the map. The land in suit is several times broader than the nali or drain and, as I have just said, it really is a lane or pathway and not a nali or drain, although water from the eaves of the plaintiff's house may drop into it and be carried into the nali or drain proper which runs in the opposite direction. For my own part it seems to me perfectly clear that a trivial mistake was made by the amin who prepared the municipal survey map and who omitted to show the southern boundary of the nali or drain as extending across the mouth or opening of this foot-path or lane. I will, however, deal with the case in the way it was dealt with in the Court below, namely, on the assumption that, so far as appears from the municipal survey map, the land, in suit is, in fact, part of the municipal nali or drain. Is the mere circumstance that it was so shown sufficient to render the present suit not maintainable because a period of nearly thirty years had elapsed before it was instituted since the completion of the municipal survey? The Courts below, which both came to the conclusion that the land in suit did in fact belong to the plaintiff were compelled to hold that, nevertheless, the suit was not maintainable by reason of a decision of a Judge of this Court, sitting singly, in *Municipal Commissioner, Gaya Municipality Vs. Mt. Rup Kalia and Another*, . In that case Agarwala J., as he then was, made the following observations:

The scope of Section 22, Survey Act, is, in my opinion, quite different. It definitely bars any suit not brought within a year from the date of the notification approving the Survey if the object of the suit is to set aside any demarcation or boundaries made under the Act. It is fallacious to contend that a mere declaratory suit has not the effect of setting aside any demarcation or boundaries. The boundaries stated in the Survey are supposed to correspond with the title and, therefore, any decision affecting the title necessarily affects the boundaries that have been demarcated and when the plaintiff sues for a declaration that her title exists over an area in excess of the area included within the boundaries that have been demarcated, the suit is in effect a suit to set aside the demarcation of the boundaries.

3. With the greatest respect, it appears to me that the expression "demarcation of boundaries" which occurs in Section 22, Calcutta Survey Act, 1887, must be given its natural meaning, which is the marking out or laying down of a boundary. The preamble to the Act states:

Whereas it is expedient to provide for the survey and demarcation of lands?

4. which suggests that the legislature realised the difference between showing in a map the line representing an admitted boundary or a boundary which was disputed and was fixed by the survey authorities and the marking out or laying down of a boundary on the actual land. Mr. Rajkishore Prasad for the respondents, invited our attention to Section 18 of the Act and pointed out that the Superintendent had a discretion to erect temporary or permanent boundary marks or not to erect them. Clearly, when there has been a dispute over a

boundary and when the decision come to by the authority which decides the dispute, is that the existing boundary is correct, there is no need to put down boundary marks of any kind. Nevertheless, it might, I think, quite properly be said that in such a case the boundary has been demarcated. It is important to notice that the power conferred on the Superintendent by the Act is merely a power to decide questions of possession and not of title, that is, the Superintendent is bound to discover where exactly the boundary line is situated according to the facts of possession and, if it does not exist on the ground, to lay it down. It is perfectly reasonable, that when this has happened, a suit by the party aggrieved at the decision should be brought within a comparatively short period. Clearly, however, it would be in the highest degree unreasonable that when there had been no dispute and no actual demarcation of the boundary, a person should be prevented from showing that a line in the survey map representing the boundary between his premises and the premises of his neighbour was erroneous. In such a case a presumption of correctness would, no doubt, attach to the survey map, but it would be a rebuttable presumption. With the greatest respect I am unable to regard the observations made in Municipal Commissioner, Gaya Municipality Vs. Mt. Rup Kalia and Another, as stating the legal position correctly and I am unable to follow it. As I have already said, the Courts below have both come to the conclusion that the land in suit belongs to the plaintiff. The appeal will accordingly be allowed and the suit will be decreed with costs throughout except that no damages on account of the removal of building materials will be allowed as against the contesting defendant. Mr. B.N. Rai, for the appellant said that his client did not press for such a decree.

Reuben J.

5. I agree.