

(1940) 09 PAT CK 0021
In the Patna High Court

Joshyula Satyanarayana Sidhanti

APPELLANT

Vs

Berhampore Municipal Council

RESPONDENT

Date of Decision : 26-09-1940

Acts Referred:

Citation : AIR 1942 Patna 42

Hon'ble Judges : Meredith, J

Bench : Division Bench

Judgement

Meredith, J.—This is an appeal by the plaintiff from a decision of the learned Subordinate Judge of Puri at Berhampore, dated 27th September 1937, reversing a decision of the Munsif of Berhampore, dated 2nd November 1936. The appellant had brought a suit for a declaration of his title to certain property upon which he claimed that he had a granary, which had existed there from before 1885 in the time of his father. On 22nd November 1933, the defendant, the Berhampore Municipal Council, served a notice on the appellant under Sections 182 and 183, Madras District Municipalities Act, to remove the granary, or in the alternative to pay license fees at the rate of Rs. 3 per annum for the years 1931 to 1933 on the allegation that the land upon which the granary stood was part of the roadway. The appellant paid the license fees under protest, and then filed the suit out of which this appeal arises for declaration of his title and recovery of the sums realized from him. The defence of the municipality was that in the year 1912 the town was surveyed by a special Revenue Officer appointed by the Government under the Madras Survey and Boundaries Act (Act 4 of 1897) and that officer demarcated the suit land as portion of the public street. Notices were issued under Sections 11 and 12 of that Act to the plaintiff's father and notifications published in the Gazette, and u/s 13 of the Act the decision of the Revenue Officer had become final and conclusive. It was further pleaded that the Secretary of State was a necessary party.

2. The learned Munsif decreed the suit, holding that the appellant had acquired title by adverse possession for more than 30 years under Article 146A, Limitation

Act. The learned Subordinate Judge however took the view that the boundary demarcation in 1912 operated as a break in the appellant's adverse possession, and as the appellant had not been in adverse possession for 30 years since 1912, he had acquired no title. Both the Courts below held that Government was not a necessary party, as the question of title could be decided as between the appellant and the municipality. The learned Judge in arriving at his view noticed a ruling of the Madras High Court *Azhagaperumal Pillai Vs. Rasa Pillai and Others*, which took a contrary view, but he observed that this ruling had been dissented from in the later ruling *S. Subramania Ayyar Vs. Emperor*, and he added that it had been well settled that the adverse possession of the plaintiff would be interrupted by the final decision of the Survey Officer under Sections 11 and 12 of Act 4 of 1897 by another decision of the Madras High Court, namely (*Penumetcha*) *Seetharama Raju Vs. Kalidindi Narayanaraju and Another*, .

3. Upon this point of law the decision of the learned Subordinate Judge was undoubtedly wrong. The ruling in (*Penumetcha*) *Seetharama Raju Vs. Kalidindi Narayanaraju and Another*, was merely that of a Judge sitting singly, and could not overrule the view of a Division Bench as expressed in *Azhagaperumal Pillai Vs. Rasa Pillai and Others*, . The learned Subordinate Judge says that *Azhagaperumal Pillai Vs. Rasa Pillai and Others*, has been dissented from in *S. Subramania Ayyar Vs. Emperor*, . The question has, however, recently been finally set at rest by a Pull Bench decision of the Madras High Court in *Sivaprasad Sowcar Vs. Sekharamantri Narasimhamurthi and Others*, . It was held by the Full Bench that an order of the Survey Officer u/s 11, or of the appellate authority u/s 12 of Act 4 of 1897, in itself has not the effect of causing a break in the continuity of the adverse possession held by the unsuccessful party so as to preclude his making use of the period of his prior possession to make up the period of 12 years required by the Limitation Act to complete his title. In this Full Bench decision, a ruling relied upon by the respondent, namely *Muthirulandi Poosari v. Seethuram Aiyar* AIR 1919 Mad. 779 , has been considered and distinguished, and moreover, the Full Bench cites with approval, the dictum laid down in *Azhagaperumal Pillai Vs. Rasa Pillai and Others*, . Leach, C.J. says:

In my opinion the correct view of the scope of the Act was taken by Reilly and Anantakrishna Ayyar, JJ. in *Azhagaperumal Pillai Vs. Rasa Pillai and Others*, . There it was said that the decision of a survey officer for the planting of stones for the demarcation of the boundary does not ipso facto dispossess any party, nor make any legal break in existing possession so as to render ineffective for purposes of limitation any adverse possession running at the date of the decision. In that case it was argued that the judgment in *Muthirulandi Poosari v. Seethuram Aiyar* AIR 1919 Mad. 779 ran contrary, but this argument was rejected by the learned Judges and the opinion of Ramesam, J. in *Kuppuswami v. Venkataswami* AIR 1923 Mad. 29 was accepted as supporting their decision.

4. It is clear that there was no break in the adverse possession in 1912. The decision of the revenue officer may have been conclusive, but that was merely a

decision with regard to the location of the boundary. The plaintiff's adverse possession as a trespasser will not necessarily be inconsistent with that decision. It appears from the findings of the learned Munsif that the adverse possession has been uninterrupted at least from the year 1885 when the municipality gave permission to the plaintiff's grandfather to repair an old pails (verandah). The learned Subordinate Judge has not held that this finding is in any way incorrect. Upon the correct legal view it must, therefore, in my opinion be held that as against the municipality the appellant has established title by adverse possession. I agree with the view taken by the Courts below that Government was not a necessary party. It might possibly have been desirable that Government should be impleaded though different considerations will arise, limitation as against Government being 60 years; but the suit cannot, in my view, fail merely on account of the plaintiff's omission to implead the Government. The effect will merely be that the decision will not be binding upon Government, and will operate only as a declaration of the plaintiff's title as against the municipality. The appeal, in my view, succeeds. It is accordingly allowed, the decision of the learned Subordinate Judge is set aside, and the decision of the learned Munsif is restored with costs throughout. Leave to appeal under the Letters Patent is allowed.