
(1964) 01 KL CK 0034
In the High Court Of Kerala
Case No : S.A. No. 357 of 1960

Kantian and Another

APPELLANT

Vs

Kannan and Others

RESPONDENT

Date of Decision : 29-01-1964

Acts Referred:

Citation : (1964) KLJ 509

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : V.P.G. Nambiar and V. Bhaskaran Nambiar, for the Appellant; A. Achuthan Nambiar, T.P. Kelu Nambiar For Respondents 1, 3 and 4 and M.C. Sreedharan For Respondents 2 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—This Second Appeal by the plaintiff and the 5th defendant, arises in a suit by the former for recovery of possession of the suit property on title and for other reliefs. The suit property is denoted by plots A, A1, A2, B, B1, B2, C & C1 in Ext. C1 plan. The two courts below have negatived the plaintiff's case both on title and on possession within twelve years of the suit. The findings are concurrent and I see no reason to disturb them so far as plots B, B1, B2 and C1 are concerned; they will stand. As regards plots, A, A1, A2 and C, though the findings are concurrent, the learned Advocate General who appeared for the appellants raised a point of law, which depended on the effect of Sections 13 & 14 of the Madras Survey and Boundaries Act, 1923 (Act VIII of 1923.) These plots were resurveyed in the year 1931 as portions of resurvey No. 29/2, patta for which was issued to the 5th defendant under whom the plaintiff claims. In the pleadings and at the trial, the case of the plaintiff was that these plots are part of a property called Mavullachal kadu, and that of the contesting defendants 1, 3 and 4 was that they are part of a property called Padachal kadu. This was the real controversy between the parties. The resurvey decision not having been questioned or challenged by the contesting defendants or by Pydal their

predecessor-in-interest within the period prescribed by Section 14 of the Act, was contended to have become final and conclusive, not only as regards the location of the boundary of resurvey No. 29/2, but also on the title to the property denoted by resurvey No. 29/2 as settled. The plea in this form was not taken in the plaint and defendants 1, 3 and 4 had therefore no occasion to meet it; it was taken in the written statement of the 5th defendant which was filed after the other defendants had filed theirs. The question was not put in the present form in either of the courts below, although no doubt, the alteration made on resurvey was adverted to by them, and was held by them to be the result of some mistake. The conclusiveness of the decision on resurvey however was not considered. On going through the appeal memorandum in the lower appellate court I am not satisfied that the point was specifically taken. So, as pointed out by learned counsel for defendants 1 and 4 who appeared in this court, the parties had no occasion to put forth their case as to the legality or regularity or otherwise of the proceedings under the Act, upon due compliance with which alone, any finality or conclusiveness could be attributed to the resurvey decision. For example, it was complained, that there was no notice to the defendants or their predecessor, of the proceedings of the resurvey under the Act, although some time afterwards certain objections were preferred by Pydal as part of his move for the correction of patta. The point was urged before me however as one of law; but I am satisfied, that the resurvey by which the aforesaid plots A, A1, A2 and C came to be included as part of resurvey No. 29/2 can have no bearing on the main issue of title to the suit property. In the plaint, as has been seen, the property was claimed as part of Mavullachal kadu although the survey numbers, old and new, were both¹ mentioned in its schedule, and in the written statements the defendants claimed the suit property as part of Padachal kadu. The two courts have examined the documents of title on which the parties relied, for example, Exts. B 67 and B 75 on which the 5th defendant relied, and Ext. B 55 on which defendants 1 and 4 relied, for proving their respective title. These and other related documents were considered with reference to the boundaries and the measurements specified in them and the two courts have concluded that the suit property is part of Padachal kadu and not part of Mavullachal kadu. This was the nature of the evidence adduced by the parties, and the courts below have taken a decision on such evidence. It is noteworthy, that the title of defendants 1 and 4, which was found, depended not on the location of resurvey No. 29/2 or of the old survey number corresponding to it. To such a case, I think the principle of Section 13 referred to cannot have any application. This section has in terms provided only that "the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded." It is possible to conceive, that a settlement of the boundary may often decide the issue of title between the parties.

2. The effect of Sections 13 and 14 was considered by Rajamannar, C. J. & Somasundaram, J. in *Sri Krishna Chandra Gajapathi Narayana Deo v. Pragada*

Ramamurthy Pantulu (A. I. R. 1952 Mad. 68) and as the learned Chief Justice has, held, the conclusiveness u/s 13 arises not from any jurisdiction with which the survey officer is endowed for adjudicating title to immovable property, but is simply an indirect result of the fixation of the survey boundary. In my judgment where the title to property has to be determined not with reference to the survey demarcation, but on other and perhaps more cogent materials, the demarcation can be regarded as but one circumstance affecting the decision on title. The following observations of Abdur Rahman J. in Ponnuswami v. Mariappa Servai (A. T. R. 1943 Mad. 420), which were approved by the bench seem apposite:

It may be that if the dispute merely related to the title of the plot in dispute as distinguished from a dispute as to its boundary, the order passed by the survey officer would not have become final.

The Bench also followed the decision of the Orissa High Court reported in Krishna Chandra Gajapati Narayan Deo Vs. Rokkam Venkatapparao Dora, where the, learned Judges made a distinction thus:

Where the rival claim regarding title to a plot has nothing to do with the question as to whether the plot lies within the boundary of one village or of the adjacent village, how can it be said that the determination of the boundary u/s 13 would affect title?

The argument advanced before me would have had some weight, if the decision on the title of the 5th defendant depended on the question, whether the suit property was part of resurvey No. 29/2 or not. Such was not the controversy. I therefore come to the conclusion, that even if the formalities prescribed by the. Act were complied with, the settlement of the boundary of resurvey No. 29/2 cannot affect the decisions taken by the two courts below on title to the suit property. I see no reason; to disturb the concurrent findings on title, with respect to plots A, A1, A2 and C.

3. On the issue of possession with twelve years of the suit also, apart from the findings being concurrently against the appellants, even considering the suit property to be waste land as contended for the appellants, the presumption that possession followed title must apply. Exts. B12 to B53 revenue receipts with the, exception of Ext. B23, have been considered by the two courts and have been explained by them as relating to the rest of resurvey No. 29/2 which admittedly belongs to the 5th defendant. I must state, that the 3rd defendant having died two years ago and his, legal; representatives not having been brought on record as such, this appeal has abated so far as her 1/4th share in the suit property is concerned. The Second Appeal is without merit and is dismissed with costs to defendants 1, 2 and 4, one set only.