

(1944) 11 MAD CK 0020
In the Madras High Court

Kilaparti Appalanarasamma	APPELLANT
Vs	
Commissioner, Municipal Council and Another	RESPONDENT

Date of Decision : 09-11-1944

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1945 Mad 224 : (1945) 58 LW 87 : (1945) 1 MLJ 22

Hon'ble Judges : Alfred Henry Lionel Leach, C.J.;Happell, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—On the 21st June, 1937, the Municipal Commissioner of Vizagapatam served upon the plaintiff a notice

to remove within seven days a tiled house, pial and steps which it was said encroached upon "" municipal land,"" by which was meant a public street.

The plaintiff denied that there was any encroachment, but as he feared that the municipality would carry out its threat to remove the alleged

obstruction if he did not comply with the notice, he filed in the Court of the District Munsiff of Vizagapatam the suit which has given rise to this

appeal. He asked for a declaration that the site marked A, B, C and D on the plan attached to the plaint belonged to him and for the issue of a

permanent injunction restraining the municipality from removing the structures on the land. The municipality was made the sole defendant. The

Municipal Commissioner, on its behalf, pleaded that the Government was a necessary party and as the result the Provincial"" Government,

represented by the Collector of Vizagapatam, was added as the second defendant.

2. The plaintiff did not agree with the municipality 's contention that the Government was a necessary party and insisted on an issue being framed

on this question. It was framed and the District Munsiff decided that the municipality was right in requiring the Government to be brought in. When the Government had been made a party, the municipality raised the plea that the suit was bad because the notice required by Section 80 of the CPC had not been given to the Government. Notice had not been given. It also denied the plaintiff's claim that the structures rested entirely on his own land. The Provincial Government adopted the contention of the municipality. The District Munsiff held that as the Government had been made a party to the suit after its institution notice under, Section 80 was not required. On the merits he also found for the plaintiff for whom he gave a decree as prayed. Both the defendants appealed to the Court of the Subordinate Judge, who disagreed with the District Munsiff on the question whether notice was necessary u/s 80; but he agreed with him that the Government was not a necessary party. He further agreed that the structures which the municipality wished to demolish stood entirely on the plaintiff's own land. Consequently he dismissed the municipality's appeal with costs and allowed the Government's appeal with costs. The municipality then appealed to this Court. The appeal was heard by Happell, J., who allowed it. The learned Judge considered that the Government was a necessary party to the suit and as notice had not been served in accordance with the provisions of Section 80 the suit was not maintainable. He gave, however, a certificate under Clause 15 of the Letters Patent which has permitted the plaintiff to file the present appeal.

3. If the Government were a necessary party to the suit, that is, necessary in order that the relief claimed by the plaintiff might be effective, undoubtedly the suit could not proceed. The failure to comply with the requirements of Section 80 would be fatal. The question whether notice was necessary when the Government was added as a defendant after the institution of a suit was considered by this Court in *Chidambaram Chettiar v.*

The Municipal Council, Karaikudi, Appeal 12(6 of 1941, and reference to the judgment in that case has been made by Happell, J. There it was accepted that the Government was a necessary party if effective relief were to be given; but the facts in that case were very different from the facts in the present case and we have no hesitation in holding that here the Government is not a necessary party.

Happell, J.

4. Based his opinion that the Government was a necessary party on the provisions of Section 61 of the Madras District Municipalities Act, 1920,

and Section 2 of the Madras Land Encroachment Act, 1905. Section 61 of the former Act vests in a municipality all public streets. Sub-section (2)

of Section 2 of the latter Act says that all public roads and streets vested in a local authority shall for the purposes of the Act, be deemed to be

Crown property. The Encroachment Act was passed in order to provide measures for checking unauthorised occupation of lands which are

Crown property. If the plaintiff's building had encroached on a public street vested in the municipality, it might be--it is not necessary to decide the

question--that the Government would have to be made a party in order to give the relief claimed by the plaintiff, but the District Munsiff and the

Subordinate Judge have held that there was in fact no encroachment and this finding of the Subordinate Judge, being one of fact, is conclusive.

5. Therefore the position is this. The plaintiff had built a house on his own land and the municipality was threatening to demolish it, if not removed,

because it imagined that it encroached on a public street. As there was no encroachment, the municipality had no right to issue the notice and still

less right to take steps against the plaintiff. The Government was not concerned with the issue of the notice or the threat which the municipality

made. The responsibility rested entirely with the municipality. The granting of the relief which the plaintiff asked for in the plaint would affect no right

vested in the Government. Therefore the Government was not a necessary party to the suit and should not have been brought into the action. In

these circumstances Section 80 of the CPC could not apply.

6. The appeal will be allowed and the decree of the Subordinate Judge restored with costs, here and before Happell, J.