

(1891) 11 MAD CK 0022
In the Madras High Court

Krishnayya

APPELLANT

Vs

The Bellary Municipal Council

RESPONDENT

Date of Decision : 27-11-1891

Acts Referred:

Citation : (1892) ILR (Mad) 292

Hon'ble Judges : Wilkinson, J; Arthur J.H. Collins, J

Bench : Division Bench

Judgement

1. We fail to see any reason why the Secretary of State was a necessary party to the suit. The real question to be determined was whether the

pyal, which plaintiff" wanted to roof over, was his private property or not. The District Munsif found, upon a careful review of the evidence, that

the pyal was plaintiff's private property, he and his ancestors for the last fifty years having exercised acts of ownership over it. The defendant, on

the other hand, adduced absolutely no evidence to show that the ground occupied by the pyal ever formed part of the street. The District Judge

does not decide that the pyal is not private property, but merely remarks that the proof of plaintiff's right cannot be considered very satisfactory. It

is argued that this must be held to be a finding that the pyal is not private property. If we thought so, it would be necessary to ask the Judge to

reconsider his decision as the evidence seems to us overwhelming, but we do not consider that he intended to set aside the finding of the District

Munsif as to the question of plaintiff's right. With reference to Section 169 of the Act (Madras Act IV of 1884), we think that the Judge has

misinterpreted it. It must be read in connection with the definition of the word street in Section 3. According to that, private property is exempted

from the action of the Commissioners. It seems to us absurd to suppose that Section 169 empowers the Commissioners to prevent a person dealing with his own property, provided he does not interfere with the convenience of the public or with any sanitary regulation. If the pyal in front of a house is not private property, the Municipal Commissioners would undoubtedly have the right to grant or withhold a license for roofing it, but when, as in the present case, the pyal is private property, the right of the Commissioners to interfere cannot arise, until the owner's building projects beyond his own limits. In the words of the Section, the erection must not cause any public inconvenience. We reverse the decree of the District Judge and restore that of the Munsif with costs in this and the lower Appellate Court.