

(1919) 08 BOM CK 0007
In the Bombay High Court

Manak	Vs	APPELLANT
Narayan		RESPONDENT

Date of Decision : 07-08-1919

Acts Referred:

Citation : 59 Ind. Cas. 437

Hon'ble Judges : Norman Macleod, C.J;Heaton, J

Bench : Division Bench

Judgement

Norman Macleod, C.J.—The plaintiffs sued to recover possession of 4 acres of land out of Survey No. 676 situated in Thalner, alleging that he owned Survey No. 68 which is adjoining Survey No. 676 that the plot in dispute was separated from Survey No. 676 by a bandh and included in his Survey Number, that he had been in possession of the plot in dispute for about 50 years; that Survey No. 676 was measured about twelve months ago at the request of the defendant by the Revenue Authorities; that they found out that the plot in dispute formed part of Survey No. 676 which belonged to the defendant, and that, accordingly, he was dispossessed by the defendant in July 1915. He claimed that he had acquired title to the plot in dispute by adverse possession, and prayed, therefore, that possession might be restored to him.

2. It has been found in both Courts that the plaintiff had been in possession adversely of the plot in dispute for more than twelve years. But it has been contended that the order of the Revenue Authorities adjusting the boundaries of Survey No. 676 was a bar to the present suit. We cannot agree with that contention. Reliance has been placed for the argument on Section 121 of the Land Revenue Code. But it does not follow that, because the Collector placed the boundary mark of Survey No. 676 at the place where it ought to be in accordance with the Survey map, that he in any way adjudicated upon the plaintiff's claim to be possessed of the plot in dispute by adverse possession. It is quite true that the fixing of the boundaries of these two Survey Numbers would show what land belonged to the persons in whose name Survey Numbers were

registered. But that would not in any way affect the right of any one of those patties to show in a Civil Court that he had acquired a title by adverse possession against a registered occupant. I agree, therefore, with the opinion of the learned Assistant Judge that the order of the Deputy Collator adjudging that the plot in suit formed part of Snvey No. 676 does not at all stand in the way of a Civil Court going into the question of adverse possession. Therefore, I think, the order of the lower Appellate Court was right and the appeal must be dismissed with costs.

Heaton, J.

3. I also think that the appeal must be dismissed with costs. The words of Sub-section (5), Clause (1), of Section 121 of the Land Revenue Code are not perfectly clear, and are not free from difficulty. They might be construed as meaning that, when the Collector has determined the boundary, he has also determined all the rights of ownership. But I do not think that this is what they do mean, and I do not think it is what the words express, when we remember that they appear in the Land Revenue Code, The words are these,--"The settlement of a boundary shall be determinative of the lights of the landholders on, either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings." I think the rights that are finally determined by the fixing of the boundaries are those rights which flow from the fact that the land is incorporated in a particular Survey Number, and I do not think they mean more than this. Land may be in one Survey Number, and yet may become by adverse possession the property of the owner of an adjoining Survey Number. That is what is found to have happened in this particular case. I think the Land Revenue Code itself provides the very soundest reasons, for taking this view. In giving to the Revenue Authorities power to fix the boundaries it says in Section 119 that, "the boundaries would be fixed by the Collector who shall be guided by the land records, if they afford satisfactory evidence of the boundary previously fixed, and, if not, by such other evidence as he may be able to procure". It is quite inconceivable to me that those words should have been used had anything more been intended than that the Collector should fix the boundary and so determine finally what land is to be incorporated in a particular Survey Number. He is not to inquire into the rights of ownership, but is to inquire into the position of the boundary, and nothing else. That being so, it is, to my thinking, quite impossible to suppose that the words of Sub-section (6) gave to the Collector's decision a finality as regards those rights of ownership which are not dependent on the circumstance whether the land does or does not form part of a particular survey Number.