

(1915) 03 MAD CK 0074
In the Madras High Court

M.K. Veeraraghava Chariar

APPELLANT

Vs

A. Krishnamachariar

RESPONDENT

Date of Decision : 22-03-1915

Acts Referred:

Citation : 29 Ind. Cas. 907

Hon'ble Judges : Tyabji, J;Ayling, J

Bench : Division Bench

Judgement

1. There is no finding by the District Judge on the plea of adverse possession set up by the defendant, and embodied in issue No. 3, though this was made the 7th ground of appeal before him. It appears to have been overlooked. We must call for a finding on this point.

2. As regards limitation, the appellant's Valcil urges that the original order of the survey officer adverse to the plaintiff was dated 31st October 1908, and that Exhibit C is only an order on his (appellant's) appeal and will not give the respondent a starting point for limitation u/s 13 of Madras Act IV of 1897. The respondent has now been allowed to file a public copy of an appeal petition filed by him against the Survey Officer's order (Exhibit D) and he represents that this appeal also was disposed of by Exhibit C.

3. As the facts are not clear, we must call for a finding: "Was there any decision of an appellate authority adverse to the plaintiff within the meaning of Section 13 of Madras Act IV of 1897, which he might take as a starting point of limitation under that section, and if so, of what date?"

4. On this issue, both sides may adduce further evidence if they so desire.

5. The findings should be submitted within two months from this date and seven days will be allowed for filing objections.

6. In accordance with the order contained in the above judgment the District Judge of Chingleput submitted the following

7. Finding.--1. The first issue on which the High Court has called for a finding is, "whether the suit is within time." This is issue No. 3 in the suit.

8. 2. The plaintiff deposes that till two or three years prior to the suit he had a shed on the suit site and was tying cattle therein. P.W. No. 2 corroborates him, P.W. No. 3 says in general terms that the site is in the enjoyment of the plaintiff.

9. 3. None of the defendant's witnesses says that either he or his vendor was even in enjoyment of the suit site. In Exhibit B the defendant acknowledged the plaintiff's right to the suit site. The District Munsif finds for these reasons that the suit is within time. On the evidence this is the only conclusion possible, and I find that the suit is within time.

10. 4. The next issue on which a finding is called for is, "was there any decision of appellate authority adverse to the plaintiff within the meaning of Section 13 of Madars Act IV of 1897 which he may take as a starting point of limitation under that section, and if so, of what date."

11. 5. The defendant's contention is that the order, of which Exhibit C is a copy, was passed on his appeal petition, Exhibit B, and not on any petition presented by the plaintiff to the Survey Department. For the plaintiff it is urged that he put in an appeal petition of which Exhibit D is a copy and that the order Exhibit C was received by him from the Survey Department as having been passed on his apppal. From the application put in by the plaintiff for copies of his appeal petition and the order passed thereon and the reply received from the Survey Department--Exhibit D series--it is clear that the appeals presented by him and the defendant were both heard together and that a single order the original of Exhibit C was passed. This is not improbable. It may be observed that from Exhibit C it appears that the plaintiff was also heard. I do not think there is much importance in the contention raised on behalf of the defendant that the plaintiff should have preferred his appeal u/s 12 of Act IV of 1887 to the Sub-Assistant Surveyor who is the immediate superior to the Survey Officer, and not to the Assistant Director. I find the first part of this issue in favour of the plaintiff. The date of the order, Exhibit C, is 18th January 1909 and I find that it is the starting point of limitation for plaintiff's suit.

12. This second appeal coming on for final hearing after the return of the finding of the lower Appellate Court upon the issue referred by this Court for trial, the Court delivered the following.

13. Judgment.--We accept the findings and dismiss the appeal with costs.