

(1942) 11 MAD CK 0002
In the Madras High Court

M.M. Ponnuswami and Others

APPELLANT

Vs

M. Mariappa Servai

RESPONDENT

Date of Decision : 24-11-1942

Acts Referred:

Tamil Nadu Survey and Boundaries Act, 1923 — Section 13

Citation : AIR 1943 Mad 420

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—This appeal arises out of a suit for injunction brought with the object of restraining the defendant from interfering with

the plaintiff's possession and enjoyment of an open space marked DLHG in the commissioner's plan, dated 30th September 1941. The suit was

decreed by the trial Court, but the decree was reversed on appeal by the Subordinate Judge of Trichinopoly and the suit was ordered to be

dismissed. The plaintiffs preferred a second appeal to this Court. When it came up for hearing before me, I held the decision of the lower appellate

Court confessing its inability to localise the plot in suit to be unsatisfactory and called for a fresh finding on that point with reference to Ex. A (the

deed relied on by the plaintiff) and to Ex. 9, (the deed relied on by the defendant). As some reference was made in the judgment of the lower

appellate Court to Ex. 4 and Ex. 5, I permitted those two documents to be taken into consideration as well.

2. The second contention advanced on behalf of the plaintiffs was that in view of the decision of the survey officer under the Survey and

Boundaries Act (Act 8 of 1923) being conclusive, it was not possible for the defendant to resist the suit. This contention had been accepted by the

trial Court. It did not however find favour with the lower appellate Court, although the grounds on which it came to that decision did not seem to be sufficient. For reasons stated in my order of 21st August 1941 I permitted the parties to adduce such further evidence in regard to this question as they cared to do and called for a fresh finding in this respect as well. This has now been done. The principal Subordinate Judge has not expressed himself quite clearly in regard to the first point and has mainly contented himself with recapitulating the report made by the Commissioner. This was to the effect that the western boundary of the plot No. 243/3 extended up to line SL shown in his (i.e., the Commissioner's) plan dated 30th September 1941. According to this report, the plaintiff would be entitled to almost half of what he claimed in the suit and this would have to be finally accepted, unless the plaintiffs succeeded in their other contention as to the conclusive nature of the order passed by the survey officer. If this prevails, the suit for injunction, which naturally implies a declaration as to the title to the plot in suit, would have to be decreed.

3. Learned Counsel for the respondent contended at the hearing that in view of the finding of the lower appellate Court in the main appeal that the plaintiffs had failed to establish their possession of the plot in dispute for twelve years prior to the suit, it could not be decreed. But that is not how I read the finding of the lower appellate Court. Its decision was that the plaintiffs were not the owners of the site in suit and the occasional user by their tenants of the plot in dispute and that of the latrine was not sufficient to hold them to be in the plaintiff's possession. This was because the land was found to be lying waste and fugitive acts of the plaintiffs or of their tenants could not be regarded as acts of possession. But if the title to the plot in suit were ultimately found to be vesting in the plaintiffs, their user of the plot in dispute or the occasional user of the same by their tenants could not lead to that conclusion. Had the lower appellate Court come to the finding that the plaintiffs were the owners of the plot in dispute the nature of these acts would have been seen in an entirely different light and would have been sufficient for the purpose of granting an injunction in their favour.

4. This takes me to the main question relating to Survey and Boundaries Act. The

finding of the lower appellate Court in regard to that question is that a survey of the town of Trichinopoly was held under Act 8 of 1923 and that the plaintiffs' boundary was according to the order of the survey officer de-marcated by the line LH. Since no civil suit was brought questioning the determination of that boundary as provided by Section 13 of Act 8 of 1923, the record of the survey would be according to the plaintiffs, conclusive proof of the fact that the boundaries had been correctly determined and recorded and could not now be questioned. Learned Counsel for the defendant-respondent however contends that there was no dispute, much less a boundary dispute, between the parties to the suit and in the absence of such a dispute, an order by the survey officer declaring the title to the plot in dispute to be vesting in the plaintiffs-that being the real effect of the order-could not be regarded as conclusive or binding on his client. The question of title is, he contends, solely determinable by a civil Court and the survey officer should not be permitted to usurp the functions of that tribunal. In order to appreciate the respective contentions of the parties and the effect of the various decisions cited in support of his argument by learned Counsel for the respondent, most of which were under the old Act (Act 4 of 1897), one has to examine the provisions of both these Acts before one can decide the effect that the order passed by the survey officer determining the boundary line of the plaintiffs would have on the plaintiff's claim to the plot in suit. The relevant provisions of Section 11 of Act 4 of 1897 (as the question in the present case relates to an undisputed boundary) reads as follows:

(1) If, at the time of survey, a boundary is undisputed the survey officer may order that it shall be laid down as pointed out by the registered holder or his agent.

5. Appeals were provided against this order u/s 12 of that Act. Sub-section (iii) of Section 12, was to the following effect:

The order of the survey officer, or, in the event of an appeal being filed the decision of the appellate authority, shall be final and there shall be no further appeal from such decision.

6. Section 13 provided for the suit in a civil Court within one year to establish rights claimed in respect of the boundary of the property surveyed. It was as follows:

Any party to a boundary dispute before the survey officer and any party to an appeal preferred u/s 12 or to whom notice of such appeal is given

and any person claiming under any such party, deeming himself aggrieved by the order of the survey officer or by the decision of the appellate

authority as the case may be, may, subject to the provisions of Parts 2 and 3, Limitation Act, 1877, institute within the period of one year from the

date of such order or decision, a suit to establish the right which he claims in respect of the boundary of the property surveyed: provided that

subject to the result of such suit, if any, such order or decision shall be conclusive as between the parties to the dispute or to the appeal, including

those to whom notice of such appeal has been given and those claiming under such parties or any of them.

7. A careful perusal of Section 13 would show that a civil suit challenging the "order of the survey officer" or "the decision of the appellate

authority" could only be instituted by a person who was a party to a boundary dispute before the survey officer or a party to an appeal preferred

u/s 12 or to whom notice of such appeal was given. No other person could institute such a suit and it was as between these persons or their

representatives that the order or decision was declared by that section to be conclusive. It was held by a Full Bench in Muthirulandi Poosary v.

Sethurama Iyer AIR 1919 Mad. 779 that a decision of a survey officer passed u/s 11, Survey and Boundaries Act (4 of 1897) on a dispute arising

between two parties as to the boundary of a certain property was final and conclusive as to the rights of the parties if not set aside either on appeal

or by a suit brought within one year, as provided u/s 13 of that Act. It was also held in that case that it would nonetheless be binding on the

unsuccessful party, although he was in possession on the date of the order and was not subsequently ousted from possession. The question as to

acquisition of title by adverse possession was not, as pointed out by the learned Chief Justice in Sivaprasad Sowcar v. Narasimhamurti AIR 1940

Mad. 187 being considered by the Full Bench in the case of Muthirulandi Poosary v. Sethurama Iyer AIR 1919 Mad. 779 but it was made quite

clear by the learned Chief Justice (Wallis C.J. as he then was) that this would be so, if the boundary was disputed and the dispute was the subject

of an order by the survey officer u/s 11. The next decision to which my attention was drawn by learned Counsel for the respondent was that of a

division Bench in *hinna Venkatrayudu v. Ramamurthi* AIR 1921 Mad. 63 to which also Sir John Wallis C.J. was a party. It was held in that ease

that the effect of Section 12, Sub-section (3), Survey and Boundaries Act, was to make the orders of a survey officer in cases falling under that

section final for the purpose of the survey alone, but not conclusive in the sense that it precluded land owners altogether from disputing their

correctness in a Court of law unless there was actually a dispute before the survey officer and the order was one to which Section 13 of the Act

applied. It was observed that Sections 11 and 12 also dealt with easements where there was no dispute at all about the boundaries and with cases

where the registered owners did not take the trouble to go and point them out, but, according to the decision of the Division Bench, sufficient effect

was given to the provisions in Section 12 (3) if it were held that there could be no further dispute in such cases about that boundary (i.e.,) the

boundary that would have to go into the survey. But they added that it seemed to be going too far to say that in such cases (i.e., where no dispute

had been raised) the boundary determined by the survey officer was to be binding for all purposes so that the determination by him could not be

questioned by either of the parties subsequently. They were thus of opinion that in cases where the dispute was not actually raised, the

determination by the survey officer would not preclude the land owner altogether from afterwards disputing the correctness of the boundary in a

Court of law.

8. The other two decisions to which my attention was drawn were by Phillips J. in *Municipal Council Vs. Paratath Bavu Devussi and Another*, and

by Spencer J. in *Raja Ganpatiraju Vs. Pogaru Ramamurthi*, where it was held that the application to bring a suit within the period of limitation

prescribed by Section 13, Survey and Boundaries Act, applied only to a case where there was a dispute in respect of a boundary and that dispute

had been settled by a competent survey officer. I have not so far referred to the decision in *Kuppuswami Iyer v. Venkataswami* AIR 1923 Mad.

29 where it was held that if the finding of the survey officer that the plaintiffs were in possession was not set aside by the defendant within 12

months as provided by Section 13, Survey and Boundaries Act, 1897, the plaintiffs would be entitled to a decree for possession even though the

defendants had been as a matter of fact in possession for over the statutory period (12 years) part of which was before and the remainder

subsequent to his decision. I did not refer to it as this has been expressly overruled by a Full Bench of this Court in Sivaprasad Sowcar v.

Narasimhamurti AIR 1940 Mad. 187. I will have to refer to this Full Bench decision later, but it was held therein and if I may say so with great

respect, rightly, that the decision of the survey officer could not possibly alter the nature of a party's possession in point of fact and that is why this

decision was overruled. All these decisions if read along with the above stated provisions of the Survey and Boundaries Act (4 of 1897) leave no

doubt that the survey officer's decision was to be conclusive under that Act only in cases where a boundary dispute had been actually raised by a

party and had no such effect where a party did not choose to raise a dispute before the survey officer. Coming to the Survey and Boundaries Act

(8 of 1923), we find that a survey of the Town of Trichinopoly was ordered by the Government. This was not disputed and the gazette notification

filed in this Court at the time when the appeal was admitted leaves no doubt as to that matter. Section 9 of the new Act reads as follows:

(1) The survey officer shall have power to determine and record as undisputed any boundary in respect of which no dispute is brought to his notice.

(2) Notice of every decision of the survey officer u/s 9 (1) shall be given in the prescribed manner to the registered holders of the lands the boundaries of which may be affected by the decision.

9. Section 10 empowers a survey officer to determine and record a boundary which is disputed. I am not concerned in this case with that section.

Section 11 of the Act provides that any person affected by a decision u/s 8, Section 9 or Section 10 may appeal against the decision of the survey

officer. It would therefore follow that it would be open to a person affected by a decision u/s 9 to appeal to the survey officer. Section 13 of the

Act is as follows:

When the survey of any land or boundary which has been notified u/s 5 has been completed in accordance with the orders passed under Sections

9, 10 or 11, the survey officer shall notify the fact in the district gazette and a copy of such notification shall be posted in the village chavadi, if any,

of the village to which the survey relates; unless the survey so notified is modified by a decree of a civil Court under the provisions of Section 14,

the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and

recorded.

10. Section 14 provides that:

Any person deeming himself aggrieved by the determination of any boundary under Sections 9, 10 or 11, may.... institute a suit within three years

from the date of the notification u/s 13 to set aside or modify the said determination and the survey shall, if necessary, be altered in accordance

with the final decree in the suit and the alteration, if any, shall be noted in the record.

11. A comparison of the language of Section 13 of the old Act with what has been used in Section 13 of the present Act would show that although

in the former it was only a party to a boundary dispute before the survey officer or any party to an appeal preferred u/s 12 or to whom notice of

such appeal was given and who might have considered himself aggrieved by the order of the survey officer that was entitled to bring a suit and who

would be bound by the order of the survey officer, if no suit were brought under that section yet the present section makes the record of survey by

a survey officer in regard to the correct determination of the boundary conclusive even u/s 9, where no dispute has been raised by a party and the

boundary has been recorded as undisputed. In other words, while under the old section a dispute was sine qua non before the order of the survey

officer could be held to be conclusive, the existence of such a dispute is, under the present section, unnecessary. If that is the effect of the alteration

effected in the language of Section 13 of the present Act, the authorities cited by learned counsel for the respondent, to which reference has been

made, could have no application to an order passed by a survey officer determining or recording a boundary as undisputed u/s 9 of the new Act.

12. It was, however, contended by learned counsel for the respondent that the survey officer might have had the power to determine the boundary

in this case or recording it as undisputed, but he had no power to determine the question of title of the plot in dispute. The contention is not sound

in my opinion. 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. But when as a result of the survey officer's order or of the decision of the appellate authority from that order, the limit of a person's boundary has been determined and recorded the question of title as to the area falling within that boundary must be in the absence of any claim as to acquisition of title by prescription or otherwise held to have been equally determined as being implicit in that order or decision and would not be liable to attack after the expiry of the period provided u/s 14 of the Act for the institution of a civil suit.

13. I cannot conceive of a case where title to the land can be in the absence of the reservation made above found not to be involved in settling a boundary to the extent that an area of land either originally within or outside the boundary is found to fall or not to fall within it and how the settlement of title to that extent can be possibly avoided. If there are two plots of land Whiteacre and Black-acre and the dispute relates to the ownership of these plots, the survey officer would not be entitled to adjudicate on that dispute. But if those two plots of land happen to adjoin each other and X claims that the whole or a portion of the area covered by Blackacre forms part of Whiteacre, or in other words the claim is that the whole or a portion of Blackacre falls really within the boundary of Whiteacre, the survey officer would be competent to determine the question whether x's boundary goes up to a certain point in the plot Blackacre or that the whole of Blackacre is included in Whiteacre. And once it is decided by that officer and the boundary of Whiteacre has been determined and recorded in the survey record, his order would be conclusive proof of the fact that the boundary of Whiteacre had been correctly determined, although as a result of his decision a portion or the whole of the plot Black-acre may come to be regarded as a portion of Whiteacre. The title to that portion of the plot now included in Whiteacre would, if not claimed otherwise than as falling within its boundary as a result of the survey officer's order, come to vest in x, unless that order is challenged by the owner of Black-acre (whether he had raised a dispute before the survey officer or not) before an appellate authority of that officer or before a civil Court within the time prescribed in Section 14 of that Act and the order is

set aside or modified inconsequence. If no such suit is brought or, if instituted, is dismissed, the order of the survey officer or the decision of his appellate authority would in either case be conclusive proof of the fact that the boundary of Whiteacre was correctly determined.

14. The decision of Waller and Wallace JJ. in *S. Subramania Ayyar Vs. Emperor*, was against the respondent's contention, but inasmuch as the view expressed by the learned Judges was not accepted in *Sivaprasad Sowcar v. Narasimhamurti* AIR 1940 Mad. 187 reliance was placed by

learned counsel on certain observations of Krishnan Pandalai J. whose view had not prevailed in the former case and met with approval in the

latter although it cannot be said how far. The passage on which reliance was placed has been referred to by the learned Chief Justice in *Sivaprasad*

Sowcar v. Narasimhamurti AIR 1940 Mad. 187 but I do not see how that can really help the defendant. It was recognised by Krishnan Pandalai

J. that if there was a real boundary dispute, the question of title depending solely on the boundary might become concluded, "as necessary and

logical consequence but not by virtue of the Act." The boundaries in *S. Subramania Ayyar Vs. Emperor*, were, as pointed out by the learned Chief

Justice, accepted by both sides and if that were so, the question could not be in the nature of a boundary dispute but that of title. In reality the

dispute in that case was in respect of the nature of tenure. Learned counsel for the respondent, however, contends, that as no other portion of the

land belonging to the defendant was situate on the west of the plot in dispute and as the whole of the plot DLHG was being claimed by the plaintiff,

the decision of the survey officer-(as it has the effect of exhausting the whole of the defendant's interest in the plot in dispute)-could not be in the

nature of a boundary dispute, but that of title. The contention is that the dispute, to be a boundary dispute, or the order of a survey officer in case

of an undisputed boundary must necessarily be confined to a portion of the land belonging to or claimed by the adjoining owner and not in respect

of the whole of his land. He relied in this connection on the observations of the learned Chief Justice in *Sivaprasad Sowcar v. Narasimhamurti* AIR

1940 Mad. 187 They are really in the nature of obiter, although even as such, they are entitled to great respect. The question for decision

formulated by the Division Bench at the time of making the reference related to

the effect that the order of the survey officer u/s 11 of the Act would have on the continuity of adverse possession held by the unsuccessful party.

15. The point that had to be decided was whether the order passed by the survey officer would preclude the person in possession from tacking on

the period of his possession, prior to the order passed by the survey officer, to that during which he was in possession after that order, so as to

make up the period of twelve years that would perfect his title by adverse possession. I cannot for myself see any reason (and I say so with very

great deference, if the learned Chief Justice intended to say anything different as contended by learned counsel for the respondent, but as to which

I am not at all sure) why a boundary dispute should necessarily be confined to a portion of Blackacre only in the illustration given by me, and not

comprise the whole of Blackacre if the owner of Whiteacre claimed that the area covered by the whole of Blackacre formed a part of Whiteacre

and had no independent existence. Similarly, there is no reason why a survey officer could be held to be acting beyond his jurisdiction if he

determined and recorded the whole of the area covered by Blackacre to fall within the boundary of Whiteacre, and if no dispute were raised

before him by any person, interested in saying anything to the contrary, to record the boundary within the meaning of Section 9 of Act 8 of 1923 as

un-disputed. It is true that as a result of the decision of the survey officer, the area covered by Blackacre would come to be regarded as a part of

Whiteacre-but before that decision, the person who claimed to be the owner of the area covered by Blackacre must be assumed to have been

disputing the right of the owner of Whiteacre and to have been contending that the whole of the area covered by Blackacre could not have been

included in the boundary of Whiteacre. A dispute must thus be regarded to have been raised as to the boundary of the two adjoining plots before

the order of the survey officer and the fact that as a result of that order the whole of Blackacre is found to be included in the boundary of

Whiteacre cannot be relevant to the question whether there was a boundary dispute or not. In cases where a survey officer records a boundary to

be undisputed-such as the present case-a dispute cannot be said to have been raised before the order was passed and the determination of a

boundary of a particular plot (e.g. that of Whiteacre in the illustration given), up to any point including the farthest limit of the area covered by the so-called Blackacre must be regarded to be in the nature of a determination of the boundary of Whiteacre and nothing else-the question as to the decision of the title to the portion included in the boundary of Whiteacre being if decided on the ground that it formed a part thereof inherent in the decision. In a case covered by Section 9, since the contention of the claimants of the area included in or covered by Blackacre must be supposed to be non-existent, the matter has necessarily to be looked at from the point of view of Whiteacre only.

16. For the above reasons, I am of opinion that the order of survey officer in regard to the entire plot DLHG holding it to be undisputed boundary of the plot bearing survey No. 243/3 up to the line LH became, in the absence of a civil suit as required by Section 13 of the Act, conclusive and the defendant is now precluded from challenging that order and thus questioning the plaintiffs' title to the plot in suit. In the result, the appeal in regard to the entire plot DLHG in the Commissioner's plan must be accepted and the decree of the first Court restored. The plaintiffs will have their costs in this and in the lower appellate Court including the costs incurred by them in calling for fresh findings. Leave refused.