
(1925) 03 MAD CK 0044
In the Madras High Court

Municipal Council

APPELLANT

Vs

Paratath Bavu Devussi and Another

RESPONDENT

Date of Decision : 26-03-1925

Acts Referred:

Citation : AIR 1926 Mad 235 : (1925) 22 LW 671

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—This is an appeal against a decree declaring plaintiff's right to certain land in Cochin Municipality. The District Judge has found that the land is used as a right of way, that it belongs to the plaintiff and that recently the Municipality interfered with his possession and that consequently he is entitled to the declaration sued for.

2. The main objection taken is that no notice of this suit was given to the Municipality u/s 261 of the District Municipalities Act of 1884, but in-as-much as this is a suit for declaration of title to immovable property, it is difficult to see how it can be treated as a suit on account of any act done by the Municipal Council." No doubt, in the plaint, the cause of action is stated to be the putting and beating of gravel on the plaint site; but if one looks into the facts, it appears that the plaint has not been accurately drafted and that the real cause of action is the notice sent by the defendant informing the plaintiff that he had no right to the property and that he should establish his right by a suit. In that view I do not think this is a case which can come u/s 261 of the District Municipalities Act. In this connexion, I may refer to President of the Taluk Board, Sivaganga v. V. Narayanan [1893] 16 Mad 317 and also Syed Ameer Sahib v. Venkatarama [1893] 16 Mad. 296 and Govinda Pillial v. The Taluk Board, Kumbakonam [1909] 32 Mad. 371.

3. The next objection is that the suit is barred by limitation, by reason of the provisions of Section 13 of the Survey and Boundaries Act. In order to apply the provisions of this section, it is necessary to show that there was a dispute before

the boundary was settled, or an appeal preferred from the settlement of the boundary. In fact, it means that, unless there has been a dispute between the parties as to a certain boundary line and that dispute has been settled by a competent officer, that decision is binding and can only be set aside by taking appropriate steps within a certain time. In the present case, there does not appear to have been any dispute at all. In fact, the District Judge finds that notice of the settlement of the boundary is not proved to have been served upon the plaintiff. This objection must also fail.

4. The District Judge has found that the property belongs to the plaintiff and that the only act of adverse possession by the Municipal Council has been the act of sweeping the land occasionally and that cannot be said to be adverse possession as against the real owner. There is no other reason for not accepting his findings in accordance with which his decree is right.

5. The appeal is, therefore, dismissed with costs.