
(1925) 03 MAD CK 0013
In the Madras High Court

Municipal Council

APPELLANT

Vs

Pratath Bavu Devussi and Another

RESPONDENT

Date of Decision : 26-03-1925

Acts Referred:

Tamil Nadu Survey and Boundaries Act, 1923 — Section 13

Citation : 92 Ind. Cas. 18

Hon'ble Judges : Phillips, J

Bench : Single 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 (sic) of 1884 but

inasmuch 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 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 connection I may refer to President of the Taluk Board, Sivaganga v. Narayanan

10 M. 317 : 3 M.L.J. 12 : 5 Tnd. Dec. 928 and also Syeed Ameer Sahib v. Venkatarama 5 Ind. Dec. 913 and Govinda Pillai v. Taluk Board, Kombakonam 4 Ind. Cas. 32 : 19 M.L.J. 333 : 4 M. L.T. 209.

3. The next objection is that the suit is (sic) 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 face it means that when 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, Munich pal 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 finding in accordance with which his decree is right.

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