

(1928) 08 MAD CK 0007
In the Madras High Court

Palimuthu Ambalagar

APPELLANT

Vs

The President, Union Board

RESPONDENT

Date of Decision : 31-08-1928

Acts Referred:

Madras Local Boards Act, 1920 — Section 207

Citation : (1929) ILR (Mad) 609 : (1928) 28 LW 653 : (1929) 56 MLJ 360

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—These are applications for revising the conviction of the petitioner u/s 207 of the Local Boards Act of 1920. The petitioner in

each case was asked to remove an encroachment upon a vacant site belonging to the Union and the prosecution was for non-compliance with the

notice within the time fixed. The petitioner was prosecuted and fined Rs. 20 in each case. There was some dispute in respect of the vacant land

between the Union Board and the Pillayar temple of which the petitioner in Cr.R.C. No. 934 of 1927 is the Dharmakarthar, and also in respect of

the plot of land in front of the land of the petitioner in Cr.R.C. No. 935 of 1927. There was a survey of the lands belonging to the Union Board

and under the survey the plots in dispute were marked off as belonging to the Union Board and a notification was published in the District Gazette;

as required by Section 13 of the Surveys and Boundaries Act. That was somewhere in 1926. Notice was issued to the petitioner in both the cases,

in October 1926, to remove the obstruction and again another notice was issued, Ex. B, in February 1927. The petitioner not having complied

with the notice, prosecution was launched against him and he was found guilty and sentenced to pay a fine of Rs. 20 in each case.

2. The question that is raised by Mr. Krishnaswami Aiyar is that the decision of the Survey Officer is not conclusive as regards the title to the property inasmuch as the petitioner has three years from the date of the notification to file a suit to modify the order of the Survey Officer. u/s 13, unless the survey so notified be 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. Section 14 of the present Act gives three years to a party to file a suit for setting aside or modifying the order of the Survey Officer. The three years have not elapsed. The question is whether in a prosecution launched before the expiry of the three years, a Criminal Court is debarred from considering the question of title to the land in dispute or whether the Criminal Court is bound to hold that the order of the Survey Officer is conclusive on the question of title. If no suit is filed within three years the order of the Survey Officer would be conclusive proof as to the boundaries determined and recorded by him. Before the expiry of three years the party against whom the order is made has a right to institute a suit and if the result of the suit be that the order of the Survey Officer is wrong, then the order of the Survey Officer will have to be set aside or modified. The question is whether, when a prosecution is launched before the expiry of three years, a Criminal Court is entitled to go into the evidence as to the title to the property, taking the decision of the Survey Officer as prima facie evidence in favour of it, or whether a Criminal Court is precluded from doing so by reason of the order of the Survey Officer. Reliance is placed by Mr. Panchapakesa Sastri upon the wording of Section 13 that unless set aside or modified by the decree of a Civil Court, the order shall be conclusive proof that the boundaries determined and recorded have been correctly determined and recorded. No doubt, this clause, if it had stood alone, would mean that the order of the Survey Officer is conclusive proof of the boundaries determined and recorded by him, but his order is subject to the decision of a Civil Court, and, for filing a civil suit, the law gives a period of three years. If before the expiry of the three years a prosecution is launched, I think a Criminal Court is not precluded from going into the question of title to the property in dispute and to decide on the evidence whether the property in dispute belongs to the Union Board or to the accused, in other

words, the Court is entitled to go behind the order of the Survey Officer. When a prosecution is launched, it is for the prosecution to make out

affirmatively all the ingredients necessary to make out the offence and the fact that under the law an order, if not modified is conclusive proof, is not

sufficient to oust the jurisdiction of a Criminal Court to consider whether on the evidence before it the prosecution has made out the offence. If a

suit had been filed within three years and had been dismissed, no doubt the remedy u/s 14 given to the unsuccessful party may be taken as having

been negated; but where no suit has been filed or where a suit has been filed and the result of the suit is not known, I do not think a Criminal

Court is debarred from going into the question as to the ownership of the land in respect of which the prosecution is launched before the expiry of

three years, from the date of the Survey Officer's order.

3. In this view, the judgment of the Lower Courts ought to be set aside. The accused has adduced some evidence as to the ownership of the land

and the Appellate Magistrate has declined to consider the evidence in his view of the law that the Survey Officer's order is conclusive as to the

ownership of the land in dispute. The Trial Court has also been misled in its appreciation of the evidence by its view that the question of the

ownership of the land is concluded by the determination of the Survey Officer. I think the proper order would be to set aside the conviction in both

cases and direct the Trial Court to weigh the evidence as regards the ownership of the land and dispose of the cases according to law. The fine, if

paid, will be refunded.