

(1934) 02 MAD CK 0032
In the Madras High Court

(Penumetcha) Seetharama Raju

APPELLANT

Vs

Kalidindi Narayanaraju and Another

RESPONDENT

Date of Decision : 22-02-1934

Acts Referred:

Citation : AIR 1934 Mad 685 : 152 Ind. Cas. 462 : (1934) 40 LW 536

Hon'ble Judges : Butler, J

Bench : Division Bench

Judgement

Butler, J.—The plaintiff in O.S. No. 287 of 1929 and defendant in O.S. No. 203 of 1930 is the appellant. He sued for possession of certain

land which he claimed to have been demarcated as his by orders of a Survey Officer dated 30th September 1926 while plaintiffs in O.S. No. 203

of 1930 sued to set the order aside. The latter suit; was instituted on 1st July 1930 and was clearly out of time. The appellant's suit was decreed

by the District Munsif and dismissed by the Subordinate Judge in appeal who also gave the plaintiffs in O.S. No. 203 of 1930 a decree. The

Subordinate Judge found that the defendants had a title by adverse possession and that plaintiff had not proved possession within 12 years of suit,

in appeal it is contended that the decision of the Survey Officer was conclusive against the defendants. It is therefore necessary to enquire what the

Survey; Officer decided. Ex. A is appellant's petition to him. In it he claims title to the lands as forming part of suit No. 251 of which the

defendants had added the portion now in dispute to their land (Suit No. 254). The land should therefore be remeasured and re-demarcated. The

order of the Survey Officer runs:

The complaint is allowed and the plots contested are ordered to be surveyed as

petitioner's lands by effecting sub-divisions of them infields Nos.

254 and 241.

2. This was done but possession was not given. u/s 13, Survey and Boundaries Act, the survey shall be conclusive proof that the boundaries

determined and recorded therein have been correctly determined and recorded, and Section 14 makes the order in dispute under Sections 10 and

11 final unless set aside by a suit filed within three years from the date of the order. Authority is clear : vide *Muthurulandi Poosari v. Sethuram*

Ayyar 1919 Mad. 779 and *Ramamurthi v. Narayana Gajapathi* 1933 Mad 279, that the decision of a Survey Officer is not limited to the

correctness of the boundaries determined. In *Muthurulandi Poosari v. Sethuram Ayyar* 1919 Mad. 779, the question referred to the Full Bench

was,

when a plaintiff's claim has been disallowed under the Survey and Boundaries Act 4 of 1897, but he has been in possession of the property, does

the decision of the Survey Officer operate as *res judicata* in a subsequent suit for possession?

3. The answer was,

the order was...conclusive as to the rights of the parties and nonetheless so because the unsuccessful party, who was in possession at the date of

the order was not subsequently ousted from possession.

4. Phillips, J., in making the reference to the Full Bench opined that the order of the Survey Officer would have interrupted the running of adverse

possession. In *Azagaparumal Pillai v. Raza Pillai* 1932 Mad. 310 a somewhat different view was taken, but this has been adversely commented on

in *Ramamurthi v. Narayana Gajapathi* 1933 Mad. 279. Hence the order of the Survey Officer must be taken to be that the appellant had title to

the land and that the respondents had not title thereto by adverse possession at the date of the order. Following *Muthurulandi Poosari v. Sethuram*

Ayyar 1919 Mad. 779, I find that adverse possession, if any, was interrupted by the order and demarcation consequent thereon. The appellant

was therefore not bound to show possession within 12 years of suit independently of the order. The judgment of the District Munsif was therefore

right. The appeals will be allowed with costs throughout.