
(1934) 04 MAD CK 0022
In the Madras High Court

Rangasami Goundan

APPELLANT

Vs

(Zamindar Kumarakurupara) Ramanatha Malayandi Errappa
Gounder

RESPONDENT

Date of Decision : 05-04-1934

Acts Referred:

Madras Court of Wards Act, 1902 — Section 49

Citation : AIR 1934 Mad 537 : (1934) 40 LW 49

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The lower Courts have dismissed the suit on the ground that the plaintiff (the appellant) had not, before instituting it, given the notice prescribed by Section 49, Madras Court of Wards Act (Act 1 of 1902). For the appellant the contention is that, owing to the peculiar character of the present suit, the serving of the notice u/s 49 is not a necessary requirement. In the course" of a survey carried out in the defendant's estate, under the Madras Surveys and Boundaries Act (Act 8 of 1923), the survey officer's decision was against the plaintiff in respect of the boundary dispute in question. The appellant's authority having confirmed that decision, the present suit has been brought u/s 14 of that Act. The relevant sections are Sections 10 to 14 and Section 18. Section 10 deals with the power of the survey officer to determine and record a boundary dispute. Sections 11 and 12 deal with appeals against orders inter alia made u/s 10. Section 13 provides how the completion of a survey is to be notified and goes on to enact:

Unless the survey so notified is modified by a decree of a civil Court under the provisions of Section Li, the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded.

2. Then Section 14 runs thus:

Any person deeming himself aggrieved by the determination of any boundary under Sections 9, 10 or Section 11 may, Subject to the provisions of parts 2 and 3, Limitation Act, 1908, 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.

3. The last relevant section is Section 18, which, in so far it is material to the present purpose, applies the provisions already referred to (relating to the survey of Government lands) to the conduct of the survey of lands in estates. Both at the time of the survey and on the date of the filing of the suit, the defendant's estate was under the management of the Courts of Wards. Section 49, Court of Wards Act reads thus:

No suit relating to the person or property of a ward shall be instituted in any civil Court until the expiration of two months after notice in writing has been delivered to or left at the office of the District Collector specified in the notification u/s 19 or the Collector appointed u/s 16 as the case may be.

4. The question really turns upon whether the statutory suit prescribed by Section 14, Surveys and Boundaries Act is, or is not, a suit within the meaning of Section 49, Court of Wards Act. What is argued for the plaintiff is, that the suit u/s 14 is virtually an appeal from the decision made in the survey proceedings that being so, though the present proceeding is called a suit, it is, in fact, and if rightly understood, not a suit but an appeal. There is, I think, in this argument some confusion. The suit may be in the nature of an appeal, but what the Act has done is, to allow an appeal in the form of a regular suit. It would be wrong, in my opinion, to substitute the word "appeal" for the word "suit" in Section 14, for that is precisely the effect of Mr. L.A. Gopalakrishna Ayyar's contention. It may be necessary for some purposes to bear in mind that the suit that has been provided for is "simply a form of appeal"; but there is no warrant for holding that the expressions "suit" and "appeal" are convertible terms. In *Phul Kumari v. Ghanshyam Misra* (1908) 35 Cal. 202 their Lordships of the Judicial Committee had to decide what, for the purpose of the Court Fees Act, the effect of a suit to set aside a summary order made in a claim proceeding, is. It was decided that such a suit was governed by Article 17 of Schedule 2 of that Act, which applies to suits, to alter or set aside a summary decision or order of any of the civil Courts not established by Letters Patent, or of any Revenue Court." In the course of their Judgment their Lordships observed:

Misled by the form of the action, directed by Section 283, both parties have treated the action as if it were not simply a form of appeal, but as if it were unrelated to any decree forming the cause of action.

5. Dealing with a question of *lis pendens*, the learned Judges in *Krishnappa Chetty v. Abdul Khader Sahib* 1915 Mad. 495, relying upon the passage quoted above, held that a suit brought under Order 21, Rule 63, Civil P.C. is a mere

continuation of the proceedings in a claim petition, on the ground that such a suit is in its essence not an original suit, but merely a form of appeal. I fail to see how this decision can help the appellant. In *Raja of Ramnad v. Subramaniam Chettiar* 1928 Mad. 1201 it was held that a suit under Order 21, Rule 63, Civil P.C. would not be bad for want of notice u/s 49, Court of Wards Act. In regard to this case, I must observe with respect, that the point does not seem to have been considered, for it was assumed that the suit must be deemed to be a continuation of the claim proceeding where the claim had been allowed, the only argument advanced being that it is not such a continuation where the claim had been dismissed. I should consider myself bound by this authority although the point was dealt with by only one of the two Judges that formed the Bench, but this decision has no direct bearing on the question I have now to decide. Section 49 refers to the commencement of a suit "in any civil Court"; it is somewhat difficult to conceive of a civil suit as having been commenced by a proceeding taken before a survey officer. In the case of a claim order, the matter is somewhat different; the claim proceeding, to start with, is instituted before a civil tribunal and so is the regular suit subsequently filed. Further, the words used in Section 49 are perfectly general and comprehensive: "no suit relating to the person or property of any ward." Why these words should be whittled away in the manner suggested, I fail to see. The decision of Ananthakrishna Ayyar, J., in S.A. No. 1296 of 1926 (unreported) relied on for the appellant, is dearly inapplicable. That case also, no doubt, related to a suit brought under the Surveys and Boundaries Act, but the defendant there was not a person represented by the Court of Wards but a Local Board. The relevant provision was Section 225, Madras Local Boards Act, which in its wording, is more restrictive as regards the class of suits where notice is required, than Section 49, Court of Wards Act, with which we are concerned; it is upon that section that the decision turned. There is a dictum by the learned Judge that "a suit filed u/s 14, Surveys and Boundaries Act is really a continuation of the proceedings taken before the survey authorities", with which I am not prepared to agree. Before concluding, I must observe that the appellate survey officer made a careless remark at the foot of his order noting that the suit impeaching his order should be filed in one year thus misstating the effect of Section 14. For such a mistake there can be no excuse. In the result the second appeal is dismissed, but in the circumstances, I direct that the parties shall bear their respective costs throughout.