

(1921) 05 MAD CK 0008
In the Madras High Court

Subraminia Mudali

APPELLANT

Vs

Meenakshi Ammal and Another

RESPONDENT

Date of Decision : 10-05-1921

Acts Referred:

Citation : AIR 1922 Mad 392 : (1922) 43 MLJ 194

Judgement

1. The course of this litigation has been unfortunate, The dispute between the parties relates to 14 cents of land and is of a kind which is very

common in connection with resurveys. Each party has some evidence of title to a particular extent and there is no room on the land to satisfy the

claims of each. Some objection has been made to the lower appellate Court's judgment on the merits, but we do not think that any question of law

has been raised; and with its decision on the question of fact we cannot interfere.

2. The substantial argument here has been against the decision of the lower Courts that the suit was not barred, as the defendants contended it was

with reference to Section 13 of Act IV of 1897. The language of the pleadings is important. The first defendant, in paragraph 6 of his written

statement, referred generally to mistaken action on the part of the Survey authorities and to his own objection to their action at the time of the

grant, of the final patta. In the end, patta for 4 acres and 39 cents was granted to the defendants. The plea of limitation is then taken in these words:

"Since the plaintiff did not bring a suit within one year to set aside this decision, the suit is time-barred". It is no doubt true that the plea is taken

very generally; but it does not seem to us that it was taken ambiguously, and defendants are entitled to a trial of it. The District Munsif framed an

issue, "Is the suit in time but he dealt with it by a short statement that the suit

must be found to be in time without further discussion. In the lower appellate Court objection was taken to this finding with reference to Muthirulandi Poosari v. Sethuram Aiyar 36 M.L.J. 356. The lower appellate Court, however, in our opinion, misread that decision as holding that time u/s 18 would run not, as Section 18 prescribes, from the date of an order or decision of the Survey authorities, but from the doing of an official act such as the actual demarcation of the land by fixing boundary stones by the Survey department. That construction of the judgment in the case cited cannot be sustained. There is no doubt a reference in it to the doing of an official act; but that reference occurs in the discussion of a previous case, Krishnamma Achayya 36 M.L.J. 356 , in which the application of Article 16 of Schedule 11 of the Limitation Act of 1871 was in question and an official act would therefore be the starting point. There is nothing in the judgment to countenance any deviation from the terms of Section 13 of Act IV of 1897. Following that section we must hold that the starting point for limitation which the defendants had to establish was an order of the Survey authorities. It is in fact fairly clear that both the lower Courts were misled by their construction of the authority above mentioned; for the record of evidence in the Munsiff's Court shows that no attention was paid to the date of any order such as Section 13 contemplates, and that the first defendant was examined and cross-examined not as to whether he had obtained such an order but as to whether the boundary had been altered, the position of stones had been changed and an official act had been done, Probably for the same reason the order of the Survey authorities was not filed and we have very little on record as to the course taken by the enquiry and nothing on the important question whether the survey order was passed as Section 13 requires in settlement of a dispute.

3. In these circumstances we must call upon the lower appellate Court to submit a revised finding on any evidence which the parties may adduce on the issue, "Whether the suit is in time with reference to Section 13 of Act IV of 1897". The finding is due in this Court by the 20th August and 7 days will be allowed for objections.

4. In compliance with the order contained in the above judgment.

5. The Court of the Subordinate judge of Vellore submitted following finding:

6. I find on the issue that the suit is not barred.

7. This second appeal coming on for final hearing after the return of the finding of the lower appellate Court upon the issue referred by this Court for trial.

JUDGMENT

1. The finding of the lower appellate Court on the issue remanded is that the suit is not barred; that is, that proviso to Section 13 of Act IV of 1897

is not applicable. We accept the lower appellate Court's finding of fact that the plaintiff was never served.

2. We have then to consider what her position is with reference to the language of the statute. So far as we can ascertain from the record, the 1st

defendant and the plaintiff had been given rough pattas at the survey for the lands found to be in their possession. The 1st defendant presented to

the superior Survey Officer a petition, in which he stated that his patta included too little and the plaintiff's too much and asked for correction of

each. He, no doubt, did not formally set out the plaintiff as respondent to his appeal, but the tenor of his petition is quite clear, that he desired relief

against her by way of appeal. That being so, we must hold first that the plaintiff and the 1st defendant were not parties to any boundary dispute

before the inferior Survey Officer. A dispute, in our opinion, involves something, in which two persons participate, and there is nothing before us to

show that the plaintiff and 1st defendant were ever arrayed against each other in the case, before the matter was brought before the superior

Survey Officer,

3. The question is next whether the plaintiff was a party to an appeal, which had been preferred u/s 12. It is again difficult to say how she was so.

She had, as we have pointed out. not taken any part and not been concerned in the proceedings in which the 1st defendant had taken part before

the inferior Survey Officer. She was brought into the proceedings for the first time before the Superior Officer. We cannot see how she was a

party to the appeal until she had been made one in virtue of some notice to her.

4. A close examination of the plaintiff's question is entailed by the wording of Section 13 of the Act. Section 13 gives the enumeration of persons,

to whom it is applicable, and we have now given reasons for our opinion that the plaintiff does not come within the two classes of persons first

specified, parties to the dispute and parties to the appeal. There is however

another class of persons specified, those to whom notice of such appeal is given; and we have to decide whether the plaintiff can be brought within that description. One reason for saying that she can is that the superior Survey Officer in his judgment in the appeal referred to her as having had notice, and it has been suggested that we ought to accept that as conclusive. We do not however see our way to do so. Section 13 lays down the conditions, in which the decision of the Survey Officer can exclude the jurisdiction of the Court, If this decision is a condition to be relied on as excluding the jurisdiction of the Court, it cannot possibly be for the Survey Officer himself to decide finally or to place on record a final decision regarding the establishment of that condition. The question whether that condition is established must be for the Court, which has to decide whether its jurisdiction has been ousted. We, therefore, must hold that as the plaintiff had not intact notice of the appeal, Section 13 and the proviso thereto do not deprive her of her right to sue.

5. We have, we may add, found some difficulty in construing this section, because in the proviso there is a reference to the parties to the dispute or to the appeal "including those to whom notice of such appeal has been given." We think, however, that the use of these words can be reconciled with the interpretation of the earlier part of the section, which we are adopting, by holding that persons who would not otherwise be parties to the appeal acquire the character of parties on receiving notice.

6. For these reasons we accept the finding. We should have said that the plaintiff - it is not disputed - had notice of the survey appellate decision on 9-7-14 and that, if Rule 13 were applicable to the case, this suit brought more than a year after that date would clearly be barred. Taking the view we do of her position and holding that Section 13 is not applicable to her, we accept the lower Court's finding that the suit is in time.

7. The result is that the second appeal is dismissed with costs.