(1939) 10 MAD CK 0002

Madras High Court

Case No: None

Sivaprasad Sowcar		APPELLANT
	Vs	
Sekharamantri Narasimhamurthi and Others		RESPONDENT

Date of Decision: Oct. 11, 1939

Acts Referred:

- Madras Estates Land Act, 1908 - Section 52(3)

Citation: AIR 1940 Mad 187 : (1940) ILR (Mad) 501 : (1940) 51 LW 73 : (1940) 1 MLJ 79

Hon'ble Judges: Patanjali Sastri, J; Krishnaswami Aiyangar, J

Bench: Full Bench

Judgement

Krishnaswami Aiyangar, J.
The plaintiff is the appellant. The property in dispute is a house in Allipuram, a suburb of Vizagapatam. The

original owner was one Sekharamantri Appalaswami, the father of the first defendant in the suit and the first respondent in the second appeal.

Sekharamantri Appalaswami was indebted to the father of respondents 2 to 5, one Kanti Mahanti Appalanarasayya. For the recovery of the debt,

K. Appalanarasayya instituted a suit against Appalaswami, and in execution of the decree obtained therein purchased the suit house on 7th

January, 1916, and obtained a sale certificate on 2nd July, 1920. Though he thus obtained a perfect title to the house, he never reduced it to

possession either by process in execution or otherwise. S. Appalaswami and after him his son the first respondent have continued in undisturbed

possession of the house. By the date of the suit, they had been in possession for over fifteen years, a period sufficiently long to give them a

prescriptive title under Article 144 of the Indian Limitation Act against K. Appalanarasayya or any one claiming under him, or indeed against all the

world. The plaintiff derives his title to the suit house from K. Appalanarasayya. He had advanced money on a mortgage of the house to the latter.

On that mortgage the plaintiff instituted a suit and obtained a decree. In execution the plaintiff himself purchased the house on 6th September, l929,

and a sale certificate was issued to him on 10th October, 1929. Resisted in obtaining possession by the first defendant, he filed an application to

remove the obstruction but the application was dismissed. Within one year of this adverse order, the plaintiff instituted the present suit to set aside

the order, and to recover possession of the house. The claim is resisted by the first defendant, on the ground that the appellant''s title assuming he

had a good title has been lost by adverse possession. Seeing that on the findings of the Courts below the first respondent and his father have been

in continuous and exclusive adverse possession of the property, the. appellant would prima facie be barred. Acting on this view the Courts below

have dismissed the suit, overruling a contention of the appellant advanced with the object of getting over the bar Of limitation.

2. To appreciate that contention a few facts are necessary. In 1922, there was a Town Survey of Vizagapatam and its suburbs, in one of which

namely Allipuram, we have said that the suit house is situate. The site of the house was demarcated as No, 967 belonging to K, Appalanarasayya,

who as we have already mentioned, had purchased the property in Court auction in 1916, and had accordingly a perfectly good title at the time.

This survey number as well as certain others formed the subject-matter of a survey dispute as shown by the order dated 29th November, 1922, of

the appellate survey authority in land complaint Appeal No. 126 F.B. It may at this stage be mentioned that the survey was conducted under the

provisions of the Survey and Boundaries Act (IV of 1897). It is found from the appellate order aforesaid that the appellant was one Mantri

Lakshminarasimham. There were four respondents and two of them were K. Appalanarasayya and Section Appalaswami. It looks as if Survey

No. 967 was claimed by the appellant as against K. Appalanarasayya and it does not appear that there was any dispute between K.

Appalanarasayya and Section Appalaswami inter se as regards the suit house. The former produced his sale certificate of 1920, and on its strength

he was recognised as the owner, and registered as such. The latter whose adverse possession was at the time only six years old could not with any

chance of success object to the title of the former and for that reason apparently, acquiesced in the decision without raising any objection then or

thereafter either within the time limited by Section 13 of the Act even afterwards. The survey order accordingly became final u/s 12(3) and

conclusive u/s 13.

3. It is contended for the appellant that the survey decision by reason of its statutory attributes has the effect of dissipating and putting an end to the

prior title, if any, in the unsuccessful party, inclusive of such growing but immature right arising out of a possession for less than the statutory period.

There can be no doubt, that such a possession is not to be treated as carrying no legal consequence, as the law invests the possessor with certain

limited rights not only as against a stranger but even against the true owner. On the argument of the appellant the period of adverse possession

prior to the order must be ignored altogether, and is not to be tacked on to the later period. The order of the survey authority, it is urged, has the

effect in law of interrupting the continuity of the possession, and creating or recognising on its date a complete title, which can only be displaced by

a fresh period of adverse possession for the statutory period to be counted from the date of the order. This is a question on which there has been a

divergence of judicial opinion due to a decision of a Division Bench in Azhagaperumal Pillai v. Rasa Pillai (1931) 62 M.L.J. 399, which strikes a

note, it seems to us, different from that involved or expressed in the other cases of this Court including the Full Bench decision in Muthirulandi

Poosari v. Sethuram Aiyar (1918) 36 M.L.J. 356 : ILR 42 Mad. 425 . We shall revert to this question a little later.

4. It is to be observed that the finality attached by Section 12(3) of the Act to a survey officer''s decision, is a finality only for the purposes of the

survey operations and the survey records compiled as a result of those operations. It has no further efficacy, and does not affect title, in particular:

Vide Chinna Venkatrayadu v. Ramamurthi (1920) 40 M.L.J. 149 : ILR 44 Mad. 340. But the provisions of Section 13 have a more far reaching

effect and it is settled that if a case fell within the section, and the suit contemplated by it is not instituted within the time limited, the survey order

becomes decisive of even a question of title. But to have this consequence it must be clearly shown that the conditions of the section have been

fully satisfied. In the present case we are of opinion that they are satisfied.

5. Section 13 is as follows:

Any party to a boundary dispute before the Survey Officer, and any party to an appeal preferred u/s 12 or to whom notice of such appeal is given,

and any person claiming under any such party, deeming himself aggrieved by the order of the Survey Officer, or by the decision of the appellate

authority as the case may be, may, subject to the provisions of Parts II and III of the Indian Limitation Act, 1877, institute, within the period of one

year from the date of such order or decision, a suit to establish the right which he claims in respect of the boundary of the property surveyed :

provided that, subject to the result of such suit, if any, such order or decision shall be conclusive as between the parties to the dispute or to the

appeal, including those to whom notice of such appeal has been given, and those claiming under such parties or any of them

6. The section makes it obligatory on the following descriptions of persons who deem themselves aggrieved by the order, to institute a suit within

the period of one year to establish their claim on pain of being for ever precluded from agitating it by suit or otherwise. They are:

(i) A party to a boundary dispute

(ii) A party to an appeal preferred u/s 12, and

(iii) A person though not impleaded as a party to the appeal has yet had notice of the appeal served on him.

7. The effect of the section is to treat class (i) as on the same footing as class (ii), as service of the notice of appeal makes them in fact, though not

in form, parties to the appeal. If we refer to Section 12, it is clear a right of appeal is conferred on a registered holder the boundaries of whose

holding is affected by the order of the survey officer. If the boundary is disputed before the officer, the order settling the dispute is made conclusive

as between the disputants by force of Section 13 unless challenged by suit. Even where no dispute had been brought up before the officer and the

officer had merely directed the boundary to be laid down as pointed out by the registered holder or his agent, a right of appeal is given to a

neighbouring holder on the issue of the notification contemplated by Section 11(4). In this case, notice is directed by Section 12(1)(c) to issue ""to

all registered holders, the boundaries of whose holdings may be affected by the proceedings in appeal."" Both classes of persons, namely those

originally impleaded by the appellant, and those others to whom notice is issued by reason of the fact that the boundaries of their holdings may be

affected by the result of the appeal, are bound by the order passed by the appellate authority. This is the language of Section 13.

8. In the present case, both K. Appalanarasayya and Section Appalaswami were made parties to the appeal at the outset and we must presume

that notice went to the latter in the appeal, and he was aware of the proceedings when they went on, and of the result after they ended. It is clear

that the interests of these two individuals conflicted, as Appalaswami was holding possession adversely to K. Appalanarasayya, though it is equally

clear that no actual conflict or dispute between them was brought up for determination by the appellate authority. On the contrary it is the claim of

the appellant alone who apparently set up a right as against K. Appalanarasayya or perhaps even against all the respondents as a body, that was

determined by the order. If the rule of res judicata as between co-defendants, is to be applied, we should be inclined to hold that the order in

question cannot be taken to have conclusively determined the question of title as between the two respondents namely K. Appalanarasayya and

Section Appalaswami as the adjudication on the point was not necessary forgiving relief to the appellant. None of the respondents had a case

which can be said to have been common to him and the appellant, so that the decision could be said to have settled a dispute latent at least in

character as between the respondents though it did not come up in a practical form before the survey authority. Even apart from this consideration

it seems to us that we shall not be warranted in applying the rule of res judicata to the decision of a survey authority under the Act especially after

the pronouncement on the point by the Privy Council in Radhakrishna Aiyar v. Sundaraswamier (1922) 43 M.L.J. 323 : ILR 45 Mad. 475, where

their Lordships cited with approval the following passage in the judgment of the High Court, namely:

The answer is that the general doctrine of res judicata is not in question, but the application of the special rule stated in Section 52(3), Estates Land

Act...

9. The language of the section has therefore to be construed without reference to the body of rules evolved in relation to the doctrine of res

judicata as applied to the decision of a Civil Court. From this standpoint it is only necessary to enquire whether K. Appalanarasayya and Section

Appalaswami were parties to the appeal within Section 13, and not whether there was any active contest between them. Once it is shown, as it has

been shown in this case, that Section Appalaswami was a party, the order is conclusive against him even though he had not actively resisted K.

Appalanarasayya''s claim. There is no hardship or injustice involved in this view being accepted. For it is difficult to imagine that a person being a

party to the appeal and not realizing the nature or the consequence of a decision, if it went against him. If in spite of this knowledge, he chooses to

keep quiet without questioning it by suit, he must take the consequence for which he alone is responsible.

10. It therefore becomes necessary to decide for the disposal of this second appeal the question to which we have adverted above. It will be

enough to refer to three decisions of this Court to indicate the reason which has prompted us to refer the consideration of the question to a Full

Bench. We may at once say that our inclination is to interpret the Full Bench decision in Muthirulandi Poosari v. Sethuram Aiyar (1918) 36 M.L.J.

356 : ILR 42 Mad. 425 , in favour of the appellant, that is to say, in support of the view that the adverse possession of the unsuccessful claimant

during the period anterior to the decision of the survey authority is to be ignored as of no legal consequence. In the case before the Full Bench, the

plaintiffs whose title to the property in dispute had been established by a decree of the Civil Court in 1900 continued in undisturbed possession till

1913 when on account of the defendants attempting to interfere with their possession they instituted the suit for an injunction against them. It

appeared that sometime between 1904 and 1906 in the course of a survey conducted under the Act, the survey officer had passed an order

demarcating the land as belonging to the defendant''s father in spite of the plaintiff''s opposition. The possession of the property however continued

with the plaintiffs undisturbed by the defendants notwithstanding the survey order. The District Judge reversed the judgment of the District Munsif

who had decided in favour of the defendants and held, following Krishnamma v. Achayya I.L.R.(1879) 2 Mad. 306, that the plaintiffs were

entitled to succeed as the demarcation of boundaries by the survey officer did not interfere with plaintiffs'' continued enjoyment from even before

the date of the order. A second appeal was preferred and came before Phillips and Seshagiri Aiyar, JJ., who considered it necessary to refer the

following question to the Full Bench namely:

When a plaintiff''s claim has been disallowed under the Surveys and Boundaries Act IV 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?

11. This reference was rendered necessary as in the view of the referring Judges the decision in Krishnamma v. Achayya I.L.R.(1879) 2 Mad.

306, was felt to be of doubtful authority. In his order of reference, Phillips, J., expressed his inability to accept the contention based on this

decision, that the plaintiffs'' title could be supported on the strength of their adverse possession. If their possession both prior and subsequent to the

survey order were taken into account, it was for more than the required duration, and the argument would have prevailed. But the learned Judge

was of opinion that such addition was not permissible, as the survey officer''s order had the effect of interrupting the continuity of the possession

which the plaintiffs had held. The other referring Judge, Seshagiri Aiyar, J., appears to have Shared the same opinion as in any other view it is not

possible to understand his observation that the defendants acquired a title to the property on the date of the Survey officer''s demarcation. The

italics are ours and the words italicized involve the proposition that the survey order had the effect of creating a new title requiring to be displaced

by a sufficient period of adverse possession to commence after its date.

12. The question propounded for answer by the Full Bench did not in terms expressly refer to the point adverted to above. None the less it is clear

that the prior possession of the unsuccessful party which had continued undisturbed even after the order was obviously the ground of the doubt

which called for solution. The answner was given by Wallis, C.J., on behalf of the Full Bench in a somewhat terse statement that the order

if not reviewed by the appellate authority or questioned by suit as provided in the section was conclusive as to the rights of the parties, and none

the less so because the unsuccessful party who was in possession at the date of the order was not subsequently ousted from possession.

13. There is no specific mention here of the effect of the survey order on the running of adverse possession, but it is equally certain that there is

nothing to suggest a dissent from the opinion of the referring Judges. The continuance of the possession in the unsuccessful party was held not to

affect the conclusiveness of the order against him. When the second appeal came again before the Division Bench after the return of the answer by

the Full Bench, the Court reversed the judgment of the District Judge, and negatived the claim of the plaintiffs. This result could have been arrived

at only on the footing that the Full Bench had sanctioned the view of the referring Judges, viz., that the survey officer''s order brought about a break

in the continuity of the adverse possession which should therefore be dated as from the date of the order and not earlier. It was in this sense

Devadoss, J. understood the principle underlying the section, as interpreted by the Full Bench, and we think there is a great deal of force in it as the

opposite view would tend to detract from the conclusiveness of the order, enacted by the section. His judgment was, however, upset on appeal

under the Letters Patent, by a Bench of two Judges, Reilly and Ananthakrishna Ayyar, JJ. who took a different view of the ruling, supporting

themselves by a pronouncement of Ramesam, J. in Kuppuswamiv. Venkataswami (1922) 16 L.W. 99,. and also by an unreported decision of

Benson and Krishnaswami Ayyar, JJ. in S.A. No. 1102 of 1909. They observed:

Neither the decision of the survey officer, nor the planting of stones in accordance with it in proceedings under the Act ipso facto dispossesses any

party, nor could it make a legal break in existing possession so as to render ineffective for purposes of limitation any adverse possession running at

its date.

14. To our mind it appears, if we may say so with respect, that this expression of opinion is contrary to the view of the Full Bench, whatever merit

there may be in the reason adduced by the Court, namely, that it would be very extraordinary if the survey officer''s decision could have an effect

denied to the decision of a Civil Court as in Subbayya Pandaram v. Mohammad Mustapha Maracayar (1933) 45 M.L.J. 588 : L.R. 50 IndAp

295 : ILR 46 Mad. 751 , and Singaravelu Mudaliar Vs. Chokka Mudaliar (alias) Chokkalinga Mudaliar, .

15. In a later decision reported in Ramamurthi v. Gajapati Rqju (1932) 64 M.L.J. 361 : ILR 565 Mad. 366, the view which prevailed in

Azhagaperumal Pillai v. Rasa pillai (1931) 62 M.L.J. 399, was not accepted. The matter first came before Spencer, J. sitting as a single Judge in

Second Appeal, from whose decision a Letters Patent Appeal was preferred which came up before a Division Bench composed of Waller and

Pandalai, JJ. who differed. The main question on which the difference of opinion arose was as to what should be considered as a boundary dispute

within the meaning of the Act. With reference to the point now under consideration after referring to the Full Bench decision, Waller, J. expressed

himself emphatically as follows:

The referring Judges in that case were definitely of opinion that the decision of the survey officer made a break in the adverse possession and that

the period before the decision could not be tacked on to the period after it, so as to make the adverse possession continuous. And the Full Bench

did not dissent from their opinion.

16. Pandalai, J. favoured the other view, accepted in Azhagaperumal Pillai v. Rasa Pillai (1931) 62 M.L.J. 399, holding that a survey officer''s

decision as to boundary does not have the legal effect of terminating the possession of the man who was in possession or of breaking the running of

his possession for purposes of limitation. On a reference to a third Judge, Wallace, J. endorsed the opinion of Waller, J. in preference to that of

Pandalai, J. and animadverted on the contrary decision of the Division Bench, as not in accordance with the effect of the Full Bench ruling which

according to him,

held that the decision of a survey officer is a decision that the successful party is in possession even though the unsuccessful party was really in

possession, and that the decision estops the unsuccessful party from urging later on that he was in possession.

17. An attempt at reconciliation of the conflicting views has been made by Wadsworth, J. in Tallapragada Achutharamayya Vs. Ayyagari

Soorappayya and Another, in which he has also endeavoured to support the decision in Azhagaperumal Pillai v. Rasa Pillai (1931) 62 M.L.J. 399,

by suggesting that the survey officer in that case had not determined any question of possession. According to the learned Judge, the survey

officer''s decision can be regarded as final only to the extent to which it purports to decide the rights of the parties, the governing factor being the

actual decision. On this view it will be necessary in every case to enquire whether the decision of the survey officer was based on possession or on

title. If it is based on an adverse finding against the title of the unsuccessful party on a mere consideration of the documentary evidence of

ownership, that finding should not according to the learned Judge, stand in the way of his adding up his possession anterior as well as posterior, so

as to make up the period required by the Limitation Act for a prescriptive title. With very great respect, we feel that the survey officer is not called

upon to give an express decision on either title or possession. The Court is merely called upon to interpret the conclusiveness attributed to a

demarcation of boundary by an officer charged with the duty of deciding a question of boundary only. An analysis of the basis of his decision,

leading to a difference in the effect of the decision on the rights of the parties does not appear to be warranted by anything in the language of the

section. We regret to say that we are not convinced of the correctness of the reasoning either on which the learned judge has supported the

decision in Azhagaperumal Pillai v. Rasa Pillai (1931) 62 M.L.J. 399, as not being really inconsistent with the Full Bench ruling. However that may

be, we think that the time has arrived for the conflict of opinion noticed above being resolved by a reference to the Full Bench of the following

question:

Whether the order of a survey officer u/s 11, or of the appellate authority u/s 12 of the Madras Act IV of 1897 has the effect of causing a break as

on the date of the order, in the continuity of the adverse possession held by the unsuccessful party, so as to preclude his making use of the period

of his prior possession to make up the period of twelve years required by the Limitation Act to perfect a title by adverse possession?

18. (This second appeal came on again for hearing, before the Full Bench, as constituted above.)

JUDGMENTS

19. A person named Kanti-mahanti Appalanarasayya obtained a decree against one Sekhara-mantri Appalaswami and in execution of that decree

attached Immovable property belonging to the latter in Allipuram, a suburb of Vizagapatam. The property was sold at a Court auction on the 7th

January, 1916, and the decree-holder became the purchaser, the sale certificate being issued to him on the 2nd July, 1920. Appalanarasayya took

no steps to gain possession of the property which remained with the judgment-debtor. In the year 1922, a resurvey of all the properties lying within

the boundaries of Vizagapatam took place. The property which-was the subject of the Court auction was registered as Survey No. 967.

Notwithstanding that Appalanarasayya had made no attempt to obtain possession of this property he claimed it as his, and although the survey

officer''s order has not been produced it would appear that he was registered as the owner and that Appalaswami as the owner of an adjoining

area marked as Survey No. 999. The Court has been given to understand that before the sale Appalaswami was the owner of both the areas. The

Survey Officer''s order was passed under the provisions of Section 11 of the Madras Survey and Boundaries Act, 1897. An appeal from the

order was preferred under the provisions of Section 12 of the Act and the appellate authority passed an order in these terms:

The complaint in respect of Section Nos. 967 and 999 relate to wrong registration and as such does not fall within the scope of the Boundary

Dispute Act, IV of 1897. The present registry in the names of Kantimahanti Appalanarasayya and Sekhara Mahanti Appalaswami, respectively is

confirmed

20. It is common ground that there was no dispute as to the boundaries of the respective properties. The only dispute was whether

Appalanarasayya or Appalaswami''s name should be registered as the owner of Survey No. 967.

21. In 1926, Appalanarasayya mortgaged Survey No. 967 to the appellant in the appeal out of which this reference arises. The appellant filed

O.S. No. 299 of 1927 of the Court of the District Munsif of Vizagapatam to enforce his mortgage. He obtained a decree and the property was

sold by the Court on the 6th July, 1929, the purchaser being the appellant to whom a sale certificate was granted on the 10th October, 1929.

Appalaswami, who was in possession and had remained in possession throughout, refused to deliver the property to the appellant and

Appalaswami''s possession having been established, the appellant''s application was dismissed. Within one year of the order of dismissal the

appellant instituted the present suit in the Court of the District Munsif of Vizagapatam for a decree for possession. At the date of the suit,

Appalaswami had been in adverse possession of the property continuously for fifteen years, unless the orders passed under the Madras Survey

and Boundaries Act 1897 operated to create in law a break. The District Munsif dismissed the suit holding that the orders passed in the survey

proceedings did not disturb the continuity of Appalaswami''s possession. On appeal the Subordinate Judge concurred in this decision. A second

appeal was then filed to this Court and frame before Krishnaswami Aiyangar and Somayya, JJ. In view of the conflict which exists in the authorities

the learned Judges have referred the following question to a Full Bench:

Whether the order of a survey officer u/s 11, or of the appellate authority u/s 12 of the Madras Act IV of 1897 has the effect of causing a break as

on the date of the order, in the continuity of the adverse possession held by the unsuccessful party, so as to preclude his making use of the period

of his prior possession to make up the period of twelve years required by the Limitation Act to perfect a title by adverse possession?

22. This Bench has been constituted to answer the question.

23. Before turning to the authorities it is necessary to examine in some detail the provisions of the Madras Survey and Boundaries Act, 1897. That

Act has been replaced by the Madras Survey and Boundaries Act, 1923, but as the survey proceedings took place under the old Act regard can

only be had to the provisions of the former Act. I may in passing mention that so far as this case is concerned there is no material difference

between the two Acts. The Act of 1897 was an Act relating to survey of lands and settlement of boundary disputes and its provisions can only

have application to such matters. Section 11(1) provided that if, at the time of survey, a boundary was undisputed the survey officer might order

that the bouadary should be laid down as pointed out by the registered holder or his agent. Sub-Section (2) said that if the the registered holder

was not present, or if the boundary was disputed, the survey officer should order it to be laid down, as nearly as might be, in accordance with the

village records, or as ascertained from the village officers and from such other evidence as the survey officer might be able to procure. Sub-Section

(3) said that the order passed by the survey officer in the case of any dispute under Sub-section (2) should be recorded in writing and the purport

thereof communicated forthwith to the parties to the dispute a copy of the order being furnished to them on their application and at their cost. Sub-

section (4) said that when the survey of a village or other defined local area forming part of the land under survey had been completed in

accordance with the orders passed under Sub-section (1), (2) and (3) the survey officer should notify the fact as soon as practicable thereafter.

Section 12 provided for appeals against orders u/s 11. Sub-section (3) of that section said that the order of the survey officer, or, in the event of an

appeal being filed, the decision of the appellate authority should be final, and there should be no further appeal from such decision. But Section 13

allowed the matter to be carried further by a suit. It said that any party to a boundary dispute before the survey officer, and any party to an appeal

preferred u/s 12 or to whom notice of such appeal was given, and any person claiming under any such party, who deemed himself aggrieved by the

order of the survey officer or by the decision of the appellate authority, as the case might be, might subject to the provisions of the Indian Limitation

Act, institute within a period of one year from the date of such order or decision, a suit to establish the right which he claimed ""in respect of the

boundary of the property surveyed,"" provided that, subject to the result of the suit, if any, the order or decision should be conclusive. To this

section was added an explanation in these words:

Where parties litigate bona fide in respect of boundaries of property claimed in common for themselves and others, all persons interested in such

boundary dispute shall, for the purpose of this section, be deemed to claim under the parties so litigating.

24. There was no provision in the Act for the decision of any question of title unless it was in respect of land involved in a boundary dispute. If

there was a boundary dispute the Act provided the machinery for its settlement and the survey officer''s order demarcating the boundaries was final

subject to an appeal u/s 12 or to the decision in a suit u/s 13. When it was a matter of a boundary dispute the survey officer had to decide where

the boundary should lie and if he decided that the piece of land in dispute fell within the boundary of one of the opposing parties his order did affect

the title to that particular piece of land. Where there was no boundary dispute, but in making the survey the survey officer found that two persons

were claiming title to the same holding, he would for the purposes of the register have to decide whose name should be inserted therein as the

owner, but this in itself did not mean that the Act empowered the survey officer, or the appellate authority to decide who was in law entitled to the

property under survey. I can find no provision in the Act which can be read as operating in such circumstances to prevent A, when B had been

registered as the owner of a holding, from instituting a suit in a Court of competent jurisdiction to establish his title as the true owner.

25. In Kuppuswami v. Venkataswami (1922) 16 L.W. 99, Coutts Trotter and Ramesam, JJ. held that where the survey officer had found that the

plaintiffs were in possession and no suit had been filed u/s 13 of the Act of 1897, the plaintiffs were entitled to a decree for possession, even

though the defendants had as a matter of fact been in possession for over the statutory period of twelve years, part of which was before and the

remainder was subsequent to the decision of the survey officer. Coutts Trotter, J. had no doubt that the survey officer''s order was wrong, but he

considered that the case was governed by the decision of the Full Bench of this Court in Muthammal Vs. The Secretary of State for India in

Council, . I am unable to share the opinion that the Full Bench decision had application. In the Full Bench case Wallis, C.J. and Ayling and

Seshagiri Ayyar, JJ. applied the doctrine of res judicata in these circumstances. A boundary settlement officer had decided under the Boundaries

Act of 1860 that certain land did not fall within the boundaries of a mitta and had never formed part of the mitta, No suit was brought by the

mittadar to contest this finding u/s 25 of the Act. The Full Bench considered that the ground of the decision as well as the actual decision was res

judicata in a subsequent suit instituted by the mittadar to recover the lands as having formed part of the mitta or in the alternative for a deduction of

the peshkush of the mitta. This dispute can only be regarded as a boundary dispute and the decision of the Full Bench is not in point in the present

case, nor was it in point in Kuppuswami v. Venkataswami (1922) 16 L.W. 99. The Privy Council in Radhakrishna Iyer v. Sundaraswamier (1922)

43 M.L.J. 323 : ILR 45 Mad. 475 , held in a case arising out of the Madras Estates Land Act of 1908 that the doctrine of res judicata did not

apply to a suit under that Act although the Board recognised that a statute might embody a special rule, which operated as a bar to the same

question being reagitated in subsequent proceedings, and some day Muthammal Vs. The Secretary of State for India in Council, , may have to be

reconsidered in the light of the ruling of the Privy Council in the case under the Madras Estates Land Act, but it is not necessary to dwell on the

question here. Before leaving Kuppuswami v. Venkataswami (1922) 16 L.W. 99, I may mention that in his judgment in that case Ramesam, J.,

indicated that in his opinion the decision in Muthirulandi Poosari v. Sethuram Aiyar (1918) 36 M.L.J. 356 : ILR 42 Mad. 425 which I shall next

refer did not prevent a plea of adverse possession being raised subsequent to the decision of the survey officer.

26. In Muthirulandi Poosari v. Sethuram Aiyari (1918) 36 M.L.J. 356 : ILR 42 Mad. 425 Wallis, C.J. and Ayling and Kumaraswami Sastri, JJ.,

held that an order passed by a survey officer u/s 11 of the Act of 1897 on a dispute arising between two parties with regard to the boundary of a

certain property was conclusive as to the rights of the parties if not set aside either on appeal or by a suit brought within one year, and it was none

the less so, because the unsuccessful party who was in possession on the date of the order was not subsequently ousted from possession. The

dispute merely related to the boundary of the two holdings and therefore fell within the four corners of the Act. The statement that the decision was

none the less conclusive as to the rights of the parties, because the unsuccessful party who was in possession at the date of the order was not

subsequently ousted from possession carried the decision no further. The Court was not considering whether one of the parties had obtained a title

to an area by adverse possession.

27. In my opinion the correct view of the scope of the Act was taken by Reilly and Ananthakrishna Aiyar, JJ., in Azhagaperumal Pillai v. Rasa

Pillai (1931) 62 M.L.J. 399 . There it was said that the decision of a survey officer for the planting of stones for the demarcation of the boundary

does not ipso facto dispossess any party, nor make any legal break in existing possession so as to render ineffective for purposes of limitation any

adverse possession running at the date of the decision. In that case it was argued that the judgment in Muthirulandi Poosari v. Sethuram Aiyar

(1918) 36 M.L.J. 356 : ILR 42 Mad. 425 ran contrary, but this argument was rejected by the learned judges and the opinion of Ramesam, J., in

Kuppuswami v. Venkataswami (1922) 16 L.W. 99 was accepted as supporting their decision.

28. There are two cases which conflict with the decision in Ashagaperumal Pillai v. Rasa Pillai (1913) 62 M.L.J. 399. The first is Ramamurti v.

Gajapatiraju (1932) 64 M.L.J. 361 : ILR 56 Mad. and the second is Seetharamaraju v. Narayanaraju (1934) 40 L.W. 536. In the first case in the

course of a survey, a dispute arosevwhether a certain field lying wholly within the boundaries of a zamindari should be demarcated as an inam or as

part of the ryoti land of the zamindari. The zamindar claimed the land as ryoti land and the inamdar as mirasi inam. The survey officer demarcated

the land as his mirasi inam, and his decision was upheld on appeal. The zamindar did not file a suit u/s 13 of the Act but in a suit brought

subsequently by the inamdar against the zamindar the question of title was raised. The appeal was heard by Waller and Krishnan Pandalai, JJ.

Waller, J. was of the opinion that the dispute was a boundary dispute within the meaning of the Act, that the survey officer had jurisdiction to

decide the dispute and that as the zamindar did not file a suit within a year u/s 13 to get the decision set aside, it had conclusively decided that the

land was government service inam and not part of the zamindari. Pandalai, J. held that the Act did not preclude the institution of the suit. He

observed:

In my opinion when two people dispute title to an ascertained and definite piece of land or to subordinate interests therein, the dispute cannot in

any proper sense be described as a boundary dispute though, as a result of the disputed title being settled, the boundaries of the property of one or

other of the disputants may be accordingly shifted. If there was a real boundary dispute, I can understand that a question of title depending solely

on the boundary may become concluded as a necessary logical consequence but not by virtue of the Act. But if there was no such dispute, it

cannot be inferentially introduced into a dispute about title and then held to be inferentially decided under the Act so that the question of title

becomes concluded by a further inference. There was, in my opinion, no boundary dispute in the proper sense before the Assistant Superintendent

of Survey, and his order, Exs. G and XXIII, being one on a matter beyond his jurisdiction could not become conclusive under the Madras Survey

and Boundaries Act.

29. As the result of the disagreement the appeal was referred to a third Judge, Wallace J. who agreed with Waller J. Wallace, J. refused to accept

the argument that there could not be a boundary dispute unless there was a dispute between two estates or between Government and an estate

regarding the physical boundary of some piece of land contiguous to both, that is, a dispute as to ""when, where and how"" the boundary between

both should run, but that if the dispute involved on one side or the other the whole of the contestant''s property there could not be any boundary

dispute, because the boundary of the disputed portion was not itself in dispute. The learned Judge said that he could see no principle in such a

contention. I cannot agree. Tn my opinion the judgments of Wallace and Waller, JJ. are contrary to the scheme and the provisions of the Act. The

Act was never intended to vest in the survey officer or in the appellate authority power to decide a pure question of title when the boundaries were

accepted by both sides, which was the case in Ramamurthi v. Gajapatiraju (1932) 64 M.L.J. 361 : ILR 56 Mad. 366.

30. The decision in Seetharamaraju v. Narayanaraju (1934) 40 L.w. 536, was given by Butler, J. who followed Ramamurthi v. Gajapatiraju

(1932) 64 M.L.J. 361 : ILR 56 Mad. 366. These two cases, therefore, stand or fall together.

31. The only other case which calls for mention is Tallapragada Achutharamayya Vs. Ayyagari Soorappayya and Another, . There, Wadsworth J.

endeavoured to reconcile the two conflicting views but I consider that they are too divergent for reconciliation. The learned Judge read the

judgment of the Full Bench in Muthirulandi Poosari v. Sethuram Aiyar (1918) 36 M.L.J. 356 : ILR 42 Mad. 425 as laying down the rule that the

survey officer''s decision u/s 11 of the Act of 1897 is conclusive as to the rights of the parties, but he said that it was apparent that the survey

officer''s decision could only be final to the extent to which it purported to decide those rights. If the survey officer decided that the unsuccessful

claimant was not in possession, the learned Judge considered that it would not be open to the unsuccessful claimant to contend that he had

acquired a title by adverse possession. On the other hand if the survey officer merely on a consideration of the documentary evidence of ownership

gave an adverse finding regarding title, Wadsworth, J. saw no reason why that finding should bar the unsuccessful claimant from contending in

subsequent proceedings that at the time of the survey officer''s order he had trespassed successfully on the land in question and that his unlawful

possession continued and was openly hostile to the real owner, taking into consideration possession before and after the survey officer''s order.

The governing factor was what the survey officer actually decided; the unsuccessful claimant could not go behind that. I have already indicated

what my reading of the Act is and I cannot regard these statements of Wadsworth, J. as embodying a correct interpretation of the law.

32. The answer which I give to the reference is that an order of the survey officer u/s 11, or of the appellate authority u/s 12 of the Act, in itself had

not the effect of causing a break in the continuity of the adverse possession held by the unsuccessful party so as to preclude his making use of the

period of his prior possession to make up the period of twelve years required by the Limitation Act to complete his title. If the unsuccessful party

remained in adverse possession of the disputed area for over twelve years his title was good irrespective of any order passed under the Act. As

my learned brothers are in agreement with me the majority decision in Ramamurthi v. Gajapatiraju (1932) 64 M.L.J. 361 : ILR 56 Mad. 366, and

the decision of Butler, J. in Seetharamaraju v. Narayanaraju (1934) 40 L.W. 536, must be overruled. It follows that the observations of

Wadsworth, J. in Achutharamayya v. Soorappayya (1938) 2 M.L.J. 1894, which are in conflict with the answer given to the reference should also

be disregarded.

33.The costs of the reference will be made costs in the appeal.

Krishnaswami Aiyangar, J.

34. After the fuller and more elaborate discussion of the question before the Bench as now constituted, I feel that the opinion expressed by my

Lord is the better and sounder one. In the order of reference I had expressed an inclination in favour of the other view which on further

consideration, I agree is not maintainable on general principles no less than on the language of the statute. It is difficult to support a view of the law

which attributes to the decision of a survey authority, a higher efficacy than that which is annexed to the decision of a Civil Court of competent

jurisdiction as per Subbayya Pandaram v. Mohammad Mustapha Maracayar (1923) 45 M.L.J. 588 : L.R. 50 IndAp 295 : ILR 46 Mad. 751 . To

have this consequence, language must be much more clear than what we have. I may add that my former inclination towards the opposite

construction was in a large measure the outcome of the limitation imposed on me as a member of a Division Bench, bound by the opinions

expressed by other benches and the legal consequences which might be regarded as flowing out of them. I now feel no doubt that the correct

decision is the one, now given expression to by my Lord, and I have no hesitation in preferring it to the other.

Patanjali Sastri, J.

35. I agree with the judgment of my Lord and have nothing material to add.

36. (This Second Appeal coming for final hearing, after the expression of the above opinion of the Full Bench, the Court delivered the following

judgment):

37. The judgment of the Court was delivered by

Krishnaswami Aiyangar, J.

38. In view of the answer given by the Full Bench, this Second Appeal is dismissed with costs of the first respondent Reference answered.