

(1929) 06 BOM CK 0015

Bombay High Court

Case No: None

Malkarjunappa Sidramappa
Deshmukh

APPELLANT

Vs

Anandrao Annarao Deshmukh

RESPONDENT

Date of Decision: June 20, 1929**Acts Referred:**

- Bombay Land Revenue Code, 1879 - Section 119

Citation: 122 Ind. Cas. 137**Hon'ble Judges:** Madgavkar, J**Bench:** Single Bench

Judgement

Madgavkar, J.

The dispute between the parties relates to a strip of land, two acres and thirty-three gunthas, shown in the map Ex. 66. Defendant No. 1-appellant was the owner of Survey No. 527, pot No. 3, and the plaintiff-respondent, the owner of Survey No. 527, pot No. 1. Both these pot numbers adjoin a public road. When the Government Surveyor witness Hari (Ex, 69) thought that respondent No. 1 cut off the trees on this road, he commenced an inquiry and incidentally in the course of that inquiry he was of opinion that the boundary marks between the pot Nos. 1 and 3 have been wrongly placed during all these years and that it was actually an old water-course in which case the strip now in dispute falling to the south of the watercourse would belong to the appellant and not, as it was so far thought, to respondent No. 1. In September it-21, the Deputy Collector held the respondent guilty of encroachment on the public road. In October 192], the respondent asked for a review of this order and that his land might be measured. That order on the part of the Deputy Collector remained. The appellant came to hear of it and hence this suit by respondent No. 1 for a declaration that the strip was of his ownership and not, as the authorities have now held, of the appellant's.

2. There is no question that in all the revenue records from 1859 to 1920 this strip had been included in the respondent's pot No. 1 which was shown as measuring eleven acres and four gunthas and the assessment levied from him accordingly, while the appellant's land was shown as measuring two acres and thirty-three gunthas. Both the parties in suit had let their lands out for over twenty years to one and the same tenant. The boundary marks and the stones between them had not been very carefully preserved and only one such stone remained when the learned Subordinate Judge visited the scene. The tenant himself deposes that he had obtained possession of the strip in suit from the respondent and paid him rent on it. The respondent, therefore, relied both on title and on possession.

3. The appellant denied the respondent's title and possession and set up the order of the Collector as barring the jurisdiction of the Civil Court.

4. The issues framed were not as definite and explicit as they might have been. There was no express issue recorded as to how far the action of the Collector was taken in a dispute within the meaning of Section 119 of the Bombay Land Revenue Code. The third issue was "What is the area of the suit property? Is the plaintiff entitled to have the area amended in this Court"? After the issues were framed and before the evidence was led, the respondent made an application Ex. 19 asking to be allowed to add the words "adverse possession" after "entitled" in issue No. 3. That application was, in my opinion, wrongly refused. In the result, the evidence was led both on title and possession. Both the lower Courts held that there had been no dispute within the meaning of Chap. IX of the Bombay Land Revenue Code, the order of the Collector was not determinative, both title and possession were with the respondent, and allowed the claim. Defendant No. 1 appeals.

5. With defendant No. 2, the owner of pot No. 2, Survey No. 527, we are not now concerned.

6. It is argued for defendant No. 1 appellant that the word "dispute" in the second part of Section 119 of the Bombay Land Revenue Code is not confined to a dispute between the parties to a litigation but includes a dispute between the Collector and one of the parties as in the present suit and that the Collector's order was, therefore, con-elusive. If the respondent had relied on, adverse possession, an express issue should have been framed and should at least have been remanded before the respondent's claim was decreed. In any case, the suit is barred by limitation as not having been brought within a year of the Collector's order.

7. It is contended for the respondent that the word "dispute" necessarily means a dispute between the parties to a litigation. Both the lower Courts have held as a matter of fact that there was no dispute. The order is not, therefore, "determinative" and the title and possession having been with the respondent the appeal must fail. It is further argued that as the jurisdiction of the Civil Courts is not expressly barred, the word "determinative" should not be held to oust the jurisdiction of the Civil

Court.

8. In [Kanhailal Badridas Vs. Ismailbhai Kasambhai](#), had occasion to refer to the unsatisfactory wording of Section 121 of the Bombay Land Revenue Code and the difficulty caused by its wording in general and by the word "determinative" in particular. The present litigation is a fresh instance, if it were needed, of the advisability of the Legislature making its intentions clearer than they are at present. In the present case, for instance, on the actual facts of the dispute in so far as they appear from evidence of the surveyor, Ex 69, it is clear that he was-actually only concerned on behalf of Government as to whether the respondent had cut down a few trees on the adjoining road, but without any obvious necessity and on the simple assumption that the water-course must have been the correct boundary succeeded in altering the revenue record which had stood uninterruptedly from 1809 to 1920 and in fact purported to transfer the ownership of two acres and eleven gunthas from one party to another. It is, to my mind, very doubtful, whether the Legislature, could intend to give the surveyor, even after the checking by the District Inspector, the authority to transfer titles to the lands by the simple process of holding that the old boundary marks were erroneous. This difficulty was in fact anticipated by me in [Kanhailal Badridas Vs. Ismailbhai Kasambhai](#), Taking the Bombay Land Revenue Code, an enactment of the Provincial Legislature, and Sections 119 and 121 of Chap. IX now in question, I adhere to the opinion that all that the Legislature probably meant was that the Revenue Authorities who are responsible for demarcating and numbering the survey and pot numbers, and for the maintenance of roads and boundary marks, should be the persons to decide on these boundaries, but it could hardly have intended that they should have powers to transfer lands by the simple process as in this suit. As the learned Chief Justice and I held, it is doubtful if the Provincial Legislature could have power to invest, in theory the Collector, in practice not a highly paid surveyor, with such authority as to oust the jurisdiction of the Court. There is a certain amount of weight in the argument for the respondent that the jurisdiction of the Civil Courts is not expressly taken away by Acts such as the Revenue Jurisdiction Act, and, therefore, the word "determinative" need not be meant to imply such ouster. The point is, however, covered by the authoritative view of Sir Charles Sargent, C.J., in *Bai Ujam v. Valiji Rasulbhai* 10 B. 456.

9. As to whether there is a dispute within the meaning of the second part of Section 119, Bombay Land Revenue Code, it has been held that "s. 121 must be read along with Sections 119 and 120 of the Code. It is only when a boundary dispute arises between the owners of adjoining lands, and the Collector is called upon to determine the dispute, that his determination become final u/s 121 of the Code be as to oust the jurisdiction of the Civil Court": *Lakshmra v. Antaji* 28 B. 312 : 2 Bom. L.R. 1083. This case to a certain extent goes somewhat against the contention for the appellant. As to the wider meaning of the word "dispute" such as the present dispute between Government and a private owner, Section 37 of the Bombay Land

Revenue Code would rather apply and not Section 119. I agree, therefore, following the decision of *Lakshman v. Antaji* 28 B. 312 : 2 Bom. L.R. 1083, that the word "dispute" in the second part of s 119 means a dispute between two neighbouring owners and not as in the present case a dispute between the Collector and the owner. It is plain from the evidence of defendant No. 1, Ex. 65, and that of the surveyor, Ex. 6.", that there was no dispute between the appellant and the respondent and no reference of such a dispute to the Collector but that it was a dispute between the Collector and the respondent as regards trees in which incidentally the surveyor thought fit suo motu to correct the boundary between the lands of the present parties. I agree, therefore, with the view of the lower Courts that there was no such dispute as is necessary for the application of Section 129 of the Bombay Land Revenue Code in favour of the appellant.

10. On the merits as regards the boundary, I entirely agree with the lower Courts, The surveyor in fact thought it simple to hold that the old water course must have been the boundary, and, on this assumption, corrected the boundary which has stood there for over half a century.

11. As regards title and possession, it was stated by the appellant's own Pleader that his title-deeds showed a similar area consistent with the old boundary. A similar area is also stated in the more recent rent-notes taken by the appellant such as in 1896 and 1903. It is clearly proved that the title throughout has been with the respondent. Although both the parties had been letting out the lands to the same tenant, the rent-notes in respect of the lands in suit have been passed in favour of the respondent and the rent has been enjoyed by him and not by the appellant, so that possession has been also throughout with the respondent.

12. On the question of limitation the issue now sought to be raised for the appellant found no place in the lower Courts. It is impossible to decide it without the facts on which there was no direct issue framed. Nor is it on the face of it clear that there was any order by the Collector in favour of the appellant necessitating a suit within a year by the respondent. It is not necessary, therefore, to remand the issue.

13. The appeal fails and is dismissed with costs.