APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Wilkinson.

1891. Nov. 27.

KRISHNAYYA (PLAINTIFF), APPELLANT,

v.

THE BELLARY MUNICIPAL COUNCIL (DEFENDANT), RESPONDENT.*

District Municipalities Act (Madras)—Act IV of 1884, s. 169—Suit for declaration of title against a Municipality—Parties.

The plaintiff sued a Municipal Council, under the Madras District Municipalities Act, for a declaration of his title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it. The structure was found to belong to the plaintiff:

Held (1), that the Secretary of State was not a necessary party to the suit.

(2), that the Municipal Council had no discretion under s. 169 of the above Act to prevent the plaintiff from dealing with the structure, provided he did not interfere with the convenience of the public or with any sanitary regulation.

SECOND APPEAL against the decree of W. C. Holmes, Acting District Judge of Bellary, in appeal suit No. 58 of 1890, reversing the decree of W. Gopalachari, District Munsif of Bellary, in original suit No. 162 of 1889.

The facts of the case are stated above sufficiently for the purpose of this report.

The District Munsif passed a decree for the plaintiff. The District Judge on appeal reversed this decree. He said as to the two questions above referred to—

"One of the grounds of appeal is that the Secretary of State "should have been joined as a defendant. Section 23 of the "Municipal Act (IV of 1884) vests in the Municipal Council all "public streets. As under an English statute, I think it should "be held that only the surface of the soil, and as much of it in "depth as is necessary for doing all that is reasonably and usually "done in streets, vested in the Municipality (Maxwell on the "Interpretation of Statutes, pp. 109 and 377). Strictly speak-

* Second Appeal No. 192 of 1891.

"ing, therefore, I think the Secretary of State should be joined as "a party in a suit of this nature.

"There is a further question whether, under section 169 of the "Municipal Act, the Municipal Council has not a discretion as to "granting a license to put up a verandah over the pyals, even "though they be on private property. On the 1st May 1889, the "Chairman of the Bellary Municipal Council gave a license to the "plaintiff 'to rebuild the walls on both sides of the pyal' in front "of his house, but permission for roofing the outer pyals was "refused. On the 30th May 1889, on plaintiff having again "petitioned, after a sub-committee had inspected the place, the "chairman informed the plaintiff 'that the sub-committee con-"sidered that permission ought not to be granted for roofing the "pyals; hence this petition is rejected.' In the orders passed by "the chairman the section under which the Municipality refused "to grant the permission prayed for is not stated, but it would "appear that section 169 left the granting or not of the permission "prayed for to the discretion of the Municipality."

The plaintiff preferred this second appeal.

Ramachandra Rau Saheb for appellant.

Ramasami Mudaliar for respondent.

JUDGMENT.—We fail to see any reason why the Secretary of State was a necessary party to the suit. The real question to be determined was whether the pyal, which plaintiff wanted to roof over, was his private property or not. The District Munsif found, upon a careful review of the evidence, that the pyal was plaintiff's private property, he and his ancestors for the last fifty years having exercised acts of ownership over it. The defendant, on the other hand, adduced absolutely no evidence to show that the ground occupied by the pyal ever formed part of the street. The District Judge does not decide that the pyal is not private property, but merely remarks that the proof of plaintiff's right cannot be considered very satisfactory. It is argued that this must be held to be a finding that the pyal is not private property. If we thought so, it would be necessary to ask the Judge to reconsider his decision as the evidence seems to us overwhelming, but we do not consider that he intended to set aside the finding of the District Munsif as to the question of plaintiff's right. With reference to section 169 of the Act (Madras Act IV of 1884), we think that the Judge has misinterpreted it. It must be read in connection with

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the definition of the word street in section 3. According to that, private property is exempted from the action of the Commissioners. It seems to us absurd to suppose that section 169 empowers the Commissioners to prevent a person dealing with his own property, provided he does not interfere with the convenience of the public or with any sanitary regulation. If the pyal in front of a house is not private property, the Municipal Commissioners would undoubtedly have the right to grant or withhold a license for roofing it, but when, as in the present case, the pyal is private property, the right of the Commissioners to interfere cannot arise, until the owners building projects beyond his own limits. In the words of the section, the erection must not cause any public inconvenience. We reverse the decree of the District Judge and restore that of the Munsif with costs in this and the Lower Appellate Court.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Wilkinson.

1891. December 8.

PARATHAYI (PLAINTIFF), APPELLANT,

v.

SANKUMANI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Court Fees Act—Act VII of 1870, *sched. I, art.* 1—*Cancellation of an agreement to sell*—Ad valorem *fee.*

The plaintiff had executed an agreement to sell certain property in discharge of mortgages executed on his behalf during his minority. He now brought a suit alleging that the agreement had been extorted from him, and praying for a declaration that the agreement was not binding on him and for any other relief "which the Court considers to be reasonable."

Held, that the plaintiff was bound to pay Court-fees upon the value of his interest in the document sought to be invalidated.

APPEAL against the decree of E. K. Krishnan, Subordinate Judge of Calicut, in original suit No. 20 of 1889.

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* Appeal No. 26 of 1891.