

## APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Tyabji.

THE CHAIRMAN, MUNICIPAL COUNCIL, SRIRANGAM  
(DEFENDANT), APPELLANT,

v.

SUBBA PANDITHAR (PLAINTIFF), RESPONDENT.\*

1918.  
July 29  
and 30.

*Madras District Municipalities Act (IV of 1884), sec. 168—Adverse possession against Municipality—'Lawful encroachment,' meaning of—Right of Municipality to remove encroachments, etc., after title barred—Limitation Act (XV of 1877)—Limitation Amendment Act (XI of 1900).*

Adverse possession by a person for twelve years before the Limitation Amendment Act of 1900 came into force, of some portion of a street vested in a Municipality, is sufficient to give the person a clear title as against the Municipality.

Under section 168 of the District Municipalities Act, the Municipal Council is not entitled to remove the projections and encroachments made by a person who has acquired full title to them and to the site on which the encroachments stand by adverse possession for the statutory period.

*Basaveswara Swami v. Bellary Municipal Council* (1915) L.L.R., 38 Mad., 6; s.c., 23 M.L.J., 478, distinguished.

SECOND APPEAL against the decree of E. L. THORNTON, the District Judge of Trichinopoly in Appeal No. 344 of 1910, preferred against the decree of T. JIVAJI RAO, the District Munsif of Srirangam in Original Suit No. 286 of 1909.

The plaintiff brought the suit against the Municipality of Srirangam for the issue of a permanent injunction restraining the Municipal Council from entering on a *koradu* (pavement) in front of the plaintiff's house or on the land on which the *koradu* was constructed and from removing the same. The plaintiff alleged that the *koradu* in question was in the enjoyment of the plaintiff and his predecessors in title for over a period of sixty years. In 1901, the plaintiff applied to the defendant Municipality for a written permission to renew the structure on the sites in question by erecting a stone pial and *koradu* in the place of a mud structure which was previously in existence. Both the lower courts found that the plaintiff had been in possession and enjoyment of the structure in question (which were encroachments on the street) for more than thirty years. The defendant Council pleaded that the plaintiff had not acquired title by adverse

\* Second Appeal No. 577 of 1912,

possession, and that the suit was bad for nonjoinder of the Government as a party to the suit. Both the Lower Courts granted the permanent injunction as prayed for by the plaintiff. The defendant, the Municipal Council, thereupon preferred a second appeal to the High Court.

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*N. Rajagopala Achariyar* for the appellant contended that the plaintiff did not as a matter of fact acquire title by adverse possession for the statutory period, that he was in possession only by sufferance and that in any event the Municipal Council was competent and entitled under the District Municipalities Act, section 168, to remove the structure as an encroachment on the street, irrespective of the question whether the plaintiff had acquired title to the same by adverse possession for the statutory period, and relied on *Basaveswara Swami v. Bellary Municipal Council*(1).

*V. Viswanatha Sastri* for the respondent contended that acquisition of title by adverse possession was a question of fact, and that a Municipality was entitled to demolish only encroachments on streets and not sites or structures on sites which by adverse possession for the statutory period ceased to be part of the street.

SADASIVA AYYAR, J.—The lower courts in considering the question of possession have proceeded on the footing that the plaintiff should have had adverse possession for thirty years before suit before he could acquire title to the street space encroached upon against the Municipality of Srirangam. It is clear that if he had had possession for twelve years before the Limitation Amendment Act of 1900 came into force, that possession was sufficient to have given him a clear title as against the Municipality.

On the question whether under section 168 of the District Municipalities Act, the Municipal Council was entitled to remove the projections and encroachments, even though the plaintiff had acquired full title to them and to the site on which the encroachment stood, I have had serious doubts. In *Basaveswara Swami v. Bellary Municipal Council*(1) the Government was a party to the suit and their title was not lost. Further, the adverse title established there did not relate to the whole cubic space of the street belonging to the Municipality

(1) (1915) I.L.R., 38 Mad., 6; s.c., 23 M.L.J., 478.

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but only to the upper space portion situated over a drain space which still continued vested in the Municipality. An erection which has become lawful by adverse possession might still be an obstruction or encroachment so far as the drain space beneath it (such drain space coming under the definition of "street") is concerned. But where the whole cubic space forming a portion of the street, vested in the Municipality has been effectively occupied and acquired by adverse possession against the Municipality, the whole of such space ceases to be a street, and the original encroachment or obstruction can no longer, it seems to me, be called an encroachment or obstruction in the street, because the street space encroached upon has wholly ceased to be a street.

I would distinguish the present case from the 23 Madras Law Journal case on this ground, though, I must admit that the observations in the judgments delivered in that case (especially that of my learned brother SUNDARA AYYAR, J.) are put on the broad ground that the acquisition of title by adverse possession and the loss of title in the Municipality has nothing to do with the Municipality's power under section 168 to remove encroachments because clause (3) of section 168 provides for compensation for the removal of lawful encroachments by the Municipality. I might, however, be permitted to remark that clause (3) relates only to encroachments lawfully made (evidently by license) under section (67) and not to encroachments which were unlawful when made but the title to the space covered by which encroachments has become indefeasible by adverse possession.

In the result though not without hesitation, I concur in the dismissal of this appeal with costs.

TYABJI, J.

TYABJI, J.—The plaintiff sued for an injunction against the Municipal Council of Srirangam restraining it from entering the land referred to in the plaint. The District Judge agreeing with the District Munsif has found that the plaintiff has been in possession of the land and of the erections over it for over the statutory period and has acquired a title to the land by prescription. This in our opinion is a question of fact, and we cannot interfere with the finding in second appeal.

It seems to me to be clear that if the land belongs to the plaintiff his structure over his own land cannot be demolished by the Municipality.

It is argued before us however that the decision in *Basaweswara Swami v. Bellary Municipal Council*(1) entitles the Municipality under section 168 of the District Municipalities Act, to demolish the erections on the land in question. I cannot agree that the effect of the decision referred to is that any erection can be considered to be an encroachment or obstruction under section 168 of the District Municipalities Act after the land over which the erection is made has passed into the ownership of the person who has made it ; and for the purposes of the question before us I see no distinction between the transfer of the ownership of the land by adverse possession and transfer in any other manner. In the case cited above the obstruction consisted of a pial (or verandah) erected over drains belonging to the Municipality and thus there was either no passing out of the ownership of the land over which the pial was erected from the Municipality to the person who had erected it, or the pial was an obstruction to the drain belonging to the Municipality in either of which cases the facts would be materially distinguishable from those with which we have to deal.

I therefore think that this appeal should be dismissed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Tyabji.*

SRI B. B. SARVARAYUDU GARU (FIRST PLAINTIFF),  
APPELLANT,

1913.  
August 1.

v.

K. VENKATARAJU (SECOND PLAINTIFF AND DEFENDANTS  
NOS. 1 AND 2), RESPONDENTS.\*

*Madras Estates Land Act (I of 1908), ss. 3 (7), 6, 23, 153 and 157—'Old waste,'  
ejection from—Onus of proving 'old waste' on landlord.*

A landholder claiming to eject a tenant under sections 153 and 157 of Madras Estates Land Act (I of 1908) on the ground that he is a non-occupancy ryot of 'old waste' is by section 23 of the Act bound to prove that the land is 'old

(1) (1915) I.L.R., 38 Mad., 6; s.c., 23 M.L.J., 479.

\* Second Appeal No. 1376 of 1912.