APPELLATE CIVIL

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Sadasiva Aygar.

1920, September 20, 21 and 22.

BATCHU CHINNA VENKATRAYUDU AND TWO OTHERS (DEFENDANTS NOS. 3 TO 5), APPELLANTS,

v.

DUVVURI RAMAMURTI AND TWO OTHERS (DEFENDANTS NOS. 1 AND 2 AND PLAINTIFF), RESPONDENTS.*

Survey and Boundaries Act (IV of 1837), sec. 12, sub-section (3) and sec. 13—Decision of a Survey officer—Finality of decision—Decision, whether final for all or for what purposes—Effect of word "final" in section 12, sub-section (3).

The effect of section 12, sub-section (3) of the Survey and Boundaries Act, is to make the orders of a Survey officer in cases falling under that section, final for the purposes of the survey, but it does not go so far as to preclude the land-owners altogether from afterwards disputing its correctness in a Court of law, unless there was a dispute before the Survey officer and the order is one to which section 13 of the Act applies.

Muthirulandi Poosari v. Sethuram Aiyar, (1919) I.L.R., 42 Mad., 425 (F.B.), explained.

APPEAL against the decree of K. KRISHNAMA ACHARIYAR, the Temporary Subordinate Judge of Cocanada, in Original Suit No. 25 of 1916.

The plaintiff, the Zamindar of Pittapur, sued for a declaration that the suit lands were his jeroyiti lands and not the inam lands of the first defendant, who admittedly owned five acres as inam and of which he had sold three acres to a third person. The Subordinate Judge found that the first defendant had added the jeroyiti lands in his possession to his inam lands. There was a survey of the lands in 1895 and 1903, in which the lands in dispute were mostly included as inam lands. The lower Court passed a decree in favour of the plaintiff in respect of all the lands claimed in the suit. The defendants preferred this Appeal and contended, inter alia, that the decision of the Survey officer as to the boundary was conclusive.

T. Prakasam and *K. Kamanna*, for appellant.—The boundary fixed by the Survey officer is conclusive under the Survey and

* Appeal No. 371 of 1919.

Boundaries Act (IV of 1897). The old Act was the Boundaries Act (XXVIII of 1860). Sections 9 to 11, 12, sub-section (3), and section 13 make it clear that the decision is final and conclusive. No suit was brought under section 13. Therefore the decision as to boundary was conclusive. See section 12, sub-section (3), of the Act. See also *Muthirulandi Poosari* v. *Sethuram Aiyar*(1).

S. Srinivasa Ayyangar, A. Krishnaswami Ayyar, V. Ramadoss and *V. Krisha Mohan* for respondents.—Where there is no dispute, the decision is not a judicial decision at all. It is only an executive order. It need not be set aside. It may be of evidentiary value. Where there is dispute, a suit lies and must be brought under section 13 of the Act; where there is no dispute, the decision need not be set aside. The word 'final' in section 12, sub-section (3), means that there is no further appeal. The language in section 13 is "conclusive." Final under section 12, sub-section (3) means final before Survey officers; it is not conclusive between parties in a Civil Court. The effect of the finality under section 12 is that the boundary cannot be altered. Reference was made to the following cases:—*Vasu Velan* v. *Paramasiva Mudaliar* (2); *Marudaiveera Pathan* v. *Venkatadri Muthirian* (3); *Municipal Council of Kumbakōnam* v. *Rajarama Ayyar* (4).

So far as the Survey and Boundaries Act is concerned, it has been assumed in several decisions cited above, that the Act does not apply when there is no dispute. When there is no dispute, the order is not a judicial order but only an executive order which need not be set aside. It may be cogent evidence against the party but not conclusive in a Civil Court.

The Court delivered the following JUDGEMENT:—

This is an appeal from a decree giving the plaintiff, the Zamindar of Pittapur, a declaration that the suit lands are his jeroyiti lands and not the inam lands of the first defendant.

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(1) (1919) I.L.R., 42 Mad., 425 (F.B.).
(2) S.A. No. 1915 of 1915 (unreported).
(3) S.A. No. 1902 of 1908 (unreported).
(4) S. A. No. 22 of 1915 (unreported).

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[Their Lordships dealt with the evidence and proceeded as follows :—]

On the whole we see no reason to differ from the conclusion of the Subordinate Judge that there has been a wrongful transfer by the first defendant of the jeroyiti lands held by him in the zamindari to his inam lands in the same village. The Subordinate Judge has given the plaintiff a declaratory decree for the whole extent of the lands claimed by him and it is admitted that he has failed to make any allowance to the extent of the inam lands in the village which the first defendant undoubtedly is entitled to. The question then is what is the inam area to which he should be held entitled. As we have said the whole area of his family inam was shown in the inam register (Exhibit P) at about five acres of which he retained two acres. There is some evidence given by the karnam that his family was cultivating for a long time thirteen acres and it is of course possible that there has been some encroachment for some time. On the whole we have come to the conclusion that making a liberal allowance in favour of the first defendant, the plaintiff is entitled to a declaration that Survey No. 298 consisting of 29·48 constitutes his jeroyiti lands.

Objection was taken by Mr. Prakasam that the boundaries are conclusive under section 12, sub-section (3) of the Survey Act. We were at first considerably impressed by that objection. We see, however, that the Full Bench in *Muthirulandi Poosari* v. *Sethuram Aiyar*(1) limited themselves to deciding that the decision by the Survey officer in boundary cases was conclusive under section 13 only where there has been a dispute and they said nothing about the effect of the word 'final' in section 12, sub-section (3). Sections 11 and 12 deal also with cases where there is no dispute at all about the boundaries and cases where the registered owners do not take the trouble to go and point them out, and those sections direct that, in such cases, where there is no dispute, the Survey officer is to fix the boundary as pointed out, and where parties do not attend he is to fix the boundaries as best as he may from the records and his order fixing the boundaries is to be notified to the parties interested,

(1) (1919) I.L.R., 42 Mad., 425 (F.B.).

and they have a right of appeal, and if they do not appeal or if the appeal is decided against them, then the original order or the order in appeal is to be final under section 12, sub-section (3). On a further consideration of the matter, we think that sufficient effect is given to that provision by holding it to mean that there can be no further dispute about that boundary, that is, the boundary that has to go into the survey. But it seems to be going too far to say that that boundary is to be binding for all purposes so that it cannot be questioned by either of the parties. In the present case it looks as if there had been carelessness at least on the part of the zamindar's agents in allowing the boundary to be settled in this way. It would be hard that a boundary of that sort should be made conclusive upon a party who neglected to attend, and whose neglect had been taken advantage of by the other side to point out the wrong boundaries. But, however that may be, we think that it is sufficient to hold that the effect of section 12, sub-section (3), is to make the boundary final but that it does not go so far as to preclude the land-owners altogether from afterwards disputing the correctness of the boundary in a Court of law. That also seems to have been the view taken in some of the unreported cases to which we have been referred.

Another question was raised by Mr. Prakasam who appeared for defendants Nos. 3 to 5 who were mortgagees from the first defendant as to their mortgage. We are not concerned to decide anything in this case about their rights against the mortgagor, the first defendant, and those claiming through or under him.

The Appeal will in part be allowed and the decree must be modified accordingly.

K.R.