

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

PALIMUTHU AMBALAGAR (ACCUSED), PETITIONER,

1928,
August 31.

v.

THE PRESIDENT, UNION BOARD, KATTUPUTHUR
(COMPLAINANT), RESPONDENT.*

The Madras Survey and Boundaries Act (VIII of 1923), ss. 13 and 14—Dispute between Union Board and private individual in respect of certain property—Survey held and marked as belonging to Union—Notification under section 13—Notice to remove encroachment on property—Non-compliance—Prosecution within three years from decision of Survey Officer—If Criminal Court competent to go into question of title to property.

Where, in respect of a property under dispute between a Union Board and a private individual, a survey was held and the property was marked off as belonging to the Union Board, and a notification under section 13 of the Madras Survey and Boundaries Act was published in the District Gazette, and in consequence of the failure of the other party to comply with a notice calling upon him to remove an encroachment on the said property, a prosecution was instituted within three years from the decision of the Survey Officer, *held*, that as the decision of the Survey Officer was subject to the result of a suit in a Civil Court to set aside the order and to be filed within three years from the date of such order, a Criminal Court was not precluded from going into the question of title to the property in dispute and to decide the question on the evidence before it.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgments of the Court of the Subdivisional Magistrate of Musiri in Criminal Appeals Nos. 32 and 33 of 1927 preferred against the judgments of the Court of

* Criminal Revision Cases Nos. 934 and 935 of 1927.

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the Stationary Second Class Magistrate of Musiri in Calendar Cases Nos. 92 and 91 of 1927, respectively.

The facts necessary for this report appear in the judgment.

T. M. Krishnaswami Ayyar for petitioner.

S. Panchapakesa Sastri for respondent.

K. Krishna Menon and *K. Venkataraghavachari* for Public Prosecutor for the Crown.

JUDGMENT.

These are applications for revising the conviction of the petitioner under section 207 of the Local Boards Act of 1920. The petitioner, in each case, was asked to remove an encroachment upon a vacant site belonging to the Union and the prosecution was for non-compliance with the notice within the time fixed. The petitioner was prosecuted and fined Rs. 20 in each case. There was some dispute in respect of the vacant land between the Union Board and the Pillayar temple of which the petitioner in Crl. R.C. No. 934 of 1927 is the Dharmakartha, and also in respect of the plot of land in front of the land of the petitioner in Crl. R.C. No. 935 of 1927. There was a survey of the lands belonging to the Union Board, and under the survey, the plots in dispute were marked off as belonging to the Union Board and a notification was published in the District Gazette as required by section 13 of the Survey and Boundaries Act. That was somewhere in 1926. Notice was issued to the petitioner in both the cases in October 1926 to remove the obstruction and again another notice was issued, Exhibit B, in February 1927. The petitioner not having complied with the notice, prosecution was launched against him and he was found guilty and sentenced to pay a fine of Rs. 20 in each case.

The question that is raised by Mr. Krishnaswami Ayyar is that the decision of the Survey Officer is not conclusive as regards the title to the property inasmuch as the petitioner has three years from the date of the notification to file a suit to modify the order of the Survey Officer. Under section 13, unless the survey so notified be modified by a decree of a Civil Court under the provisions of section 14, the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded. Section 14 of the present Act gives three years to a party to file a suit for setting aside or modifying the order of the Survey Officer. The three years have not elapsed. The question is whether in a prosecution launched before the expiry of the three years, a Criminal Court is debarred from considering the question of title to the land in dispute or whether the Criminal Court is bound to hold that the order of the Survey Officer is conclusive on the question of title. If no suit is filed within three years, the order of the Survey Officer would be conclusive proof as to the boundaries determined and recorded by him. Before the expiry of three years, the party against whom the order is made, has a right to institute a suit and if the result of the suit be that the order of the Survey Officer is wrong, then the order of the Survey Officer will have to be set aside or modified. The question is whether, when a prosecution is launched before the expiry of three years, a criminal Court is entitled to go into the evidence as to the title to the property taking the decision of the Survey Officer as *prima facie* evidence in favour of it or whether a Criminal Court is precluded from doing so by reason of the order of the Survey Officer. Reliance is placed by Mr. Panchapakesa Sastri upon the wording of section 13 that unless set aside or modified by the decree of a Civil

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Court, the order shall be conclusive proof that the boundaries determined and recorded have been correctly determined and recorded. No doubt, this clause, if it had stood alone, would mean that the order of the Survey Officer is conclusive proof of the boundaries determined and recorded by him, but his order is subject to the decision of a Civil Court and for filing a civil suit, the law gives a period of three years. If, before the expiry of the three years, a prosecution is launched, I think a Criminal Court is not precluded from going into the question of title to the property in dispute and to decide on the evidence whether the property in dispute belongs to the Union Board or to the accused, in other words, the Court is entitled to go behind the order of the Survey Officer. When a prosecution is launched, it is for the prosecution to make out affirmatively all the ingredients necessary to make out the offence, and the fact that under the law an order, if not modified, is conclusive proof, is not sufficient to oust the jurisdiction of a Criminal Court to consider whether on the evidence before it the prosecution has made out the offence. If a suit had been filed within three years and had been dismissed, no doubt the remedy under section 14 given to the unsuccessful party may be taken as having been negatived; but where no suit has been filed or where a suit has been filed and the result of the suit is not known, I do not think a Criminal Court is barred from going into the question as to the ownership of the land in respect of which the prosecution is launched before the expiry of three years from the date of the Survey Officer's order.

In this view, the judgments of the lower Courts ought to be set aside. The accused has adduced some evidence as to the ownership of the land and the appellate Magistrate has declined to consider the evidence in his view

of the law that the Survey Officer's order is conclusive as to the ownership of the land in dispute. The trial Court has also been misled in its appreciation of the evidence by its view that the question of the ownership of the land is concluded by the determination of the Survey Officer. I think the proper order would be to set aside the conviction in both cases and direct the trial Court to weigh the evidence as regards the ownership of the land and dispose of the cases according to law. The fine paid will be refunded.

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B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Odgers.

LAZAR FERNANDO (ACCUSED), PETITIONER,

1928,
February 22.

v.

AMIRTHAM FERNANDO (COMPLAINANT), RESPONDENT.*

*Abkari Act, Madras (I of 1886)—Opium Act (I of 1878)—
Offences under—Private person—If has locus standi to
institute proceedings.*

A private person has no *locus standi* to institute proceedings in respect of offences under either the Abkari Act or the Opium Act.

In re Kuppusami Naidu, (1922) 44 M.L.J., 231, followed.

Lakshmi Narasayya v. Narasimhachari, (1913) 25 M.L.J., 577, referred to.

PETITION praying that the High Court will be pleased to quash the proceedings of the Court of the Sub-Magistrate of Tuticorin in C.C. No. 322 of 1928.

* Criminal Miscellaneous Petition No. 791 of 1928.