

(1926) 07 MAD CK 0012
In the Madras High Court

Arjuna Mahapatro and Others

APPELLANT

Vs

Dayanidhi Bhainipati

RESPONDENT

Date of Decision : 20-07-1926

Acts Referred:

Citation : AIR 1927 Mad 60 : (1926) 51 MLJ 637

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The first point urged in this second appeal is that the learned District Judge erred in rejecting Exs. VT and VI (a) as not

having been properly proved. They were admitted in evidence in the first Court and the learned Subordinate Judge dealt with them in para. 7 of his

judgment. When documents are admitted in evidence with or without formal proof in the first Court, it is not open to the Appellate Court to reject

the documents as not having been properly proved, for, in several cases, parties may dispense with formal proof of documents and admit in

evidence documents which are relevant. When the trial Court with the consent of the parties admits a document in evidence without formal proof,

it is not open to the Appellate Court to reject the document from consideration as not having been properly proved. It is open to the Appellate

Court to refuse to consider a document on the ground that it is not a relevant document. But I do not think that the judge's decision has been

vitiated by his rejection of Exs. VI and VI (a) from consideration. They are documents to which the plaintiff was not a party. The contention of Mr.

Venkatachariar is that they were prepared by a surveyor under the authority of the Collector who was then the agent of the Court of Wards and

that at that time there was no reason for the surveyor making a wrong survey and that therefore these documents are strong evidence in support of

his case. As observed by the learned Subordinate Judge these documents are of little or no probative value. The mere fact that they were prepared

by a public officer is, not by itself sufficient to make them very strong piece of evidence against a person who was no party to the proceedings

adopted by the Collector or under his authority by his surveyor. It was not a survey under the Madras Survey and Boundaries Act. It was a survey

no doubt under the Court of Wards Act for the purpose of the Court of Wards. I do not think that in the circumstances these documents are of

any great probative value in a case like this in which the parties to the action were in no way concerned in the proceedings before the surveyor. As

there is a volume of evidence upon which the learned District Judge has relied for his conclusion, I do not think that his ruling out Exs. VI and VI

(a) as not having been proved vitiates his judgment. The next point urged is that the Lower Courts ought to have considered the Commissioner's

report in the case. A Commissioner was appointed at the close of the case and he submitted his report which is printed at pages 3 to 5: of the

documents. The Subordinate Judge does not make any reference to it, and the learned District Judge before whom the contention was raised by

the appellants as regards the non-consideration of the Commissioner's plan and report by the Lower Court remarked:

It appears that the plaintiff objected to the report and plan, and as the Commissioner was not examined as a witness, the Subordinate Judge was

right in leaving them out of account.

2. A Commissioner's report is evidence in the case, but Courts should take care to see that the report is filed as an exhibit. No doubt there is the

loose practice prevailing in the mofussil of reading a Commissioner's report as evidence without marking it as an exhibit, but what appears to have

happened in this case was that the plaintiff objected to the correctness of the report and the defendants who were interested in getting it filed as an

exhibit did not care to rely on it. They should have asked the Court to have it filed as an exhibit. In order to see whether the appellants have a

legitimate ground of complaint I went through the Commissioner's report and find that as regards two points the Commissioner's report is not of

any value to either side and that as regards one point, that is the existence of Bado Ghayi, it is of some value. Evidently considering the non-

conclusiveness of the report, both sides seem to have given the go-by to it and it does not lie in the mouth of the appellants to say that the Lower

Courts ought to have relied upon the document, when they themselves did not take the trouble to have it marked as an exhibit. If they had asked

the Court to have it marked as an exhibit, the Court would have examined the Commissioner and given an opportunity to the plaintiff to

substantiate his objections to the plan and report. As there is a considerable value of evidence in the case upon which both the Lower Courts have

relied for the conclusion they came to, I do not think that the non-consideration of the Commissioner's report, even if it is treated as evidence

without having been formally filed, has in any way affected the result of the case. As the learned District Judge has concurred in the conclusion

arrived at by the trial Court and as his findings of fact are supported by evidence on record, do not think that the contention of the appellant ought

to be allowed to prevail.

3. In the result, the second appeal fails and is dismissed With costs.