

(1938) 08 MAD CK 0002
In the Madras High Court

Balagurumurthy Chettiar

APPELLANT

Vs

Kalingan Ambalagaran (deceased) and Others

RESPONDENT

Date of Decision : 08-08-1938

Acts Referred:

Citation : AIR 1938 Mad 957 : (1938) 48 LW 655 : (1938) 2 MLJ 648

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is an appeal from the judgment of the Additional Subordinate Judge of Trichinopoly dated the 6th December,

1935, allowing the appeal by the defendants from the decree of the District Munsiff, Trichinopoly, dated the 21st December, 1934, and remanding

the suit to the trial Court for fresh disposal after taking evidence on a certain point. For the purpose of deciding this appeal it is unnecessary to go

into the facts of the case at any length. The suit was for recovery of the amount due under the mortgage executed by the father of defendants 1 to 3

and the fourth defendant in favour of the plaintiff. The fourth defendant's name was struck off and his case need not be considered. The suit was

defended on the ground that the mortgage sued on had been discharged by the father of defendants 1 to 3 and that the endorsements of payments

found on the mortgage deed were not true. After full trial the suit was decreed in favour of the plaintiff. It was not the case of the defendants who

appealed to the District Court that they had not sufficient opportunity to present their case or adduce evidence in support of their case. But

nevertheless they filed an application purporting to be under Order. 41, Rule. 27, Civil Procedure Code, praying the District Court to admit a

certain document in evidence in appeal, namely, a certified copy of an entry from a death register said to relate to their father. This application was

opposed by the plaintiff-respondent but was allowed by the District Judge on the 5th April, 1935, that is to say, long before the appeal was even

ripe for hearing. In any case it is clear that the District Judge did not go into the merits of the appeal before he passed the order and the appeal

itself was transferred by the District Judge to the Additional Subordinate Judge for disposal on a subsequent date. The Additional Subordinate

Judge who disposed of the appeal appears to have thought that he was bound by the order of the District Judge admitting the document in question

as evidence in appeal and he thought that it was but fair that the plaintiff - respondent should have an opportunity of leading rebutting evidence to

show that the entry in the death register in question did not relate to the father of defendants 1 to 3. He was not content with making this direction,

but actually remanded the case to the lower Court for fresh disposal after taking evidence on the point. This necessarily involved the setting aside

of the decree of the lower Court and that too for no valid reason. It cannot be maintained for a moment that the procedure adopted either by the

District Judge in admitting additional evidence in appeal or the judgment of the Subordinate Judge reversing the decree of the Court below and

remanding the case for fresh disposal was justifiable. The powers of the appellate Court in the matter of admission of additional evidence are

subject to limitations which are clearly laid down in Order. 41, Rule. 27. This matter has been dealt with in more than one case by their Lordships

of the Privy Council and it cannot for a moment be urged that the District Judge acted with jurisdiction when he ordered the document in question

to be admitted as evidence in appeal before hearing the appeal itself at the instance of a party. As was observed by their Lordships in *Parsotim*

Thakur v. Lal Mohar Thakur (1913) 61 M.L.J. 489 : L.R. 58 IndAp 254 : ILR 10 Pat. 654 (P.C.) :

The legitimate occasion for the exercise of this discretion (of admitting additional evidence in appeal) is not whenever before the appeal is heard a

party applies to adduce fresh evidence, but "when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent" ... It

may well be that the defect may be pointed out by a part, or that a party may move the Court to supply the defect, but the requirement must be the

requirement of the Court upon its appreciation of the evidence as it stands.

2. Their Lordships go on to state that wherever the Court adopts this procedure it is bound by Rule. 27(2) to record its reasons for so doing, and

under Rule. 29 must specify the points to which the evidence is to be confined and record on its proceedings the points so specified. In this case

the order admitting additional evidence in appeal was passed before the appeal was heard and there is no doubt therefore that that order was

without jurisdiction. Even if the learned Subordinate Judge thought that this order of the District Judge admitting evidence was binding on him, there

was no necessity for him to have reversed the decree of the Court below and remanded the suit for fresh disposal; the correct procedure which he

ought to have followed, even if he thought that the order of the District Judge was binding on him, was to have the additional evidence taken either

by himself or by the lower Court and then dealt with the appeal. Both the order of the District Judge admitting evidence in appeal as well as the

judgment of the Subordinate Judge reversing the decree of the trial Court and remanding the suit for fresh disposal are clearly erroneous and

contrary to law. They are therefore set aside and the lower appellate Court is directed to dispose of the appeal afresh according to law. The

appellant is entitled to have his costs of this appeal from the respondents. The costs in the Court below should be provided for in the revised

decree of the lower appellate Court.