

(1912) 07 MAD CK 0051
In the Madras High Court

Bana Veeramma

APPELLANT

Vs

Gungala Chinna Reddy and Others

RESPONDENT

Date of Decision : 30-07-1912

Acts Referred:

Evidence Act, 1872 — Section 107, 108

Citation : (1912) 23 MLJ 443

Judgement

1. This is a suit for possession of a house site. The plaintiff stated in her plaint that the house was purchased by her elders, that her husband left the place and went away to foreign places, that she and her father-in-law lived in it subsequently for 5 or 6 years, that the father-in-law then died, that she then continued to live in the house for some time till it fell down, that she then went to live with her brother in another village and that when she returned to the village in 1908 she found that the defendants had trespassed on it.

2. The defendants put the plaintiff to the proof of her title and possession. The case that the plaintiff attempted to make out at the hearing was that she succeeded to the house as the heir of her husband. No positive evidence was adduced to shew that her husband survived her father-in-law. She could not succeed unless the Court found that she did so. It is argued by the learned Vakil for the appellant that the appellate court was bound to presume that her husband lived for a period of 7 years after he left the village and that as the father-in-law died before the expiration of the 7 years the husband must be taken to have survived him. Reliance is placed on the combined effect of sections 107 and 108 of the Indian Evidence Act. The former section states that if a person is proved to have lived within a period of 30 years and the question is whether he is alive or dead the onus is on the party who asserts that he is dead. This is qualified by Section 108 which lays down that when it is proved that a person has not been heard of for 7 years by those who would naturally have heard of him if he had been alive the burden of proving that he is alive is on the person who affirms it. It is argued that in as much as u/s 107 it is enough to prove that a man was alive within 30 years to throw the onus of proving his

death on the party who asserts it there is a presumption that he lived during the 30 years and that Section 108 modifies it only where it is proved that the person was not heard of for 7 years. We are unable to agree with the appellant's Vakil as to the meaning to be put on Section 107. Both sections 107 and 108 deal with the procedure to be followed when a question is raised before a court as to whether a person is alive or dead. Neither of these sections in our opinion lays down any presumption as to how long a man was alive or at what time he died. The contention for the appellant is not supported by any Indian authority cited before us. On the other hand the view we take is supported by the pronouncement of the Calcutta High Court in *Naiki v. Lalsahu* ILR (1909) C. 103 and of the Allahabad High Court in a recent Full Bench decision in *Muhammed Sherif v. Bande Ali* ILR (1911) A. 36: A passage from Lawson on Presumptive Evidence has been read to us which goes to shew that in America there is a presumption that a man was alive until the expiration of the period of 7 years from the time that he was last heard of. That in our opinion is not the Indian Law. Then it is argued that there is at least a presumption of fact that the husband was alive for 7 years after he was heard of. Assuming that a Court may make a presumption that a man was alive during some period after he was heard of, it would depend entirely on the circumstances whether the Court would make such presumption or not. We are unable to say that on the facts placed before us, the Court should have inferred as a presumption of fact that plaintiff's husband was alive when his father died even if we would be justified in interfering in second appeal on the ground that a presumption of fact has not been made. We are therefore unable to interfere with the finding on the question of title.

3. Then it is contended that the finding on the question of plaintiff's possession cannot legally be upheld. The finding perhaps is not quite satisfactory. But the plaintiff's own case was that though she lived in the house for sometime after her father-in-law died she left it as the house fell down 20 years before the suit. It is not shewn how her possession could be taken to continue during the period of her absence. Nor is it shewn that she had acquired a title by prescription before she left the place. We cannot agree that the plaintiff would be entitled to tack her own possession on to that of her father-in-law. A person who has been found to have no title cannot rely on the possession of another when he did not enter on possession as his heir. Here the plaintiff's case was that she entered on possession as heir of her husband, not of her father-in-law. On the whole we do not think that we would be justified in interfering in this case in second appeal. We therefore dismiss it with costs.