

(1955) 12 PAT CK 0002
In the Patna High Court
Case No : A.F.A.D. No. 192 of 1954

Channoo Mahto and Others	Vs	APPELLANT
Jang Bahadur Singh and Others		RESPONDENT

Date of Decision : 13-12-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 5
Evidence Act, 1872 — Section 13, 145, 167, 21, 79

Citation : AIR 1957 Patna 293

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Advocate : B.C. De and D.L. Nandkeoliyar, for the Appellant; Anwar Ahmad, Ali Ahmad and Sarju Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

Raj Kishore Prasad, J.—This plaintiffs' appeal is directed against a judgment of reversal of Mr. H.R. Kazimi, District Judge, Muzaffarpur dated 15-12-53.

2. The plaintiffs brought a suit for a declaration of their title to and recovery of possession of 6k. 15dh. out of plot 228 of khata 24 in village Phulwaria. The plaintiffs' case was that there was one Bucha, who died before the survey, which took place in 1897, leaving behind a major son Daulat, and a minor son Maulat. Bucha died leaving some properties also including plot 228. At the time of survey Maulat was a minor, and, therefore, all the properties left by Bucha were recorded in the name of Daulat only, as he was the major son of Bucha.

The two brothers, however, continued to be in joint possession of the properties left by Bucha. Even after the death of Daulat, his son, Mohammad Jan, defendant No. 5, and Maulat continued to be in joint possession of all the properties. Thereafter there was a partition between Mohammad Jan and Maulat, by virtue of which the disputed land was allotted, to the share of Maulat, and the remaining portion of the plot fell to the share of Mohammad Jan.

Maulat continued to be in exclusive possession of, the disputed land for a number of years, and thereafter he sold the same to the plaintiffs on 13-6-1915 under Exhibits 1-A and 1-B, The plaintiffs continued in possession of the disputed land, but thereafter, due to interference by the defendant 1st party they discontinued their possession in" December, 1950, On these allegations the plaintiffs sought a declaration of title to and recovery of possession of the disputed land.

Alternatively, the plaintiffs also prayed that if it was found that plot 228 was not partitioned be-ween Maulat and Md. Jan, then as each of them had a moiety share in it, the plaintiffs were entitled to a half share in plot 228 after partition. They also prayed that in such a case they were entitled to get a refund of the proportionate amount of the consideration from Maulat. Maulat was originally a defendant to the suit as defendant 6, and he filed a written statement supporting the case of the plaintiffs. He, however, died during the pendency of the suit, and his wife Sanichri was substituted in his place. She filed a written statement supporting the defendants 1st and 2nd parties. Later on she also died and her name was expunged.

3. The suit was, therefore, contested mainly by defendants 1st and 2nd parties. Their case was that Bucha died after the survey, that he had no property of his own, and all the properties which stood recorded in the survey record of rights in the name of Daulat, were his self-acquired properties and belonged to him alone, and Maulat had nothing to do with the same. They also denied the allegation of partition between Md. Jan and Maulat, and the fact that by partition the disputed land fell exclusively to the share of Maulat, Their further case was that a portion of plot 228 was given in para to one Ramnandan Prasad, who orally sold his bharna rights to Maulat, and, therefore, Maulat was in possession for a number of years as bharnadar but when the bharna was redeemed the land came back in possession of Md. Jan, the mortgagor. They also denied the case of possession and dispossession set up by the plaintiffs.

4. The trial Court found that all the properties, which were recorded in the name of Daulat, belonged to his father Bucha; Bucha died before the survey; Daulat and Maulat continued to be in joint possession of all the lands recorded in the name of Daulat; there was a private partition between Maulat and Md. Jan, by virtue of which the land claimed by the plaintiffs was allotted to the share of Maulat, Maulat was never in possession as a bharnadar; Maulat had a right to sell the lands in suit to the plaintiffs; and that the case of possession and dispossession set up by the plaintiffs was true. On these findings the learned Munsif decreed the plaintiff's suit.

5. On appeal by the defendants 1st party the learned District Judge reversed the decision of the first Court. He held that Bucha died after survey; the disputed land belonged exclusively to Daulat, as it was his self-acquired property, and Maulat had no interest therein; there was no partition between Maulat and Md. Jan in 1943, and the plaintiffs' story of partition was untrue; and that the plaintiffs had, therefore, no title to the disputed lands. On these findings he

dismissed the plaintiffs' suit.

6. Mr. B.C. De, appearing for the appellants, has argued that the decision of the Court of appeal below is vitiated, because it has excluded from consideration two documents, namely, Exhibits 1 and 1-D on the ground that these documents could not be used in evidence in contradicting the case set up by the defendants 1st and 2nd parties, to the effect, that Maulat had no share in Phulwaria lands, recorded in the name of Daulat, because the provisions" contained in Section 145, Evidence Act, were not complied with, and Md. Jan, defendant 5, who was examined as D. W. 7, was not given a chance to explain the circumstances, if any, in which Maulat became a joint executant of these documents, and further that Section 21, Evidence Act, did not apply to the case.

7. Mr. De has further contended that the Court of appeal below has committed a serious error of procedure in finding that the evidence of Md, Jan, D.W. 7, who is recorded as having stated in his examination-in-chief, that Bucha died before survey, has been wrongly recorded.

8. I shall deal with the second contention of Mr. De first. Md. Jan, defendant No. 5, son of Daulat, was examined as D.W. 7. In the very beginning of his examination-in-chief he stated: "Bucha was my grandfather. He died before survey." He gave this evidence on 9-12-52. This evidence was read over to him the same day, and he admitted it to be correct; and in token thereof he put his left thumb impression. Then Bench Clerk of the 2nd Additional Munsif, who read over the deposition to this witness, has signed the certificate: "Read over to the witness, who admitted it to be correct."

This procedure was in accordance with the provisions of Rule 5 of Order 18 of the Civil Procedure Code, which provides that, in cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language of the Court in the form of a narrative by the Judge, and, when completed, shall be read over in presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same and shall sign it. When his evidence was read out, D.W. 7 did not complain to the learned Munsif that the very third line of his examination-in-chief, wherein he was recorded to have said, that Bucha died before survey, was wrong, because, as a matter of fact, he died after the survey.

If his evidence had been wrongly recorded, it was his duty to point out this mistake to the Court, but he did not do so, either on the date, when it was read out to him, or even afterwards. At the time of argument also before the learned Munsif it was never argued by the lawyer of the defendants that the above statement of D.W. 7 had been wrongly recorded. On the other hand, arguments were advanced before him on the footing that D.W. 7 had admitted that Bucha died before the survey, and, therefore, the learned Munsif was perfectly justified in deciding the case on that footing.

The defendants 1st party appealed against the judgment of the learned Munsif. In the memorandum of appeal filed before the learned District Judge, no ground

was taken that the evidence of D.W. 7, that Butcha died before the survey, had been wrongly recorded. No affidavit was filed before the learned District Judge to show that the above statement of D.W. 7 was incorrect. Even in this Court no affidavit has been filed by the respondent to show that the above statement was wrongly recorded. The learned District Judge suo motu thought that in his opinion, in his own words, "there is considerable room for thinking that a mistake was made in recording his evidence, and what the witness "really meant to say was that Bucha died after the survey." He further observed: "I say so, because the trend of the cross-examination at p. 3 of his evidence shows that he was taken to have said that Bucha died after the survey. Had it not been so, the following answer would not have been obtained from him: "I have seen no paper to show that Bucha Dhunia died after survey"."

The question for consideration, therefore, is, was it open to the Court of appeal below, in the absence of any affidavit, or any challenge by the defendants either in argument or in the memorandum of appeal before it, to take upon itself suo motu the duty to conduct an enquiry on its own, whether the record of the evidence of D.W. 7 faithfully and accurately embodied the gist of what the witness actually said. Had the learned Judge considered Section 80 of the Evidence Act, it would have been clear to him that there was no duty whatever on the Court to conduct an enquiry on its own, unless it was disclosed by affidavit exactly where the inaccuracy lies.

Section 80 of the Evidence Act provides that whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding, or before any officer authorised by law to take such evidence, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence was duly taken.

This section gives legal sanction to the maxim "omnia praesumuntur rite esse acta" with regard to documents taken in the course of a judicial proceeding. When a deposition is taken by a public officer, there is a degree of publicity and solemnity, which affords a sufficient guarantee for the presumption that everything was formally, correctly and honestly done. The presumptions to be raised under this section, which deals with the subject of depositions of witnesses and confessions of prisoners and accused persons, are considerably wider than those u/s 79 of the Evidence Act. In this connection I may refer to Bhagwan Singh Vs. The State of Punjab, . His Lordship Bose, J., was considering the statement made by a witness in the committal proceedings in a criminal trial. His Lordship said as follows:

"Now the certificate of the Committing Magistrate endorsed on the deposition sheet states that the deposition was read out to the witness and that the witness

admitted it to be correct The Court is bound to accept this as correct u/s 80 of the Indian Evidence Act until it is proved to be untrue. The burden is on the person seeking to displace the statutory presumption and if he chooses to rely on the testimony of a witness which the Court is not prepared to believe the matter ends there. The duty of displacing the presumption lies on the person who questions it.

The Court is of course bound to consider such evidence as is adduced but it is not bound to believe such evidence nor is there any duty whatever on the Court to conduct an enquiry on its own.....The object of the reading over prescribed by Section 360 of the Code of Criminal Procedure is not to enable the witness to change his story but to ensure that the record faithfully and accurately embodies the gist of what the witness actually said. Therefore, before prejudice can be substantiated on this score, it must be disclosed by affidavit exactly where the inaccuracy lies".

In my opinion, the above observations of their Lordships of the Supreme Court apply to the present case also. When Rule 5 of p. 18 of the CPC had been complied, with; the learned District Judge was bound to accept the evidence of D.W. 7 to the effect that Bucha died before the survey as correct u/s 80 of the Evidence Act until it was proved to be untrue. In the present case there was never any challenge by the defendants, either in the first Court or in the Court of appeal, below, nor any affidavit was filed, disclosing where the inaccuracy lay. In such circumstances, in my opinion, the Court of appeal below was bound to accept the statement of D.W. 7 that Bucha died before the survey as correct. The learned District Judge committed a grave error of procedure in taking upon himself the duty to examine the correctness or otherwise of the above statement of D.W. 7, in the absence of any challenge by the defendants.

9. The first contention of Mr. De is that exhibits I and I-d should have been taken into consideration by the learned District Judge in deciding the question, whether Maulat had a share in the properties which stood recorded in the name of Daulat only. As exhibits I and I-d were in Urdu, I got them translated and typed. The official translation of the two documents are on the record. Exhibit 1 is a sale deed dated 11-5-40 executed jointly by Maulat, son of Bucha, and Md. Jan (D.W. 7), son of Daulat, brother of Maulat, in favour of one Farmoodan in respect of 1k. 10dh. of land under plot Nos. 244/731 and 281/716 under khata 24 in mouza Phulwaria, where the disputed lands lie.

Exhibit 1d is another sale deed, dated 7-12-39 executed jointly by the above named two persons, namely Maula and Md. Jan, in favour of one Chanu Mahto in respect of 5 khatas of land in mouza Pokhjara. The defendants' case was that Maulat had no share in any land in village Phulwaria. But exhibit 1 indicated that Maulat had a share in village Phulwaria, as otherwise Maulat would not have joined Md. Jan in the execution of this document. Exhibit 1 was, therefore, strongly relied upon by the plaintiffs. The defendants case, as disclosed in the evidence of Md. Jan, D.W. 7, was that Bucha had no properties at all, and that,

therefore, his sons Daulat and Maulat did not inherit any property from their father, Bucha, and further that whatever properties stood recorded in the name of Daulat were his self-acquired properties. The plaintiffs in order to falsify this defence relied on exhibit 1-d, referred to above, to show that even in village Pokhrera Maulat had a share in the property conveyed under this sale deed, otherwise there was no reason why Maulat should have joined in the execution of this document.

The plaintiffs, therefore, placed strong reliance on exhibits 1 and 1-d in order to show that the properties which were recorded in the name of Daulat were really the joint properties of both Daulat and Maulat; and that their case that Bucha died before the survey, and that as at the time of survey Maulat was a minor, all the properties of Bucha, inherited by the two brothers, Daulat and Maulat, were recorded in the name of Daulat only, and that as such Maulat, although not recorded in respect of such properties, had also a share in them, was correct.

10. In exhibit 1, which is in respect of Phulwaria, where the disputed lands lie, it, is mentioned by Maulat and Md. Jan that on receipt of the entire consideration money they had put the vendee in possession and occupation of the property and constituted her absolute owner thereof. It is further recited that if any act was done by them, or their heirs, as "a result of which, the vendee, or her heirs, was dispossessed from the whole, or any portion of the property vended thereunder, in that case the vendee will be competent to realise the principal consideration money with interest from them. It is also recited that in the property sold, 1 khata is owned and possessed by Maulat, and 10 dhurs are owned and possessed by Md. Jan. There is, therefore, no doubt that this document amounts to an admission on the part of Md. Jan that Maulat had interest in the lands of village Phulwaria, and, therefore, the defence that Maulat had no share in any land in village Phulwaria was false.

11. Likewise, in exhibit 1-d it is mentioned that Maulat and Md. Jan were in need of money for meeting necessary and household expenses, as well as for payment of rent to the proprietor, and, therefore, they were selling the property covered, by the document, which had been in their possession and occupation, and on receipt of the entire consideration they had put the vendee in possession and occupation of the property vended.

It is also mentioned in this document that if the vendee, or his heirs, be ever dispossessed from the whole or any portion of the property vended, in that case the claimant shall be competent to realise the principal consideration money with interest from the two executants. Against plot 91, which is one of the two plots sold under the deed, it is mentioned that the area sold was possessed by Md. Jan constituting his khas share. As against plot No. 135 also it is mentioned that out of 2k. 10dh. 1k. 5 dh are possessed by Maulat and 1k. 5dh are possessed by Md. Jan.

Exhibit 1-d, therefore, also amounts to an admission on the part of Md. Jan that

Maulat had also a share in the properties sold, and, therefore, this admission belied the defence, as disclosed in the evidence of D.W. 7, that Bucha had no property, and, therefore, his two sons, Maulat and Daulat, inherited no property from him, and whatever properties stood recorded in the name of Daulat belonged to him only, and Maulat had no share in those properties,

12. An "admission" has been defined in Section 17 of the Evidence Act. According to this section an "admission" is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, mentioned in the succeeding Sections 18 to 20. Section 18 provides that statements made by a party to the proceeding are admissions, except in certain cases. Applying these tests (to the statements made by Md. Jan (D.W. 7), defendant No. 5, in exhibits 1 and 1-d, in my opinion, they clearly amount to admissions made by him within the meaning of Section 17 of the Evidence Act.

13. Md. Jan, D.W. 7, son of Daulat and defendant No. 5, stated in Court as follows:--

"Bucha was my grandfather....My grandfather had no properties. Daulat and Maulat did not inherit any properties from my grandfather.....The disputed land was acquired by my father. My father acquired the properties out of his own income. Maulat had no concern with these lands. Out of the self-acquired lands my father gave 14 kathas of lands in Pokhrera to Maulat..... Maulat was separate from my father. I was never joint with Maulat....."

Cross-examination:--

""Maulat had no other lands excepting the 14 kathas lands in Pokhrera.""

The above statements made by D.W. 7 in the witness box are inconsistent with his statements made in exhibits 1 and 1-d. The above sworn testimony of D.W. 7 is undoubtedly contradicted by, and runs counter to, his statements in the above two documents.

14. Admittedly the provisions of S. 145, Evidence Act, have not been complied with. The statements made by D.W. 7 in exhibits 1 and 1-d were not put to him in his cross-examination, and his attention was, therefore, not drawn during cross-examination to the statements made by him earlier in these two exhibits. He was not confronted with the specific portions of the statements of D.W. 7 mentioned by him before, which are sought to be used as his admissions. The question, therefore, for consideration is, whether, without complying with the procedure laid down in Section 145, Evidence Act, the statements, or admissions, made in exhibits 1 and 1-d, could be used as legal evidence against defendant No. 5, that is D.W. 7.

The learned District Judge relied on a Full Bench decision of the Lahore High Court in *Firm Malik Das Raj Faqir Chand v. Firm Piara Lal Aya Ram* AIR 1946 Lah 65 (B), and held that in his opinion exhibits 1 and 1-d did not amount to an

admission of D.W. 7 within the meaning of Section 21, Evidence Act, and, therefore, the cases of this Court, namely, Sheopal Singh Vs. Mahendra Narain Singh and Others, , and (Mahant) Ramkeshwar Das Vs. Baldeo Singh, , had no application to the present case, and, therefore, as Section 145, Evidence. Act, had not been complied with, exhibits 1 and 1-d could not be used in evidence against the defendants for the purpose of showing that the defence that Maulat had no share in village, Phulwaria was false.

15. Mr. De has in this connection put forward two contentions: (1) that the statements contained in exhibits 1 and 1-d amounted to admissions of defendant 5 (D.W.7), and, therefore, they were admissible also u/s 21, Evidence Act; and (2) that these two documents were admissible also u/s 13 of the Evidence Act. He, therefore, relied on the decision of this Court in Ramkeshwar Das v. Baldeo Singh (D), referred to above.

16. I have held above that the view of the learned District Judge that the two documents do not contain any admission by Md. Jan is not correct. The Question, therefore, for consideration is, if exhibits 1 and 1-d contain admissions by Md. Jan (D.W. 7), are these two documents admissible in evidence without complying with the provisions of Section 145, Evidence Act?

17. The rule contained in 21 is that admissions are relevant and provable, but if they are self-serving, then generally they are not receivable in evidence. If the admission is a self-harming one, then, with few exceptions, it is usually considered as a proof of a very satisfactory kind. Admissions are valuable pieces of evidence, as the rule is that when a party admits to be true, he is presumed to be true unless the contrary is established. Therefore, in my opinion, the statements of Mr. Jan in exhibits 1 and 1-d are his admissions within the meaning of Section 21 of the Evidence Act. In the Division Bench decision of the Patna High Court reported in (Mahant) Ramkeshwar Das Vs. Baldeo Singh, , James, J., with whom Rowland, J., agreed, after referring to the case of Bal Gangadhar Tilak v. Shrinivas Pandit, AIR 1915 PC 7, observed as follows in connection with the admission contained in an affidavit of the defendant:

"This is not a document which becomes relevant by the provisions of Section 145, Evidence Act, and would otherwise be inadmissible. It is an admission which goes to the root of the case, which is relevant u/s 21, Evidence Act; and its relevancy is not affected by the question of whether the defendant may or may not have given evidence consistent with the statement contained in it.

If it had been a document which had no relevancy apart from the fact that it contradicted statements made by the defendant when he was in the witness-box, it would have been necessary to observe strictly the provisions of Section 145 before the document could be used; but it was not a document of that nature and no irregularity was committed in the manner of admitting it into evidence and in the use which was made of it after it was admitted."

I respectfully agree with the above observations of their Lordships. This case,

and the other Patna case, referred to before, were, however, dissented from in the Full Bench decision of the Lahore High Court mentioned above. Mahajan, J., who subsequently became the Chief Justice of the Supreme Court, in delivering the Judgment of the Full Bench considered specifically the two Patna decisions and dissented from them. In respect of the Division Bench decision in Ramkeshwar Das v. Baldeo Singh (D) of this Court, his Lordship Mahajan, J., observed as follows:--

"It appears to me that these observations were made by their Lordships, I speak with great respect, under some misapprehension as to the Privy Council decision in ILR 39 Bom 441: 42 IA 135: (AIR 1915 PC 7) (E). As already pointed out, in that case, in spite of specific reference to Section 21, Evidence Act, their Lordships held that admission relevant u/s 21 could not be used as legal evidence unless the procedure laid down in Section 145, Evidence Act, was complied with. That, in substance though not in clear language, is the verdict of their Lordships of the Privy Council. This case, therefore, runs counter to that decision and to that extent cannot be held to be good law. The principle on which their lordships decided ILR 39 Bom 441: (AIR 1915 PC 7) (E) comes into clear conflict With this decision."

As I am sitting single, I am bound by the Division Bench decision of this Court, and, therefore, following this decision, I hold that because exhibits 1 and 1-d are admissible u/s 21 also, apart from u/s 145, Evidence Act, the provisions of Section 145 need not be complied with, and, therefore, exhibits 1 and 1-d are admissible u/s 21 of the Evidence Act.

If ever an occasion arises to consider this question by this Court, the decision of the Supreme Court on Section 145, Evidence Act, in Bhagwan Singh Vs. The State of Punjab, , referred to before, may also be considered along with the two Patna decisions, the Full Bench decision of the Lahore High Court, and the Privy Council decision, referred to above.

18. In my opinion, exhibits 1 and 1-d are also admissible under, Section 13 of the Evidence Act, The facts made relevant under this section are (a) transaction, and (b) instances. Neither of these terms is defined by the Act. A "transaction" is the doing or performing of any business; management of any affair; performance; that which is done; an affair.

A "transaction" is something already done and, completed; a "proceeding" is either something which is now going on, or, if ended, is still contemplated with reference to its progress or successive stages. A "transaction", in the ordinary sense of the word, is some business or dealing which is carried on, or transacted between two or more persons.

A "transaction", as the derivation denotes, is something which has been concluded between persons by a cross or reciprocal action as it were: see Gujju Lal v. Fatteh Lal ILR 6 Cal 171 (FB) (F). In this case, Garth, C. J., further added: If the parties to a suit were to adjust their differences inter se the adjustment

would be a "transaction".

Therefore, deeds of sale have been held to be evidence quantum valeant as transactions and instances in which rights were asserted and recognised (see *Daitari Mohanti v. Jugo Bundho* 23 Suth WR 293 (G), and *Sabran Sheikh Vs. Odooy Mahto*, , in which this case was followed). In the present case, the question is of the existence of a right, and the sale deeds come both within Clauses (a) and (b); they are both-transactions in which the right was claimed or asserted, and instances in, which the right was exercised.

In my opinion, therefore, the two sale deeds, exhibits 1 and 1-d, were both transactions and instances, in which Maulat's rights in the properties recorded in the name of Daulat were asserted and recognised, and, therefore, they would be admissible u/s 13 of the Evidence Act also.

19. The result of my finding, on a review of the authorities mentioned above, is that exhibits and 1-d are admissible in evidence, and should have been considered by the Court of appeal below, as was done by the first Court.

20. The next question for consideration is whether, in view of Section 167, Evidence Act, the Judgment of the learned District Judge, on the above grounds, can be said to be in accordance with law?

Section 167 provides that the improper admission, or rejection, of evidence shall not be ground of itself for a new trial, or reversal, of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that if the rejected evidence had been received, it ought not to have varied the decision. Exhibits 1 and 1-d were the main, and most important documents, on the side of the plaintiffs to support their case that Maulat had also a share in the properties recorded in the "name of Daulat, and to negative the defence story to the contrary. They were relied upon by the first Court.

According to the learned District Judge also thpese were the strongest evidence in support of the plaintiffs' case, and the other documents were of no assistance in deciding, the question, whether Maulat had any title to the disputed land. The learned District Judge after excluding from consideration exhibits 1 and 1-d observed that neither the oral, nor the documentary evidence, adduced by the plaintiffs, establishes that Maulat had a share in the disputed property. In a case like this, where the evidence excluded is not a piece of evidence, but the main evidence in support of a party's case, it is impossible to state what the finding of the Court of appeal below would have been, had this evidence been considered.

I am not in a position to say that if the rejected evidence had been received, it ought not to have varied the decision of the Court of appeal below. In this view of the matter, it seems to be necessary to send the appeal back to the Court of appeal below, and to order the appeal to be heard afresh. It there would have

been evidence apart from the rejected evidence, then that might have precluded this Court from ordering a fresh hearing of the appeal.

The question, whether the admissions or statements in Exhibits 1 and 1-d had been established to be untrue, or incorrect, will be considered afresh by the Court of appeal below.

21. In the result, the appeal succeeds, and is allowed, and the Judgment and decree of the Court of appeal below are set aside, and the appeal is remanded to the learned District Judge to re-hear the appeal and give a fresh decision after consideration of exhibits 1 and 1-d, and the other evidence on the record, and the Judgment of the first Court, in the light of the observations made above. Cost of this appeal will abide the result of the appeal in the Court of appeal below.