

(1932) 11 MAD CK 0017
In the Madras High Court

Duraiswami Thevan

APPELLANT

Vs

K.N.K.L. Lakshmanan Chettiar

RESPONDENT

Date of Decision : 11-11-1932

Acts Referred:

Citation : AIR 1933 Mad 537 : (1933) 38 LW 240

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The point raised by the appeal is, whether the alleged defamatory statement made by the defendant is absolutely privileged. Under the sections of the Madras Estates Land Act relating to the appraisalment and division of the produce, the landholder (the plaintiff in the case) presented an application, and u/s 75 an officer was deputed to carry out the functions specified in that section. In the inquiry that followed, the defendant (who was a raiyat under the plaintiff) gave a long oral statement, and in the course of it, made the allegation (said to amount to slander) that the plaintiff had murdered his (defendant's) father-in-law. One of the pleas raised by the defendant in this connexion is, that he did not make the allegation imputed to him; but this point is concluded by the concurrent finding against him of the two Courts below.

2. The question of law is, as I have said, whether the statement is absolutely privileged. Mr. A. Srinivasa Ayyangar for the plaintiff (respondent) has strenuously urged that the proceeding before the officer deputed u/s 75 is not a judicial proceeding and that the rule of absolute privilege has no application. But the doctrine of absolute privilege is not confined to statements made before judicial tribunals strictly so called but has been carried further, and has been held to apply to statements made before a

tribunal (which word covets a commission or inquiry) recognized by law, which, though not a Court in the ordinary sense of the word, exercises judicial functions, that is to say, acts in a manner similar to that in which a Court of justice acts in respect of an inquiry before it." Gatley on Libel and Slander, Ch. 11, p. 182, 1924

Edn.

So long as the substantial elements of natural justice are observed, an absolute privilege attaches to the proceedings. The substantial elements of natural justice must be found to have been present at the inquiry." (p. 183).

3. The learned author points out that it is often a difficult question to determine, whether a particular tribunal exercises judicial functions so as to confer an absolute privilege on statements made in the course of its proceedings. In every case, he observes, it is necessary to examine somewhat narrowly the constitution, the functions and procedure of the tribunal. According to Folkard absolute immunity exists in respect of statements made "in the ordinary course of the administration of justice" or "in the usual and regular course of legal procedure," provided the statements made are relative to the matter in hand:" Folkard's Slander and Libel, Edn. 7, p. 100. Accordingly it has been held that a military Court of inquiry, though not coming within the ordinary definition of a Court of justice, is nevertheless a tribunal exercising judicial functions, so as to confer an absolute privilege on statements made before it. The General Medical Council, the Committee of the Law Society, a commission appointed by the bishop of a diocese, have similarly been held to be judicial tribunals within the meaning of the rule: Gatley: pp. 183 and 184.

4. It is therefore unnecessary to decide whether the officer deputed u/s 75 performs strictly judicial functions or not, for there can be no doubt that the proceedings before him are at any rate quasi-judicial proceedings, and the law casts upon him the duty of acting in a manner similar to that in which Courts of justice generally act. For the plaintiff it is contended that the officer's duty, if objections of a certain kind are taken, is merely to record them, and therefore he is not a judicial tribunal. This clearly is not the true effect of the sections, for while it is laid down that he shall record the objections, he is required nevertheless to carry out the appraisal or division as the case may be. Cases occur where objections are taken, such as, that rent is not payable in kind but in cash, and the officer deputed cannot deal judicially with such questions; but the intention of the legislature is that the proceeding should not be delayed until the objections have been disposed of. In a certain event, in regard to matters, which are within the province of the officer, finality attaches to his decision, Section 75(7), and it is futile to contend that his duty is merely ministerial. The case relied on for the plaintiff, *The Royal Aquarium and Summer and Winter Garden Society v. Parkinson* (1891) 1 QB 431 only lays down that the doctrine of absolute immunity does not extend further than to Courts of justice and tribunals having similar attributes. The question arose, whether a meeting of the London County Council for granting music and dancing licenses, was a Court within the meaning of the rule by which defamatory statements made in the course of proceedings before a judicial tribunal are absolutely privileged. Lord Esher, M.R., observes that the duties performed by the council are administrative, their action being consultative for the purpose of administration, and not judicial. This case

has no analogy to the present, and I reject the plaintiff's contention founded on the nature and character of the proceeding in question.

5. It is next contended for the plaintiff that the absolute privilege, protecting the party from action, does not apply, as the statement in question was irrelevant to the inquiry then being held. The defendant's case in that inquiry was that no melvaram was due to the plaintiff and that the latter filed the application u/s 74 needlessly and out of spite. While stating that the melvaram had been already paid, he recounts the history of the relations between himself and the plaintiff. The lands had originally belonged to his father-in-law, who presented a "harvest petition" against the plaintiff, and before the passing of, the award, the latter murdered his father-in-law. Then the defendant goes on to say that on his father-in-law's death, his share devolved upon him and his wife, which the plaintiff was anxious to purchase, but he would not accede to his request. Displeased with him on that account, the plaintiff unnecessarily filed the application in question. This is the gist of what the defendant stated before the Revenue Officer. The law is not that the statement, on which the privilege is conferred, must be relevant in the narrow sense of that word; the statement must be made with reference to the subject of the inquiry or must be relative to the matter in hand: this is what the authorities lay down. In the judgment of Bramwell, J.A., in *Seaman v. Netherclift* (1877) 2 CP D 53 this point has been dealt with very tersely and clearly. Says Bramwell, J.A.:

As to the first proposition I am by no means sure that the word "relevant" is the best word that could be used; the phrases used by the Chief Baron and the Lord Chancellor in *Dawkins v. Lord Rokeby* (1875) 7H L 744 would seem to be preferable "having reference" or "made with reference to the inquiry."

6. Then he shows by giving an example what is meant by a statement which has no reference to the inquiry at all. Suppose while a witness is in the box, a man were to come in at the door and the witness were to exclaim, "That man picked my pocket," that is not the kind of statement in respect of which the witness would enjoy immunity. Bramwell, J.A., goes on to say that the words "having reference to the inquiry" ought to have a very wide and comprehensive application and ought to extend to a statement which a witness might naturally and reasonably make when giving evidence with reference to the matter in hand. Cockburn, C.J., makes similar observations, and referring to statements de hors the matter in hand, gives the following instance:

If a man, when in the witness-box, were asked: "Were you at York on a certain day?" and he were to answer: Yes, and AB picked my pocket there,

such a statement would be altogether de hors the character of witness and not within the privilege. I may also refer to *Adivaramma v. Ramachandra Reddi* (1911) 6 PC 309 where Wallis, J., as he then was, took the same view. Judged by this test, absolute immunity attaches to the statement in question.

7. In the result, I hold that the judgment of the lower Court, which reversed that

of the District Munsif, is wrong and the suit is accordingly dismissed. Although the defendant succeeds, he is not in the circumstances entitled to costs, and I therefore direct each party to bear his costs throughout. The memorandum of objections is dismissed. No costs.