
(1924) 04 MAD CK 0020
In the Madras High Court

G. Konda Reddi and Another

APPELLANT

Vs

P. Pichireddi and Others

RESPONDENT

Date of Decision : 22-04-1924

Acts Referred:

Evidence Act, 1872 — Section 90

Citation : AIR 1925 Mad 184

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—The appellants raise an objection that Exhibit A, which is a registration copy of a sale-deed executed in 1888, has not been

properly proved, because the presumption u/s 90 of the Evidence Act cannot be drawn, as the document was less than 30 years old when it was

first produced in Court. When the case was first tried, the Munsif naturally did not consider whether Section 90 was applicable because the

document was obviously not 30 years old at that time. But after finding that the loss of the original was not satisfactorily proved, he refused to

allow the sale to be proved by secondary evidence, whether oral or documentary in the shape of Exhibit A. Therefore, although this document was

marked as Exhibit A, it was not treated as evidence in, the suit.

2. On appeal the suit was remanded for re-trial and when it came on for re-trial the sale-deed, of which Exhibit A is a copy, was more than 30

years old; and it has been laid down so long ago as Minu Sirkar v. Rhedoy Nath Roy 5 C.L.R. 135 that in applying the presumption allowed by

Section 90 of the Evidence Act, a period of 30 years is to be reckoned not from the date upon which the document is filed in Court, but from the

date on which it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof. I have been referred to a decision of

a Single Judge reported as Chiranji Lal v. Kallo (1914) 12 A.L.J. 507 which seems to take a different view, but the same view is taken in Hari

Ram v. Matsaddi (1917) 146 P.W.R. 1917 and in a recent case of the Lahore High Court, Ladha Singh v. Hukam Devi AIR 1924 Lah. 145

3. The lower Court was, therefore, quite justified in applying Section 90 of the Evidence Act to this document which was 30 years old at the time

when its genuineness came up for consideration, namely, at the time of the re-trial in the District Munsif's Court. Apart from this, it might be

noticed that the appellants in their written statement did not deny the genuineness of this document. They did not, directly admit its execution, but

paras. 3 and 4 of their written statement show clearly that they did impliedly admit execution, but denied the bona fides and the validity of the

document. In that view also it seems rather strange that they should now question the genuineness of the document, namely, the fact of its

execution.

4. For both these reasons the second appeal fails and is dismissed with costs.