

(1940) 09 MAD CK 0049
In the Madras High Court

Ganthakoru Mangamma and Others

APPELLANT

Vs

Dulla Paidayya and Others

RESPONDENT

Date of Decision : 24-09-1940

Acts Referred:

Citation : AIR 1941 Mad 393 : (1941) 53 LW 160 : (1941) 1 MLJ 174

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is an appeal from the decree of the Subordinate Judge of Chicacole dated the 19th November 1936 reversing on

appeal the decree of the District Munsif of Vizagapatam dated the 10th November, 1932 in O.S. No. 175 of 1932. The reversal was based on a

single ground namely, that the plaintiff had failed to show that she or her vendors had possession of the suit property at any time within 12 years

prior to the suit and that therefore the suit was barred by limitation. The other points which arose in the case and which had been decided in favour

of the plaintiff were not considered by the lower appellate Court and indeed the main complaint by the appellant has been that the judgment of the

lower appellate Court does not satisfy the legal requirements of a judgment.

2. This is a case in which by a curious irony, the Subordinate Judge who decided the case was an officer junior in rank to the District Munsif who

decided the case as the trial Judge. This is accounted for by the fact that nearly four years elapsed between the decision by the trial Judge and the

decision in appeal.

3. The question of possession was dealt with by the trial Court in a careful judgment covering a lot of ground "and no attempt was made by the

lower appellate Court to come to close quarters with the evidence in the case or to meet the reasoning of the trial Court in support of its

conclusion. In other words, this is a case to which the observations of their Lordships of the Judicial Committee in *Rani Hemantha Kumari Debt v.*

Maharaja Jagindra Nath Roy Bahadur (1906) 16 M.L.J. 272 would apply, namely, that the judgment in appeal does not come to close quarters

with the judgment which it reviews and indeed never discusses or alludes to the reasoning of the trial Judge. In such a case their Lordships

observed that this characteristic of the appellate Court's judgment "'seriously invalidates its authority'". The entire evidence is dealt with very

unsatisfactorily by the lower appellate Court in a few sentences and no reference is made to the documentary evidence on the side of the plaintiff

and no reason is given for rejecting the conclusion of the trial Judge as regards the credibility of the witnesses examined on the side of the plaintiff.

On the other hand, the documentary evidence on the side of the defendants was accepted without question by the lower appellate Court in spite of

the several reasons given by the trial Judge for rejecting the documentary evidence. On the whole, I have no doubt that this is a case in which the

judgment of the lower appellate Court does not satisfy the requirements of the law and must therefore be deemed to be a judgment vitiated by an

error in procedure.;

4. Even otherwise there has been a failure to give sufficiently good reasons for upsetting the findings of the trial Judge as regards the credibility of

the oral evidence in the case. As $\frac{1}{2}$ matter of law, the lower appellate Court was bound not to go against the opinion of the trial Judge who had

an opportunity; of having the witnesses before him in deciding upon the credibility of the oral evidence in the case. Unless good reasons are given,

any interference with the conclusion of the trial Judge on matters of this kind must be deemed erroneous in law. These considerations are sufficient

to meet the contention on the side of the respondents that the second appeal is not competent as it does not fall within any of the grounds

mentioned in Section 100 of the Code of Civil Procedure. This is a case in which the second appeal does come within one of the grounds

mentioned in that section and the objection as to the competence of the appeal is not well founded.

5. In these circumstances, the only course to be adopted is to reverse the finding on the question of possession and the decree of the lower appellate Court and to remand the appeal for fresh disposal according to law after considering all the evidence in the case. The costs of this second appeal will abide and follow the result and should be provided for in the revised decree of the lower Court. The court-fee paid on the memorandum of appeal will be refunded to the appellants.
6. Leave to appeal is asked for but I see no sufficient reason to grant leave.