
(1910) 01 MAD CK 0045
In the Madras High Court

Her Highness Matusri Jijoyamba Bai Sahiba by her Duly
Authorized Agent Baluswami Bhattugoswami

APPELLANT

Vs

Vengalakshmi Ammal and Others

RESPONDENT

Date of Decision : 12-01-1910

Acts Referred:

Citation : 5 Ind. Cas. 827

Hon'ble Judges : Arnold White, C.J; Munro, J

Bench : Division Bench

Judgement

Arnold White, C.J.—This is an appeal from a decree of Mr. Justice Boddam dismissing the plaintiff's suit. The plaintiff's suit was in ejectment and the plaintiff relied upon an alleged lease which was set up in paragraph 4 of the plaint. The lease is alleged to have been executed in November 1845 by the then Maharajah of Tanjore and under the alleged lease one Aiya Dikshadar, according to the allegations in paragraph 4 of the plaint, became a tenant-at-will of the Maharajah. Certain documents were tendered in evidence in the Court below and were rejected by the learned Judge and the ground of this appeal is that these documents were wrongly rejected.

2. With regard to the alleged lease a document was tendered in evidence which was produced by the 1st witness for the plaintiff who says that he found it among the records in an almirah in a room of the plaintiff. And he says it purports to be a copy and to bear the signature of the Rajah who is referred to in paragraph 4 of the plaint. Now I will assume that this document does purport to be a copy of the document which is referred to in paragraph 4 of the plaint. There is no evidence that the original has been lost or destroyed. The Advocate-General relied upon the provisions of Section 90 of the Evidence Act and contended that this document was admissible in evidence and he cited two cases. Khetter Chunder Mookerjee v. Khetter Paul Sreeterulus 5 C. 886 : 4 C.L.R. 199 and Ishri Prasad Singh v. Lalli Jas Kunwar 22 A. 294. But he admitted that he could not rely on the provisions of Section 90 unless there was evidence to

show that the alleged original had once existed and had been lost. For the purpose of showing that, he relied upon certain documents which were tendered in evidence before the learned Judge and which were rejected by him.

3. I need not only refer to two of these documents, as they are the only material ones for the purpose of this question. The first is a letter, dated the 26th November 1845, from the Chief Magistrate, Madras, to the officer described as the Resident at Tanjore. This letter refers to certain correspondence which had passed between the Chief Magistrate and the Sirkele of the then Maharajah. It then goes on to refer to the representative of the Maharajah having obtained an agreement from a certain party who was then in possession of a house which the Maharajah said was his property acknowledging that the house was the property of the Maharajah and rendering himself liable to proceedings in the event of the party in possession attempting to retain possession against the desire of the Maharajah. It is quite clear that there is nothing in this document even supposing for a moment that it is admissible in evidence to identify the party therein referred to as being in possession of the house with the Aiya Dikshadar referred to in paragraph 4 of the plaint. The Advocate-General, however, seeks to establish this contention by means of another document which was tendered in evidence before the learned Judge and rejected--and, according to the Advocate-General wrongly rejected. This is a letter dated the 17th January 1846, some months after the letter written by the Chief Magistrate and it is in reply apparently to the letter written by the Chief Magistrate in November 1845. In this letter there is a statement that the then Maharajah gave a house referred to in correspondence into the custody of one person calling himself Aiya Dikshit and "that Aiya Dikshit brought and delivered to us an agreement obtained from him in writing." And that is all.

4. Now even assuming for a moment this is admissible in evidence there is nothing to identify the agreement therein referred to with the agreement set up in paragraph 4 of the plaint or with the agreement set out in the document which is said to be a copy of the original lease. So, it seems to me that even if these documents were admissible in evidence they are not sufficient to establish the plaintiff's claim to eject the defendants on the strength of the agreement set up in paragraph 4 of the plaint. But, in my opinion, they are not admissible in evidence. The Advocate-General has argued that in virtue of the provisions of Section 35 of the Evidence Act they are admissible. He has argued they came within the words an entry in any public or other official book, register or record made "by a public servant in the discharge of his official duty." Our attention has been called to no case in which it has been held that correspondence, official it may be comes within the terms of that section. As I construe that section, it does not apply to ordinary correspondence though that correspondence might be conducted by officials. The entry must be in something which is either a book, register, or record." Then again I should be unable to hold that these entries were made "by public servants in the discharge of their official duties." Assuming that the Chief Magistrate is a "public servant" I should be very doubtful whether

what he wrote on the 26th November was an entry made by him in the discharge of his official duties. And with regard to the Sirkele who is described as the minister of the Rajah there is no evidence to show that he is a public servant within the meaning of Section 35 of the Evidence Act. For these reasons I think the learned Judge was right in rejecting the documents. I think the appeal fails and must be dismissed with costs.

Munro, J.

5. Before Exhibit A can be accepted as secondary evidence the Court must be satisfied that it was made from or compared with the original, assuming that there was an original. There is no proof of this, and I do not think we should be justified in presuming it. This being so, the plaintiff has failed to show any subsisting title in the suit property and I agree that the appeal should be dismissed with costs.