

(1919) 05 CAL CK 0055
In the Calcutta High Court

Hridoy Nath Parui and Another

APPELLANT

Vs

Akshoy Lal Chowdhury and Others

RESPONDENT

Date of Decision : 06-05-1919

Acts Referred:

Evidence Act, 1872 — Section 32(3)

Citation : AIR 1919 Cal 814 : 52 Ind. Cas. 463

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—This is a second appeal against a decree declaring the right and title of the plaintiffs to the land in suit and for recovery of possession of the same. The decision of the lower Appellate Court is based on findings of fact; but it is contended on the part of the appellants that these findings were arrived at on a consideration of documents which were irrelevant. The documents in question were deeds executed by persons who were not parties to the suit with reference to land on the boundary of the disputed land, in which statements were made in support of the plaintiffs' claim. No objection was taken to the admission of these documents; and it appears to me on the authority of the cases of *Imrit Chamar v. Sridhar Panday* 13 Ind. Cas 120 : 15 C.L.J. 7 : 17 C.W.N. 108 and *Abdullah v. Kunja Behari* 12 Ind. Cas. 149 : 14 C.L.J. 467 : 16 C.W.N. 252 that these statements must be held to be relevant. It is urged that they should not have been admitted in evidence because the authority of these rulings is that they are admissible under Clause (3) of Section 32 of the Evidence Act and it has not been proved that the conditions mentioned in the first part of Section 32 exist in this case. It appears to me, however, that in order to successfully take this objection the appellants should have objected to the admission of these documents at an early stage. The objection is not one as to their admissibility but as to their mode of proof. The contents of the documents are relevant and the question was whether those contents should be proved by the documents themselves or by direct evidence. When no objection was taken at an earlier stage to prove the contents by the documents, it was not necessary

for the plaintiffs to adduce oral evidence to prove the statements made in these documents. I would, therefore, hold that the first objection fails and that the findings of the lower Appellate Court are not vitiated by the admission of irrelevant evidence.

2. The only other point is that the first Court found that the suit was bad for non-joinder of one of the plaintiffs' sons and that the lower Appellate Court has come to no finding on this point. It will appear that any objection on this ground was waived by the appellants at an earlier stage of these proceedings. This probably accounts for the fact that this objection has not been taken in the grounds of appeal in this Court. It is sufficient to reject this contention on the ground that it has not been so taken.

3. The appeal fails and is dismissed with costs.