

(1909) 07 MAD CK 0023

In the Madras High Court

In Re: P.A. Somasundram Pillay and Others and Kandasawmy Pillay and Others

Date of Decision : 29-07-1909

Acts Referred:

Citation : 3 Ind. Cas. 736

Hon'ble Judges : Ralph Benson, O.C.J.;Sankaran Nair, J

Bench : Division Bench

Judgement

1. It is not urged before us that Exhibit-A, was executed by Manickam Pillai who purports to have executed it. The conduct of the 3rd accused

when summoned by the Sub-Registrar to produce Exhibit-A, his promise to produce it and the discovery of the document in his house in the

locked safe of which he and his brother, the 4th accused, had the key, leave no room for doubt that the document was made for the benefit of the

3rd and 4th accused and that they had possession of it until it was taken by the police on search of their house. In these circumstances there is no

reason to disbelieve the oral evidence of the, witnesses, who speak to the execution of the document in the presence of the 3m and 4th accused.

The circumstances show that it must have been executed in order to support their claim to the property and was, therefore, fraudulent. Mr.

Richmond for the 3rd and 4th accused contended that the property comprised in Exhibit-A, belonged to them by virtue of certain documents

which he contended were executed in the name of Manickam benami for them, and that the execution of Exhibit-A, was, therefore, intended only

to confirm their title to property which already belonged to them and was, therefore, not dishonest or fraudulent. He relied on the case of Kailas

Chandra Das v. The Grown 6 C.W.N. 382. We are not prepared to follow that

case. In our opinion the intention of the 3rd and 4th accused in getting Exhibit-A executed and registered was to confirm their alleged title to the property and enable them to deal with it, and that would certainly be to the detriment of any person dealing with them in regard to the property. The document was, in our opinion, clearly fraudulent and a forgery.

We do not think that the sentence on the 3rd accused who was the Manager of the family and who appears to have been the prime mover in the forgery is too severe-but in the case of the 4th accused who was his younger brother, and no doubt under his influence, we think the sentence may be reduced to two years" rigorous imprisonment. In other respects we dismiss their appeal. As to the 1st and 2nd accused the oral evidence to which we have already referred establishes their guilt. It is pleaded that they were only the servants of the 3rd accused. The Sessions Judge has taken this into consideration in awarding their sentence. We further observe that they did not plead that they acted under their master"s orders but they supported the false defence of their master that the document was written under the directions of his enemy, the 15th prosecution witness. We must dismiss their appeal. The 5th accused having died, his appeal abates.