
(1958) 01 MAD CK 0028
In the Madras High Court

Kaliammal alias Thayammal

APPELLANT

Vs

Pongiammal and Others

RESPONDENT

Date of Decision : 29-01-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 18

Citation : AIR 1958 Mad 331 : (1958) ILR (Mad) 630 : (1958) 71 LW 261 :
(1958) 1 MLJ 340

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—This appeal was posted before Govinda Menon, J., (as he then was). He has, because of divergence of views

between Judges, regarding whether notes of a local inspection made by a Court should be prepared and kept on record or not and whether the

failure to do so would vitiate the judgment or not, referred this Second Appeal to a Bench for being decided by it. That is how it has come before

us.

2. The facts were briefly these : O.S. No. 107 of 1950 on the file of the District Munsif, Gobichettipalayam, was filed by one Kaliammal alias

Thayammal, for a declaration of her easementary right to use the suit pathway ABC marked green in the suit plan, to go to her land S. No. 44-C

and to take her men, cattle and carts along it, and for a permanent injunction restraining the defendants and their men from obstructing her and her

men from walking along or taking men and cattle and carts along the said pathway, A B C and for costs. The suit was stoutly resisted by the

defendants on the ground that the plaintiff had no easementary right of any kind, and that she had no right to take any carts or cattle or men along

the pathway. The learned District Munsif, after discussing the evidence, held that the plaintiff was entitled to the right of way claimed and decreed

the suit with costs. The defendants took the matter in appeal. The learned Second Additional Subordinate Judge, Coimbatore, heard the appeal,

A.S. No. 3 of 1953 on his file. In the course of the pendency of the appeal he made a personal inspection of the suit " locality, but did not prepare

any notes of that inspection and leave it on record. He referred in para. 10 of his judgment to his local inspection and to some facts observed by

him. He reversed the judgment of the learned District Munsif and dismissed the suit with costs throughout. The Second Appeal has been filed by

the plaintiff against the judgment and decree in appeal.

3. One of the points urged in the Second Appeal was that the judgment of the lower Appellate Court was vitiated by the failure of the learned

Subordinate Judge to prepare notes of his inspection and leave them on record. It was also contended that the lower Appellate Court had acted

on facts found by it at the inspection without disclosing those facts by preparing notes of inspection and leaving them on record. Govinda Menon,

J., thought that the first question, viz., whether the trial Court or the appellate Court making a local inspection was bound to prepare notes of such

inspection and keep them on record, was an important one to be decided by a Bench.

4. We have perused the records and heard the learned Counsel on both sides. We are now deciding only the question as to whether a Court, trial

or appellate, making a local inspection is bound to prepare" notes of inspection and keep them on record, whether or not the facts found by it at

the local inspection had influenced it for arriving at its judgment and had been relied on by it as reason for its judgment. It was conceded by Mr.

Jagadisa Ayyar and cannot be disputed on the rulings that if the facts found at the local inspection have been used, wherever it is permissible to do

so, by the Court for arriving at its conclusions on the judgment, notes of such local inspection should be prepared and kept on record. But that will

involve examining the judgment itself and finding how far the Court was influenced by the facts found at its local inspection in arriving at the

judgment. The mere fundamental question is whether, even in the absence of proof that the facts found at the local inspection had visibly influenced

the Court in arriving at its judgment, the Court was still bound, once it made a local inspection, to prepare notes of such inspection and keep them on record, and whether the judgment would be vitiated by its failure to do so. Mr. Jagadisa Ayyar contended that, whatever might be the natural justice aspect of it, there is nothing in law to require a Civil Court making a local inspection, and not visibly relying on the facts found by it at the local inspection for arriving at its judgment to prepare notes of such local inspection and keep them on record. He pointed out that, under Order 18, Rule 18, Civil Procedure Code, the Court may at any stage of a suit inspect any property or thing concerning which any question may arise and that the rule does not go on to state ""and shall prepare notes of such local inspection and keep them on record,"" like Section 539-B (2) of the Criminal Procedure Code, which specifically provides that a memorandum of any relevant facts observed at the local inspection shall be prepared and shall form part of the record of the case. From this omission he wanted to argue that it was not necessary for a Court, much less obligatory, to prepare notes of local inspection in a civil case under Order 18, Rule 18, Civil Procedure Code. We are not convinced by this general argument based on the omission. It is obvious that a mere omission will not do in such cases. u/s 165 of the Evidence Act, a Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant, and the section does not go on to state that he shall record the answers given in reply to such questions, obviously because that need not be said. The question, therefore, is whether the omission regarding the preparation of a memorandum or notes of inspection under Order 18, Rule 18, Civil Procedure Code, would have the effect of not making it necessary for a Court to prepare such a memorandum even if it makes a local inspection. It must be remembered that it is making the local inspection as a Court and that such local inspection involves not only public time and energy but is also made after notice to all the parties. There must be some purpose in the Court's making such inspection. Of course, the Court is not bound under Order 18, Rule 18, to make a local inspection, even if both the parties request it to do so, if it considers that it is not necessary. On the other hand, it can also make a local inspection even if neither party requests it to do so if it thinks it necessary in the

interests of justice. Again, the local inspection may be made at any stage of a suit, namely before the evidence has begun to be recorded, or in the course of the recording of the evidence, or after the evidence is concluded and before the arguments are heard and judgment is delivered. It is also obvious that some local inspection may prove to be utterly useless for the purpose of the case, while others may be very useful, either for understanding the evidence, or for appreciating the evidence, or for believing some witnesses as against others, when the two sets speak to a state of facts in a contradictory fashion. Thus, if some witnesses say that a house is too small and incapable of being partitioned, and others say that it can conveniently be partitioned, and the Court makes an inspection, it is obvious that the facts discovered at the inspection will incline it towards the views expressed by one set of witnesses as against the other set of witnesses. So too, in a case about the age or value of a tree or building in dispute. While it is quite clear from their lips that a Court cannot act on facts discovered by it at the local inspection against the evidence in the case, without any evidence in support of the facts discovered by it, and this is because the Judge is not put on oath or subjected to cross-examination and his notes are not even subjected to objections by either side, still it is obvious, as held in several cases, that his local inspection will, on the principle that "the eye is evidence", vitally influence him in cases where a view of the place is material to decide which version, out of two conflicting versions, is true. It has been held in *Buckingham v. Daily News, Ltd.* (1956) 2 All E.R. 904 that a view of the place by the Court is part of the evidence, just as much as an exhibit and that it is real evidence ; and the weighty authority of Denning L.J., in *Goold v. Evans & Co.* (1951) 2 T.L.R. 1189 has been relied on for this observation. We are of opinion that, even if the judgment of the Judge making the local inspection is not visibly proved to have been influenced by the facts observed by him at the local inspection, still the facts observed by him at the local inspection must have consciously or unconsciously contributed towards his conclusions in the Judgment. Otherwise there would have been no meaning in his making a local inspection. Of course, it is possible that in a few cases they contributed nothing at all in which case the notes of local inspection prepared by him would state so : any way, it is desirable and, in our opinion, necessary", that he should prepare notes of his local

inspection and keep them on record, especially where there is a possibility that one of the parties might not have been present at the local

inspection despite the notice having been given to him, and it is desirable that both sides should know all the facts the Judge observed at his local

inspection and the result of such local inspection.

6. Mr. Jagadisa Ayyar relied on the ruling of a Bench of the Calcutta High Court in *Raj Chandra Banik and Others Vs. Iswar Chandra Banik and*

Others, . There, it was observed that there was nothing in the CPC which obliged the Court holding the local inspection to leave notes regarding it.

Indeed, it was added that, if the Judge left such notes on record the parties might object. This later observation was not relied on by Mr. Jagadisa

Ayyar, whose only point was that, even though it may be desirable to prepare notes of inspection, it is not obligatory on the part of the Court to do

so, and that if it fails to do so, the judgment would not be vitiated, unless the facts observed at the local inspection had visibly influenced the

conclusions arrived at in the judgment or formed the basis of the judgment. He relied also on the observations of single Judges of the Calcutta High

Court in *Bholanath v. Memena Khatun* AIR 1946 Cal. 444 and *Hari Charan v. Jitendra Nath* 65 Ind.Cas. 601 much to the same effect. He also

relied on the ruling of the Patna High Court in *Ram Chandra Rao v. Norayan Lal* 58 Ind.Cas. 909. There, the learned Judge, Jwala Prasad, J.,

held that, though it was desirable to prepare notes of local inspection and place them on record, the judgment would not be vitiated by a failure to

do so, unless the facts found at the local inspection formed the basis of the judgment or helped the Judge in arriving at the conclusions therein. He

also relied on the ruling of a Bench of the Bombay High Court in *Lakmidas Khushal v. Bhaiji Khushal* I.L.R.(1911) 35 Bom. 317 to the effect that

where a Subordinate Judge made a local inspection and decided the case by the light of his own view of the alleged passage, there was no error in

the procedure adopted by the Subordinate Judge. But, there, of course, the parties knew what the facts were, which the learned Subordinate

Judge had observed at his local inspection.

7. Mr. V. Thyagarajan, for the plaintiff-appellant, relied on the rulings of the Calcutta High Court in *Joy Coomar v. Bundhoo Lall* I.L.R.(1882)

Cal. 363 holding that the result of the local inspection should be put on paper. He

also relied on the ruling of a Bench of the Calcutta High Court in

Rai Kishore Ghose v. Kumudini Kanta Ghose 14.1nd.Cas.377 and on the decisions of single Judges of this Court in Municipal Council Vs.

Palakkal Velayudha Menon, and Padmasani Bai v. Sabapathy Mudaliar (1932) 2 M.L.J. 284 where Ananthakrishna Aiyar, J., and Somayya, J.,

have held that notes should be prepared by the Court regarding the facts observed by it at the local inspection. He referred also to the ruling of a

Bench of this Court in R. Govindaswami Naidu Vs. G. Pushpalammal and Another, were Rajamannar, C.J., and Somasundaram, J., have held that

even a Rent Controller making a local inspection, of the house in question, should prepare notes of his inspection and keep them on record, and

argued therefrom that a Court should all the more do so. Mr. Jagadisa Ayyar too had referred to this ruling for showing that the principles of

natural justice might require the preparation of such notes of local inspection. We agree with Mr. Thyagaraja Ayyar, and the rulings cited by him,

and hold that the omission in Order 18, Rule 18, Civil Procedure Code, to make a Court holding a local inspection, prepare notes of such

inspection and keep them on record, is only by inadvertence and is not intended deliberately, and that the judgment of a Court which makes a local

inspection but fails to prepare notes of that inspection and keep them on record will be vitiated, as the facts discovered at the local inspection must

have consciously or unconsciously been taken into consideration by it in arriving at its conclusions in the judgment.

8. In the end, therefore, we set aside the judgment and decree of the learned second Additional Subordinate Judge, Coimbatore, in A.S. No. 3 of

1953, and remand the appeal to the Subordinate Judge, Erode, (who has now territorial jurisdiction), for disposing of it afresh. The learned

Subordinate Judge, who re-hears the appeal is free to make a local inspection if he wants ; but if he makes a local inspection he should keep notes

of such inspection on record. In the circumstances, we direct all the parties to bear their own costs in this Second Appeal. The Court-fee paid will

be refunded. Leave refused.

9. We think it desirable for the Rules Committee to amend Order 18, Rule 18, CPC by adding a provision for the preparation of notes of

inspection and keeping them on record.

10. We leave all the other contentions of either side open, at the remanded hearing of the Appeal.