

(1953) 07 MAD CK 0006

In the Madras High Court

Case No : Civil Revision Petition No. 303 of 1952

Karuppanna Gounder and Others

APPELLANT

Vs

Kolandaswami Gounder and Others

RESPONDENT

Date of Decision : 17-07-1953

Acts Referred:

Evidence Act, 1872 — Section 65, 90
Registration Act, 1908 — Section 57(5)

Citation : AIR 1954 Mad 486 : (1953) 66 LW 1055 : (1953) 2 MLJ 717

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : K.V. Srinivasa Ayyar, for the Appellant; Narayanaswami Ayyar, for the Respondent

Judgement

1. During the course or the trial of O. S. No. 195 of 1950 on the file of the District Munsif of Karur, the plaintiffs attempted to adduce in evidence

a certified copy of a registered partition deed entered into on 22-5-188C among various individuals. Before this was done, the plaintiffs had asked

defendants 3 and 4 to produce the original partition deed but the same had not been complied with. A registration copy was therefore sought to

be let in. Defendants 1 and 2 contended that since the registration copy was not thirty years old it should be proved strictly like the original and the

presumption u/s 90 of the Indian Evidence Act could not be drawn in this case.

2. The executants and the attestors of the original partition deed are dead and it was not possible to prove the same by direct oral evidence. The

learned District Munsif relied upon a decision in - Gadey Venkata Ratnam (deceased) and Others Vs. Gadey Sitaramayya and Others, where a

Bench of this Court held that in view of the decision of the Privy Council in -- AIR

1935 132 (Privy Council) the view expressed in the Full Bench

in -- P. Subrahmanya Somayajulu and Others Vs. Y. Seethayya and Others, that the presumption u/s 90 of the Evidence Act with regard to

documents thirty years old arises in the case of copies as well as originals, and that if a copy is found to be a true copy, a presumption may be of

the genuineness of the original itself is no longer good law, and that the party relying on such a copy must prove the execution of the original in

some way known to law at least by approved circumstantial evidence. The learned District Munsif also extracted a passage from the judgment of

the Privy Council and held that where a copy of a document purported to be thirty years old is produced it can be admitted in evidence only if the

proof of the execution of the original is shown in some way known to law at least by approved circumstantial evidence. The trial Court had also

held that the three unregistered lease deeds which were sought to be admitted were also inadmissible.

3. In revision the question of the admissibility of the unregistered lease deeds is not seriously pressed, and therefore it remains to consider only the

validity of the lower Court's order upholding the objection by the defendants that a certified copy of the partition deed is not admissible in

evidence.

4. Section 57 of the Indian Registration Act deals, among other things, with the grant of certified copies, and sub-section (5) lays down that all

copies given under that section shall be signed and sealed by the registration officer and shall be admissible for the purpose of proving the contents

of the original documents. But the law is that a certified copy of what has been copied in the books of registration is admissible to prove the

contents of the original document only when a case is made out for introduction of secondary evidence, i.e., by proof of the loss of the original or

where a original is withheld by a party in whose possession it is or is presumed to be. In this case the plaintiffs have done all they could by giving

notice to defendants 3 and 4 to produce the original which notice has not been complied with. Therefore, the requisite essentials for the adducing

of secondary evidence have been properly complied with. When once the case for the introduction of secondary evidence is made out, certified

copy got from the Registrar's office can be admitted u/s 57, Sub-section (5) of

the Indian Registration Act without other proof than the Registrar's certificate of the correctness of the copy and shall be taken as a true copy.

It seems to me that the plaintiffs have satisfied the Court that the necessary pre-requisites for the introduction of secondary evidence as contemplated under Sections 65 and 66 of the Evidence Act have been made out. When once it is proved that the party is entitled to adduce secondary evidence, then the question arises, "What is the mode of proof of the certified copy?" As stated already u/s 57(5) of the Indian Registration Act, a certified copy obtained from a Registrar's office shall be admissible for the purpose of proving the contents of the original documents. That means that the mere production of a certified copy without any further oral evidence to support it would be enough to show what the original document contained. That a registration copy is the copy of a public document contemplated u/s 74, Sub-section (2) of the Indian Evidence Act is indisputable and the copy of such a document is a certified copy of a public document u/s 76 of the Indian Evidence Act.

5. The decisions to which my attention has been invited, viz. Gadey Venkata Ratnam (deceased) and Others Vs. Gadey Sitaramayya and Others, and AIR 1935 132 (Privy Council) and other cases deal with registration copies of Wills which are said to be more than thirty years old. But the requirements of proof regarding Wills are somewhat different from those of Partition deeds. The decision in -- Sangam Lal Vs. Ganga Din and Others, on which reliance has been placed by the learned counsel for the respondents cannot be applicable to the present case. It is doubtful, as can be seen from the observations in page 391 of the report in Sangam Lal Vs. Ganga Din and Others, whether the alleged certified copy proved there was really a registration copy. In the case of copies granted under Sub-section (5) of Section 57 of the Indian Registration Act, they can be admitted for the purpose of proving the contents of the original document i.e., in such cases it would be as if the original itself has been produced.

The ruling in Gadey Venkata Ratnam (deceased) and Others Vs. Gadey Sitaramayya and Others, has not considered the effect of Sub-section (5) of Section 57 of the Indian Registration Act, for in the case of registration copies, what is applicable is not Section 80 of the Indian Evidence Act but Sub-section (5) of Section 57 of the Indian Registration Act. I am therefore

inclined to hold that the registration copy of the partition deed sought to be let in does not require any further proof and is therefore admissible in evidence. The order of the learned District Munsif rejecting the registration copy of the partition deed alone is set aside and his order rejecting the unregistered lease deeds is confirmed. Each party will bear his or their own costs in this revision petition.