
(1927) 05 MAD CK 0036
In the Madras High Court

Karuppanna Konar and Others

APPELLANT

Vs

Rangaswami Konar and Others

RESPONDENT

Date of Decision : 05-05-1927

Acts Referred:

Evidence Act, 1872 — Section 32

Citation : AIR 1928 Mad 105(1)

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Plaintiffs sued for a declaration that a room belonged to the family of defendants and themselves in common. The lower appellate Court decreed the suit and defendants appeal. In the trial Court the District Munsif thought the oral evidence adduced by plaintiffs to be worthless. Witnesses said that they worshipped in the room with no clear idea how or what they worshipped. The lower appellate Court does not traverse the reasoning of the District Munsif but merely holds that the plaintiff's evidence is better than that of defendants" which may not necessarily mean that plaintiffs have made out their case. Evidently what chiefly impressed the learned Subordinate Judge was the entry in certain old documents that a boundary was the "God's house enjoyed in common." Ex. E, a partition deed of 1874, Ex. H, a mortgage of 1879, and Exs. A and B, sale deeds of 1881 all contain this recital. Their admissibility as evidence was challenged in the lower appellate Court and the Subordinate Judge ruled:

The documents are old and their executants are not alive. Statements made by persons deceased about the ownership of the adjacent property in describing boundaries, are, I think. relevant evidence.

2. This is a most perfunctory pronouncement on a point of law. The Subordinate Judge was presumably applying Section 32, Evidence Act, and he should have stated with precision and reasons the sub-clause under which in his opinion the documents came. The District Munsif's treatment of the matter was even worse. He thought the documents "inadmissible, but proceeded on the assumption that

they were admissible. It is now argued that the documents come under Sub-clause 3; statements made against the proprietary interest of those making them; or Sub-clause 7; statements contained in a deed which relates to a transaction such as is mentioned in Section 13, Clause (a).

3. It cannot be said that a statement of boundaries is against the proprietary interest of the person making it except on the assumption that every person must be presumed to own the universe until he makes a statement circumscribing his title. On the contrary a person may be presumed to own nothing until he brings into existence an effective deed evidencing his title to property and such a deed with the boundaries stated therein, is a document not against but in his proprietary interest. In *Rajah Leelanund v. Mt. Lakkahputtee Thakoorain* 22 W.R 231., it was held that a mortgage deed is a statement against the proprietary interest of the person making it, and therefore a statement in a mortgage deed that so much rent was payable on the property, was also a statement admissible in evidence because the whole document was admissible in evidence. It is difficult to see how this argument could be founded on Section 32, Evidence Act, 1872 and possibly the learned Judges considered themselves governed by Act 11 of 1855 (see *Ningawa v. Bharmappa* [1899] 23 Bom. 63. u/s 32(3) it is the statement not the document containing the statement which must be against the proprietary interest of the person making it. But 23 Bom. 63 follows 22 C.W.R. 231 and holds that a mortgage is against the proprietary interest of the executant, and therefore a statement of boundary in the mortgage is admissible. This view has been dissented from in this Court in *Re Paddapanai Narayanappa* [1910] M.W.N. 668 and *S. Venkataraja Gopala Raju v. Narasayya* [1911] M.W.N. 779 and I defer to that authority. Lastly it is argued that Sub-clause 7 is applicable because in the partition deed Ex. E, the parties assert the family common right to the holy room. The exact phrase in Ex.E is east of the Swami house which is common to the said dayadis and ourselves, north of the thatched house, etc.

4. It is obviously a mere statement of boundary and as such cannot be classed with any of the verbs in Section 13 created, claimed, modified, recognised, asserted or denied; "mentioned" would be appropriate verb, which means considerably less than asserted. Therefore it must be held that Exs. E.H. A and B are not admissible in evidence.

5. The learned Subordinate Judge has no doubt been influenced by the idea that these ancient documents are obviously not intentionally false and are, therefore, presumably true. But he has overlooked that parties making statements which are not material to their interests have no occasion to be accurate. Suppose that the holy room was never common in any legal sense, yet was thought to be common because sometimes the whole family met there in worship. The parties who drew up these documents might easily have called it the common room, as a sufficient description, without troubling to see if that appellation was strictly accurate. It is exactly in view of such contingencies that the provisions of the

Evidence Act are framed.

6. I find that the Subordinate Judge was materially influenced in his finding on issue 2 by inadmissible evidence and remand the suit to the lower appellate Court for a fresh finding "upon that issue on the evidence on record excluding Exs. E, H, A and B. Time for submitting finding will be six weeks. Time for filing objections to the finding will be ten days.

JUDGMENT

7. On receipt of the finding of the Subordinate Judge, the Court delivered the following.

8. In the light of the finding now submitted, judgment must be for the appellants, with costs throughout.