

(1946) 07 MAD CK 0031
In the Madras High Court

Komirineni Rosayya and Another

APPELLANT

Vs

Munnamgi Rosayya

RESPONDENT

Date of Decision : 08-07-1946

Acts Referred:

Citation : AIR 1947 Mad 345 : (1947) 1 MLJ 60

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

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—Defendants 1 and 5 are the appellants and the appeal arises out of a suit filed by the plaintiff in ejectment and for recovery of profits. Defendants 1 and 5 are father and son. The plaintiff's case was that the defendants 1 and 5 were in possession of his lands as lessees, that they used to pay a particular rate of rent for some years, that when the rent was raised they did not pay it and that when they were asked to vacate, they obstructed the plaintiff from taking possession of the properties. The other defendants (defendants 2 to 4 and 6 to 9) are said to have helped them in the said obstruction. Defendants 1 and 5 pleaded that the properties had been sold by the plaintiff to them, that they had been in possession of the same all along and that the suit was barred by limitation by adverse possession. The other defendants pleaded that there was no cause of action as against them, that they did not obstruct the plaintiff and that the suit was liable to be dismissed so far as they were concerned.

2. Both the Courts have found that the property belonged to the plaintiff, that the plaintiff was in possession within 12 years prior to the suit and that the suit was not barred by limitation by adverse possession, that the transaction of defendants 1 and 5 was in the nature of a lease and not a sale and accordingly decreed the suit for possession against all the defendants and gave a decree for past profits and for costs against the first defendant. On appeal the decree of the lower Court was confirmed. Four issues were framed which were all issues of fact and on all those issues the lower appellate Court found against the appellant. A

second appeal herefore cannot lie on a decision of facts.

3. At the time when the second appeal was admitted, it was pointed out that Exs. P-2 and P-4 were inadmissible in evidence and that a judgment based on inadmissible evidence could be interfered with in second appeal. Ex. P-2 is a document which relates to a neighboring land and not the suit land, but that was admitted in evidence because the second defendant was a party to that document and therefore it was admissible as against him. The judgment is not based merely on Ex. P-2 but is based on other evidence in the case and the learned judge had to consider the pleas of the various contesting defendants. A document which is admissible in evidence as against a particular individual has necessarily to be referred to in the judgment, and it cannot be said that, merely because the judgment makes reference to a particular document which is admissible as against one of the defendants, the judgment as against the other defendants is based on that document. The learned Judge has dealt with the oral evidence in two paragraphs of his judgment, and that was admissible as against all the defendants. I do not therefore think I will be justified in interfering with the judgment of the lower Court on the ground that Ex. P-2 is not admissible as against the appellants.

4. With regard to Ex. P-4 it is a document to which none of the parties to the suit were parties, but then, the Judge has definitely stated that it is admissible in evidence because one of the executants of the document had been examined as a witness and the recital about the particular property in dispute was relied upon as corroborative of the evidence given by the party to the document who was examined as a witness. It is urged before me that the recital is not admissible u/s 157 by way of corroborative evidence. As was pointed out by Wadsworth, J., in *Thyagarajan Chetty and Another Vs. Narayana Thevan*, it is not all previous statements made by a witness that can be relied as corroborative evidence. It must be a statement made as regards a fact which had taken place of a statement made before a properly constituted authority. Of course, the statement in question is not a statement made before any competent authority, but it is urged that it is not a statement of fact which had taken place. The recital is that a particular land belonged to a particular individual. In *Thyagarajan Chetty and Another Vs. Narayana Thevan*, the recital was that a particular document was in possession of a particular person. Wadsworth, J., has held that it is a fact which had taken place and therefore the recital about that fact made in a previous document is relevant evidence u/s 157. In this particular case, it is not clear whether the property was referred to as property in the possession of the person mentioned therein, or as property owned by that person. The words might mean either that the property was in the possession of the person stated or that the property was owned by the person. If a statement that a particular property was in possession of a particular person in a particular period is relevant evidence of a fact that had taken place, the recital that the person owned it, also is a statement of a fact that had taken place at the time when it was made. Possession is a legal conception as also ownership. If a particular statement

about a particular individual that he was in possession of a property is relevant evidence of a fact that had taken place, then the fact that he owned it is also a similar recital of a fact that had taken place. I do not therefore think that the learned Judge was wrong in considering that it was relevant as corroborative evidence being a statement made by the witness on a previous occasion.

5. The second appeal fails and is accordingly dismissed with costs.

6. No leave.