

(1924) 07 MAD CK 0012
In the Madras High Court

Koyyalamudi Chinnayya and Another	APPELLANT
Vs	
Koyyalamudi Mangamma	RESPONDENT

Date of Decision : 28-07-1924

Acts Referred:

Citation : AIR 1926 Mad 864

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—This is a second appeal from the decree of the Court of the Additional Subordinate Judge of Ellore in A.S. No. 181 of 1921

preferred against the decree in C.S. No. 262 of 1920 on the file of the Additional District Munsif of Ellore.

2. The lower appellate Court decreed the suit and Defendants Nos. 1 and 2 appeal.

3. The plaintiffs sue for recovery of possession of certain properties and for mesne profits alleging that the properties fell to the share of the 1st

plaintiff's husband in a partition held in 1911, and the question whether there was such a partition (Issue No. 1) has been decided in the affirmative

by the lower appellate Court. It is a question of fact which ordinarily cannot be raised in second appeal but the appellants contend that the lower

appellate Court wrongfully admitted as evidence the documents Exs. P, P (1) and P (2) and was influenced by these documents without giving the

appellants an opportunity of showing that they were forged. The District Munsif in his 4th paragraph rejected these documents with the following

remarks:

It is said that subsequent to his death partition lists were drawn up setting forth

the properties which had been allotted to each of the brothers.

These partition lists were sought, to be exhibited in the case, but as they purported to be deeds of partition and not mere partition lists, and as they were unstamped and unregistered, they were not allowed to be filed in the case.

4. In his 7th paragraph the learned Sub-ordinate Judge settles the question of rejection of these lists thus:

On going through the lists, I find that the language used does not amount to a deed of partition declaring a divided status and allotting properties to

the several coparceners. And the evidence shows that the actual partition took place a year before the lists were prepared and these lists were

simply notes as regards the property that fell to each share. I do not think the lower Court is right in rejecting these documents.

5. Accordingly he admitted them as being simply notes as regards the properties which fell to each share. If they are nothing more than that, the

documents can have no evidentiary value. Prosecution Witness No. 1, 1st plaintiff's next friend, merely states that partition lists were prepared and

there is no evidence as to who wrote or signed Ex-P series. I am asked to find that the learned Subordinate Judge assumed, when "he admitted

these documents that they were signed by the persons by whom they purported to be signed and treated them as important admissions by the

defendants that there had been a partition. Of course, if he had made any such assumption without taking any evidence in the matter, this case

would obviously have to be remanded. But I do not think that he did anything of the sort. I gather that he said the documents might be filed as mere

notes and then considered whether apart from these documents there was sufficient evidence of partition. He refers to the evidence of P. Ws. Nos.

1 and 2 and Exs. A and A (1). He considers the discrepancies in the evidence of P. Ws. Nos. 1 and 2, but notes that the kist has been paid

separately as appears from Exs. C and D series. He finds ample evidence as regards the separate enjoyment of the property and he observes that

the evidence of defendants was discredited by the lower Court. In his summary of the evidence he make³ no mention of Exs. P, P (1) and P (2),

or of any admission contained therein. I find that he admitted them for what they are worth, and as ic that stage of the proceedings they were worth

nothing at all he dismissed them from his mind. Therefore, I do not find that the

lower Court considered Exs. P, P (1) and P (2) or was in any way influenced by them. The finding of fact cannot be assailed on that ground.

6. The cases cited by the appellants are distinguishable. In *Govindan Nair v. Govindan Nair* [1912] M.W.N. 821 it was held that the Judge did not refer to two documents of" importance and, therefore, the case was returned for a fresh finding ; but in the present case the Judge referred, if at all, to documents of no importance. In *Sumitra Kuer v. Ram Kair Chowbey* [1921] 5 Pat. L.J. 410 it was held that:

Where an appellate Court has relied for its decision upon a document which is inadmissible In evidence, a Court of second appeal would be justified in remanding the case for decision to the appellate Court with a direction to exclude that document from its consideration.

7. But here the Ex. P series are clearly admissible in evidence if they are treated simply as notes, and as I have observed the Court, as a matter of fact, did not rely upon them in coming to the decision. *Ariya Muthu Pillai v. Sennaya Pillai* [1914] 1 L.W. 771. Here the Court had proceeded very largely on a consideration of evidence admitted during the hearing of the appeal in-contravention of Order 41, Rule 27, of the Civil P.C., which again has no application to a case where the Court has properly admitted evidence, and as a matter of fact, has not proceeded on the consideration of it. In *Ujir Ali Sirdar v. Shadhai Behara* AIR 1922 Cal. 185 it is laid down:

The High, Court cannot, on second appeal, look at the evidence to decide if the remaining evidence in a case after that which has been improperly admitted is rejected, is sufficient to warrant the finding of the Court below.

8. This principle will apply if we agreed with the appellant's assumption that the Court below had been materially influenced by Ex. P series and had regarded them as containing important admissions by the defendants. But since I hold that the Court below paid no attention to Ex. P series and certainly did not regard them as containing admissions, there is no need to decide whether the remaining evidence is sufficient to warrant the finding of the Court.

9. On all the questions raised the second appeal fails and is dismissed with costs.