

(1928) 09 MAD CK 0039
In the Madras High Court

K.S. Ganapathi Aiyar

APPELLANT

Vs

Sakharayappa Mudaliar and Others

RESPONDENT

Date of Decision : 03-09-1928

Acts Referred:

Citation : AIR 1929 Mad 187

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—This civil revision petition has been filed against an interlocutory order of the Subordinate Judge of Trichinopoly excluding certain items of evidence in the course of the trial of O.S. No. 23 of 1924. Two points have been dealt with in the order of the lower Court and have been argued before me (1) A printed copy of the deposition of a party to the former suit (who is the father of present defendant 7) which came up to the High Court in 1900 on appeal was tendered in evidence as containing an admission of the party and contradicting his present case, and (2), defendant 1 in the case offered to give evidence of the fact that the party made an oral statement as a witness in the trial of the former suit, the oral statement being the deposition itself. The Subordinate Judge excluded both these items. The matter is sure to come up on first appeal, and when it does come to the High Court these points will have to be dealt with by two Judges of the High Court. It seems to me that it is extremely undesirable that I should express an opinion which may afterwards be embarrassing to two Judges of this Court and I am extremely unwilling to do so. But at the same time if there is any way of my passing such an order as would avoid causing delays or other inconvenience in the trial of the first appeal, I ought to do so at least in the exercise of my powers of superintendence. With these observations I will take each of the matters under discussion.

2. On the first point it seems to me that the Subordinate Judge has stated his principles correctly; that is, if it could be shown that the printed copy tendered before him is proper secondary evidence he was willing to admit it. Section 63,

Clause 3, second portion "copies compared with the original" will cover this case if the printed copy was compared with the original deposition. The Subordinate Judge has discussed it on the footing that the practice of the High Court was that before sending the papers to the press a copy would be made of the papers to be printed and the copy would be sent to the press for printing and, therefore, the printed copy would not be a copy of the original but a copy of the copy. In this he was right and if the matter stops there, his order would be correct, but my own impression is and the affidavit filed by the petitioner in the High Court shows that before giving the final direction for striking off, it would be compared with the original. If so, the second part of Section 63. Clause 3 would make it proper secondary evidence. This matter was not brought to his notice; but his order shows that, if a proper affidavit is filed and the application renewed, he would be willing to admit a printed copy of the High Court printed papers. The appeal in the High Court was of 1900 and I believe this was the practice in the High Court certainly from 1900 until 1922, when the Government Press took up the printing of the High Court papers. I may add here that we have not got to do with a translation, in which case there would be greater difficulty in the way of holding a printed paper of the High Court as secondary evidence. In the present case, the deposition was in English and it was printed in the High Court. The case in Chandreshwar Prasad Narain Singh Vs. Bisheshwar Prasad Narain Singh, , supports the petitioner, though it seems to have gone much further. In view of the careful order of the Subordinate Judge, I do not want to reverse it or pass any order myself. I leave the matter with these observations, so that the only final order in the case would be that of the Subordinate Judge and it would be open to be dealt with without any kind of embarrassment by two Judges of this Court.

3. I now come to the second point which seems to me to present a little more difficulty than the first. The learned advocate for the petitioner relied on the observations of the Privy Council at p. 648 in Haranand Chetlangia v. Ram Gopal Chetlangia [1900] 27 Cal. 639. They seem to support him, but the learned advocate for the respondent pointed out that being a matter of foreign record it is not touched by Section 91, Evidence Act, whereas a deposition being a record in writing would be affected by Section 91. Mr. Varadachari for the petitioner drew my attention to Solai Naik v Emperor [1911] 34 Mad. 349. Seeing that the act of deposing is a physical Act which can always be proved by any one who has heard the statement being made, one may perhaps say that the fact of deposing might be proved by any one who has seen and heard the witness. But beyond this I do not wish to express an opinion by any order.

4. Here again I must leave the matter as it is with these observations; so that whatever order the Subordinate Judge may pass may remain as the final order- But to avoid any inconvenience or delay in the course of the trial of the first appeal and to avoid "worse inconvenience which I need not suggest, it is desirable that defendant 1 who now wishes to depose to the statement made in the trial of the former suit should be permitted to make the whole statement and

the statement should be put on record and the Subordinate Judge should pass a ruling holding that it is inadmissible in evidence if he thinks so. If the appellate Court afterwards thinks that the Subordinate Judge was wrong in excluding it, need not direct the taking of further evidence and thus delay the hearing of the appeal. We do not know when the appeal would be heard and things may happen in the interval which may not make the evidence available afterwards and thus cause irreparable injury to the defendants in case the appellate Court differs from the Subordinate Judge. I, therefore, think that his statement should be put on record and the Subordinate Judge may give his ruling excluding it, if he thinks fit. I understand the learned advocate for the respondent has no objection to this course. I, therefore, direct the Subordinate Judge to examine defendant 1, to take down his deposition and then pass his order under the Evidence Act excluding it or allowing it as he likes- I think the order I am passing is a proper order so far as my superintendence under. Section 107, Government of India Act, is concerned, and it will save a" lot of trouble and inconvenience hereafter. With these observations I dismiss the petition. I make no order as to costs. The memorandum of objections is also dismissed without costs.