
(1915) 12 MAD CK 0038
In the Madras High Court

Manchukonda Appadu and Others

APPELLANT

Vs

Atchi Appalaswamy and Others

RESPONDENT

Date of Decision : 08-12-1915

Acts Referred:

Evidence Act, 1872 — Section 69

Citation : 32 Ind. Cas. 760

Hon'ble Judges : William Ayling, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—The suit is on a mortgage-bond. As required by Section 69 of the Evidence Act the executant's signature has to be

proved. The Second plaintiff in the case gave evidence and the form in which it is recorded is in these words: ""The bond was executed to me and

to second plaintiff: Exhibit A"", which is the mortgage-bond. Then he says later on in cross-examination: "I took the bond from only two people as

the patta stood in their name."" The District Munsif who delivered judgment" in the case was the very gentleman before whom the witness gave his

evidence. He says in his judgment, paragraph 4:""Plaintiff's witness No. 2 who is 1st plaintiff in the suit proves that the bond was executed to him

by A. Appanna and his son A. Pydayya."" There can be no doubt that what he means to convey by this is that the 2nd plaintiff in the witness-box

proved the signature of these two persons and that the bond was, therefore, legally proved. It was only in the appeal before the District Judge that

objection was taken that what is recorded in the deposition is not sufficiently proved within the meaning of Section 69 of the Evidence Act. The

learned District Judge yielded to that argument and dismissed the plaintiff's suit. It appears to me that he is wrong. It was the District Munsif who

heard the witness and recorded his evidence that was in the best position to say whether the witness proved the signature of the executant of the mortgage-bond or not. What is most important is that no objection was taken to the admissibility of the document by the defendant. If the signature was not proved he ought to have then and there objected to the document being admitted in the evidence and marked as an Exhibit. He did not do so. In my mind it shows conclusively that, as a matter of fact, the document was proved as required by law and that it was too late for the defendant to take such an objection in appeal. The second appeal will be allowed and the suit remanded to the District Court for disposal according to law on the other issues in the case. Costs will abide the result.

William Ayling, J.

2. I agree.