

(1927) 09 MAD CK 0057
In the Madras High Court

Muthiyan Chetti

APPELLANT

Vs

Vayyadayan and Another

RESPONDENT

Date of Decision : 28-09-1927

Acts Referred:

Evidence Act, 1872 — Section 90

Citation : 108 Ind. Cas. 412

Hon'ble Judges : Curgenvan, J;Ananthakrishna Aiyar, J

Bench : Division Bench

Judgement

1. This Letters Patent appeal is against the judgment of the learned Chief Justice in Second Appeal No. 1121 of 1923. The suit Was for redemption of the othis and the question that arose was whether the documents evidencing them Exs. C and D were genuine. The learned District Munsif supporting himself in part at least by the presumption u/s 90 of the Evidence Act, answered this question in the affirmative, but the first Appellate Court refused to draw the presumption and considered that the evidence was not sufficient to establish the genuineness of the documents. The learned Chief Justice accepted the second appeal on the ground that the judgment of the lower Appellate Court was vitiated by the fact that the Judge had overlooked the provisions of Section 90 of the Evidence Act and had proceeded in fact to throw upon the plaintiff a burden which properly rested on the defendant. We have examined the judgment of the learned Subordinate Judge as carefully as possible, and with all respect we do not think that we can concur in this view. In para, 6 he proceeds to summarise the attitude adopted by the Court of first instance in this matter and to consider whether in the light of the views expressed in Ramien Vs. Veerappudian and Others, it was open to him to refuse to draw the presumption u/s 90 and to form an independent opinion upon the evidence as to the genuineness of the documents. The test whether, without giving an opportunity for further evidence, he could do this lay in whether the District Munsif had recorded and communicated to the plaintiff a finding, before the opportunity for receiving evidence had passed, that he was prepared to make the presumption under the

section, and the learned Subordinate Judge has stated clearly that there was no such ruling on the part of the District Munsif. We cannot do otherwise than infer from this statement that before him no assertion was made that the learned District Munsif did express such a view and accordingly that the plaintiff was shut out from adducing any further evidence. This view is further supported by an examination of the course of events took at the trial. The two documents were first produced on 5th November, 1919. On 16th July, 1920, the 2nd defendant who was said to be colluding with the plaintiff, was examined as P. W. No. 1 and he identified Exs. C and D as the other deeds which were produced before the panchayatdars. It then appears that these documents were marked accordingly as exhibits and in the dockets on the back of them it is stated that they are "proved by P. W. No. 1." We do not attach any more significance to these endorsements than was attached in the very similar case already cited *Ramien Vs. Veerappudian and Others*, where the Court considered that "there was sufficient evidence to justify them being marked as exhibits at that stage." We are unable to agree with the view advanced by Mr. Bhashyam for the respondents that the meaning of the endorsements is that the Court was willing to draw the presumption as to genuineness u/s 90. The position appears to be perfectly clear from what happened subsequently. On the same day another witness P. W. No. 2 was examined and in the course of his evidence he was required to prove the writing and the signature of the writer of the documents. On the following day the plaintiff himself was examined as P. W. No. 3 and he deposed that he executed Ex. D. It is very difficult accordingly to understand how the respondents can now say that, owing to a finding announced at the time by the District Munsif that he dispensed with further evidence he was dissuaded from "adducing that evidence and that his case was accordingly prejudiced. It seems further clear that this argument as to a finding was not raised before the first Appellate Court nor indeed in the second appeal because ground No. 4 of the appellate grounds goes no further than to aver that the plaintiff was misled by the procedure adopted by the first Court. If their case were then as it is now that the District Munsif had announced his finding we think it is improbable that the circumstance would not have been stated in clearer language. We have come to the conclusion accordingly following *Ramien Vs. Veerappudian and Others*, that it was open to the first Appellate Court to re-consider the question of the genuineness of the documents and that in so doing, and in deciding it upon the evidence, there was no irregularity in its procedure. On the authority of the same case, if authority be required, we consider that the finding that was come to, that the documents were not genuine, is a question of fact which we cannot interfere with.

2. As to the merits of the second appeal the only argument advanced is that although the suit mortgages have been found against a decree could be given upon the admission in the 1st defendant's written statement that a mortgage in fact had existed. That admission is coupled with the reservation that it was time barred, being 70 years old. In these circumstances, no decree can be given upon

the so-called admission. We allow the Letters Patent appeal and dismiss the second appeal with costs.