

(1937) 03 MAD CK 0040
In the Madras High Court

Muthu Goundan and Another

APPELLANT

Vs

Chinniah Goundan and Others

RESPONDENT

Date of Decision : 19-03-1937

Acts Referred:

Citation : AIR 1937 Mad 861

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—Mr. Ramaswami Ayyangar has strenuously argued that the lower Court's judgment is correct, but I am afraid I cannot agree with him. The question is simply: are there grounds for my interference with the lower Court's decision in second appeal? I am clearly of the opinion that there are such grounds. The property in question was brought to sale in pursuance of a decree obtained by one Murugappa against Karungannan, the father of defendant 10. The property was purchased by Venkatasubbier, the agent of Murugappa, at the Court auction held in 1915. This man who is examined as P.W. 6 played a prominent part in the transactions that led up to the action. In 1917, he obtained symbolical delivery of the land that he had purchased. As regards Murugappa the evidence shows that he was in financial difficulties and that defendant 1, Mr. V.S. Narayanaswami Ayyar, a Vakil, was appointed receiver of his properties. It is common ground that in spite of the Court's sale, the land continued to be in the possession of Karungannan and after his death, his son defendant 10. No steps were taken, it is further admitted, to get the patta transferred in the name of the purchaser; on the contrary after Karungannan's death about 1926, the patta was renewed in the name of his son. Venkatasubbier paid the kist from 1919 to 1923 but made default in 1924. Thereupon the land was brought to sale for the arrears of land revenue. Venkatasubbier purchased it and Karungannan got the sale set aside by paying up the arrears due. From that time onwards, the kist was paid first by Karungannan and after his death by his son. The latter, on 6th February 1929, purporting to be the owner of the land, sold it to defendant 2 for Rs. 1,500. The receiver one month later sold the same land to the plaintiff for

the low sum of Rs. 400, a circumstance that shows that they were both conscious of the fact that the vendor had a very doubtful right to the property. The plaintiff brought this action on 10th February 1929 and the point that had to be decided was, was he or his predecessor-in-title in possession of the land in question within 12 years of the suit?

2. The plaintiff rested his case upon an alleged tenancy which, if proved, would establish his title to the property. It was asserted that immediately after Venkatasubbier obtained symbolical possession, there was an agreement in virtue of which Karungannan became his tenant. The learned District Munsif who has written a careful judgment, has found that with a view to make out this case, Venkatasubbier did not scruple to forge, falsify and fabricate documents. The lower Appellate Court has agreed with that view and the documentary evidence on which the plaintiff relies stands therefore condemned. The trial Court finding that the case of the tenancy set up is utterly false, has dismissed the suit. It has very naturally and rightly attached great importance to the proceedings that took place in connexion with the revenue sale. If the property really belonged to Murugappa (what has been alleged is that Venkatasubbier conveyed the property to this man), how is that circumstance reconcilable with the fact that Venkatasubbier himself purchased it at the revenue sale? Again, if Karungannan did not believe himself the owner, is it in the least likely that he would have paid up the arrears and got the revenue sale set aside? Basing his finding *inter alia* on this ground, the District Munsif has, as already observed negated the plaintiff's claim.

3. The Subordinate Judge however has reversed his decision in view mainly, if not solely, of the inference he has drawn from a post-card marked Ex. F, dated 20th December 1918. It is supposed to have been written by Venkatasubbier to P.W. 3, the plaintiff's brother. There the former complained that persuaded by P.W. 3 he had let the property to Karungannan, who had failed to pay the rent and P.W. 3 was therefore requested to intervene and see that Karungannan behaved justly. That is the purport of the letter and the learned Judge thinks that it probalises the case of the tenancy that has been set up; in other words, he has treated Ex. F as substantive evidence and if that is wrong, his judgment cannot stand. It seems not a little strange that it has occurred to none in the lower Courts to challenge the genuineness of this card. Why a man in the position of P.W. 3 has chosen to preserve this apparently unimportant letter for over 13 years, no one seems to have elicited. From 1918 when the letter was written, to 1929 when his brother became the owner, this post-card could possess no significance whatsoever to the witness.

4. I should have thought that in a case of this sort, where almost every document produced for the plaintiff had been forged, fabricated, or tampered with, a post-card of this description would not have been left unchallenged. Moreover, the manner in which this document came to be produced in Court ought to have excited suspicion. Venkatasubbier, curiously enough, was not

examined in the regular order, his evidence being postponed till the witnesses on both sides had been examined. The letter was produced by P.W. 3 without requisition and without summons and he formally proved it by swearing that Venkatasubbier had sent it to him. The contents of Ex. F are clearly hearsay or second hand evidence and although proof has been offered to show that it has been written by Venkatasubbier, I fail to see how it advances the plaintiff's case. The mistake lies in the lower Court having treated it as substantive evidence which could be acted upon. u/s 157, Evidence Act, the testimony of a witness may be corroborated by a former statement made by him about the time of the occurrence. Thus it could have been properly used to corroborate Venkatasubbier, had he deposed there was a lease as alleged in this letter. But strangely again, neither does Venkatasubbier refer to this particular lease said to have been granted in the circumstances mentioned in Ex. F nor, what is even more strange, does he allude to the letter itself. The lower Court seems to have entirely ignored this aspect of the case. In the first place Ex. F as already observed is not substantive evidence; secondly it cannot be used to corroborate the testimony of P.W. 3 granting that he has referred in his evidence to the lease mentioned in it and thirdly, the witness, in corroboration of whose evidence alone this post-card was admissible, has made no statement whatsoever which it could have corroborated. I may further observe that "Ordinarily before corroborative evidence is admissible the evidence sought to be corroborated must have been given". The Court has no doubt a discretion to allow evidence to be given out of the regular order, though such a course will be found in most cases inconvenient: Woodroffe and Ameer Ali's Indian Evidence Act, 9th Edn., p. 1026. If this post-card has been excluded, as it ought to have been, the question remains: would the lower Court have reached the conclusion which it did? A perusal of his judgment shows that it was influenced almost solely by the Ex. F, which, as already observed, ought never to have been acted upon. I am satisfied that independently of this letter which has been wrongly admitted, there is not sufficient evidence to justify the lower Court's reversal of the well considered decision of the District Munsif. In the result, the second appeal is allowed and the judgment of the first Court is restored. Plaintiff shall pay the costs of defendants 2 and 7 in the lower Appellate Court, but as to costs here I make no order. Leave to appeal is refused.