
(1917) 04 MAD CK 0023
In the Madras High Court

Ponnaloori Ellamandayya

APPELLANT

Vs

Chelakapathi Lakshmayya and Others

RESPONDENT

Date of Decision : 20-04-1917

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : AIR 1918 Mad 455(2) : (1917) 33 MLJ 295

Judgement

1. This is a suit by a person alleging himself to be a reversioner for possession. The widow of the last male owner died in 1909. The suit was

instituted in 1912. The defendants among other pleas stated that one Guruviah alias Gurunadham, a nearer reversioner was alive when the widow

died and that the plaintiff was excluded by him. In answer to this averment the plaintiff stated that Guruviah was not heard of for thirty years and

that the presumption therefore was that he was dead in 1909.

2. The Courts below, in our opinion, rightly held that although Guruviah was not heard of for thirty years before suit, there was no presumption that

he was dead in 1909. Mr. Rajagopalachariar who has argued this case with great insistence contested this proposition. He argued that the

presumption must be raised with reference to the event which is the basis of the action and not with reference to the date of the suit. The language

of Section 108 of the Evidence Act, in our opinion, does not support this contention. The word question in that section has reference to the point

raised in the suit. The law of Evidence prescribes rules for the mode of proof in Courts, and it is with reference to the matter that is in issue in the

suit, the rules are to be applied. The authority of Mookerjee, J., in Srinath Das v. Probodh Chunder Das (1910) 11 C.L.J. 580. Narki v. Lal Sahu

ILR (1909) C. 103 and Muhammad Sharif v. Bande Ali ILR (1911) A. 36 all support this proposition. Veeramma v. Chenna Beddi ILR (1912)

M. 440 approves of the Calcutta and Allahabad decisions. The learned vakil for the appellant has not convinced us that these decisions are wrong.

He strongly relied on the decisions of Karamat Hussain, J., in Mussammat Akbari v. Sayad Bashir Ali (1910) 8 I.C. 55. The view of the learned

Judge was expressly overruled by the Pull Bench in Muhammad Sharif v. Bande Ali ILR (1911) A. 36. Further it is clear that the learned Judge

has misread the decision in In re Phene's Trusts (1869) L.R. 5 Ch. A. 139 upon which he based his conclusions. The statement of law by Lord

Justice Gifford at page 151 of that volume leaves no room for doubt that it is for a party who wants the court to presume in the trial that a person

was dead at a particular time to establish that position.

3. Neville v. Benjamin (1912) 1 Ch. 723 does not help the appellant. In that case it was found that the son of a testator was not heard of since

1892. The testator made a will and died in 1893. The administrators of the son's estate claimed the legacy made to the son in the will. It was held

that they should prove that the son was alive in 1893 when the father died. This is also what Section 103 lays down. The principle to be applied in

such cases is clearly laid down by Sir G.M. Gifford, L.J., in In re Phene's Trusts (1869) L.R. 5 Ch. A. 139 in these terms: "The true proposition

is, that those who found a right upon a person having survived a particular period must establish that fact affirmatively by evidence; the evidence

will necessarily differ in different cases, but sufficient evidence there must be, or the person asserting title will fail." Applying this test, we hold that

the appellant has failed to prove that Guruviah was dead in 1909.

4. Another contention of the learned vakil is that his client should have been allowed to amend the plaint by claiming title as the heir of Guruviah.

We see no reason for interfering with the discretion of the Lower Appellate Court in this matter. Moreover, there is no guarantee that the plaintiff is

the sole heir of Guruviah because as was pointed out in Jackson v. Ward (1907) L.R. 2 Ch. 354 there is no presumption arising from the

presumption of the death of an individual that he left no heirs behind him.

5. We hold that the Courts below are right and dismiss the second appeal with costs.