

(1912) 01 MAD CK 0053
In the Madras High Court

Ramuvien

APPELLANT

Vs

Veerappudayan and Others

RESPONDENT

Date of Decision : 02-01-1912

Acts Referred:

Citation : (1914) ILR (Mad) 455

Hon'ble Judges : Sundara Ayyar, J; Spencer, J

Bench : Division Bench

Judgement

1. Two points are argued in this Second Appeal. The first point is that, as the District Munsif presumed the genuineness of Exhibit A, the Appellate Court had no power in law to hold that it should not be presumed to be genuine and to reject it. Reliance is placed in support of this argument on Section 4 of the Evidence Act, which lays down that, when the Court may presume a fact, it may either do so or call for proof of it. The contention apparently is that the Appellate Court was bound either to hold Exhibit A to be genuine until it was disproved, or at least, to call for proof. This argument entirely ignores the practice prevailing in the Courts of this Presidency in the trial of suits. When prima facie evidence of custody and of the date of a document purporting to be 30 years old is given, the Court generally marks the document on the footing that there is sufficient evidence to justify its, being marked as an Exhibit at that stage. It is only subsequently that the opponent exercises his right of adducing evidence of circumstances which entitle him to say that the presumption u/s 90 of the Evidence Act should not be drawn with respect to the document. And the Court generally arrives at its conclusion on the matter after the evidence on both sides has been given. It is not shown that in this case the District Munsif ever recorded a judicial opinion as to whether he would presume Exhibit A to be genuine before he wrote his judgment in the CHSO. Nor is it urged that the plaintiff asked for a ruling as to whether the Munsif was prepared to presume the document to be genuine, or whether he would require it to be proved, It is therefore not correct to say that the plaintiff was prejudiced by any ruling on the part of the District Munsif, or prevented from adducing all the evidence that he could to prove the

document or to ask the Court to presume its genuineness. There is no foundation for the argument that in such circumstances the Appellate Court has not got the same power to decide whether the document should be presumed to be genuine or not as the court of first instance has. The plaintiff could not require an opportunity of adducing further evidence unless he was prevented by anything done by the Court from adducing all the evidence he could. *Shafiq-un-nissa v. Shaban Ali Khan* (1904) 26 All 581 and *Srinath Patra v. Kuloda Prosad Banerjee* (1905) 2 C.L.J. 592, cited for the appellant, do not give him any real support. In the former case the Judicial Committee of the Privy Council merely drew attention to the provisions of Section 90 and Section 4 of the Evidence Act. And the second case goes no further. We are of opinion that there is no substance in this contention.

2. The second point urged is that as the final decree for redemption was passed, by the District Munsif before the appeal against the preliminary decree was presented in the District Court, the appeal was not competent and that the defendant was entitled to appeal only against the final decree or, at any rate the appeal against the preliminary decree was not sustainable without an appeal against the final decree also. This question has been fully considered by this Court in *Lakshmi Vs. Mani Devi and Others*, where it was held that the right of a party to appeal against a preliminary decree is not affected by the subsequent passing of a final decree. A later decision of the Calcutta High Court has now been brought to our notice. *Janahi kNatk Roy Chowdhury v. Promotha Nath Roy Chowdhury* 15 C.W.N. 830. But this case does not carry the question further than the previous decisions already considered in the Madras case did. And we see no reason to depart from the view adopted in *Lakshmi Vs. Mani Devi and Others*, . This contention must also be overruled.

3. In the result the Second Appeal is dismissed with costs.