

(1921) 01 MAD CK 0025
In the Madras High Court

Sabapathy Pathan

APPELLANT

Vs

Perumal Padayachi and Another

RESPONDENT

Date of Decision : 27-01-1921

Acts Referred:

Citation : AIR 1921 Mad 323 : (1921) ILR (Mad) 640

Hon'ble Judges : Spencer, J; Ramesam, J

Bench : Division Bench

Judgement

1. We are not satisfied that the learned Subordinate Judge acted irregularly either in admitting additional evidence in appeal or in inspecting the site.

The Judge gave substantial reasons for admitting additional evidence in the shape of public records.

2. Rai Kishori Ghose v. Kumudini Kanta Ghose (1912) 14 I.C. 377 , Avant Lal Sahu v. Gokul Sahu (1916) 35 I.C., 344 and Dawarka Prasad v.

Makhu Lal (1918) 62 I.C. 241 have been quoted in support of the argument that it is illegal for a Court in person to hold a local inquiry.

3. The two latter are judgments of single Judges and in all these cases the decisions are based on the omission from Order XXVI, Rule 9, of the

Code of Civil Procedure, of the words that occurred in Section 392 of the Old Code, which provided for the issue of a commission for a local

investigation only in cases where it could not be conveniently conducted by the Judge in person. Two of the learned Judges relied also on the

English practice in such matters. In India we must be guided by our own CPC on matters of procedure which are specifically provided for.

4. There is also a case of this Court, Syed Ahamad Sahib Shutari Vs. The Magnesite Syndicate, Ltd. and Others, , which proceeds on the

assumption that the change of language in Order XXVI, Rule 9, signified a prohibition of inspections being conducted by Judges in person.

5. We do not think that it has that significance.

6. The effect of the alteration in the language seems only to be that the issue of commissions is not restricted to cases where the Judge is unable

conveniently to make the investigation himself. As the rule now stands, a Judge may issue a commission in any case where he deems it fit to do so,

irrespective of his own convenience.

7. In none of the above decisions has any account been taken of the newly enacted provision in Order XVIII, Rule 18, which declares:

The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

8. This rule suggests that the legislature desired to encourage rather than to prohibit the elucidation of the truth by means of personal inspections

made by Judges.

9. The Privy Council decision, *Kessowji Issur v. G.I.P. Railway Company* (1907) ILR 31 Bom. 381 (P.C.) has very often been quoted as

meaning that Judges should under no circumstances hold an inspection of the site in dispute, but if the decision is carefully studied it appears that

the objection to the procedure adopted in that case was mainly to opinions being formed upon an inspection made under conditions quite different

from those which were material to the question at issue at the trial.

10. In the present case no such objection can be advanced. The use made by the learned Judge of what he observed at his inspection was to verify

and confirm what the commissioner had already noted in his report. By so doing it cannot be urged that either side was prejudiced.

11. The Second Appeal fails and is dismissed with costs.