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**(1947) 12 MAD CK 0018**  
**In the Madras High Court**

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| S.K. Ramaswami Goundan              | Vs | APPELLANT  |
| S.N.P. Subbaraya Goundan and Others |    | RESPONDENT |

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**Date of Decision :** 04-12-1947

**Acts Referred:**

**Citation :** AIR 1948 Mad 388 : (1948) 61 LW 193 : (1948) 1 MLJ 215

**Hon'ble Judges :** Happell, J

**Bench :** Division Bench

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### **Judgement**

Happell, J.—This is an appeal from the judgment in appeal of the District Judge of Coimbatore, dated the 31st March, 1945, confirming the judgment and decree, dated the 11th April, 1944, of the Subordinate Judge of Coimbatore in O.S. No. 130 of 1943. The suit out of which the appeal arises, O.S. No. 130 of 1943, was brought for redemption of the suit properties on the footing of a mortgage, Ex. P-3, dated 4th June, 1850, executed by one Samanna Goundan in favour of one Krishna Ayyar and one Venkataramana Ayyar and three other persons. Kandaswami Goundan, an undivided son of Samanna Goundan, sold the equity of redemption in the suit properties to the plaintiff on the 29th September, 1938, for Rs. 100. The suit has some remarkable features. Nothing is heard of the suit mortgage between the alleged date of the execution of Ex. P-3, 4th June, 1850, and the sale to the plaintiff on 29th September, 1938. The suit properties, however, had been frequently dealt with by way of mortgage and sale by Krishna Ayyar and Venkataramana Ayyar and their successors for considerable amounts until in 1918 they were sold to the father of the first defendant for Rs. 1,10,000. By the date of suit, it is reasonable to assume that they were worth several lakhs. The plaintiff relied

on two other documents, Exs. P-1 and P-2. Ex. P-1 purports to be a patta issued on 6th July, 1847, by the karnam of the village, one Sinnathambi

Pillai, in favour of the two persons, Krishna Ayyar and Venkataramana Ayyar. The properties covered by the patta are the suit properties and are

expressed to be 3,400 kulis in extent (something over 40 acres), and the assessment payable in respect of the land is stated to be Rs. 315. Ex. P-2

is a sale deed executed on the 14th November, 1849, in respect of the properties covered by Ex. P-1 by Krishna Ayyar and Venkataramana

Ayyar in Favour of Muthu Goundan for a consideration of Rs. 75. Reference has already been made to Ex. P-3. It purports to be a mortgage of

the suit property covered by Exs. P-1 and P-2 by Samanna Goundan, the son of Muthu Goundan, in favour of Krishna Ayyar and Venkataramana

Ayyar and three other persons, Athappa, Velappa and Karuma Goundan. It is in evidence, it may be stated here, that the successors of these three

Goundans disclaimed all knowledge of the mortgage, Ex. P-3. The first defendant was the only contesting defendant. He claimed the property

absolutely under the sale deed of 1918, and maintained that the three documents, Ex. P-1, Ex. P-2 and Ex. P-3 were not genuine. Both the lower

Courts agreed with the contentions of the first defendant and have held that Exs. P-1, P-2 and P-3 are not genuine. This is a second appeal against

concurrent findings of fact by the lower Courts and the findings, therefore, unless satisfactory reason is shown, cannot now be challenged by the

plaintiff-appellant.

2. It has, however, been argued by Mr. Subba Rao for the appellant that the findings of the lower appellate Court are vitiated by mistakes of fact,

by an error in law by reason of a failure properly to apply the provisions of Section 90 of the Evidence Act and by the improper inclusion and

exclusion of evidence. In order to appreciate the contentions for the appellant, it will be convenient to summarise the reasons as stated in his

judgment which weighed with the learned District Judge in holding that the three crucial documents were not genuine. He pointed to the improbable

character of the appellant's case as a whole, especially the inadequate consideration for the sale deed, Ex. P-2, and the mortgage, Ex. P-3, in

respect of property which was assessed to pay annually Rs. 315 as land revenue, and to the fact that nothing was ever heard of the three

documents between the alleged dates of their execution and the sale to the plaintiff of the equity of redemption some 90 years later. On matters of detail tending to show that the documents were not genuine, he was of opinion (1) that the document, Ex. D-2, showed that Sinnathambi Pillai who purports to have issued Ex. P-1 and to have written Exs. P-2 and P-3 and was said to be the karnam of the village was not the karnam at all and was indeed not proved to have existed; (2) that the pleadings and judgment in O.S. No. 74 of 1844 show that Muthu Goundan, who according to Exs. P-2 and P-3, should have died sometime between 14th November, 1849, and 4th June, 1850, in fact died in 1867, or 1868, while Samanna who purports to have executed Ex. P-3 in 1850, was 42 in 1884, so that he was only 8 years old when the document was executed; (3) that the document Ex. 4 showed that Venkataramana Ayyar was only 22 in the year 1862, so that when he with others was said to have taken a mortgage in his favour he was only 10 years of age; (4) that in the course of the inam inquiry of 1862-63 no claim to the property was put forward by Muthu Goundan or his successors; while on the other hand, there was an assertion, which was accepted, of exclusive title by Venkataramana Ayyar and Krishna Ayyar and the inam was registered in their names; (5) that although Ex. P-2 recites that the property should be transferred in Muthu Goundan's name, there was never at any time any transfer of patta in favour of Muthu Goundan or his successors; and (6) that the initials, I.C.W. stamped on each of the three cadjan documents, Exs. P-1, P-2 and P-3 are not, as was suggested for the appellant, the initials of the Collector of the period who was a Mr. J C. Wroughton.

3. We will take first the objection that the presumption required by Section 90 of the Evidence Act as to documents 30 years old has not been drawn. The learned District Judge has dealt with this question in paragraph 13 of his judgment. His view that in the circumstances of the case the Court was not bound to raise a pre-sumption u/s 90 of the Indian Evidence Act and that the proper course was to mark them as exhibits without requiring formal proof and then consider, having regard to the evidence and surrounding circumstances whether they were or were not genuine is in accordance with the decision of this Court in Vaidyanathaswamy Iyer Vs. Natesa Malavarayan and Others, . Section 90 of the Evidence Act

states that the Court may draw the presumption referred to in the section and not that it must draw the presumption, and indeed in many cases, the

present being one, it would be most dangerous to draw the presumption that a document was genuine merely because it was thirty years old

according to the recitals in the document and came from proper custody.

4. As regards the wrongful exclusion of evidence, it is contended that the District Judge should have admitted a document put in by the witness,

P.W. 3. We are of opinion that the document was rightly rejected although perhaps the reasons-given for rejecting it by the learned District Judge

are not altogether correct. On all three documents Exs. P-1 to P-3, the initials, I.C.W. are stamped on the cover of the documents which are

written on cadjan leaves, and the document for which admission was sought is a cadjan leaf document relating to a conveyance of property similar

in appearance to Exs. P-1 to P-3 and bearing stamped on it the initials I.C.W. The learned District Judge rejected the document because it did not

refer to the same property as the suit property. This might not be a sufficient reason for rejecting the document if there had been any object to be

served by its admission. The document, however, was produced for the purpose of showing that Exs. P-1 to P-3 must be genuine because a

genuine document of the same period, and of the same appearance and character, also bore the initials, I.C.W. We shall have something to say of

these initials in a moment. Here it is only necessary to say that the first defendant did not admit the document to be genuine and that the document

is not ex facie any more genuine than Exs. P-1 to P-3. Its admission, therefore, could have done nothing to prove the genuineness of the other

documents, Exs. P-1, P-2 and P-3, and the only result of its admission would have been that the Court would have had to embark on an inquiry

into the genuine-ness of four documents instead of three. Moreover, the document rejected, unlike Exs. P-1, P-2 and P-3, did not even come from

proper custody, so that section 90 of the Evidence Act could not be invoked in respect of it.

5. The findings of the learned District Judge with regard to the date of the death of Muthu Goundan and the ages of Samanna and Venkataramana

Ayyar, if they are correct, go far to show by themselves that Exs. P-1 to P-3 are fabrications. If Muthu Goundan was alive when Ex. P-3 was

executed, then it is surprising that his son, Samanna Goundan, should have executed it, and still more surprising if at the date of its execution

Samanna Goundan was a minor. And again if Venkataramana Ayyar was only twenty-two in 1862, he was only ten when the last of the three

documents which he purports to have executed was executed. It is argued, however, by Mr. Subbarao that the documents on which the learned

District Judge relied to prove the date of Muthu Goundan's death and the ages of Samanna Goundan and Venkataramana Ayyar were not

admissible for the purpose to which they were put. For the date of the death of Muthu Goundan, the learned District Judge relied on the judgment,

Ex. D-22 in O.S. No. 74 of 1884, Wherein it was stated that it was admitted that Muthu Goundan had died about seventeen years before the date

of suit. The judgment was not inter partes and it is argued for the appellant that the judgment is not admissible as the purpose for which it was

admitted does not fall within any one of the Sections 40 to 44 of the Evidence Act. We are inclined to hold, if it were necessary, that the statement

regarding the date of the death of Muthu Goundan is admissible. The plaintiff in O.S. No. 74 of 1884 was Samanna Goundan, the father of the

appellant's vendor, and in Krishnaswami Ayyangar v. Rajagopala Ayyangar ILR (1894) Mad. 73 it was held that a previous judgment was

admissible u/s 35 of the Evidence Act to prove a statement made by a predecessor-in-title of the party against whom the document is sought to be

used. This case was referred to without disapproval by the Judicial Committee in the case of Collector of Gorakhpur v. Ram Sundar Mal (1934)

67 M.L.J. 274 : L.R. 61 IndAp 286 : ILR 56 All. 468 (P.C.) and, in our opinion, the statement contained in the judgment in O.S. No. 74 of 1884

sought to be proved in the present case is not distinguishable from the statement held to be admissible in the case of Krishnaswami Ayyangar v.

Rajagopala Ayyangar ILR (1894) Mad. 73. We must, however add that the actual point which had to be decided in (1934) L.R. 61 I.A. 286

(Privy Council) was a much narrower one and did not necessitate a decision as to the correctness or otherwise of Krishnaswami Ayyangar v.

Rajagopala Ayyangar ILR (1894) Mad. 73. Whether, however, Ex. D-22 was wrongly or rightly admitted is not of much importance. The facts

that Samanna Goundan was a minor when he purported to have executed Ex. P-3 and that Venkataramana Ayyar was a minor when he purported

to have executed Exs. P-2 and P-3 appear, in the case of Samanna Goundan, from the plaint in O.S. No. 74 of 1884 wherein he is shown as 42

years of age in 1884, and, in the case of Venkataramana Ayyar from Ex. D-4, a copy of his statement in connection with the Inam Commission

Enquiry wherein he is shown as 22 years of age in 1862. Both these documents were clearly relevant for the purpose to which they were put.

6. We take next the alleged mistakes of fact made by the learned District Judge. They relate to his handling of the evidence regarding the

Sinnathambi Pillai who is alleged to have issued Ex. P-1 and written Exs. P-2 and P-3 and of the initials, I.C.W. that appear on the documents,

Exs. P-1, P-2 and P-3. As regards Sinnathambi, the learned District Judge has made a mistake to this extent that Ex. D-2 does not exclude the

possibility that Sinnathambi Pillai was the karnam of the village on the dates when the documents were executed. This document shows that there

were two karnams in the village and the second karnam for the period 1848 to 1852 is not shown. Sinnathambi Pillai, therefore, might have been

that karnam; on the other hand, it is in no way proved that he was. The mistake made by the learned District Judge does not seem to us to be of

any great importance.

7. With regard to the initials I.C.W. as far as we can see, the learned District Judge appears to have made no mistake, although possibly he may

not have appreciated exactly what it was that the appellant wanted to prove by pointing to these initials. The fact is that they are not the initials of

Mr. J.G. Wroughton who was the Collector of the district at the time when the three documents were executed and they accordingly proved

nothing. Moreover, if it was intended to prove that the Collector of the district at the time was in the habit of issuing cadjan documents impressed

with his initials in order to show their genuineness, it should not have been difficult to prove this by the production of documents from the

Collector's office.

8. We are, therefore, of opinion that the findings of the lower Appellate Court are not vitiated by reason of mistakes of fact or errors in the

admission of evidence. In any case, the criticisms of Mr. Subba Rao leave the evidence and circumstances untouched which most compellingly

tend to show that the documents, Exs. P-1 to P-3, are not genuine, as, for

instance, the fact that Venkataramana Ayyar and Krishna Ayyar in the course of the enquiry by the Inam Commission asserted and had recognised their exclusive right to the property, whereas Muthu Goundan and his family made no claim in respect of it; and the fact that Krishna Ayyar and Venkataramana Ayyar frequently dealt with the property as theirs over a long period of years whereas Muthu Goundan and his successors are not shown to have had any dealings with the property between 1850 and the sale of it to the appellant in 1938. We see, therefore, no reason to differ from the concurrent findings of the lower Courts that the documents are not true.

9. The appeal is dismissed with costs, advocate's fee Rs. 250.