

(1924) 09 MAD CK 0057
In the Madras High Court

T.K. Appalacharyulu

APPELLANT

Vs

T.K. Venkata Ramanujacharyulu and Others

RESPONDENT

Date of Decision : 18-09-1924

Acts Referred:

Evidence Act, 1872 — Section 32

Citation : AIR 1925 Mad 345

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The only point argued in this second appeal is that the Subordinate Judge erred in relying upon hearsay evidence for the proof of the loss of the original Exhibit XIII. Plaintiff claims as reversioner of one Ramanujachary, 3rd defendant is the son of the alleged adopted son of Ramanujachary and the adoption is said to have been made after his death by his widow. The Will is said to have been executed by the testator in 1873 and was registered five months after his death in 1874 and the plaintiff contended that the Will was a forgery. The defendant produced a registration copy of the Will and relied upon a statement of his third witness that Doddacharlu had stated that the Will had been lost during a fire some years before. Upon this evidence he relied for the purpose of adducing secondary evidence of the Will. The District Munsiff held that the evidence adduced for the loss of the document was only hearsay evidence and rejected Exhibit XIII on the ground that the loss of the original had not been sufficiently accounted for. On appeal, the Subordinate Judge held that in a case like this hearsay evidence would be admissible for the purpose of proving the loss of the original and exhibited Exhibit XIII and dismissed the plaintiff's suit. If the original of Exhibit XIII was proved, no doubt it would have shown that the adoption was made under the authority of the testator. But that fact having been directly challenged it was the duty of the 3rd defendant to have adduced satisfactory evidence that the original of Exhibit XIII was lost. He contended himself by examining a witness who stated that they heard Doddacharlu say that the Will was lost. Doddacharlu was

actually present in Court but he was not examined by the 3rd defendant. It is now argued before me that as he was an adverse witness he could not have been examined to prove the loss of the document. It is very difficult to follow this argument for Doddacharyulu was the father of the adopted boy and third defendant is the son of the adopted boy. That being so it is very difficult to see how the paternal grandfather could have refused to speak the truth in favour of his grandson. But apart from that whether his evidence is reliable or unreliable, the question is whether hearsay evidence can be adduced for the purpose of proving the loss of a document. The Subordinate Judge relies upon a passage in Taylor on Evidence which has no application to the present case. Doddacharyulu was in possession of the document according to 3rd defendant and he was alive on the date when the case was tried before the District Munsiff and there is no reason why hearsay evidence should have been admitted. No doubt the statement of a deceased person is admissible u/s 32 of the Evidence Act, if it fulfils the conditions therein laid down. It does not permit any hearsay evidence to prove a thing which could be proved by a person who is cognisant of it, or, in other words, where direct evidence is available hearsay evidence is not at all to be admitted. That being so, Exhibit XIII cannot be received in evidence and if Exhibit XIII is expunged from the records, there is no proof that the adoption was made under the authority of Ramanujacharyulu.

2. The judgment of the Subordinate Judge which is based entirely on documents inadmissible in evidence, cannot be supported. I reverse the judgment of the Subordinate Judge and restore that of the Principal District Munsiff with costs in this Court and the lower Appellate Court.