
(1921) 04 MAD CK 0035
In the Madras High Court

Vaidyanathaswamy Iyer

APPELLANT

Vs

Natesa Malavarayan and Others

RESPONDENT

Date of Decision : 04-04-1921

Acts Referred:

Evidence Act, 1872 — Section 90

Citation : AIR 1921 Mad 452 : (1921) 14 LW 416 : (1921) 41 MLJ 310

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The 2nd plaintiff is the appellant. The suit was brought for redemption of a mortgage effected under a document, the counterpart of which is alleged to be Ex. H, which is dated in 1824.

2. The main question for consideration therefore is whether Ex. H is genuine. The Court of First Instance refused to presume u/s 90 of the Evidence Act that it was a genuine document and called for proof of the same and as no reliable proof was forthcoming that Court dismissed the plaintiff's suit.

3. The Lower Appellate Court confirmed the decree of the Court of First Instance on substantially the same grounds. The point therefore for decision is whether the Lower Court ought to have used the discretion vested in them by Section 90 of the Evidence Act in favour of the plaintiffs.

4. It must be admitted that the learned District Judge has made certain erroneous observations in his judgment. If a Court is prepared to presume the genuineness of a document u/s 90 of the Evidence Act, the question whether the endorsement of the Staiup-vendor thereon sets out the true facts as to the name of the purchaser of the stamp and the object for which he wanted the stamped cadjan is not so much a question governed by Section 90 as by Section 114, illustration to which provides that the regularity of official acts might be presumed. Then the Judge (probably misled by some arguments advanced before him) thought erroneously that the endorsement of the native Registrar

who issued this and other stamped cadjans originally was the certificate of registration of the Registering Officer referred to in Section 9 of the Registration Regulation 17 of 1802 and has-made some observations on the erroneous basis that the document was registered two years after its execution, whereas the document was not registered at all. Further the 2nd plaintiff's character as shown by the result of prior litigations was given too much weight in considering whether a presumption u/s 90 ought to be raised or not with reference to Ex. H. Also the District Judge seems to have treated Ex. A which is a Registration copy of a still older document as not above suspicion and the reasons he gives for looking upon that document also with suspicion might not be quite satisfactory.

5. But the main question in this case is whether the discretion vested in the Lower Courts as to the raising of the presumption as to the genuineness of the document purporting to be over thirty years old, (Ex. H.) was exercised so unreasonably as to call for the interference of this Court in Second Appeal. The presumption u/s 90 as to documents over thirty years old has to be made with some care. In the case of registered documents such a presumption is very readily raised ; and in the case of other documents, unless by reason of their appearance or by reason of internal evidence there are some cogent considerations which recommend them to the favour of the Court, the Court is not bound to raise such a presumption usually, In the present case the fact that the document, Ex. H, is written on a stamped cadjan of the "value of two annas whereas a stamped cadjan of the value of Rs. 2 was required under the Stamp Law then in existence (Regulation 13 of 1860) and the fact that the unusually long term of 70 years is mentioned with the added circumstance that it had not been produced in a former suit where it might be expected to have been produced seem to have weighed with the Lower Courts in not raising the presumption. In *Shafiq-un-nessa v. Shaban Ali Khan* ILR (1904) All. 581 Their Lordships of the Privy Council refused to overrule the discretion of the Lower Courts in the matter of raising the presumption of genuineness in respect of an apparently very old document because the reasons given by the Lower Courts were not prima facie unsound. In the result I see no sufficient reason to interfere with the discretion of the Lower Courts, in the present case. I would therefore dismiss the second appeal with costs.

Spencer, J.

6. I agree and have nothing to add.