

**(1952) 08 KL CK 0016**  
**In the High Court Of Kerala**  
**Case No : Second Appeals No. 265 of 1124**

Velu Pillai Padakalingam

APPELLANT

Vs

Paramanandam Yesudasan

RESPONDENT

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**Date of Decision :** 19-08-1952

**Acts Referred:**

Contract Act, 1872 — Section 65

**Citation :** (1952) 08 KL CK 0016

**Hon'ble Judges :** Subramonia Iyer, J

**Bench :** Single Bench

**Advocate :** T.R. Subramonia Iyer, for the Appellant; T.N. Subramonia Iyer and S. Subramonia Iyer, for the Respondent

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## Judgement

Subramonia Iyer, J.—The Plaintiff has presented this Second Appeal against that part of the appellate decree of the District Judge of Nagercoil in A.S. No. 487 of 1120 making the decree for surrender of two buildings granted to him by the Munsiff conditional on his paying their value to the 1st Defendant, which the Munsiff was directed to ascertain and remanding the " case for that purpose. There is memorandum of cross-objections filed by the 1st Respondent, (1st Defendant) stating that the suit should have been dismissed as the lease on which the suit was based has not been proved. The other Respondents (Defendants) do not appear.

The suit as originally filed in the year 1110. was for recovery of arrears of rent on foot of an alleged oral lease of two shop-buildings situated in a busy part of the Nagercoil town- That, lease arrangement was one alleged to have been entered into between the Plaintiff and the 1st Defendant in Medom 1105. Two other persons were impleaded as Defendants 2 and 3 as the persons in, possession of the. buildings. Another person was subsequently added as the 4th Defendant also for the same reason.

2. The 1st Defendant denied the lease, and set up an arrangement of lease between himself and one Sanjeevi Ammal who was the lessor to the Plaintiff of

the suit of these and other buildings. Against the decree passed in the Plaintiff's favour, the first Defendant appealed before the District Judge, Nagercoil (A.S. No. 140/1114) who reversed the decision and remanded the case for fresh disposal to the Munsiff. After remand, the Plaintiff amended the suit as one for recovery of possession of the said buildings which formed the subject matter of the lease. The 1st Defendant filed a fresh written statement to this amended plaint.

3. There were 7 issues framed by the Munsiff before remand and an equal number thereafter. Issue 8 is as follows:

(8) Is the plaint lease true?

4. Learned Counsel for both sides at the commencement of the argument in this Court agreed in complimenting the Munsiff and also the Judge upon the elaborate and efficient manner in which both of them marshalled the materials and the evidence in the case, though they reached different conclusions. The findings being divergent, according to the procedure prevalent here, this Court has to consider the facts and record a finding afresh.

Being under that responsibility, I thought it proper to defer my compliments to the courts below until after my consideration of the facts and evidence in the case. Learned Counsel for the Appellant therefore took me in detail through the mass of oral and documentary evidence that has been adduced in the case with the result that the hearing took several hours spread over two days and this day which normally would have taken not more than an hour. The result of my investigation of the matter is a discovery that the learned Munsiff did not record a finding on issue 8 on which depended the success or failure of the parties. This appears to have been a case in which having gone at a tangent the centre was forgotten which was never reached.

5. The main controversy between the parties is this: Sanjeevi Ammal who is the widow of one Aseervatham had two children born of him. Aseervatham appears to have been entitled with his brother, to a plot of land measuring 74 cents and bearing Survey No. 1382/369. As a result of an arrangement of partition between the said brother of Aseervatham and his widow and children, 22 cents out of the said extent allotted to the brother and the remaining 52 cents became vested in Sanjeevi Ammal and her children. The parties belong to the ristian community.

The Plaintiff's case is that Sanjeevi Ammal have a lease of the said 52 cents to him in 1098 when the children were minors, that he continued to be the lessee thereunder and that that case was renewed on 19-9-1104, under Ex. D for a period of 6 years from that date. His case further is that after the date of Ex. D he it up 4 shop buildings in the premises bear- Municipal Numbers 4919, 4920, 4921, and 4922 whose old numbers were 4551/E, D, C and respectively, and that the last two buildings were leased out to the Defendant 1 in Medom 1105 as already stated.

The 1st Defendant's case, on the other hand, is that the site on which the last two buildings were constructed was a ditch before the year 1103, that pursuant to an arrangement entered into between himself and the said Sanjeevi Ammal in the year 1103 he filled up that ditch of the level ground and put up the last two buildings in the latter part of the year 1104 under (sic) an arrangement that, from the date of impletion(sic) of the buildings, he would pay a (sic) of Rs. 10/- per month for the site. As gards(sic) the other two buildings there was no ispute(sic) that it was the Plaintiff that erected them.(sic) These buildings would also appear to been put up at about that time.

Thus the parties were at variance as to by whom and at whose expense the buildings, sought to be recovered were constructed. If the buildings were constructed in the year 1104 and by Defendant 1 then the lease alleged by the Plaintiff in Medom 1105 could not be true. If, on the other hand, the buildings were put up in the year 1105, that circumstance would probabalise the lease alleged by the Plaintiff. The attention of the parties and of the courts, was therefore directed to the findings as to by whom and at what time these buildings were erected. The learned Munsiff came to the conclusion upon this question in favour of the Plaintiff and the learned Judge in appeal reached the opposite conclusion in favour of Defendant 1.

6. The buildings in question are situated within the limits of the Nagercoil Municipality. Under the Municipal law, sanction of the Municipality is required for putting up buildings. The 1st Defendant's case is that he put up these buildings without such sanction and rendered himself liable to a prosecution. Papers, regarding such prosecution were filed by him. He also produced a notice of demand made by the Municipality for tax in respect of these buildings which were registered in his name. Papers relating to that registry were also filed.

The 1st Defendant also filed papers to show that he paid the Municipal assessments for these buildings beginning from the second half of the year 1104. He produced too a licence of the year 1104 from the Municipality to use a bullock cart showing his residence as one of the buildings in dispute. There were also papers received from the Municipality produced in the case to show that the other two buildings, viz., those bearing Nos. 4919 and 4920 were registered in the name of the Plaintiff.

The Plaintiff filed a document marked as Ex. S which is an endorsement addressed to him dated 18-10-1104 to the effect that the sanction applied for by him to put up certain buildings has been granted. The application, the prayer wherein was stated to have been granted, was. however not produced. The endorsement itself, does not indicate to which building or site it related nor was any other evidence adduced to identify the plot referred to therein. The learned Munsiff considered these and other documents and came to the conclusion that the documents relied upon by Defendant 1 did not relate to the site or to the buildings to which the Suit related.

Apart from the question of the sustainability of this finding based on the contents of these documents, one remark that has to be made is that Defendant 1 who examined himself as his witness swore in examination-in-chief expressly that the aforesaid documents related to the site and buildings in question in the case. That is to say, he swore clearly that the Municipal and other records produced by him, which were all of the year 1104, did relate to the two buildings bearing Nos. 4921 and 4922 which formed the subject-matter of the suit.

The Plaintiff subjected Defendant 1 to a lengthy cross-examination but there was no question put challenging the testimony given by him as regards the said documents and their being in respect of the houses which form the subject-matter of the suit. Had he been cross examined as to these, he would have had an opportunity to adduce other evidence.

7. The learned Munsiff did not advert to this circumstance nor did he consider the consequence of the omission of the Plaintiff to cross-examine Defendant 1 on this point. The trial of a cause is aimed at arriving at the truth of the conflicting cases that are presented before the court. Every witness entering the box does so as a Witness of truth. "Cross-examination is a powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of his story." (Per Hanworth, M.R., cited with approval by Sankey, L.C., in - "Mechanical and General Inventions Co. v. Austin Motor Co." 1935 AC 346 at p. 360 (A-)).

The extent of its effectiveness no doubt depends upon the dexterity of the wielder of the weapon, but every cross-examiner should and can if he is careful, indicate in cross-examination, whichever part of the evidence given in examination-in-chief is challenged and an omission to do so would lead to the inference that the evidence is accepted subject of course to its being assailed as inherently improbable. This is the rule in America, England and in this country as is clear from the following authorities.

#### Opportunity of Cross-examination as equivalent to Actual Cross-examination

The doctrine requiring a testing of testimonial statements by cross-examination had always been understood as requiring, not necessarily an actual cross-examination, but merely an opportunity to exercise the right to cross-examine if desired. The reason is that, wherever the opponent has declined to avail himself of the offered opportunity, it must be supposed to have been because he believed that the testimony could not or need not be disputed at all or be shaken by cross-examination. In having the opportunity and still declining, he has had all the benefit that could be expected from the cross-examination of that witness. This doctrine, is perfectly well-settled." Wigmore on Evidence Vol. II, paragraph 1371:

As a rule a party should put to each of his opponent's witnesses in turn so much of his own case as concerns that particular witness or in which he had a share, e.g., if the witness has deposed to a conversation, the apposing counsel should

indicate how much he accepts of such version, or suggest to the witness a different one. If he asks no question he will in England, though not perhaps in Ireland, generally be taken to accept the witness's account. "Flanagan v. Foby" 1918 2 Ir. Rule 361, 388-9, (C.A.) (B); -"Browne v. Dunn" 1893 6 Rule 67 (H.L.) (C).

Moreover, where it is intended to suggest that the witness is not speaking the truth upon a particular point his attention must first be directed to the fact by cross-examination so that he may have an opportunity of explanation and this probably applies to all cases in which it is proposed to impeach the witness's credit. Such questions are rendered by statute a condition precedent to proof of a previous contradictory statement by the "witness. Failure to cross-examine, however, will not always amount to an acceptance to the witness's testimony, e.g., if the witness has had notice to the contrary beforehand, or the story is itself of an incredible or romancing character, or the abstention arises from mere motives of delicacy as where young children s are called as witnesses for their parents in divorce cases, or when counsel indicates that he is merely sustaining for convenience, e.g., to save time. And where several witnesses are called to the same point it is not always necessary to cross-examine them all." Phipson on evidence, 9th Edn. 1952, pp. 497 and 498.

This much counsel is bound to do, when cross-examining; he must put to each of his opponent's witnesses, in turn, so much of his own case as concerns that particular witnesses or in which that witness had any share. Thus, if the Plaintiff has deposed to a conversation with the Defendant, it is the duty of the counsel for the Defendant to indicate by his cross-examination of the Plaintiff how much of the Plaintiff's version of the conversation he accepts, and how much he disputes, and to suggest what the Defendant's version will be. If he asks no question as to it, he will be taken to accept the Plaintiff's account in its entirety." Odger's Pleading and Practice, 13th Edn., p. 261.

It cannot be too strongly emphasized that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be accepted unless of course there are any inherent improbabilities... "per Wort, J., in - Karnidan Sarda and Another Vs. Sailaja Kanta Mitra and Another,

8. The consequence of" the omission of the Plaintiff to cross-examine Defendant 1 in respect of the testimony given by him in examination-in-chief as regards the fact that the Municipal records produced, relied upon and proved by him did relate to the two buildings in question, amounts to an acceptance of that evidence by the Plaintiff. Had the learned Munsiff adverted to this aspect of the matter, he would not have recorded a finding as he did to the effect that those records did not relate to the buildings in dispute.

9. The learned Munsiff started consideration the de of the question as to who it

was that erected the buildings on the basis that the onus is upon Defendant 1 to make out his case which, if he does not succeed in doing, the Plaintiff would be entitled to relief, even though the Plaintiff does not succeed in establishing that it was he that put up the buildings. This is a wrong approach to the question as admittedly possession was with Defendant 1.

The general rule is, that possession constitutes a sufficient title against every person not having a better title. "He that hath possession of lands, though it be by "disseisin", hath a right against all men but against him that hath right"; for, "till some act be done by the rightful owner to divest this possession and assert his title, such possession is "prima facie evidence of a legal title in the possessor, so that, speaking generally, the burden of procedure (sic) of title is thrown upon any one who claim to oust him; this possessory title, moreover may, by length of time and negligence of he (sic) who had the right, by degrees ripen into perfect and indefeasible title."

Hence, it is a familiar rule that, in ejectment, the party controverting my title must recover by his own strength, and not by weakness, and "when you will recover anything from me, it is not enough for you to destroy my title, but you must prove your own better than mine; for without a better right, "meliores conditio (sic) possidentis." Similarly, mere possession will support trespass "qu. cl. fr." against any one who cannot show a better title; therefore he who commits a trespass upon the possession of Anr. , being himself a wrong-" doer, has no right to put the other party to proof of his title. And to the like effect are the rules of the civil law: "non possessori incumbit necessitas probandi possessiones ad se pertinere", and "in pari causa possessor potior haberi debet".

The same rule as to the effect of possession holds good with regard to chattels....

Broom's Legal Maxims, 10th Edn., pp. 486 and 487.

10. Even in regard to the contents of the documents referred to by the Munsiff, I am constrained to remark that the judgment is full of mistakes. The learned Munsiff seems to think that Ex. V, which is a document executed by Defendant 1 on 12-3-1105, does not relate to any of the plaint buildings because it does not contain the then sub-number of these buildings. A perusal of the document would clearly show that it does contain the sub-number and that on its face it is clearly a document referring to the buildings in question. Learned Counsel for the Appellant admitted that the Munsiff was in error in the observation that he made upon this document.

It is not necessary to multiply instances (of which there are several) of mistakes committed by the learned Munsiff in respect of facts referred to in his judgment. I must take this opportunity to re-iterate what I have been mentioning whenever occasion arose therefor, that it is the duty of the courts, especially in cases subject to appeal, to make a correct and complete reference to all the relevant and material pieces of evidence in their judgments in order that when the matter comes up before the High "Court it may not be necessary to wade through the

details of evidence at first hand as I had to do in this case, spending a lot of time which otherwise could have been saved.

11. The result of my scrutiny into the documents relied upon by Defendant 1 is that the Conclusion reached by the Munsiff against him and in favour of the Plaintiff cannot be supported. As already stated, the learned Munsiff did not record a finding upon issue 8 which finding is necessary to grant the relief as claimed in the plaint. The learned Judge in appeal approached the question from Anr. aspect. He considered the probabilities and reached the conclusion that the buildings in question were put up by and at the cost of Defendant 1. He relied particularly upon the admission made by the Plaintiff in his examination that Defendant, 1 did in fact function in the matter of construction of the two buildings but that he was doing so not on his own behalf but for and on behalf of the Plaintiff.

Though the learned Judge indicated his view against the oral lease on which the suit was brought, he however failed to record a clear finding upon the question, that is, issue 8. In the result I was confronted with the aforesaid situation in which I had myself to consider the evidence and on such consideration I have reached the conclusion that the lease alleged in the plaint has not been made out. Of the 3 witnesses examined for the Plaintiff, the information of the 2nd and 3rd is hearsay. Neither to them nor to the Plaintiff examined as his first witness was a single question put as regards the factum of the lease alleged in the plaint.

There is thus the absence of even formal direct evidence of the lease alleged in the plaint nor are there any circumstances clearly indicating the existence of any such lease. The documents filed on behalf of Defendant 1 on the other hand tend to prove the existence of the houses in question in the year 1104 registered in the name of Defendant 1.

12. The lease that is alleged in the plaint is, as already stated, of two buildings. The site on which these buildings are erected is not dealt with separately. That site must necessarily be delivered over to the Plaintiff if the buildings are delivered because the site has no existence except as supporting these buildings.

The lease that was alleged by Defendant 1 was of a vacant site on which he, as lessee, put up the buildings. The learned Judge found that it was Defendant 1 that put up the buildings and while granting a decree to the Plaintiff for their recovery, directed that their value should be assessed and paid to Defendant 1 before he is deprived of possession. When the lease alleged by the Plaintiff on which the suit is brought is of the buildings, that is to say, when the Plaintiff does not allege a lease of the site apart from the buildings, and when the learned Judge found that the buildings were put up by Defendant 1 on what basis he granted a decree to the Plaintiff is not mentioned in his judgment.

It is possible that the learned Judge did not regard the buildings as distinct from the site on which they stand. However liberally we may construe the plaint, it does not appear to be possible to gather out of it an allegation to the effect that

the site on which the buildings stand has been leased by the Plaintiff to Defendant 1.

13. The question then is, if the specific lease alleged by the Plaintiff on which relief is sought, has not been made out, Whether any relief could be granted to the Plaintiff in this suit.

In paragraphs 8 and 13 of the written statement filed by Defendant 1 on 28-5-1110, he sets up a positive case that he is the lessee of the site on which the buildings stand from Sanjeevi Ammal in the year 1103 on an arrangement to pay a fixed rent of Rs. 10/- per month from the date of completion of the buildings, for putting up which the lease was taken. He says that he has spent an amount of Rs. 1,400/- for putting up these buildings, that before possession of the buildings is taken away from him, he should be paid that amount, and that he has no objection to surrender on payment of that amount. The question is whether on the basis of this admission contained in the written statement of Defendant 1, a decree could be given to the Plaintiff in this suit itself without amendment.

14. The valuation of the suit given in the plaint is as for the recovery of the property on foot of a lease, that is, as for one year's rent. According to the Plaintiff the rent originally was Rs. 10/- per month which was enhanced to Rs. 11/- and which was further enhanced to Rs. 12-8-0 so that at the time of the suit, the rent was Rs. 12-8-0 per month and he valued the plaint at one year's rent calculated at the rate as last enhanced.

If relief can be given to the Plaintiff upon the arrangement of lease admitted by Defendant 1 in his written statement, then, as the rent admitted by him is Rs. 10/- per month, the valuation of the plaint would be sufficient. There is no need to regard the suit as on title because if the relief could be given to the Plaintiff upon the admission contained in the written statement of Defendant 1, it is on foot of a lease admitted by him and not on title. There is therefore no question of impropriety of the valuation or insufficiency of court-fee.

15. The only question is whether it is competent for the court to award a relief to the Plaintiff when the specific case of the lease alleged by him is found against and when Anr. arrangement of lease is admitted by the Defendant. The admission contained in the written statement is of a lease arrangement between Sanjeevi Ammal and Defendant 1 of the year 1103.

Sanjeevi Ammal is the grantor of the lease under Ex. D to the Plaintiff dated 19-9-1104. Though Ex. D does not refer to the fact that part of the property comprised therein, which includes the site of the two buildings in question, is outstanding on a lease with Defendant 1 and though the tenor of the document is against any such lease, if there does not exist a lease to a third party of any part of the premises comprised in the lease which is in fact subsequent, it is competent for the lessee under the subsequent lease to enforce the rights of his lessor against the antecedent lessee by way of recovery of rent as also of

possession of the leasehold. There still remains the further question whether it is at all competent or proper for the court to grant the relief in this very suit.

The erstwhile High Court of Cochin took the view from very early times that when a Plaintiff brings a suit on a specific lease which is not established but the Defendant admits a different lease it is competent for the court to award relief to the Plaintiff based upon the admitted lease.

There is a case reported in the earliest report of Cochin that is in - "1 Select Decisions 272 (E)". This case has been followed in - "24 KER 45 (F)". In - "Maria Solvanayaka Ammal v. Opists Ammal" 20 KER 243 (G), the question was whether it was competent for the Plaintiff to give up her own case and depend upon the case set up in the written statement of the Defendant and claim a decree on foot thereof.

In that case one Appavu assigned certain immovable properties to the Defendant, his daughter for a consideration of Rs. 13,000/- out of which, an amount of Rs. 3,000/- was reserved with the vendee with a direction to pay it to the Plaintiff. In the suit brought to recover the said amount of Rs. 3,000/- the Plaintiff averred in the plaint that the said sum had been lent by her to the said Appavu and that recovery was sought of that debt. The Defendant contended that the loan alleged in the plaint was false but proceeded to say that the father on account of his love and affection towards the Plaintiff, directed the vendee (the Defendant) to pay the said amount to the Plaintiff as a gift.

The situation thus was that on the facts alleged in the plaint the Plaintiff had to be non-suited as she had no cause of action on the debt against the transferee of the property from the debtor. The positive case set up by the Defendant in her written statement however enabled the Plaintiff to seek relief against her by way of recovery of the identical amount because, on account of the arrangement between, the said Appavu and the Defendant, the Plaintiff obtained a benefit and became entitled to enforce the claim though not a party to the arrangement as held by the Privy Council in - "Khawaja Muhammad Khan's case (H)". "Muhammad Khan v. Husaini Begam" 37 Ind App 152 (PC) (H).

Recently the Supreme Court had occasion to consider this question in the case reported in - Srinivas Ram Kumar Vs. Mahabir Prasad and Others, of the respective reports, the learned Judges say as follows:

The rule undoubtedly is that the Court cannot grant relief to the Plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the Plaintiff could have made, was not only admitted by the Defendant in his written statement but was expressly put forward as an answer to the claim which the Plaintiff made in the suit, there would be nothing improper in giving the Plaintiff a decree upon the case which the Defendant himself makes.

A demand of the Plaintiff based on the Defendant's own plea cannot possibly be

regarded with surprise by the latter and no question of adducing evidence on those facts would arise when they were expressly admitted by the Defendant in his pleadings. In such circumstances, when no injustice can possibly result to the Defendant, it may not be proper to drive the Plaintiff to a separate suit. As an illustration of this principle, reference may be made to the pronouncement of the Judicial Committee in - AIR 1943 29 (Privy Council) This appeal arose out of a suit commenced by the Plaintiff Appellant to enforce a mortgage security. The plea of the Defendant was that the mortgage was void. This was given effect to by both the lower courts as well as by the Privy Council.

But the Privy Council held that it was open in such circumstances to the Plaintiff to repudiate the transaction altogether and claim a relief outside it in the form of restitution u/s 65, Indian Contract Act. Although no such alternative claim was in the plaint, the Privy Council allowed it to be advanced and gave a decree on the ground that the Respondent could not be prejudiced by such a claim at all and the matter ought not to be left to a separate suit. It may be noted that: this relief was allowed to the Appellant even though the appeal was heard ex parte in the absence of the Respondent.

In (1950) 5 Dom L R (KER) 311 this Court,, took the same view.

16. Following the principle of the aforesaid 5 decisions, I consider it just and proper to grant a decree to the Plaintiff for recovery of the two buildings whose recovery is sought for in the plaint on the admission contained in the written statement of Defendant 1.

I ought not omit to mention the fact that when at the end of the arguments I questioned counsel for both sides as to whether it was necessary to call for a finding recorded by the courts below upon issue 8, that is, as regards the truth of the oral lease alleged in the plaint and whether the case should be remanded for that purpose, they submitted that the parties have got tired of this litigation relating to a small item of property on account of its pendency for over 17 years and that they would pray that this Court may dispose of the matter finally without any further protraction by a remand. It was on account of that request that I thought it fit to dispose of the case in this Court itself.

17. Determination of the terms on which the decree is to be given now remains. If an admission or concession is to be availed of it has to be taken as a whole and the condition, if any subject to which it is made must be complied with. The concession to surrender the building is coupled with the condition that their value claimed viz., Rs. 1,400/- should be paid before such surrender. The Plaintiff will, therefore, have a decree for delivery of the two houses sought to be recovered in the suit on condition of his paying an amount of Rs. 1,400 to Defendant 1 by way of their value.

18. There arises Anr. question as to the rent whose recovery is sought in the plaint. It having been found that the specific lease alleged in the plaint is not proved, the Plaintiff's relief will be confined to the admission contained in the

wriEsn statement of Defendant 1 and that admission is to the effect that the liability in respect of rent is at the rate of Rs. 10/- per month that he had paid rent inclusive of Medom 1108 and that he had paid Rs. 2/- towards the rent of Edavam of that year. The balance rent, that is Rs. 8/- for Edavam 1108 and the entire rent for the succeeding months until suit and thereafter would be the amount that the Plaintiff would be entitled to get from Defendant 1. There is no admission that the outstanding rent would carry interest. In the absence of such a stipulation the Plaintiff would not be entitled to get any interest nor will he be entitled to get an enhanced rent which is claimed by him in the plaint.

19. The amount of rent payable by Defendant 1 will be set off against the Rs. 1,400/- that has been awarded to Defendant 1 in respect of the two buildings whose recovery " is decreed and the " balance will be recoverable by the Plaintiff.

20. The result is that both the Second Appeal imd the Memorandum of Objections should be dismissed. The decree for surrender passed in favour of the Plaintiff by the Munsiff and confirmed by the District judge will however be maintained though not on the grounds on which it was claimed and granted in the courts below.

21. As regards costs I direct that both parties pay themselves their respective costs in all the courts.

22. This is a case in which the parties have attempted to conceal and not to reveal the truth. It would appear to be a challenge of the parties to the court to find out the truth unearthing the veils that they have attempted to put on the truth and the court has been put to a lot of trouble. I have to recollect and repeat what Lord Haldane said in - "Kundan Lal v. Mt. Begam-un-Nisa" AIR 1918 PC 30 wherein the question was a simple one and related to the factum of a plea of discharge by payment of a debt whose recovery was sought in the case. His Lordship said:

The case is one in which it is far from easy to ascertain the truth and there are points in it which have caused them (their Lordships of the Privy Council) anxiety.

My feeling in this case was precisely that.