

APPELLATE CIVIL.

Before Teunou and Richardson JJ.

TAMIJUDDIN SARKAR

v.

TAZU.*

1918

May 10.

Register of Deaths—Public document—Evidence—Certified copy of entry in the Register, admissibility of—Bengal Police Manual, 1911, rule 124—Evidence Act (I o^c 1872) ss. 35, 74 and 114.

A register of deaths kept by police officers at *thanas* under the rules made by the Local Government, is a "public document" within the meaning of s. 74 of the Evidence Act. Under the provisions of s. 114 of that Act, the Court is entitled to presume that an entry made in such register was properly made and a certified copy of such entry is admissible in evidence.

Ramalinga Reddi v. Kotayya (1) referred to.

SECOND APPEAL by Sheikh Tamijuddin Sarkar, the defendant No. 1.

This was a suit for partition of a certain *jote* situate in the District of Mymensingh and alleged to be the property of one Jungu Sarkar. The plaintiffs were his grandsons, being the sons of his daughter, Tarabai. They instituted this suit in 1912 against Tamijuddin and Sharfun Bibi, the son and another daughter of the said Jungu, and against one Kulsum Bibi, the wife of Tamijuddin. In their plaint they alleged, that Jungu died in 1897 leaving him surviving his son, the defendant No. 1 and his two daughters,

* Appeal from Appellate Decree, No. 2988 of 1915, against the decree of C. H. Moseley, District Judge of Mymensingh, dated Jan. 11, 1915, confirming the decree of Sarat Kishore Bose, Subordinate Judge of that District, dated May 18, 1914.

Tarabai and the defendant No. 2; that at the time of his death Jungu was the owner of the *kayemi mokarari* right in the said *jote*; that their mother owned and held a certain portion of the said *jote*, and after her death Tamijuddin maintained plaintiff No. 2 out of the income thereof; that they were the sole heirs of Tarabai, who died after her father, in 1899; and that under the Mahomedan Law they were entitled to their mother's 4 annas share in the lands in question by right of inheritance. They, therefore, claimed separation of their shares in the said lands and *khas* possession of the same. This suit was contested principally by Tamijuddin, who contended that the plaintiffs were not entitled to any interest in the said *jote*, on the ground that Tarabai had predeceased and not survived Jungu. In respect to both the plaintiffs and the defendant No. 2, who in her written statement set up her claim to partition by right of inheritance, he pleaded, that he had been in adverse possession of the lands in suit for upwards of 12 years, and any claim to partition now, was barred by limitation and, further, that a portion of the said lands had been disposed of in favour of his wife, Kulsum, under a *kabinnama*, executed by Jungu at the time of her marriage. Kulsum in her written statement supported this latter contention. Both Courts decreed the suit for partition. Tamijuddin, thereupon, appealed to the High Court.

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Baboo Birendra Kumar Dey, for the appellant. The register of deaths kept at a police station under rule 124 of the Bengal Police Manual, 1911, Vol. I, had not the force of law. It was not a 'public document' within the meaning of s. 74 of the Evidence Act, and a certified copy of an entry therein was inadmissible in evidence. The lower Court was, therefore,

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in error in relying on such evidence in support of the plaintiffs' case, that Jungu predeceased his daughter Tarabai. As regards the question of adverse possession, there was nothing in the evidence to support the plaintiffs' allegations that any portion of the lands in suit was ever held at any time by their mother, or that after her death any portion of the income was paid to them. The appellant was in undisputed possession for over 12 years and the suit was barred as against the plaintiffs and the defendant No. 2.

Babu Gobinda Chandra Dey Roy, for the respondents, was not called upon.

TEUNON AND RICHARDSON JJ. This appeal arises out of a suit for partition. The original owner of the property it appears was one Jungu Sarkar. The plaintiffs in the suit, the respondents before us, were the sons of his daughter, Tarabai Bibi. The defendant No. 2 was another daughter, while the principal defendant, who is the appellant before us, was the son of Jungu Sarkar. The parties, it may be observed, are Mahomedans.

With regard to defendant No. 2 it was urged in the Courts below, that her right to a share had been extinguished by adverse possession. Both Courts have decided against the appellant on that point, and with respect to that, the only matter that is urged before us is that the District Judge is wrong in saying that there is evidence to show that some of the respondents at times participated to some extent in the fruits of the property. It was suggested that such evidence as there is, bears only upon the case of the plaintiffs. But that, we find from the judgment of the first Court, is not correct. The value of the evidence of course is a matter not for us to consider in second appeal. That contention of the appellant therefore fails.

With regard to the plaintiffs it was contended on behalf of the appellant that their mother Tarabai Bibi had predeceased their father Jungu Sarkar, and that the sons consequently are not entitled to any share. That question has also been decided against the appellant, and the only point taken here in that connection is, that both the Courts below have erred in admitting in evidence the certified copy of an entry made in a register of deaths kept at the local *thana*. It is contended that the said register is not a "public document" within the meaning of section 74 of the Evidence Act. That question again turns upon the further question whether the said register is an official book or register, and the entry made was made by a public servant in the discharge of his official duty, within the meaning of section 35 of the Evidence Act.

It is not suggested before us that this register is kept under any special provision of law enjoining upon the Police the maintenance of this register. But it appears that it is in fact a register kept by Police officers at *thanas* under a rule made by the Local Government, and to be found in the Bengal Police Manual. It cannot, we think, be said that in making entries in a register thus prescribed the Police officer is not acting in the discharge of his official duty. But it is further urged that in this particular case it has not been shown by what particular Police officer the entry was made. That we think is of no importance, inasmuch as the rule casts the duty upon some Police officer to be appointed for the performance of that duty by the officer in charge of the *thana*. Under the provisions of section 114 of the Evidence Act, we are entitled to presume that the entry was properly made. We may observe here that the view we take as to this being a public document and that the entry in such register is admissible in evidence, is supported by the

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decision of a Divisional Bench of the Madras High Court reported in *Rimzlingi Reddi v. Kotayya* (1). True there the register in question was one kept by village officials under the orders of the Board of Revenue, but in principle the two cases are not distinguishable.

For these reasons we dismiss this appeal with costs.

O. M.

Appeal dismissed.

(1) (1917) I. L. R. 41 Mad. 26.

ORIGINAL CIVIL.

Before Greaves J.

E. D. MURRAY

v.

EAST BENGAL MAHAJAN FLOTILLA CO., LD.*

Costs—Security for costs—Insolvent plaintiff—Cause of action arising after insolvency—Practice.

In a suit by an undischarged insolvent for a sum of money larger than his liabilities in the insolvency, and due in respect of a transaction subsequent to the insolvency, the defendant applied for security for costs :—

Held, that the plaintiff ought not to be ordered to give security for costs.

Rhodes v. Dawson (1), *Cook v. Whellock* (2) and *Cowell v. Taylor* (3) referred to.

IN April 1916 the plaintiff was adjudicated an insolvent on his own petition. His liabilities amounted to Rs. 11,604. In August 1917 he brought this suit to recover a sum of Rs. 33,731, for brokerage alleged to

* Application in Ordinary Original Civil Suit No. 980 of 1917.

(1) (1886) L. R. 16 Q. B. D. 548. (2) (1890) L. R. 24 Q. B. D. 658.

(3) (1885) L. R. 31 Ch. D. 34.