

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.

VENKATASAMI (PLAINTIFF), APPELLANT,

v.

VENKATREDDI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Evidence Act—Act I of 1872, s. 35—Res inter alios acta—Title-deeds—Petition of plaintiff's predecessor asserting title—Judgment obtained by plaintiff's predecessor recognising title.

In a suit to establish the plaintiff's title to certain land, he put in evidence (1) a conveyance in favour of his father, (2) a sale-certificate issued to his father's vendor, (3) an order made in certain execution proceedings in which was recited a petition by his father asserting his title, (4) a judgment obtained by his father in which his title was recognised. Neither the defendants nor their predecessors were parties to any of these instruments or proceedings:

Held, that all these documents were relevant.

SECOND APPEAL against the decree of M. B. Sundara Rau, Acting Subordinate Judge of Ellore, in appeal suit No. 297 of 1888, reversing the decree of O. Sivaramakristnamma, District Munsif of Ellore, in original suit No. 109 of 1888.

Suit for a declaration of the plaintiff's title to certain land and for an injunction restraining the defendants from interfering with the plaintiff's possession.

The plaintiff and the defendants averred that the land formed part of the ancestral property of their respective families. The first issue was framed with reference to these averments.

The plaintiff's case was that the land in question formed part of the family property, which was divided between his father and his uncle Tataya; that Tataya's share in it and other property was attached and brought to sale in execution of a decree obtained against him by Tammana Ratnam in original suit No. 239 of 1866 on the file of the District Munsif of Ellore and purchased by the judgment-creditor, who obtained a sale-certificate filed in this suit and marked as exhibit A; and that the purchaser sold

* Second Appeal No. 1492 of 1889.

it to the plaintiff's father under a conveyance, dated 6th October 1875 and filed in this suit and marked as exhibit B; Tataya's share was subsequently attached in execution of a decree obtained against him by Mohamed Azam Saheb in original suit No. 255 of 1867, and the plaintiff's father intervened by petition in execution, but the attachment was released on payment of the judgment-debt without trial of the petition; an extract from the proceedings of the District Munsif of Ellore, dated 15th June 1876, which was filed in this suit as exhibit D, contained a recital of the above mentioned petition, stating the petitioner's title and the order releasing the attachment. In 1877 the plaintiff's father brought original suit No. 171 of 1877 in the same Court against his vendor's son and two persons in occupation, to eject the latter from the premises sold to him under the conveyance of the 6th October 1875 and obtained a decree; the judgment in that suit, filed in this suit as exhibit C, set out the plaintiff's title and the pleas of the contending defendant, viz., that it had been agreed between the plaintiff and Tataya that the property should be returned to the latter, under whose will the contending defendant claimed title.

The District Munsif passed a decree for the plaintiff. This decree was reversed, on appeal, by the Subordinate Judge, who held that the oral evidence did not establish the plaintiff's title, and ruled that the documentary evidence, above referred to, was inadmissible for reasons stated in his judgment as follows:—

“ The fact of the existence of the sale-certificate (exhibit A) and judgment (exhibit C), to which defendants or the person or persons through whom they claim were no parties, do not affect defendants' right. There is nothing to show that the defendants or their predecessors in title were aware of the fact of the sale or of the judgment. There is no evidence on record that the purchaser, under exhibit A, was put in possession of the premises purchased, thereby to show that, if the defendants were in possession of the ground claimed, they would either have resisted delivery or taken steps to have their right established to it having the sale-certificate and judgment set aside. Likewise exhibit B (the sale-deed) is *res inter alios acta*. The same remarks are applicable, with equal force, in regard to exhibit D. We must not, therefore, be misled by exhibits A to D which, in their present state, are irrelevant to the present case.”

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The plaintiff preferred this second appeal.

Parathasaradhi Ayyangar for appellant.

Bhashyam Ayyangar for respondents.

JUDGMENT.—The Subordinate Judge was in error in holding that exhibits A to D were inadmissible in evidence against the defendants. It is true they are not conclusive, since the defendants were not parties to them, but they are relevant evidence as tending to show that the plaintiff's ancestors had dealt with the site as their own for a long term of years.

The Subordinate Judge has thus decided the case upon the oral evidence alone, the defendants not having, on their part, any title-deeds, and he has found a title in the defendants, acquired by adverse possession, as to which no issue was framed.

We must ask the Subordinate Judge to retry the first issue, taking into consideration the documents A to D, and return a revised finding thereon with reference to these observations.

Finding is to be returned within one month from the re-opening of the Court after the recess, and seven days, after the posting of the finding in this Court, will be allowed for filing objections.

[In compliance with the above order, the Subordinate Judge submitted his revised finding on the first issue, which was in favour of the plaintiff.

The second appeal having come on for final hearing, their Lordships accepted the above finding and reversed the decree of Subordinate Judge and restored that of the District Munsif.]