

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

1908.
January 7.

KRISHNAMA CHARIAR (PLAINTIFF), APPELLANT.

v.

NARASIMHA CHARIAR (DEFENDANT), RESPONDENT.*

Civil Procedure Code, Act XIV of 1882, s. 568—Fresh evidence admissible when inherent defect apparent on examining the evidence—Document purporting to be executed by two persons but signed by only one not invalid.

The legitimate occasion for the admission of additional evidence by the Appellate Court under section 568 of the Code of Civil Procedure arises only when, on examining the evidence as it stands, some defect becomes apparent. Where fresh evidence is discovered outside the Court, such evidence can be imported into the case on an application under section 623 of the Code. *Kessonji Issur v. Great Indian Peninsula Railway Company*, (I.L.R., 31 Bom., 381), followed.

A deed is not invalid because one only of several parties who purported to execute it actually signed it.

THE facts are thus stated in the judgment of the lower Appellate Court.

“Suit for redemption. The suit land admittedly was plaintiff’s ancestral property, and the plaintiff’s case was that he and his uncle had mortgaged it to the father of defendants Nos. 1 to 4 for Rs. 50. Defendants, except No. 3, pleaded that it was not a mortgage, but an outright sale. The alleged mortgage and sale were both unregistered documents, and both are alleged to have been executed in *Dhatu*. Neither documents were produced at the first trial. The District Munsif considered plaintiff’s evidence more reliable and gave a decree. The first defendant appealed.

After the appeal was filed, the appellant discovered the document, exhibit III, and produced it. Fresh evidence was taken by the Munsif, and the appeal has again come up for hearing, and the question for decision now in appeal is whether, in

* Second Appeal No. 299 of 1905, presented against the decree of K. C. Manavedan Raja, Esq., District Judge of North Arcot in Appeal Suit No. 277 of 1903, presented against the decree of M.R.By.A Sambamurti Ayyar, District Munsif of Ranipet, in Original Suit No. 73 of 1903.

the face of the evidence now on record, the alleged mortgage of plaintiff is true. I feel no hesitation in finding that it is not.

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I am convinced that exhibit III, the sale deed now produced, is genuine.

The body of exhibit III, shews that it was intended to have been executed by plaintiff and one Varadachari, but, actually, it bears the signature of only the plaintiff. The case of *Sivasamy Chetti v. Sevugan Chetti* (I.L.R., 25 Mad, 389) was cited by the respondent's vakil to show that, even if exhibit III be genuine, it must be considered as an incomplete instrument having no effect. That decision does not enunciate any such general proposition, and apparently relates only to the facts of the particular case. Moreover, in this case, exhibit IV has also a similar recital, and bears the signature of plaintiff alone. This shows that that was a recognized practice among them. Granting, however, for argument's sake, that exhibit III has not been completed, I think it is more than enough to show that plaintiff's alleged mortgage is untrue

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I therefore find the first issue for the defendants and dismiss the plaintiff's suit."

The plaintiff appealed to the High Court.

The first and fourth grounds of appeal were as follows:—

"That the lower Appellate Court erred in admitting exhibit III at the late stage of the case without any grounds for the same.

That the lower Appellate Court had not recorded any reasons for admitting new evidence on appeal."

T. Rangachariar for appellant.

T. V. Seshagiri Ayyar and *T. Narsimha Ayyangar* for respondent.

JUDGMENT.—The main question for consideration in this appeal is with reference to the jurisdiction of an Appellate Court, under section 568 of the Code of Civil Procedure, to admit additional evidence. This question was recently considered by the Privy Council in *Kessowji Isur v. Great Indian Peninsula Railway Company* (1), and the law is laid down in the following terms:—
....."the legitimate occasion for section 568 is when, on examining the evidence as it stands, some inherent lacuna or defect

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becomes apparent, not where a discovery is made, outside the Court, of fresh evidence, and the application is made to import it. That is the subject of the separate enactment in section 629."

No doubt in the case before us the defence was that a sale deed had, in fact, been executed, and also the statement of the law referred to was made with reference to the special circumstances of that case, viz., that the Appellate Court in dealing with the appeal was, in fact, reviewing and reversing an order by the Court of First Instance, refusing to grant a review on the ground of the discovery of new evidence; but, having regard to the general terms in which the law is laid down in the passage of the judgment of the Privy Council which has been cited, we do not think we should be warranted in holding that, as regards the question before us, the present case can be distinguished from the case before the Privy Council, and we think that the statement of the law of the Privy Council is applicable to the present case.

As regards the contention that the sale deed was ineffective on the ground that it was only signed by one of the parties who purported to execute it, we see no reason to differ from the view of the District Judge.

As we are of opinion that, having regard to the statement of the law by the Privy Council, we are bound to hold that the order by the District Judge admitting the sale deed in evidence was made without jurisdiction, we must set aside the decree of the lower Appellate Court and remand the case to that Court for disposal upon the evidence which was before the Court of First Instance at the first hearing. Costs will abide the event.
