

WHITE, C.J., it was held (page 311) that the maternal uncle from whom the inheritance devolved was not an "ancestor." The law is thus AND
ABDUR RAHIM, J. stated at page 344 of Mayne's 'Hindu Law,' seventh edition, published after the judgment of Privy Council in *Ve. kanyamma Garu v. Venkataramanayamma Bahadur Garu* (1). "Hence all GURUMURTHI REDDI
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GURAMMAL. property which a man inherits from a direct male ancestor, not exceeding three degrees higher than himself, is ancestral property, and is at once held by himself, in coparcenary with his own issue. But where he has inherited from a collateral relation, as for instance from a brother, nephew, cousin or uncle, it is not ancestral property; consequently his own descendants are not coparceners in it with him."

This second appeal is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Abdur Rahim.

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v.

RAMAN.*

1908.
July 18.
November
13.

Penal Code, Act XLV of 1860 ss. 464 and 467—No false document where execution simply sets up a false claim but has no intention of causing belief that document was executed by another.

A, who was not the son, natural or adopted, of the deceased B, executed a deed of mortgage of certain properties of B in favour of C. In the body of the document A was described as the son of B, though no such description appeared in the signature. A was known to C for a long time, and A had no intention of causing it to be believed that the document was executed by any other person than himself.

Held, per MUNRO AND ABDUR RAHIM, JJ., that A was not guilty of making a 'false document' within the meaning of section 464, Indian Penal Code. The assertion of a false claim in a document will not constitute the document false, when it is executed by the party who purports to execute it and there is no intention of causing a belief that it was executed by some other person, real or fictitious.

(1) (1902) I.L.R., 25 Mad., 678.

* Criminal Revision Case No. 287 of 1908.

Per PINHEY, J.—The document was a false document as it contained a false description. A wanted to cause it to be believed that such a person as the son of B existed and his intention was to defraud the real heir, *i.e.*, the widow of B, A had thus committed the offence of 'forgery' within section 467, Indian Penal Code.

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CRIMINAL REVISION case preferred against the order of acquittal of G. G. Spencer, Sessions Judge of Tinnevely, in Sessions Case No. 5 of 1908.

The facts are sufficiently stated in the judgment.

The case first came on for hearing before (Munro and Pinhey, JJ.), who delivered the following judgments:—

JUDGMENTS (MUNRO, J.).—I am of opinion that exhibit A is not a false document within the meaning of section 464 of the Indian Penal Code. The document must fall, if at all, within the first clause of the section. That clause lays down that a person makes a false document who dishonestly or fraudulently signs a document with the intention of causing it to be believed that the document was signed by a person by whom he knows it was not signed. In the present case the accused had no intention by describing himself in the document as the son of Veerana Kudumban to cause it to be believed that the document was executed by anybody other than himself. His intention was to assert or to support his claim to be the adopted son of Veerana.

I would therefore dismiss the revision petition.

As my learned brother has taken a different view, the case will have to be laid before another Judge under sections 439 and 429 of the Criminal Procedure Code.

PINHEY, J.—The Sessions Judge of Tinnevely acquitted Rama Kudumban on a charge of forging a valuable security under section 467, Indian Penal Code. Government refused to appeal. The petitioner moved this Court by a revision petition. Mr. Justice Wallis sitting as Judge of the Admission Court doubted if the Sessions Judge had correctly expounded the law and referred the case to a Division Bench.

The facts as found by the Sessions Judge are as follows:—

One Veerana Kudumban, who owned certain separate property died on 5th May 1906, leaving a widow—the petitioner—but no son. The widow enjoys the property and has secured *patta* in her name. On the 12th October 1907 the accused Rama Kudumban's

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son *Kothala Veeran* executed a usufructuary mortgage deed in favour of prosecution witness No. 5 for Rs. 90 by which he purported to mortgage among other items two items of the separate property of the late Veeranan. The deed is signed by Rama Kudumbam without adding the father's name, but the document itself contains an averment that it is executed by "Rama Kudumbam, son of Veeranan. It was the accused's case at the trial that he had been adopted by Veeranan, but the Sessions Judge found against the adoption. He further found that the accused was no relation to the deceased Veeranan and that the document was executed with intent to commit fraud. Apparently both the accused and the mortgagee intended to defraud the widow. The Sessions Judge has held that the offence of forgery of a valuable security was not made out, because the act of the accused did not amount to the *making of a false document* as defined in section 464, Indian Penal Code. He reasons thus:—A document is not false within the definition because it contains false statements or descriptions, and it is the essence of forgery that the signature, the seal or the date should be false; in other words that to constitute forgery the falsity must consist in the document being signed or sealed with the name or seal of a person who did not in fact sign or seal it. As the document in this case was executed by a real person in his own name and merely contains a false description inserted at or without his own suggestion it cannot be said that it was executed with the intention of causing it to be believed that it was executed by some one else who did not really execute it.

The definition of 'Forgery' in the Indian Penal Code is not as simple and clear as the definition of 'Forgery' at Common Law, and this perhaps accounts for the error into which the Sessions Judge appears to have fallen. 'Forgery' in England is not defined by Statute. Forgery at Common Law is defined by Blackstone (4 Com., 247) as "the fraudulent making (or alteration) of a *writing* to the prejudice of another man's right." There can be no doubt that the accused's act exactly fulfilled the requirements of this definition. A little consideration will, I think, show that it also falls within the definition of the Indian Penal Code. The document (exhibit A) must be considered as a whole. The signature must be read along with the false statement in the

body of the document that the executant was the son of Veeranan. A man's signature of his own name may amount to forgery—*vide* explanation (1) to section 464, Indian Penal Code, and illustration A. We can only interpret the document as if the words "son of Veeranan" had been added to the signature. The accused executed a document purporting to deal with the property of the petitioner as if he and not the petitioner was the heir of the former owner, and suppressed his own real father's name. The false description in the document made the signature false. What the Sessions Judge calls the essence of forgery was clearly present here.

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Adoption is a common practice in this country. Veeranan had no son and might have adopted one, but did not. An adopted son might have lawfully executed such a document as exhibit A. The accused executed exhibit A fraudulently in the name of a fictitious person, Veeranan's son, with the intention of causing it to be believed that such a person as Veeranan's son really existed and had executed the document though he knew that no such person existed or had executed it. He made a false document, within the definition set forth in section 464, Indian Penal Code, explanation (2). As he made the false document in order to assert or support a claim or title, and with intent to defraud Veeranan's widow he committed forgery. Exhibit A purports to be a valuable security. The act of the accused constituted an offence under section 467, Indian Penal Code.

I would set aside the order of acquittal and order a retrial.

The case again came on for hearing under sections 439 and 429 of the Code of Criminal Procedure in due course before the Bench constituted as above.

T. R. Venkatarama Sastri for complainant.

The Acting Public Prosecutor in support of the order of the Sessions Judge.

When the Court made the following judgment:—

JUDGMENT (ABDUR RAHIM, J.).—The question in this case is whether the accused by describing himself as the son of Veeranan in the body of the sale deed, which he executed by putting his mark at its foot, intended to represent that the document was executed by a fictitious person inasmuch as Veeranan had no son or by himself claiming to be the adopted son of Veeranan. If the

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facts which are proved be borne in mind, it seems to me that there is no difficulty in arriving at a conclusion. Veeranan was uncle of the accused; it is alleged by him that he was adopted by his uncle but it has been proved that that allegation is false. The person in whose favour the sale deed was executed has been examined as the fifth prosecution witness and from his evidence it appears that he knew the accused well and his family. It would be impossible in my opinion under such circumstances to say that the accused by calling himself the son of Veeranan intended to make out that he wanted it to be believed that it was not he that was executing the document but a fictitious person. True, he falsely described himself as the son of Veeranan, and though I do not say that in some circumstances a false description may not be such as to affect the identity of the person falsely described, it would be going too far to hold that whenever an executant of a document attaches a false description to his name he comes within the purview of section 464, Indian Penal Code. In this case I have no hesitation in saying that, by calling himself the son of Veeranan, the accused merely intended to put forward a claim that he was the adopted son of that man.

The acquittal of the accused in my opinion was right and there is no reason to interfere with that order.
