

NARAYANA
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authority for the proposition that the only kind of guardian who can present a document for registration on behalf of a minor at all is either a guardian according to the personal law of the minor concerned or a guardian legally appointed under the Guardians and Wards Act or otherwise. That is sufficient to dispose of the present case, and I agree therefore that the plaintiff's suit must be dismissed, though in the circumstances of the case it is appropriate that each party should bear his own costs. This restriction of the persons who can present documents for registration on behalf of minors appears to me obviously likely to work great and unnecessary hardship in some cases and I think that is a matter to which the attention of the legislature might well be drawn.

N.R.

APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastri and
Mr. Justice Reilly.*

1928,
January 4.

RAMASWAMI CHETTIAR AND THREE OTHERS (DEPENDANTS),
APPELLANTS,

v.

TYAGARAJA PILLAI AND TWO OTHERS (PLAINTIFFS),
RESPONDENTS.*

O. XIII, r. 1, Civil Procedure Code (V of 1908) and r. 64 of the Civil Rules of Practice, no order under, to produce documents—Production of documents during trial—Rejection, whether justifiable.

A party was not ordered by the Court, under Order XIII, rule I, Civil Procedure Code, to produce his documents at the first hearing, nor was he directed, under rule 64 of the Civil

* Appeal No. 404 of 1923 and C.M.P. No. 2925 of 1924.

Rules of Practice to produce them on or before any specific date.

Held, that the Court was not justified in summarily refusing to receive the documents produced at the time of the trial, and that in such circumstances the Court should use its discretion in the admission of the documents according to their nature.

APPEAL against the decree of the Court of the Subordinate Judge of East Tanjore at Mayavaram, dated 15th March 1923 in C.S. No. 27 of 1922 and C.M.P. No. 2925 of 1924 (Petition to admit documents).

The facts are given in the judgment.

Rule 64 of the Civil Rules of Practice is as follows :—

“ If the Court does not call for the production of the documentary evidence of the parties, under section 138 of the Code (XIV of 1882), corresponding to Order XIII, rule 1, Civil Procedure Code, it shall direct the defendant to file in Court a list of the documents on which he intends to rely, and shall fix a time for the production thereof. The said list shall be in form No. 16, and shall be signed by the party filing the same or by his pleader ”.

M. S. Vaidyanatha Ayyar for appellant.—Under Order XIII, rule 1, Civil Procedure Code, or under rule 64 the Court should fix a date for the production of documents by parties; otherwise it cannot reject documents on the ground of late production; *Chidambara Chettiar v. Parvathi Achi*(1). Order XIII, rules 1 and 2 aim against spurious and forged documents being produced later. But if they be public documents or documents whose genuineness cannot be disputed, the Court may always receive them though produced late and must use its discretion in each case. *Ranchhod v. The Secretary of State for India*(2), *Talewar Singh v. Bhagwan Das*(3), *Imambandi v. Mutsaddi*(4), *Jagdip Pandey v. Taibunnissa*(5). Unless a vendor gives a clear title, *i.e.*, one without encumbrances, he is not entitled to the purchase money especially if he had not discharged mortgages which he had undertaken to discharge; section 17, Specific Relief Act.

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(1) (1925) 87 I.C., 351.

(2) (1898) I.L.R., 22 Bom., 173.

(3) (1907) 12 C.W.N., 312.

(4) (1918) I.L.R., 45 Cal., 878 (P.C.).

(5) (1928) 72 I.C., 397.

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N. Muthuswami Ayyar for respondent.—According to Order XIII, rule 1, the documents should be produced at the first hearing. The practice of the lower Courts is to the same effect. No separate order to produce documents is generally made by lower Courts. Even when there is no order, a party should be diligent and produce as early as possible all the documents he relies on. Anyhow the lower Court has a discretion. If it has in its discretion rejected documents as filed late, the High Court cannot substitute its own discretion in the matter for that of the lower Court.

JUDGMENT.

KUMARA-
SWAMI
SASTRI, J.

KUMARASWAMI SASTRI, J.—This appeal arises out of a suit filed by the respondents to recover the balance of purchase money claimed under a sale-deed filed as Exhibit A in this case. The defendants raised various defences and pleaded that nothing was due. The issues were settled on the 1st of September 1922. When the issues were settled, no order was passed as to the list of documents or the production of documents. After settlement of issues, the case was transferred to the Additional Sub-Court, East Tanjore, at Mayavaram, and after some adjournments the case was taken up for hearing on the 15th of March 1923. On that date the defendants' vakil filed two applications. One was an application to receive certain documents and the other was an application for an adjournment. The documents which they wanted the Court to receive consisted of certified copies of certain decrees and orders obtained from Courts, registration copies of certain documents obtained from the Sub-Registrar's office, sale certificates issued in suit No. 48 of 1913 which it is alleged refers to some properties now in dispute, printed copies of plaints, sale proclamations in two suits, Suit No. 38 of 1914 and Suit No. 48 of 1914, and ledgers which it is alleged were filed in another Court. The Subordinate Judge dismissed the application for receiving the

documents in evidence on the ground that they had not been filed earlier and also refused an adjournment; and he went into the case and passed a decree for Rs. 15,213 and odd. Neither party adduced any evidence.

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The appellants argue that the Judge was wrong in refusing to receive the documents which they tendered and that he ought not to have refused an adjournment in this case but should have allowed the defendants an opportunity of filing and proving the documents, which as already pointed out, consisted mainly of certified copies and registration copies of documents.

The main question in this case is whether the learned Judge was right in refusing to receive these documents. Order XIII, rules 1 and 2, relate to the production of documentary evidence at the first hearing. Rule 1 says:

“(1) the parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced; (2) the Court shall receive the documents so produced; provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs”.

Rule 2 provides that documentary evidence not produced as required by rule 1 shall not be received in a subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof. The Court has in such cases to record reasons for receiving documents not produced at an earlier stage. Rule 64 of the Civil Rules of Practice provides for cases where the Court does not call for the production of documentary evidence under Order XIII, rule 1. It says that in such cases it shall direct the defendant to file in Court a list of the documents on which he intends to rely and shall fix a time for the production thereof. The list is to be in Form No. 16 and shall

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be signed and verified by the party filing the same or by his pleader. In the present case, no orders were passed either under Order XIII, rule 1 or under rule 64 of the Rules of Practice so that there was no direction for the parties to produce the documents and no direction that a list should be filed. Under these circumstances, the question arises whether the Judge was right in rejecting the documents produced at the trial. Even if there was an order passed, considerable discretion is allowed to the Courts in cases where the documents are either public documents or are certified copies or where there is no reasonable doubt as to their genuineness. We have been referred to *Ranchhod v. The Secretary of State for India*(1), *Talewar Singh v. Bhagwan Das*(2), *Jagdip Pandey v. Taibunissa*(3) and *Chidambara Chettiar v. Parvathi Achi*(4). The discretion of Courts to admit documents has also been considered by the Privy Council in *Imambandi v. Mutsaddi*(5). I think, therefore, in the present case the Judge was wrong in summarily rejecting the documents which were tendered at the date of the hearing. The difficulty was mainly caused by the procedure adopted by the vakil for the appellants who assumed that there was some default and put in a petition for the admission of these documents. He should also have put his clients in the box and proved the facts, but he adduced no evidence. Having regard to these facts and to the unsatisfactory way in which the case has been disposed of in the absence of important documents, I think that the proper course will be to reverse the decree of the lower Court and to send the case back for disposal directing the Sub-Court, Mayavaram, to receive in evidence the documents sought to be tendered,

(1) (1898) I.L.R., 22 Bom., 173.

(2) (1907) 12 C.W.N., 312.

(3) (1923) 72 I.C., 397.

(4) (1925) 87 I.C., 351.

(5) (1918) I.L.R., 45 Calc., 878.

admitting such documents which are certified copies of public documents and which require no further proof. If there are any other documents which the parties want to file, I think the Court ought to consider each document on its own merits and receive such documents as to which there is reasonable explanation for non-production or as to which there can be no doubt as to genuineness. He will pass the necessary orders under Order XIII, rules 1 and 2, Civil Procedure Code, or the Civil Rules of Practice before fixing a date for the trial.

As regards costs, I think that as the appellants have been dilatory in this case, they should pay the costs of the respondents in the High Court, and as regards costs in the first Court, they should pay the day costs incurred by the plaintiffs on the 15th of March 1923. The other costs of the suit will abide and follow the result of the decree.

The appellants are entitled to the refund of the Court fee paid in this Court for the appeal.

No separate order is necessary on the petition to receive documents.

REILLY, J.—I agree. I may add that it appears to me desirable that rule 64 of our Civil Rules of Practice and rules 1 and 2 of Order XIII, Civil Procedure Code, should be brought into accord with each other by amendment.

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