

APPELLATE CIVIL.

Before Mr. Justice Curgenven and
Mr. Justice Sundaram Chetti.

1933,
November 3.

TULASI AMMAL (APPELLANT), PETITIONER,

v.

DANALAKSHMI AMMAL AND SIX OTHERS (FIRST
RESPONDENT AND NIL), RESPONDENTS.*

Code of Criminal Procedure (Act V of 1898), sec. 476—Complaint under—Civil Court's power to make—Registration of deed—Suit to enforce—Deed found to be a forgery in—Complaint of offences under ss. 471 and 193, Indian Penal Code, against writer and attestors and against principal beneficiary under deed and plaintiff in suit—Writer and attestors not examined in civil suit which was disposed of on their depositions given before District Registrar—Plaintiff in suit examined on commission in civil suit but not taking any physical part in preparation of deed—Section 195 (1) (b) and (c) of Criminal Procedure Code—Applicability and effect of.

The registration of a settlement deed purporting to have been executed by one G, attested by five persons and written by a sixth person was refused by the District Registrar on the ground that its genuineness was not established. G's second wife who was also a substantial beneficiary under that deed thereupon instituted a suit to enforce registration thereof. The trial Court passed a decree directing that the deed should be registered but on appeal the High Court found that it was a forgery, allowed the appeal and dismissed the suit. On an application to the High Court to exercise its power under section 476 of the Code of Criminal Procedure to make a complaint in respect of the alleged fabrication of the settlement deed,

Held that the intervention of the Court was unnecessary so far as the writer and the attestors were concerned but that a complaint of offences under sections 471 and 193 of the Penal Code should be made against G's second wife.

* Civil Miscellaneous Petition No. 3639 of 1933.

Under sub-section 2 of section 195, Criminal Procedure Code, the term "Court" as employed in that section does not include a Registrar under the Indian Registration Act.

TULASI AMMAL
v.
DANALAKSHMI.

PETITION praying that, in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to direct that a complaint be filed against the first respondent and the other persons concerned in respect of the offences which appear to have been committed by them, namely, the concoction of the settlement deed and its use in Court as evidence as well as the evidence adduced in support thereof in Appeal No. 18 of 1928 preferred to the High Court against the decree of the Court of the Subordinate Judge of Tanjore in Original Suit No. 21 of 1926.

K. Desikachari for petitioner.

K. Bhashyam Ayyangar and *T. R. Srinivasan* for respondents.

The ORDER of the Court was delivered by CURGENVEN J.—This is an application to this Court to exercise its power under section 476 of the Code of Criminal Procedure to make a complaint in respect of the alleged fabrication of a certain document. In Appeal Suit No. 18 of 1928 a settlement deed, Exhibit B, figured as having been executed by one Govindaswami Naidu. The document bore the alleged signature of Govindaswami in seven places and it appeared to have been attested by five persons and to have been written by a sixth person. The suit out of which the appeal arose was to enforce registration of this document and the plaintiff (now first respondent) was Govindaswami's second wife and a substantial beneficiary under the settlement deed, much to the prejudice of the first wife who was

CURGENVEN J.

TULASI AMMAL
 v.
 DANALAKSHMI.
 CURGENVEN J.

the first defendant in the suit. Proceedings had taken place before the District Registrar, who had refused to register this document on the ground that its genuineness was not established. The trial Court passed a decree directing that the settlement deed should be registered, relying upon a considerable amount of evidence given before the District Registrar and filed in the Civil Court instead of by fresh examination of the witnesses to prove execution by Govindaswami. When the case came before this Court it was discovered, as the judgment will be found to state, that each of the seven signatures could be ascribed to tracing from one or another of three signatures in another document, an adoption deed Exhibit A. The conclusion was accordingly reached that the document must be a forgery and the appeal was allowed and the suit dismissed.

In this application we may deal first with the position of the writer and attestors. Section 476, Criminal Procedure Code, deals with offences referred to in section 195, sub-section 1, clause (b) or clause (c) "which appear to have been committed in or in relation to a proceeding in that Court", i.e., the Court whose sanction is sought. Turning then to section 195 (1) and dealing with sub-clause (b), the offence so far as the attestors are concerned would fall under section 193, Indian Penal Code, viz., either giving false evidence in a judicial proceeding or, it is suggested, fabricating false evidence for the purpose of being used in any stage of a judicial proceeding. So far as the former offence is concerned the objection has been raised that the depositions in question were given not before the Civil Court at all but before the

Registrar in the course of his enquiry, and that TULASI AMMAL
 under sub-section 2 of section 195 the term DANALAKSEMI
 "Court" as employed in that section does not CURGENVEN J.
 include a Registrar under the Indian Registration
 Act, 1877. Accordingly the qualification which
 sub-clause (b) contains that such offence must be
 alleged to have been committed in or in relation
 to any proceeding in any Court has no application,
 with the result that the matter is not such as this
 Court would be justified in making a complaint
 of under section 476, Criminal Procedure Code.
 Similarly with regard to fabricating false evidence,
 section 193 of the Penal Code itself requires that
 the false evidence should be fabricated for the
 purpose of being used in any stage of a judicial
 proceeding, and the corresponding qualification
 in sub-clause (b) requires that the fabrication
 must be with a view to the production of the
 document in Court. There is no reason to suppose
 that the primary purpose of the forgery of the
 document was production in Court or that it
 would necessarily be produced in Court at all.

There remains sub-section (c) of section 195,
 which deals with the act of forgery or of using as
 genuine a forged document. Attached to this is
 the qualification that the offence, whichever it is,
 must be alleged to have been committed by a
 party to the proceeding before the Court and it
 has been held in a series of cases which one of us
 has summarised in *Ponnuswami Udayar, In re*(1)
 that the language of section 195 must be read in
 conjunction with the terms of section 476, so that
 it is only in the case of offences committed by a
 party to the proceeding that the Court should

(1) (1928) 28 L.W. 769.

TULASI AMMAL
 v.
 DANALAKSHEMI.
 CURGENVEN J.

take action under the latter section. The consequence therefore is that without expressing any view as to the merits of the application against these persons, the writer and the attestors of the document, we must find that the intervention of the Court is unnecessary for their prosecution for the offences specified.

There remains the case of the plaintiff in the suit, who is the second widow and the first respondent here. This lady took no physical part in the preparation of the document and the action imputed to her is that in the first place she produced or caused to be produced in Court the forged document, and thereby committed an offence under section 471, Indian Penal Code, by using it as genuine, and in the second place that she gave false evidence in support of its genuineness. As regards the former charge it has been said that an application was made to the Registrar to register the document. It was doubtless produced before him and impounded and at the instance of the plaintiff in the subsequent suit produced before the Court. We think that a *prima facie* case under section 471, Indian Penal Code, dependent of course upon proof of the falseness of the document, is made out upon these grounds.

As regards the offence of giving false evidence an offence under section 193, Indian Penal Code, this lady's position was different from that of the other witnesses because she was examined in the civil suit on commission. The same difficulty that arises with regard to the others therefore under the terms of sub-section (b) does not exist

in her case. When so examined she deposed as follows :—

TULASI AMMAL
v.
DANALAKSHMI.
—
CURGENVEN J.

“ Before the death of my husband, he executed a settlement deed in my favour. He wrote the deed of settlement in this house at the northern hall. I know when it was written. I was at the doorway leading from the hall to the inner room ten feet off. I saw his signing it (Exhibit B settlement deed dated 26-10-1925 opened from the sealed cover in the presence of the parties and their Vakils). He affixed his signature to Exhibit B. He executed it 4 or 5 days prior to his death. The day was Monday. He directed me to bring money for stamp paper for the document. I brought the cash box and placed it with him. He took out money therefrom and gave it. On the day when the settlement deed was written he was in possession of sound mind and power of disposition. He was ailing from fever. He was ailing from fever for 10 or 15 days.”

It has been urged that the interests of justice do not require that we should make a complaint in the case of the first respondent and in an affidavit it has been alleged that some improper pressure has been placed upon her by the other side by threatening these proceedings in order to induce an unfair division of the property. This, if true, is regrettable but at the same time it cannot conclusively decide whether this is a fit case or not for us to take action under the section. The forgery, if true, was of an iniquitous kind because it was designed to defraud one widow in the interests of the other, who was not merely a co-wife but also her niece. The means adopted to this end were so ingenious as to induce the Court of first instance actually to give a decree. In these circumstances we think that it is expedient in the interests of justice that a complaint should be made against the first respondent in the terms indicated above to the Sub-Divisional Magistrate,

TULASI AMMAL
v.
DANALAKSHMI.

Tanjore. Under the proviso to sub-section 1 of section 476, Criminal Procedure Code, we appoint the Deputy Registrar, Appellate Side, to make the complaint. The settlement deed, Exhibit B in the appeal and the adoption deed, Exhibit A, and another document, viz., a plaint containing the admitted signature of Govindaswami, Exhibit L, will be forwarded with the complaint.

A.S.V.

APPELLATE CIVIL.

*Before Mr. Justice Sundaram Chetti and
Mr. Justice Pakenham Walsh.*

1933,
November 1.

PL. RM. KR. KARUPPAN CHETTIAR (SURETY),
APPELLANT,

v.

A. OT. N. NAGAPPA CHETTIAR AND ANOTHER
(PLAINTIFF AND DEFENDANT), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 145 (a); O. XXI, r. 40 (1) and (5) proviso—Time allowed to judgment-debtor, arrested in execution, for satisfaction of decree—Security bond executed as condition of, surety undertaking to pay decree amount on failure of judgment-debtor to pay within time allowed—Release of judgment-debtor upon—Default of judgment-debtor to pay within time allowed—Execution of decree against surety—Decree-holder's right of—Security bond if intra vires of Court—Enforceability of bond—Contract Act (IX of 1872), sec. 126—Applicability and effect of.

A judgment-debtor who was arrested in execution of a decree entered into a private arrangement with his judgment-creditor by which the latter agreed that the former should have

* Appeal against Order No. 522 of 1932.