APPELLATE CIVIL.

Before Mr. Justice Wadsworth.

ALAPATI NARASIMHAM (PLAINTIFF), APPELLANT,

v.

AILOORI BABU RAO (DEAD) AND FOUR OTHERS (DEFENDANTS AND NIL), RESPONDENTS.*

1938, August 29.

Indian Evidence Act (I of 1872), sec. 63 (3)—Printed records of the Madras High Court—Secondary evidence, if.

Under the present practice of the Madras High Court the printed record of the High Court is not a copy made from or compared with the original but a copy of a copy and, unless there is evidence of some comparison with the original, the printed record is, in the absence of consent, not secondary evidence of the original under section 63 (3) of the Evidence Act.

The decision in *Ganapathi Aiyar* v. *Sakharayappa*(1) distinguished on the ground that it dealt with the practice followed in the printing of the High Court's records prior to 1922.

APPEAL against the decree of the Court of the Subordinate Judge of Bapatla in Appeal Suit No. 52 of 1932 preferred against the decree of the Court of the District Munsif of Bapatla in Original Suit No. 679 of 1928.

V. Govindarajachari for appellant.

B. Somayya for *K. Krishnamoorthi* for respondents 4 and 5.

Second respondent was not represented.

JUDGMENT.

WADSWORTH J.—This appeal arises out of a suit in which the only real question was whether the WADSWORTH J.

* Second Appeal No. 121 of 1934.

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second defendant was or was not the adopted son of the plaintiff. The plaintiff denied the adoption. In the course of the arguments two documents were exhibited on behalf of the defence, namely, Exhibits XI and XI (*a*).

Exhibit XI is a copy of a deposition by the plaintiff in a criminal case, forming part of the printed record of the revision proceedings in the High Court. Exhibit XI (*a*) is a copy taken from that printed copy. In this deposition the plaintiff makes an admission which, if the copy is correct, practically puts an end to his case. He admits that the second defendant was his adopted son. When the plaintiff was in the box, he was asked whether he had made such a statement and he said :

> " I did not admit there that second defendant was my son. I said that he was by courtesy my son as he married my wife's brother's daughter."

Evidently when the plaintiff was cross-examined the printed copy of the deposition was not available and was not actually used in cross-examination. The only contention in second appeal which has any basis is the contention that Exhibit XI, the printed copy of the plaintiff's deposition, is not secondary evidence of that deposition in that it is not a copy made from or compared with the original [*vide* section 63 (3) of the Indian Evidence Act]. Both the lower Courts, on the authority of the decision of RAMESAM J. in *Ganapathi Aiyar* v. *Sakharayappa*(1), have held that printed copies of High Court record are in practice compared with the original deposition at the time when the proofs are corrected and that therefore they are good secondary evidence under

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section 63 (3) of the Evidence Act. Both the lower Courts overlooked the fact that in the case just referred to RAMESAM J. was dealing with the procedure followed in the printing of the High Court's records prior to 1922. I have ascertained from the Translation and Printing Department of the High Court that the procedure which formed the basis of this judgment came to an end shortly after the work of printing the High Court records was transferred from the press in the High Court to the main Government Press, and this transfer took place on 4th January 1923. It would appear that for a few months thereafter the checking of proofs with the originals continued. Thereafter it ceased and the present practice which has been going on for many years is to send to the Government Press typed copies of the record from which the printed record is made and the correcting of proofs is done in the Government Press by comparison with the typed copies and not with the original depositions. Therefore it follows that the High Court record under the present procedure is not a copy made from or compared with the original but a copy of a copy and unless there is evidence of some comparison with the original, which is not the usual practice, the inference would be that the printed record is in the absence of consent not good evidence of the original. Exhibit XI was a deposition in a case which came up to the High Court on 22nd April 1924, that is to say, a year and a quarter after the transfer of the printing to the Government Press. The case was actually disposed of in April 1925. It would seem probable therefore that the present procedure was followed and that the printing was done from the typed copy and it is not likely that there would have been a comparison with the original deposition. Both the Courts were wrong

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in assuming on the strength of RAMESAM J.'s observations that the practice referred to by him still continued at the time that Exhibit XI was printed. It seems to me to follow that unless the defence is in a position to prove that in fact this record was checked with the original, Exhibits XI and XI (*a*) were wrongly admitted in evidence.

I have been asked to go into all the evidence in the case and hold under section 167 of the Evidence Act that excluding Exhibits XI and XI (*a*) there is sufficient evidence to support the finding of the Courts below. It seems to me undesirable to do so in the present case. I do not for a moment wish to state that the evidence apart from Exhibits XI and XI (*a*) is insufficient to establish the defence case. But what I would observe is that when one takes away a piece of evidence of the importance which Exhibit XI obviously occupies in the defence, one cannot accept the findings of the Courts below on the rest of the evidence for the defence, findings which may have been coloured by inferences from these two documents; and I do not think it is desirable in second appeal to go into the whole of the voluminous record in order to come to a decision on the question of fact without any assistance from the Courts below. Moreover, I think it is also desirable that the defendants should have an opportunity of replacing the important piece of evidence which may have to be excluded on a very technical objection. In this particular case there is some doubt as to the stage at which the objection was taken in the trial Court. The documents were marked in the course of the arguments and the objection must have been taken before the arguments were concluded, for this objection is discussed at length in the trial Court's judgment. But the stamp

on the back of the document Exhibit XI contains the note that the document is marked by consent. This may be merely an error on the part of the clerk who was docketing the various exhibits. On the other hand it may be an indication that the objection to Exhibit XI was not taken at the time when it was actually put into evidence. If so it is open to the trial Court to overrule the objection because of the lateness at which it was made.

In the result, therefore, I allow the appeal and remand the suit to the trial Court for disposal after giving the defendants an opportunity to prove the deposition of the plaintiff contained in Exhibit XI by other records, if available and admissible, and after giving both parties an opportunity to adduce evidence on the questions whether Exhibit XI was or was not marked by consent and whether the objection taken to that document was or was not belated. Should the trial Court come to the conclusion that Exhibit XI is admissible either because the plaintiff consented to its being exhibited or because objection to its admission was belated, this appeal will stand dismissed with costs throughout. In the absence of such a result, the trial Court will dispose of the suit and costs will abide the result.

V.V.C.