

APPELLATE CIVIL

Before Mr. Justice Martineau and Mr. Justice Zafar Ali.

LADHA SINGH AND OTHERS (DEFENDANTS)

Appellants,

versus

Mst. HUKAM DEVI (PLAINTIFF) } Respondents.
AND Mst. INDO (DEFENDANT) }

1923

March 8.

Civil Appeal No. 1229 of 1920.

Indian Evidence Act, I of 1872, section 90—Presumption in regard to ancient documents—date from which period of thirty years should be reckoned.

A document, dated the 3rd August 1888, was produced in Court on the 19th December 1917, and its genuineness was not called in question up to the 12th August 1918, when the first Court gave its judgment. It was only when the case came up to the Appellate Court that the defendants took the objection that the document had not been proved. The District Judge held that the period of thirty years should be reckoned from the date of his predecessor's order remanding the case.

Held, that the period of thirty years laid down in section 90 of the Evidence Act, should at all events not be reckoned from a date earlier than the 12th August 1918, when the trial Court gave its decision, and the due execution of the document could therefore be presumed.

Minu Sirkar v. Rhedoy Nath Roy (1) referred to.

Second appeal from the decree of Lt.-Col. B.O. Roe, District Judge, Lahore, dated the 24th February 1920, affirming that of Faqir Sayad Said-ud-Din, Munsif, 1st Class, Lahore, dated the 12th August 1918, decreeing the plaintiff's suit.

GOBIND RAM, for Appellants.

GANGA RAM, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU J.—The first five defendants, who live at Atari Saroba, sued Indo and her husband Diwan Chand for possession of a house in that village. The

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case ended in a compromise by which half of the house was given to Indo. Indo's sister has now sued for a declaration that half of the house belongs to her, alleging that the house was owned by her father Kahna, and that since his death it has been the property of her sister and herself. The defendants denied that the plaintiff was in possession and pleaded that the Kahna was not the owner of the house but lived in it with their permission. The Courts below have given judgment for the plaintiff, finding that she is in possession and that Kahna's ownership is proved by two documents, Exhibits P. 3 and P. 4 which show that defendants or their ancestors sold the house to him.

No evidence was given as to the execution of those documents, but the Courts below have held that their genuineness may be presumed under section 90 of the Evidence Act as they are more than 30 years old and were produced from proper custody. No objection is taken to the admissibility of P. 4, which was executed in 1874, but it is contended in second appeal that P. 3, which is dated the 3rd August 1888, is not admissible without proof, as it was produced on the 19th December 1917 less than 30 years after its execution.

The learned District Judge has held that the period of 30 years mentioned in section 90 of the Evidence Act is to be reckoned back from the time when the document is in controversy, and this view is supported by *Minu Sirkar v. Rhedoy Nath Roy* (1), where it was held that the period is to be reckoned, not from the date on which the document is put into Court, but from the date on which, after the document has been tendered in evidence, its genuineness becomes the subject of proof. Up to the 12th August 1918, when the first Court gave its judgment, the genuineness of P. 3 does not appear to have been called in question, and it was only when the case came up to the Appellate Court that the defendants took the objection that P. 3 had not been proved. The learned District Judge is of opinion that the period of 30 years should be reckoned from the date of his predecessor's order remanding the

(1) (1879) 5 Cal. L. R. 125.

case, and we think that at all events it cannot be reckoned from a date earlier than the 12th August 1918, when the trial Court gave its decision. From whichever of these dates the period be counted the document is more than thirty years old, and we hold, therefore, that proof of its execution is not required.

It is argued that the house to which P. 3 relates is not shown to be the one in dispute, but this point was not taken in the grounds of appeal either in this Court or in the Lower Appellate Court.

The finding, therefore, that the house belonged to Kahna, being supported by evidence, cannot be contested, and the finding as to the plaintiff's possession is also not open to contest. The contention that the plaintiff has a third sister and cannot sue for more than her own share has no force, as in the first place it does not appear to be known whether that sister is alive or dead, and in the second place the suit is not for possession but only for a declaration of the title of the plaintiff, with whose rights the defendants are seeking to interfere.

The appeal is dismissed with costs.

C. H. O.

Appeal dismissed.

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