

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
Zafar Ali.*

LAJPAT RAI AND OTHERS (PLAINTIFFS) Appellants

versus

FAIZ AHMAD AND OTHERS (DEFENDANTS)

Respondents.

1927

March 25.

Letters Patent Appeal No. 253 of 1925.

Indian Evidence Act, I of 1872, sections 13, 32—Documents executed by strangers to suit, recognising title of party—inadmissible—where executants neither produced nor found to be dead—Civil Procedure Code, Act V of 1908, section 100—Second Appeal—Certain evidence held inadmissible—Remand—to lower Appellate Court—for redecision on the admissible evidence.

The trial Court dismissed the suit for possession of a site of land in which, in addition to oral evidence, the plaintiffs produced and relied upon certain deeds of sale concerning plots adjacent to the land in suit reciting that the latter was the plaintiffs' property. Although the executants of these deeds were strangers to the suit, the lower Appellate Court relied upon the statements contained in those deeds as well as upon the oral evidence, and thereupon decreed possession. On second appeal to the High Court the case was remanded by a Single Bench for redecision on admissible evidence only.

Held, that as the executants of the deeds were neither produced as witnesses nor proved to be dead, the deeds had been improperly admitted in evidence.

Chooni Lall v. Nilmadhab (1), and *Mahiditta Mall v. Nicholson* (2), followed.

Ketabuddin v. Nafar Chandra (3), and *Saraj Kumar v. Umed Ali* (4), relied upon.

Farzand Ali v. Zafar Ali (5), and *Dwarka Nath v. Mukundu Lal* (6), not followed.

(1) 1925 A. I. R. (Cal.) 1034.

(4) (1922) A. I. R. (Cal.) 251.

(2) 224 P. L. R. 1913.

(5) (1918) 46 I. C. 119.

(3) 1927 A. I. R. (Cal.) 230.

(6) (1906) 5 Cal. L. J. 55.

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Held further, that the finding of fact based partly upon inadmissible evidence could not be maintained, and the case was rightly remanded by the Single Bench for redecision on the basis of the admissible evidence.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Broadway, dated the 1st July 1925.

FAKIR CHAND and C. L. MATHUR, for Appellants.
NIAZ MUHAMMAD, for Respondents.

The judgment of the Court was delivered by—

ZAFAR ALI J.—The plaintiffs laid claim to a site which was not in their possession, and in proof of their title to it they produced three documents and examined a number of witnesses. These documents are registered deeds of sale in favour of third parties relating to properties adjoining the site in question on three different sides. The plaintiffs relied on the recitals of boundaries in these deeds describing the site as plaintiffs' property. The trial Court dismissed the plaintiffs' suit, but on appeal the District Judge came to the conclusion that the oral evidence should be given credence to because it received support from the recitals of boundaries in the said deeds, and thus relying upon the oral as well as documentary evidence he granted the plaintiffs a decree for possession of a portion of the site. The defendants appealed against that decree contending *inter alia* that the said documents were not admissible in evidence. On the authority of the rulings cited in *Brajeshware Peshakar v. Budhanunndi* (1), *Manohar Singh v. Sumirta* (2), *Cherag Ali v. Mohini Mohan* (3), *Abdul Ali v. Rejan Ali* (4), *Saraj Kumar v. Umed Ali* (5),

(1) (1880) I. L. R. 6 Cal. 268. (3) (1913) 19 I. C. 615.

(2) (1895) I. L. R. 17 All. 428. (4) (1913) 21 I. C. 618.

(5) (1921) 63 I. C. 954.

Pramatha Nath v. Krishna Chandra (1), and *Chooni Lall v. Nil Madhab* (2) this contention was accepted by the learned Judge of this Court who heard the appeal and he remanded the case to the District Judge for redecision on the basis of the admissible evidence.

The plaintiffs have preferred a Letters Patent Appeal against the said order of remand and their counsel, Mr. Fakir Chand, contends (1) that the documents are admissible in evidence, and (2) that, even if they are not, the finding of fact arrived at by the District Judge could not be interfered with as it was based upon *some* evidence. Both these contentions are untenable. As regards (2) it may be stated at once that the finding of fact, based as it partly was on evidence which was not admissible, could not be maintained because it was not possible to divine what value the District Judge would have attached to the oral evidence if the documentary evidence had been rejected.

On the first point the learned counsel relies upon (a), *Farzand Ali v. Zafar Ali* (3), and (b) *Ketab-ud-Din v. Nafar Chandra* (4)—(a) was based upon *Dwarka Nath v. Mukund Lal* (5) which was dissented from in *Saraj Kumar v. Umed Ali* (6). In (b) also it was held *inter alia* that where the executant of a document was alive but was not produced there was a strong body of opinion that such document was not admissible either under section 11 or section 13 of the Evidence Act. As the executants were not produced in the present case, nor were stated to be dead, the documents were not shown to be admissible in evidence.

As observed in *Chooni Lall v. Nilmadhab* (2) :—
“ There was at one time a conflict of opinion upon

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(1) (1924) 84 I. C. 420. (4) 1927 A. I. R. (Cal.) 230.
(2) (1924) 86 I. C. 734. (5) (1906) 5 Cal. L. J. 55.
(3) (1918) 46 I. C. 119. (6) 1922 A. I. R. (Cal.) 251.

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the admissibility of documents between strangers, where one of the parties to the suit was mentioned as owner of the boundary land; but recent decisions have finally settled the point. At one time it was attempted to make such documents admissible in evidence under section 11, clause (2) of the Indian Evidence Act. In some cases the admissibility of such documents was made to rest on section 13 and in some other cases on section 32, clause (3) of the Indian Evidence Act," and then the learned Judges who decided that case went on to say "We are of opinion that a document between strangers to the suit in which mention is made of one of the parties or their predecessors as holding the land lying on the boundaries of the lands belonging to the executants of the document is not admissible in evidence." The same view was taken in *Mahiditta Mal v. Nicholson* (1).

We are, therefore, of opinion that the learned Judge rightly held that the documents are not admissible in evidence, and we accordingly dismiss the appeal with costs

N. F. E.

Appeal dismissed.

(1) 224 P. L. R. 1913.