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August 16.

R. RAMACHANDRAN AYYAR

v.

RAMALINGAM CHETTIAR

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA, and J. R. MUDHOLKAR, JJ.)

Second Appeal—Interference by High Court—Finding of fact—Substantial error or defect of procedure—What is—Code of Civil Procedure, 1908 (Act V of 1908), s. 100.

There was a partnership between the two appellants and the father of the respondents Nos.1 and 2 who died in 1936. In 1938 respondent No. 2 executed a release deed in favour of the the appellants whereunder the appellants agreed to pay a sum of money to respondens Nos. 1 and 2 in lieu of the share of their father. Subsequently, respondent No. 1 filed a suit for setting aside the release deed and for accounts. The main questions that arose for decision were whether the release deed was justified by adequate consideration, whether respondent No. 2 had independent advice at the time when he signed the deed and whether he acted *bonafide* or he was imposed upon. The trial Court decreed the suit but on appeal the first appellate court dismissed the suit. In second appeal the High Court upset the findings of the first appellate court and restored the decree of the trial court. The appellants contended that the High Court had no jurisdiction to interfere in second appeal as the question involved was one of fact. The respondents contended that the High Court was competent to interfere as there was a substantial defect of procedure committed by the first appellate court in that it did not deal with all the reasons given by the trial court and it did not come to close quarters with the judgment of the trial court.

Held, that the High Court was not justified in interfering with the findings of fact recorded by the first appellate court in favour of the appellants. There is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. To enable the High Court to interfere under s. 100(1)(c) of the Code of Civil Procedure there must be a substantial error or defect in the procedure which may possibly have produced error or defect in decision of the case upon the merits; it is not enough that there is an error or defect in the appreciation of evidence. Even where the appreciation

or evidence made by the first appellate court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, it cannot be said to introduce a substantial error or defect in procedure. In the presnt case, the High Court was not entitled to interfere merely because judgment of the first appellate court was not as elaborate as that of the trial court or because some of the reasons given by the trial court had not been expressly reversed by the first appellate court. The questions which arose for decision were pure questions of fact and their decision depended upon the appreciation of the evidence and circumstances of the case. The findings on these questions given by the first appellate court were binding on the High Court. The broad features of the evidence supported the conclusions of the first appellate court and it could not be contended that its finding was perverse or was not supported by any evidence.

Mst. Durga Choudhrain v. *Jawahir Singh Choudhri (1890)* L. R. 17 I. A. 122, relied on.

Rani Hemanta Kumari Debi v. *Brojendra Kishore Rao Chowdry*, (1890) L.R. 17 I.A. 65, *Shivabasava Kom Amingavda* v. *Sangappa Bin Amingavda*,(1904) L. R. 31 I. A. 154 and *Rani Hemanta Kumari Debi* v. *Maharaja Jagadindra Nath Roy Bahadur*, (1906) XVI M.L.J.R. 272, referred to.

Mangumma v. *Paidayya*. (1940) 53 L. W. 160, disapproved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 284/59.

Appeal by special leave from the judgment and decree dated March 16, 1956, of the Madras High Court in S. A. No. 436 of 1953.

A. V. Viswanatha Sastri, R. Ganapathy Iyer and *G. Gopalakrishnan,* for the appellants.

N. C. Chatterjee, B. N. Kirpal, Bishambar Lal and *Ganpat Rai,* for the respondents.

1962. August 10. The Judgment of the court was delivered by

GAJENDRAGADKAR, J.—This appeal by special leave raises the old familiar question about the *Gajendragadkar J.*

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limits of the High Court's jurisdiction to interfere with findings of fact in a second appeal under s. 100 of the Code of Civil Procedure. Defendants 1 & 2 who are the appellants before us contend that the High Court has exceeded its jurisdiction in interfering with the findings of fact recorded by the lower appellate Court in their favour in dismissing the suit filed against them by respondent No. 1. Before dealing with this question, it is necessary to refer to the material facts leading to the present dispute between the parties.

It appears that there was a partnership between appellant No. 1 Ramachandra Iyer, his father-in-law V. V. Kuppuswami Ayyar who was the father of appellant No. 2 Vanchinatha Ayyar, Rama Ayyar and Lakshamanan Chettier. This partnership worked two mills in Kasha Chidambaram. Lakshmanan Chattier is the father of respondent No. 1, the plaintiff, and respondent No. 2, defendant No. 3. After the death of V. V. Kuppuswami Ayyar, the second appellant took his place in the partnership. Rama Ayyar retired from the partnership in September, 1936. Lakshmanan Chettier died on June 10, 1936, so that after the retirement of Rama Ayyar, the partnership continued to be managed by the two appellants as partners. On September 26, 1938, defendant No. 3 executed a release deed in favour of the two appellants. Under this document Rs. 9,165/- were agreed to be paid by the appellants in lieu of the amount due to the share of Lakshmanan Chettiar. Out of this amount, Rs. 8,165/- were paid to respondent No. 2 on the date when the document was executed and Rs. 1,000/- were kept with the appellants in order to be paid to respondent No. 1 who is the present plaintiff, on his attaining majority. Resopndent No. 2 had attained majority on August 12, 1938, whereas respondent No. 1 attained majority on January 17, 1947. It appears that on June 30, 1944,

the balance of Rs. 1,000/- which was kept with the appellants to be paid to respondent No. 1 on his attaining majority, was paid by them to respondent No. 2 on his furnishing security. After respondent No. 1 attained majority, he gave notice to the appellants calling upon them to satisfy him about the correctness and bonafide character of the transaction of settlement reached between them and his brother, respondent No. 2, and in that connection, be demanded an inspection of the relevant books of account. The appellants turned down his request for the inspection of the account-books and so, on January 9, 1950, i. e., within three years after his attaining majority, respondent No. 1 filed the present suit.

In his suit, respondent No. 1 alleged that at the time when his elder brother, respondent No.2, executed a release deed in favour of the appellants he (respondent No. 2) had just attained majority and at the time of the said transaction, he had no independent advice and was "literally imposed upon". The plaint further alleged that the said release deed was executed for a wholly inadequate consideration, without full knowledge by the second respondent of the real facts of the situation and only as a provisional arrangement. According to respondent No. 1, the arrangement was no more than tentative and it was not binding against him. It is mainly on these allegations that he alleged that the release deed could not have "validly bartered away his share in the profits due to his deceased father as a partner of the firm", and he claimed a declaration that the said release deed was not binding on him; that he was entitled to have an account rendered by the appellants in regard to the profits and assets of the partnership as on June 10, 1936, the date on which his father died, and that the share allotted to his father should be ascertained and the appellants directed to pay him of the same.

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In the plaint, respondent No. 1 also claimed that he was entitled to recover a share of the profits of the two mills up to the date of the suit, proportionate to the sum found due to him.

The material allegations made by respondent No. 1 in his plaint in regard to the settlement deed were disputed by the appellants by their written statement. They urged that the said settlement had been arrived at between respondent No. 2 and themselves as a result of the intervention of respectable people, two of whom were closely related to the family of respondents 1 & 2. Their uncle, Santhonam Chettiar, and Chekka Chettiar who is the son of the sister of their father's mother, took active part in the settlement of the dispute and these two gentlemen consulted Sama Ayyar, a respectable merchant of the place in whom all the parties had full confidence, and it was virtually as a result of the advice tended by Sama Ayyar that the terms of the release deed were settled. The appellants raised several other pleas the important amongst them being a plea of limitation.

Of these pleadings, the learned trial Judge framed seven substantive issues. The first issue was whether the document of September 26, 1958, executed by the second respondent was a release, or an alienation, or a discharge? The second issue was in regard to limitation and the third issue was whether as an alienation, the said document would bind respondent No. 1 ? By issue No. 6, the question raised was whether respondent No. 1 was entitled to question the release deed? All the issues thus framed answered by the trial Judge in favour of respondent No. 1, and against the appellants. In the result, the suit filed by respondent No. 1 was decreed and a Commissioner was appointed to take accounts.

It appears that the learned trial Judge held that at the time when the release deed was executed the appellants had suppressed material books from respondent No. 2 and his adviser, and the trial Court was indignant at the conduct of the appellants in not producing the said books even at the trial. It then proceeded to examine the evidence addduced before it by the respective parties and came to the conclusion that the release deed "was brought about under fraudulent and mistaken circumstances without looking into all relevant; accounts that it was not effected for the benefit of the family and hence, it was not binding on the plaintiff." It would be noticed that the principal dispute between the parties at the trial was whether the two mills which were operated by the partnership formed part of the assets of the partnership itself, or whether they belonged to the appellants alone. The trial Court has expressly stated that it did not propose to make any finding on that issue; but, curiously anough, it has left the decision of that question to the commissioner whom it appointed to take accounts.

Against this decree, the appellants preferred an appeal in the District Court at South Arcot. The lower appellate Court examined the relevant evidence surrounding the execution of the release deed and took into account the admissions made by respondent No.2. It held that all the circumstances proved in the case show beyond doubt that the settlements was not done in a hurry or haste and that there was no intention on the part of the appellants to defraud respondent No. 2 and his brother. The learned Judge also held, in the alternative, that the suit filed by respondent No. 1 would be barred by limitation. In his opinion, s. 7 of the limitation Act was a bar to the maintainability of the suit. We have already noticed

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that the lower appellate court has made a definite finding that the discharge given by respondent No. 2 was binding on respondent No. 1. The result of those findings was that the decree passed by the trial Court was set aside and respondent No. 1 suit was ordered to be dismissed. It appears that in the appellate Court, respondent No 1 field certain cross-objections and had also made an application for the amendment of the plaint. Both these applications were dismissed.

The dismissal of his suit took respondents No.1 to the High Court in second appeal and the High Court has allowed the appeal, because it was disposed to accept the finding of the trial Court that the impugned transaction was not binding against respondent No.1. It appears that the learned Judge who heared the second appeal was taken through the evidence and though he has not recroded his findings on the evidence as such, he has indicated his occurence with the conclusions of the trial Court. He referred to the dispute about the two mills and to the fact that Sama Ayyar had not been examined. He thought the uncle of the respondents was a respectable witness and that there was no reason to disbelieve his evidence and he held that accounts had not been examined at the time when the impugned settlement was reached. It is on these broad grounds that he allowed the appeal and restored the decree passed by the trial Court. On the queston of limitation, the learned Judge held that s.7 of the Limitation Act was not a bar the suit, because by his present action respondent No.1 was not in terms asking for accounts as such, but he was claiming a declaration that the document executed by respondent No.2 was not binding on him. It is this decree which is challenged before us by Mr. Viswanath Sastri on behalf of the appellants in the present appeal.

Mr. Sastri contends that the principal question which was agitated before the High Court by respondent No. 1 was a question of fact and it was not open to the High Court exercising its jurisdiction under s. 100 Code of Civil Procedure to interfere with the finding recorded by the lower appellate Court on that question of fact. On the other hand, Mr. Chatterjee for respondent No. 1 has argued that the High Court was justified in interfering with the decree passed by the lower appellate Court because that decree disclosed a substantial error or defect in the procedure, and so, the case falls under s. 100 (1) (c) of the Code. That is how the principal question which falls for our decision is whether the High Court was justified in reversing the conclusion of fact recorded by the lower appellate Court in this case.

The question about the limits of the jurisdiction of the High Court in entertaining second appeals has been considered by several High Courts in India as well as the Privy Council on numerous occasions, and the true legal position in that behalf is not at all in doubt. In hearing a second appeal, if the High Court is satisfied that the decision is contrary to law or some usage having the force of law, or that the decision has failed to determine some material issue of law or usage having the force of law, or if there is a substantial error or defect in the procedure provided by the code, or by any other Law for the time being in force which may have produced error or defect in the decision of the case upon the merits, it can interfere with the conclusions of the lower appellate Court. That, in plain terms, is what cls. (a), (b) and (c) of s. 100 (1) provide. Mr. Chatterjee, however, relies on cl. (c) of s. 100 (1) and contends that the High Court found that there was a substantial error or defect in the procedure affecting the decision on the merits; and he seeks to support this contention

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on the ground that all the reasons given by the trial Court in support of its finding that respondent No.1 was not bound by the agreement, had not been duly considered by the lower appellate Court, and that is a substantial error and defect in the procedure. He says that if the lower appellate Court wanted to interfere with the trial Court's conclusions of fact, it was necessary that all the reasons given by the trial Court should have been examined and the whole of the evidence set out by the trial Court in its judgment should have been taken into account. Since the judgment of the lower appellate Court is not elaborate and some of the grounds set out in the trial Court's judgment have not been examined, that constitutes an error or defect in the procedure and so, the High Court was entitled to correct that error or defect, because the said error or defect affected the decision of the merits in the case. The judgment of the appeal Court, Mr. Chatterjee contends, "must come into close quarters" with the judgment of the trial Court and meet the reasoning given there in, before it can be treated as conclusive between the parties for the purposes of s. 100.

It is well-known that as early as 1890, the Privy Council had occasion to consider this aspect of the matter in *Mussummat Durge Choudhrain* v. *Jawahir Singh Choudhri.*(1). In that case, it was urged before the Privy Council, relying upon the decision of the Calcutta and Allahabad High Courts in *Futtehma Begum* v. *Mohamed Ausur,* (2) and *Nivath Singh* v. *Bhikki Singh* (3) respectively, that the High Court would be within its jurisdiction in holding that where the lower appellate Court has clearly misapprehended what the evidence before it was, and has been led to discard or not give

(1) (1890) L.R. 17 I.A. 122. (2) (1882) I.L.R. 9 Cal. 309.
(3) (1885) I.L.R. 7 All. 649.

sufficient weight to other evidence to which it is not entitled, the High Court can interfere under s. 100. This contention was rejected by the Privy Council and it was observed that an erroneous finding of fact is a different thing from an error or defect in procedure, and that there is no jurisdiction to entertain a second appeal on the ground of an erroneous fiinding of fact, however gross or inexcusable the error may seem to be. Their Lordships added that nothing can be clearer than the declaration in the Code of Civil Procedure that no second appeal will lie except on the grounds specified in s. 584 (corresponding to s. 100 of the present Code), and they uttered a word of warning that no Court in India or elsewere has power to add to or enlarge those grounds. Since 1890, this decision has been treated as a leading decision on the question about the jurisdiction of the High Court in dealing with questions of facts in second appeals.

It is necessary to remember that s. 100 (1) (c) refers to a substantial error or defect in the procedure. The defect or error must be substantial that is one fact to remember; and the substantial error or defect should be such as may possibly have produced error or defect in the decision of the case upon the merits—that is another fact to be borne in mind. The error or defect in the procedure to which the clause refers is, as the clause clearly and unambiguously indicates, an error or defect connected with, or relating to, the procedure; it is not an error or defect in the appreciation of evidence adduce by the parties on the merits. That is why, even if the appreciation of evidence made by the lower appellate Court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to introduce a substantial error or defect in the procedure. On the other hand, if in dealing with a question of fact,

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the lower appellate Court had placed the onus on a wrong party and its finding of fact is the result, substantially, of this wrong approach, that may be regarded as a defect in procedure; if in dealing with questions of fact, the lower appellate Court discards evidence on the ground that it is inadmissible and the High Court is satisfied that the evidence was admissible, that may introduce an error or defect in procedure. If the lower appellate Court fails to consider an issue which had been tried and found upon by the trial Court and proceeds to reverse the trial Court's decision without the consideration of such an issue, that may be regarded as an error or defect in procedure; if the lower appellate Court allows a new point of fact to be raised for the first time before it, or permits a party to adopt a new plea of fact, or makes out a new case for a party, that may, in some cases, be said to amount to a defect or error in procedure. But the High Court cannot interfere with the conclusions of fact recorded by the lower appellate Court, however erroneous the said conclusions may appear to be to the High Court, because, as the Privy Council observed, however gross or inexcusable the error may seem to be there is no jurisdiction under section 100 to correct that error.

Mr. Chatterjee, however, has purported to base his contentions on certain decisions to which it is necessary to refer. In *Rani Hemant Kumari Debi v. Brojendra Kishore Roy Chowdry*(1), the dispute was in regard to the binding character of the compromise between the parties. The trial Court had held that the compromise was binding and dismissed the suit. The District Judge reversed the decree on the ground that the compromise was not binding. The matter then went to the High Court in second appeal, and the High Court held that the compromise was binding and restored the decree of the trial

(1) (1890) L.R. 17 I.A. 65.

Court. When it was urged before the Privy Council that the High Court had exceeded its jurisdiction in interfering with the lower appellate Court's conclusion on a question of fact, the Privy Council affirmed the decision of the High Court on the ground that the finding of the lower appellate Court had been recorded without any evidence; and so, this decision merely shows that if a finding of fact has been recorded by the first appellate Court without any evidence, that finding can be successfully challenged in second appeal, because a finding of fact which is not supported by any evidence can be questioned under s. 100; and in that connection, it may be said that the decree proceeding on such a finding discloses a substantial defect or error in procedure. It is true that in dealing with this point Sir Richard Couch has observed that "when the judgments come to be looked at, it appears that he (the first appellate Court) has reversed the decree of the first Court in the absence of any evidence—certainly in the absence of any evidence upon which he might reasonably come to the conclusion that the deed of compromise was not for the benefit of the adopted son." With respect, we may point out that this observation should not be literally construed to mean that wherever the High Court thinks that the evidence accepted by the lower appellate Court could not have been reasonably accepted, the High Court would be justified in interfering with the decision of the lower appellate Court. All that the said observation means is that it should be a case where the evidence, which is accepted by the lower appellate Court, no reasonable person could have accepted and that really amounts to saying that there is no evidence at all. It is in this sense that the said observation should be construed and then it would be consistant with the Privy Council's decision in the case of *Mst. Durga Chodhrain* (1). Therefore, we are inclined to treat this decision as

(1) (1890) L.R. 17 I.A. 122.

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supporting the proposition that the High Court can interfere with the conclusion of fact recorded by the lower appellate Court if the said conclusion is not supported by any evidence.

In *Shivabasava Kom Amingavda* v. *Sangappa Bin Amingavda* (1), the Privy Council had occasion to consider the scope of the expression "substential defect or error of procedure" under s. 100. In that case, the validity of the decision of the High Court in second appeal was challenged on the ground that the High Court had interfered with the finding of fact recorded by the lower appellate Court. This contention was rejected by the Privy Council, because it took the view that the lower appellate Court had disposed of the suit upon a case not raised by the parties, and to which the evidence had not been directed, and so, the course thus adopted by the lower appellate Court amounted to a substantial error or defect of procedure within the meaning of s. 584. The Privy Council has also added that the High Court's conclusion was right that the finding of fact recorded by the lower appellate Court was not supported by any evidence. This decision illustrates what the expression "substantial error or defect of procedure" really means.

Mr. Chatterjee has then placed strong reliance on the decision of the Madras High Court in *Mangamma* v. *Paidayya* (2). In that case, Pandrang Row J. has held that where the first appellate Court fails in its judgment reversing the finding of the trial Court to come into close quarters with the evidence in the case or to meet the reasoning of the trial Court in support of its conclusions, the judgment of the appellate Court must be deemed to be vitiated by an error in procedure and so, can be interfered with in second appeal. These observations, so doubt, support Mr. Chatterjee in

(1) (1904) L.R. 31 I.A. 154. (2) (1940) 53 L.W. 160.

contending that the High Court was justified in reversing the finding of fact recorded by the lower appellate Court in this case. In our opinion, however, the broad observations made in the judgment do not correctly represent the true legal position about the limits of the High Court's jurisdiction in dealing with second appeals under s. 100. This decision shows that the learned Judge thought that the lower appellate Court was bound not to go against the opinion of the trial Judge who had an opportunity of having the witnesses before him, in deciding upon the credibility of the oral evidence; and he has added that unless good reasons are given, any interference with the conclusion of the trial Judge on matters of this kind must be deemed to be erroneous in law. It is plain that this statement of the law is inconsistent with the provisions of s. 100.

In *Rani Hemanta Kumari Debi* v. *Maharaja Janadindra Nath Roy Bahadur* (1)., the Privy Council has no doubt observed that it is better that the appellate Court whenever it reverses the judgment of the lower Court, comes into close quarters with the judgment of the lower Court and meets the reasoning therein. These observations, however, do not assist us in determining the scope of the provisions of s. 100. They were made in an appeal which went before the Privy Council against the decision of the High Court when the Appellate Bench was dealing with the first appeal filed against the decision of the Judge of the first instance. The High Court had reversed the decision of the first Court; and in considering the proprierty or correctness of the said reversing judgment, the Privy Council observed that the appellate judgment did not come into close quarters with the judgment which it reversed. It would thus be seen that what

(1) (1906) XVI M. L. J. R. 272.

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the Privy Council has said about the requirements of a proper appellate judgment, cannot assist Mr. Chatterjee in contending that if a proper judgment is not written by the lower appellate Court in dealing with questions of fact, its conclusions of facts can be challenged under s. 100. That question must be considered in the light of s. 100 alone.

We must, therefore, hold that Mr. Chatterjee is not right in contending that because the judgment of the lower appellate Court was not as elaborate as that of the trial Judge, or because some of the reasons given by the trial Judge had not been expressly reversed by the lower appellate Court, the High Court was entitled to interfere with the conclusions of the lower appellate Court. The questions which arose for the decision of the Courts of fact, was a simple question of fact—was the release deed executed by respondent No. 2 in favour of the appellants justified by adequate consideration? Had respondent No.2 independent advice at the time when he signed the said document? Did he act *bona fide*, or was he imposed upon? —these were the points that arose between the parties on their pleadings. It would be noticed that these points present pure question of fact and their decision depended in the present case on appreciating the oral evidence adduced in support of the rival contentions, documents produced by the parties, their conduct and surrounding circumstances. In other words, what the Courts of fact were called upon to consider and decide were questions of fact in the light of all relevent evidence. That being so, we do not think the High Court was justified in interfering with the finding of fact recorded by the lower appellate Court in favour of the appellants.

On this view of the matter, it would not be necessary to consider the further question as to

whether the suit filed by respondent No. 1 was within time.

Mr. Chatterjee has, however, pressed us to consider the material facts, because he argued that the finding of the lower appellate Court was patently erroneous and can be regarded even as perverse, for, according to him, it is not supported by any evidence and is entirely inconsistent with all the evidence on record. We would, therefore, very briefly indicate our conclusion on this point. We have already noticed that the deed of settlement was executed by respondent No. 2 with the advice of his uncle and another relative and Sama Ayyar, a respectable merchant of the locality, played an important part in the proceedings that led to the execution of the document. As was to be expected, respondent No. 2 who has signed the document, has supported respondent No. 1's case and so has the uncle of the two respondents. But the evidence given by them clearly proves that the conduct of the appellants was not at all unfair or dishonest. Sama Ayyar considered the matter and advised the uncle of the respondents. Respondent No. 2 was told to consult his mother who was looking after the family affairs. The mother was consulted and she agreed. In fact, it appears that there were certain amounts credited with the firm which were 'Amanat' and Sama Ayyar told the parties that it was because the appellants were fair that they disclosed these amounts and were prepared to pay them to the respondents, and after taking into account the said amounts, Rs. 9,165/- & odd were agreed to be paid, and in fact, the whole of it has been paid.

In the document it is expressly stated that the two mills belonged to the appellants. The recital is made in the very fore-front of the document and yet the document has been signed by respondent

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No. 2 and has been attested by his uncle and another witness. The trial Court has left this issue open and had ordered that the Commissinor should try it. On the material as it stands, there does not appear to be any justification for the argument that the mills in fact belonged to the partnership, and it is extremely unlikely that if the mills had belonged to the partnership, Sama Ayyar would not have known about it and accounts of profits of both the mills would not have been taken before the release deed was signed. The trial Court was impressed by the fact that all the account-books were not produced for the inspection of respondent No. 2 or his uncle at the time when the release deed was executed, and it has added that the books were not produced even at the trial. Why and under what circumstances the appellants refused to produce the books at the trial, it is unnecessary to enquire ; but the assumption that the appellants suppressed the books from respondent No. 2 and his uncle at the time of the negotiations in 1938 seems to us to be contrary to the clear admissions made by the uncle of the respondents. Purushotham Chettiar, the uncle, is a man of substance. He is worth about Rs. 3 lakhs. He owns a number of houses and lands. He was a Municipal Councillor and an Honorary Magistrate. He was naturally interested in his nephew and so, he must have done all that was necessary to be done before he asked respondent No. 2 to sign the release deed. It is easy for him and respondent No. 2 to come forward now and make some vague allegations against the appellants in supporting the case set up by respondent No. 1. But even he clearly admitted that appellant No. 1 showed him the ledger in which the amounts due to the deceased father of the respondents were disclosed and said that the mills belonged to them and that he would give a letter if the witness wanted to see the books of accounts.

It appears that the mills were worked at Chidambaram but the accounts were at Nannilem, and the specific and clear admission made by Purushotham Chettiar is that appellant No. 1 was prepared to give a letter to enable the witness to see all the accounts, and so, he has admitted that he had no suspicions against appellant No. 1 at that time. He, however, did not go to Nannilam or Kumbakonam to look into the account books. In other words, these admissions clearly show that the appellants were prepared to allow respondent No. 2 and his uncle to inspect all the books of account, but they did not care to do so, and that is because Sama Ayyar was a trusted person and his decision was accepted by all the parties. Therefore, the main reason on which the trial Court based its conclusion and which presumably appeared to the High Court to be sound, is patently inconsistent with the admissions made by the uncle of respondents 1 & 2.

There is another point to which the High Court has referred and which apparently weighed even with the trial Court and that is that Sama Ayyar had not been examined. We were told that Sama Ayyar had been cited by respondent No. 1 and was not examined by him. But apart from this aspect of the matter, if respondent No. 1 challenged the validity and the binding character of the release deed executed by respondent No. 2, the onus was on him to prove his case and sustain the material allegations in support of it; and so, it inevitably follows that since Sama Ayyar was alive, it was for respondent No. 1 to cite him. That being so, the failure to examine Sama Ayyar can be legitimately treated as a ground against respondent No. 1 and cannot be treated as a ground against the appellants, and yet, that is precisely what the High

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Court appears to have done. It would thus be clear that the important question of fact on which the parties are at issue, was decided by the trial Court in favour of respondent No. 1 and by the lower appellate Court in favour of the appellants. As we have already indicated, the broad features of the evidence support the conclusion of the lower appellate Court and so, Mr. Chatterjee is not at all justified in contending that the finding of the lower appellate Court is perverse or is not supported by any evidence.

In the result, the appeal must be allowed, the decree passed by the High Court is set aside and that of the appellate Court restored with costs throughout.

Appeal allowed.