

**Parasmal Vs. Krishnappa**

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**Court :** Karnataka

**Decided On :** Sep-18-1987

**Reported in :** ILR1987KAR3580

**Judge :** Chandrakantaraj Urs and ;Navadgi, JJ.

**Acts :** Karnataka Money Lenders Act, 1962 - Sections 11(1) and 11 (5); [Evidence Act, 1872](#) - Sections 62 and 63

**Appeal No. :** R.F.A. No. 621 of 1986

**Appellant :** Parasmal

**Respondent :** Krishnappa

**Advocate for Def. :** Kesthur N. Chandrasekhar, Adv.

**Advocate for Pet/Ap. :** S. Shaker Shetty, Adv.

**Disposition :** Appeal rejected

**Judgement :**

**Chandrakantaraj Urs, J.**

1. This is an appeal by the plaintiff who has been no suited on the ground that he did not have a valid money lenders' licence as required by the provisions of the Karnataka Money Lenders Act on the relevant date, namely, 14-6-1971, the date

on which the suit pronote was executed.

2. That he did not produce a valid licence obtained under the Karnataka Money Lenders Act, Act 12 of 1962, for the period from 1st January, 1971 to 31st December, 1971 is not in dispute. At an earlier point of time, this Court gave sufficient time to the appellant-plaintiff to produce the licence for the aforementioned period, but it turns out that the relevant books have been lost by the concerned office and not even a certified copy of such a licence is available now for production. The fact that an endorsement is issued that the original registers of licences for the years 1970 and 1971 are lost cannot lead to an inference that the appellant had a licence for the relevant period, namely, for the calendar year 1971.

3. Under Section 62 of the Evidence Act, it is provided that primary evidence means the document itself produced for the inspection of the Court. Similarly, under Section 63, secondary evidence means and includes

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the Copy, and copies compared with such copies;

(3) copies made from or compared with the original ;

(4) counter-parts of documents as against the parties who did not execute them; and

(5) oral accounts of the contents of a document given by some person who has himself seen it. The present endorsement produced before the Court indicating that the registers of licences are lost do not fall into any one of the five categories enumerated under Section 63 of the Evidence Act. Therefore, as held by this Court in State of Mysore -v.-Kainthaje Thimmanna Bhat & Ors., 1968(2) KLJ 227, in order to raise a presumption under Section 114 of the Evidence Act, certain conditions must be satisfied. In the said case, a Notification by the Chief Commissioner was required to be issued in accordance with the provisions of Section 29 of the Coorg Land Revenue Regulations. In the absence of such a

notification, the power to alter the entries by the Commissioner was limited to circumstances provided for in another Section of the same regulation. If the Notification itself was not produced, then the question of reference to such Notification in some other order would not give rise to the presumption that such a Notification existed. In that view of the matter, the endorsement cannot be secondary evidence of the existence of a valid licence issued under the provisions of the Act on the relevant date. Therefore, we must conclude that the plaintiff was unable to produce the licence which he claimed to have.

4. However, Mr. Shaker Shetty argued that Sub-section (5) of Section 11 of the Karnataka Money Lenders Act saved the suit filed before the commencement of the Act. He has drawn our attention to the expression 'this Act' occurring both in Sub-section (1) and Sub-section (5) of Section 11 and he pleads that that refers to the amendment Act of 1977 and, therefore, the suit transaction having taken place in 1971 and the suit having been filed in 1974 before the amendment Act of 1977, the provisions of Sub-section (1) of Section 11 were not attracted. We do not find much merit in the contention. The expression 'this Act' occurring in the two sub-sections above refers to Act 12 of 1962 which came into force in 1965. Therefore, the relevant date of coming into force of the Act is the date in 1965. The present suit and the transaction relating thereto being after 1965, the plaintiff appellant is hit by Sub-section (1) of Section 11.

Therefore, we do not see any merit in this appeal. We reject the same.

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