

**Divethi Varada Ayyangar Vs. Krishnasami Ayyangar**

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**SooperKanoon Citation :** [sooperkanoon.com/786405](http://sooperkanoon.com/786405)

**Court :** Chennai

**Decided On :** Oct-13-1882

**Reported in :** (1883)ILR6Mad117

**Judge :** Charles A. Turner, Kt., C.J. and ;Kindersley, J.

**Appellant :** Divethi Varada Ayyangar

**Respondent :** Krishnasami Ayyangar

**Judgement :**

1. The appellant is admittedly the owner of the property in suit, from which he sued, to eject the respondent, alleging that he had been let into possession of a portion under a lease of which the term had expired, and had encroached on the residue under colour of his lease. The evidence on which the appellant sought to establish his averment respecting the lease has been held to be fabricated.
2. The respondent pleaded, and the Courts below have found, that he obtained possession of the whole estate in virtue of a mortgage for Rs. 1,000 and a second mortgage for Rs. 50 on the 22nd of July 1865.
3. The mortgage for Rs. 1,000 was executed after the Registration Act of 1864 came into force but was not registered.
4. The respondent's Pleader contends that, although this instrument could not be produced in evidence, he is entitled to prove it by secondary evidence, namely, an

admission contained in the second mortgage-deed, and that the instrument, though it could not be given in evidence, was not altogether inoperative to create an interest in the property. The language of Act XVI of 1864, Section 13--' no instrument \* \* \* shall be received in evidence in any civil proceeding or any Court, or shall be acted on by any public officer '--is not so explicit as the language of the subsequent Act XX of 1866, in which there are added the words ' or shall affect any property comprised therein,' but its effect is not less prejudicial to the person claiming under the instrument, for the Courts are prohibited from acting on an instrument which should have been, but has not been, registered; and if the person so claiming were allowed to defeat the provision prohibiting the production of the instrument in evidence by giving secondary evidence under Section 656 of the Evidence Act, as soon as it became apparent that the instrument itself had not been registered, the secondary evidence of its existence and contents would be practically valueless for the purpose of sustaining a charge on immoveable property exceeding in value Rs. 100.

5. The defendant, then, is unable to defend his possession in virtue of the original mortgage for Rs. 1,000, but he may rely on the further charge of Rs. 50, which is proved by an instrument of which the registration was optional; and inasmuch as the appellant has not offered to pay that charge, but has come into Court on averments which are untrue, we shall affirm the decrees of the Courts below and dismiss this appeal.

6. Each party will bear his own costs of the appeal.

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