

Thama Vs. Govind Bilal

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Court : Mumbai

Decided On : Feb-14-1907

Reported in : (1907)9BOMLR401

Judge : Lawrence Jenkins, ;K.C.I.E., C.J. and ;Khareghat, J.

Appeal No. : Second Appeal No. 331 of 1906

Appellant : Thama

Respondent : Govind Bilal

Judgement :

Lawrence Jenkins, C.J.

1. The plaintiff sues as a usufructuary mortgagee to enforce his rights under a mortgage-bond.
2. He has however failed on the ground that the bond on which he sues has not been proved and accordingly his suit has been dismissed with costs.
3. It is under these circumstances that he appeals to this Court.
4. The bond itself is not forthcoming and the District Judge has held that it is lost; but he admitted a certified copy produced from the Registrar's Office.

5. His finding however is that the bond is not proved to have been executed by the defendants.

6. Admittely there is no oral evidence adduced in proof of the execution of the bond. That was for no fault of the plaintiff as the writer and the attesting witnesses are deceased and apparently there was no one whom the plaintiff could usefully call for the purpose of proving the execution of the document.

7. The learned Judge says that 'there is no satisfactory evidence of payment of consideration or of former dealings which went to make up the consideration of this bond, that in short there is no express or inferential proof in regard to the execution of the deed by the defendants.'

8. But it appears to us that the learned Judge has overlooked the provisions of Sections 58, 59 and 60 of the Registration Act.

9. It is provided by Section 60 that the registering officer shall endorse on the document a certificate containing the word 'registered' together with the number and page of the book in which the document has been copied and that such certificate shall be signed, sealed and dated by the registering officer and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act and the facts mentioned in the endorsements referred to in Section 59 have occurred as therein mentioned.

10. Section 59 provides that 'the registering officer shall affix the date and his signature to all endorsements made under Sections 52 and 58, relating to the same document and made in his presence on the same day.'

11. While Section 58 enacts that 'on every document admitted to registration other than a copy of the decree or order or a copy sent to a registering officer under Section 89' there shall be endorsed from time to time the following particulars (that is to say):- (a) the signature and addition of every person admitting the execution of the document; (b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act ; and (c) any payment of money or delivery of goods made in the presence of the registering

officer in reference to the execution of the document and any admission of receipt of consideration, in whole or in part, made in his presence, in reference to such execution.'

12. It has been contended on the part of the appellant that there are endorsements in this case which enable the plaintiff to rely on them as evidence of the execution of the document and the receipt of consideration money.

13. Cases have been cited in support of this view and in particular the case of *Nittyanund Kur v. Raj Bullubh Adyapurahit* (1876) 25 W.R. 267.

14. On the other side cases have been cited for the purpose of showing that what the plaintiff relies on has never been regarded as sufficient proof of a document and for this purpose reference has been made to *Shaikh Fyez Ali v. Omedee Singh* (1874) 21 W.R. 265 *Ram Coomar Sen v. Khoda Neway* (1880) 7 C L.R. 223 *Salimatul Fatima v. Koylashpoti Narain Singh* I L R (1890) Cal. 903, *Kristo Nath Koondoo v. T.F. Brown* I L R (1886) Cal, 176. But in none of these cases has reference been made to the provisions of the particular Registration Act which was applicable to the document then under consideration.

15. The section we have cited provides that the facts mentioned in the endorsement may be proved by those endorsements provided the provisions of Section 60 have been complied with. And there is no suggestion that there has not been a complete compliance with the provisions of that section.

16. Now on the document here there are endorsements made in accordance with the provisions of Section 58 and in those endorsements it is stated that the executants admit execution of the document and receipt of money.

17. We are unable sitting here in second appeal to say that these endorsements prove the execution and the receipt of consideration money, but we are able to say that the endorsements may be admissible for that purpose.

18. We must therefore reverse the decree of the lower Appellate Court and send back the case for re-determination in the light of these remarks.

19. At the same time we desire to make it clear that though the certificate is admissible for the purpose of proving that the facts mentioned in the endorsement occurred as therein mentioned, we do not wish to fetter the discretion of the fact, or to suggest that by reason of those endorsements the Judge is bound to hold that there has been such execution and payment as the endorsements suggest.

20. The costs of this appeal and all the costs hitherto incurred will be costs in the suit.

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