

Munna Lal Vs. Ram Dei

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Court : Allahabad

Decided On : Jul-18-1916

Reported in : (1917)ILR39All109

Judge : Henry Richards, C.J. and ;Pramada Charan Banerji, J.

Appellant : Munna Lal

Respondent : Ram Dei

Judgement :

Henry Richards, C.J. and Pramada Charan Banerji, J.

1. This appeal arises out of a suit on foot of a mortgage. The court of first instance dismissed the plaintiffs suit holding that it was not proved that the mortgage had been duly attested as required by Section 59 of the Transfer of Property Act. The first court also considered that the real mortgagee (that is to say the person who had advanced the money) was one Man Mohan Lal and not Munna Lal, the plaintiff. The lower appellate court held that the document had been duly attested and that the other question ought not to have been gone into at all. We think that the decision of the lower appellate court was correct. The plaintiff proved that the mortgage was signed by Bachchu Lal the mortgagor. It was proved that one of the attesting witnesses was dead. The other attesting witness was called and proved that the mortgage was signed by the mortgagor in his presence and that he had signed the deed as an attesting witness. It was not expressly proved that there

was another attesting witness present who saw the mortgagor sign, but it was not proved to the contrary that there was not another attesting witness. The document on the face of it appears to have been signed by the mortgagor in the presence of two attesting witnesses. The main question which has been argued in the present appeal is whether under these circumstances the mortgage can be said to have been proved. Section 59 of the Transfer of Property Act requires that a document securing Rs. 100 or upwards, in order to operate as a mortgage, should be signed and attested by the mortgagor in the presence of two witnesses. Section 68 of the Evidence Act is as follows: 'If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.' Section 69 is as follows: 'If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his hand-writing, and that the signature of the person executing the document is in the hand-writing of that person.' Reading the two sections together, we think the meaning is clear. In our opinion it was intended to lay down how a document which was by law required to be attested could be proved, and the intention was, that if the provisions of the section as to proof were complied with, the document, in the absence of evidence to the contrary, must be considered proved. The contention on behalf of the appellant is that it was necessary, not only to produce one of the attesting witnesses, but either he or some other witness should have to prove further that the document was in fact signed by the mortgagor in the presence of at least two witnesses who signed their names as such to the document. We do not think that this was the intention of the Legislature. If it was, it must have equally been the intention of the Legislature in Section 69, in the case where both the attesting witnesses were dead or persons whose attendance could not be procured. In support of the contention of the appellant the case of *Abdul Karim v. Salimun* (1899) I.L.R. 27 Calc. 190 has been referred to. It is quite clear from a perusal of this case that the question argued in the present appeal did not arise. The question there was whether a document, which had not been signed in the presence of the witnesses could operate as a mortgage or could be regarded as having been 'attested' within the

meaning of Section 69 of the Transfer of Property Act. Reliance was also placed on some of the remarks of their Lordships of the Privy Council in the case of *Casement v. Fulton* (1845) 3 Moo. I.A. 395. Their Lordships there referred to the meaning of the expression 'execution' of a will. Their Lordships' remarks refer to a special section of the Indian Succession Act which will be found set forth at page 400 of the report. In our opinion this case also has no bearing on the point discussed before us. The only other point raised is that the court of first instance held that, notwithstanding that the mortgage on the face of it was made in favour of the plaintiff, the real mortgagee was Man Mohan Lal. We think that under the circumstances of the present case, this was a question which ought not to have been gone into at all, and we agree with the view taken, in this respect, by the lower appellate court. The appeal fails and is dismissed with costs.

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