

Randhir Singh Vs. Param Hans and

Randhir Singh Vs. Param Hans and

SooperKanoon Citation : sooperkanoon.com/458732

Court : Allahabad

Decided On : May-08-1916

Reported in : (1916)ILR38All461

Judge : Walsh and; Sundar Lal, JJ.

Appellant : Randhir Singh

Respondent : Param Hans And; ors. and Sahodra

Judgement :

Sundar Lal, J.

1. This is a suit upon a deed which purports to be a deed of mortgage, dated the 17th of July, 1908. The document bears the signature and mark of Musammat Subhadra the executant. It bears the signature of one Gopal, an attesting witness, and the only other witness whose name is written by the scribe is Bansi. In the margin of the deed is given the name of another witness or a person who was expected to be an attesting witness, who is described as Bansi 'son of Bandhir, caste Gola purab, resident of Saujan, by acknowledgement of the executant.' This is written in the hand-writing of the scribe. There is no signature or mark of this witness Bansi on the deed. He is dead, and there is nothing to show that he authorized the scribe to sign his name for him. He has not himself put his signature or mark. The question is whether he is an attesting witness within the meaning of Section 59 of the Transfer of Property Act. In a recent case which

came before the Patna High Court, *Earn Bahadur v. Ajodhia Singh* (1914) 20 C.W.N. 699, Chief Justice Chamier and Mr. Justice Jwala Prasad came to the conclusion that to be an attesting witness within the meaning of Section 59 of the Transfer of Property Act, the witness must not only have seen the execution of the document but should have also subscribed as a witness, that is, he must have put his own mark or signature to it. It may be that in the present case the scribe wrote up what he found in the draft of the deed with the intention of subsequently obtaining the signature or mark of Bansi on the acknowledgement of the executant, as before the Privy Council ruling in *Shawn Patter v. Abdul Kadir Ravuthan* (1912) I.L.R. 35 Mad. 607, witnessing a document on the mere acknowledgement of the executant was regarded as sufficient by this Court. In our opinion in the absence of proof that the scribe was authorised by Bansi to sign for him as an attesting witness or to put his mark or signature to the document on his behalf as a witness, the document has not been duly attested by at least two witnesses and is not a valid mortgage according to the aforesaid Privy Council ruling. We think that the document cannot operate as a mortgage as against the transferee of the property. It creates no charge as has been recently ruled by a Full Bench of this Court in *The Collector of Mirzapur v. Bhagwan Prasad* (1913) I.L.R. 35 All. 164. The suit for sale of the property therefore fails. It is, however, a suit upon a registered document and has been brought within six years from the date of the cause of action. The plaintiff is entitled to a money decree against Musammat Subhadra. We therefore vary the decree of the court below by dismissing the suit for sale and making a money decree for the claim against Musammat Subhadra with costs.

Walsh, J.

2. It is as well to add a caution against treating an important question like this, namely, as to whether an alleged attestation or execution is genuine or not, in the way in which it has been treated by the court below. That court has assumed in favour of the document that a witness who was actually called before the court must have seen the alleged executant touch the pan of the scribe as an authority to sign for him although there is not a scintilla of evidence on the point.

3. We allow the appeal of the transferee with costs, but amend the decree of the court below by making a decree for money against Musammat Snbhadra with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com