

Balkaran Singh and ors. Vs. Mt. Dulari Bai and ors.

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Court : Allahabad

Decided On : Jun-25-1926

Reported in : AIR1927All231; 97Ind.Cas.292

Appellant : Balkaran Singh and ors.

Respondent : Mt. Dulari Bai and ors.

Judgement :

1. We are of opinion that this appeal must be allowed. Mt, Dulari, who was the only appellant before the Subordinate Judge of Mirzapur, appears to have rested her appeal upon a preliminary point, that no evidence had been produced to prove that the person signing the mortgage-deed (Bikram Singh) had authority to do so from the real executant.

2. The position of Mt. Dulari was that she had come into this suit for redemption by reason of her having bought from the auction-purchaser some portion of the mortgagee's rights. The issues which were framed by the learned Munsif, were framed in the main upon her written statement. That written statement contains no allegation whatever of any want of authority in Bikram Singh. It was on this one point alone that her appeal was allowed. We have repeatedly stated in this Court that lower appellate Courts and this Court sitting either in Letters Patent or in second appeal, ought not to entertain points which should have been alleged in the pleadings and made the subject of an issue and of argument and of decision

by the trial Court and also stated in the grounds of appeal clearly and directly. The trial Judge does not have an opportunity of giving a decision upon a point such as this and it is not fair to a lower Court to upset an appeal on a ground never submitted to it. We, therefore, allow this appeal, but we deem it necessary to call attention to the case reported in *Haji Sheikh Bodha v. Sukhram Singh* : AIR1925 All1 , where it was decided that the presumption which is allowed by Section 90 of the Evidence Act, that a document more than thirty years old was duly executed by the party by whom it purported to be executed also includes the presumption that where the signature of the executant purports to have been made by the pen of a scribe the scribe must be duly authorized to sign for the executant. In the case under appeal the authority of Bikram Singh who purported to act under the authority of Har Dayal Singh and Mt. Khatua in the execution of the document was challenged. The mortgage-deed was of the year 1876 and we are of opinion that there was a presumption, rebuttable no doubt by evidence, but nevertheless a presumption, in favour of due and proper execution of that document by a person having authority to execute it.

3. We, therefore, allow this appeal, set aside the decree of the lower appellate Court, and restore that of the Court of first instance with costs in all Courts.

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