
(1911) 07 BOM CK 0004
In the Bombay High Court
Case No : Second Appeal No. 176 of 1910

Balu Ravji Gharat

APPELLANT

Vs

Gopal Gangadhar Dhabu

RESPONDENT

Date of Decision : 19-07-1911

Acts Referred:

Transfer of Property Act, 1882 — Section 59

Citation : (1911) 13 BOMLR 944 : 12 Ind. Cas. 531

Hon'ble Judges : Rao, J; Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, Kt., C.J.—The only point argued in this appeal is whether the mortgage deed, Exhibit 32, is duly attested by two witnesses in accordance with the provisions of Section 59 of the Transfer of Property Act. The objection taken is that one of the two witnesses attesting it was Sadu, a person interested in the money advanced though not himself a party to the document. The objection that a person was not a good witness on the ground that he was interested in the transaction was based upon the rule-of evidence, which finds no place in modern English or Indian Procedure, that a person was not to be believed if he testified in a matter in which he was interested. The only trace of its survival is in the statutory provisions which debar legatees from taking legacies under wills which they attest.

2. In *Seal v. Claridge* (1881) 7 Q.B.D. 516, much relied upon by the appellants' pleader, the old case of *Swire v. Bell* (1793) 5 T.R. 371, which the obsolete rule was pushed to its farthest extent was cited to the Court but Lord Selborne in delivering judgment said: "what is the meaning of attestation apart from the Bills of Sale Act 1878 ? The word implies the presence of some person who stands by but is not a party to the transaction." He then referred to *Freshfield v. Reed* (1842) 9 M.&W. 404, and said : "it follows from that case that the party to an instrument cannot attest it." Again in *Wickham v. Marquis of Bath* (1865) 1 Eq.

17, the remarks of the Master of the Rolls imply that if the plaintiffs Dawe and Wickham had not executed the deed as parties but had only signed with the intention of attesting, the provision of the statute requiring two attesting witnesses would have been satisfied.

3. We, therefore, think that the objection taken to the attestation of Sadu who was not a party fails and we dismiss the appeal with costs.