

(1989) 11 KL CK 0035
In the High Court Of Kerala
Case No : A.S. No. 30 of 1981

C. Assiamma

APPELLANT

Vs

State Bank of Mysore and Others

RESPONDENT

Date of Decision : 20-11-1989

Acts Referred:

Limitation Act, 1963 — Section 18
Partnership Act, 1932 — Section 32(3), 45, 72
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1990 Ker 157 : (1990) 2 ILR (Ker) 43

Hon'ble Judges : V. Sivaraman Nair, J;P.K. Shamsuddin, J

Bench : Division Bench

Advocate : M.M. Abdul Azeez and K. Joseph Monipally, for the Appellant; N.N. Venkitachalam, M.A. Manhu and V.V. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

Shamsuddin, J.—2nd defendant in O.S. No. 16 of 1977 on the file of the court of Additional Sub Judge, Parur, is the appellant in this appeal.

2. The above suit was filed by the 1st respondent herein for recovery of money. 1st defendant is a partnership firm run under the name and style "M/s. Hilal Traders" and constituted under Ext. A1 partnership deed dated 1-10-1969. Its partners are defendants 2 and 3. Defendants 2 and 3 executed Ext. A2 power of attorney dated 1-10-1969 in favour of the 4th defendant to manage the affairs of the firm. The firm was carrying on business in arecanuts and hill produces.

3. 1st defendant represented by its partners defendants 2 and 3 and acting through the power of attorney holder the 4th defendant, requested plaintiff-Bank in 1969-70 to extend financial assistance to it. Defendants agreed to execute necessary documents and to give proper security. Defendants 2 and 3 also informed the Bank of the power of attorney given by them in favour of the 4th defendant authorising him to do all acts necessary for the management of the affairs of business of 1st defendant-firm including operation of all accounts

standing in the name of the firm.

4. On such representation and on an undertaking to discharge the liabilities incurred by 1st defendant-firm, plaintiff-Bank allowed the following facilities: (1) cash credit key loan facilities with a limit of Rs. 75,000/- which was later enhanced to Rs. 1,50,000/- with a sub limit of Rs. 25,000/- for Mundy type facility; (2) documentary bills purchase with a limit of Rs. 25,000/- which was also later increased to Rs. 75,000/- and (3) clean demand bills purchase with a limit of Rs. 10,000/-. The 1st defendant represented by its partners defendants 2 and 3 executed an agreement Ext. A16 dated 24-2-1971 in favour of the plaintiff for the above cash credit facilities on security of pledge of goods, hill produce, merchandise and documents of title to goods and agreed to comply with all the terms and conditions mentioned therein.

5. Thereafter, 1st defendant operated the accounts and drew various amounts. On 2-3-1971, 2nd defendant deposited with the plaintiff-Bank at Cochin, registration copies of title deeds of two items of properties which are Items 1 and 2 in the plaint schedule with intent to create an equitable mortgage for the amounts drawn on various counts.

6. In the course of their business, 1st defendant used to deposit despatch consignments of betel nuts to various places and discount demand bills issued by it against consignments mentioned in the bills and transport documents with the plaintiff-Bank and withdraw amounts in relation thereto. 1st defendant used to realise the value of goods represented in the transport bills. However, some of the bills were not honoured and some were returned unpaid. Between December, 1971 and February, 1972, nine such bills amounting to a sum of Rs. 83,593.65 were returned (including Bank charges, but excluding overdue interest). One of the bills sent to Mandvi, Bombay was returned as, upon verification of bags, they were found to contain palm chips instead of supari. Failure, of consignees to honour the respective bills were duly conveyed to defendants 1 to 4 by the plaintiff-Bank and the plaintiff-Bank demanded from them the amount drawn against such bills. Plaintiff-Bank also demanded defendants 1 to 4 to repay all outstandings in their accounts, to which defendants requested for further finance. They also expressed willingness to furnish further security. They were prepared to give further security to such advances by way of further collateral security.

7. 3rd defendant deposited on 8-4-1972 and 18-7-1972 with the plaintiff-Bank, title deeds in respect of her properties with intent to give security and created an equitable mortgage in favour of the plaintiff-Bank in respect of the properties covered by the deposited title-deeds. On 1-8-1972 the 3rd defendant also executed a power of attorney in favour of the Bank to sell or otherwise deal with items of properties comprised in the equitable mortgage stated above so as to enable the plaintiff-Bank to sell the same and reimburse themselves out of such sale proceeds so much of the amount due to them from the aforesaid amount. Accordingly, plaintiff-Bank effected sale of one item of property and realised an

amount of Rs. 20,000/- which was credited to account. Out of dishonoured bills, bills of Cannanore were released on 10-2-1972 to Central Produce Committee for Rs. 3,000/- and the said amount was credited to the bills account of 1st defendant on 21-3-1974. Likewise, an amount of Rs. 1,500/- held on margin of bills were credited to bills account on 21-3-1974 thus bringing the demand draft returned account balance to Rs. 79,093.62. On 15-11-1974, three Bombay bills, were released to Mangalore Spices Agencies for Rs. 2,500/- and the amount credited to the Bills account bringing down the balance to Rs. 76,593.65. On 9-4-1974, 529 bags of supari held under lock and key account were delivered to M/s. Sharon Traders against payment of Rs. 25,000/- on the instruction of defendants, thus bringing the liability under the key-loan account to Rs. 1,33,220.72. Similarly 55 bags of pepper-dust were released to West Coast Hill Produce Corporation against payment of Rs. 500/- which was credited to Mundy type account on 23-5-1974.

8. Defendants by their various letters of confirmation sent to plaintiff-Bank, last being dated 14-11-1975, acknowledged and confirmed the balance outstandings as on 21-3-1974 in their accounts with the plaintiff-Bank. 1st defendant firm made payments totalling a sum of Rs. 469.20 from 9-12-1975 to 21-1-1976 towards their liability. Various demands were made by the plaintiff-Bank for payment of the outstandings, but defendants did not make the payment. On the basis of the above allegations the plaintiff-Bank filed the suit praying for a decree against defendants 1 to 4 directing them to pay the plaint-claim and sale of plaint schedule property in enforcement of equitable mortgage and payment to the plaintiff of the sale proceeds in satisfaction of the principal amount and interest, or in the alternative to pass a decree against 4th defendant personally for the plaint claim and directing him to pay the same to the plaintiff-Bank.

9. In the written statement filed by 2nd defendant, she contended that she retired from the partnership-firm with effect from 1-1-1972 and an agreement of dissolution was entered into on 18-3-1972 that the fact of dissolution was intimated to the plaintiff-Bank by her by letter dated 6-4-1972 and also public notice of dissolution was given by advertisement in the "Sathyanadam" Newspaper dated 2-4-1972 that after dissolution, no question of non-existing firm acting through the power of attorney holder -- 4th defendant could arise as the partnership ceased to exist that the credit facilities allowed by the plaintiff to the firm on 24-2-1971 did not include any documentary bills purchase limit, that the clean bills purchase limit was only Rs. 15,000/- and not Rs. 20,000/- and that cash credit pledge limit was Rupees 1,50,000/- with sub limit of Rs. 25,000/- for mundi type of transaction. She further stated that after 21-7-1971, 2nd defendant had not been a party to any drawing, that she did not admit that any overdraft or bills purchase facility were availed of by the firm after 21-7-1971 that no equitable mortgage was created by her in favour of the plaintiff-Bank and that there was only an offer to deposit copies of title deeds which was rejected by the plaintiff stating that 2nd defendant should deposit the original title deeds or execute a registered mortgage deed which she did not do,

that she did not admit the correctness of the accounts stated in the plaint, that she was not liable for debits with the accounts subsequent to the dissolution of the firm, that she has not received any demand from the plaintiff-Bank, that as per the terms of dissolution, 3rd defendant undertook the discharge of all liabilities of the firm, that this was the reason why 3rd defendant had deposited the title deed mentioned in the plaint and had given the power of attorney to the plaintiff to sell the property mortgaged by her, that she had not acknowledged or confirmed the liabilities on 14-11-1975 or any other date, that any acknowledgement or confirmation by the 3rd defendant after dissolution cannot bind her, and that therefore the claim was barred by limitation against her, that the power of attorney in favour of the 4th defendant was to manage the affairs of the business of the 1st defendant-firm and could not survive after dissolution of partnership, that the officials of the plaintiff-Bank were acting in collusion with the 4th defendant to enter into transactions, not covered by the loan sanction order, that plaintiff sold 55 bags of pepper for a small value, that the plaintiff had not given by intimation to 2nd defendant regarding the dishonour of bills and that the plaintiff was not entitled to any relief against 2nd defendant.

10. 3rd defendant in her statement averred that the suit was not maintainable, that the 2nd defendant retired from the partnership on 1-1-1972, that thereafter the partnership firm was not in existence, that consequently the power of attorney given to 4th defendant also ceased to be in force after the dissolution of the firm, that the bills mentioned in paragraph 5 of the plaint were purchased by the Bank and that therefore the defendants had no liability for money due under those bills, that she had not been informed of the dishonour of the bills or the sale of goods mentioned in paragraph 5 of the plaint, that the said sale was not binding on the 3rd defendant that though documents of title were entrusted there was no intention of creating an equitable mortgage by deposit of title deeds and that the suit was liable to be dismissed.

11. 4th defendant filed a written statement or less reiterating the contentions raised by defendants 2 and 3, as to the retirement of 2nd defendant, the dissolution of the firm and the cessation of his rights under the power of attorney.

12. Defendants 5 and 6 in their written statement denied the creation of an equitable mortgage by 2nd defendant by deposit of title deeds and contended that they are bona fide purchasers for value, 5 cents in R. S. No. 113/7 without notice of the alleged mortgage and that they mortgaged the property purchased to the Syndicate Bank and availed of a loan of Rs. 65,000/- from Syndicate Bank, Kumbala Branch.

13. 7th defendant, Syndicate Bank, also filed a written statement contending that 5 cents in R. S. No. 113/7 of Koipady Village was held by them under an equitable mortgage, that no valid equitable mortgage was created over that property by 2nd defendant in favour of the plaintiff-Bank and that in any event the plaintiff was not entitled to get a decree charged on the aforesaid 5 cents.

14. On behalf of the plaintiff, P.Ws. 1 to 3 were examined and Exts. A1 to A69 were marked. On behalf of defendants, D.Ws. 1 to 4 were examined and Exts. 61 to BI9 were marked.

15. The trial court rejected the contentions of defendants and deeded the suit as prayed for. However it found that defendants 5 and 6 were bona fide purchasers for value without notice of the charge in respect of 5 cents of land and in this view of the matter, a direction was given in favour of defendants 5 and 6 to the effect that item 2 in the plaint schedule should be proceeded only in the last instance after exhausting remedies against the other items and personal relief.

16. In this appeal, Sri M. M. Abdul Azeez, learned counsel for the appellant 2nd defendant, raised the following contentions :-- (1) By deposit of copies of title deeds, the 2nd defendant has not created any valid equitable mortgage in respect of the properties covered by the said documents; (2) There was only an offer to deposit the copies of documents, but that offer having been rejected by the plaintiff-Bank, no equitable mortgage was created; (3) The 2nd defendant retired from 1st defendant-firm on 1-1-1972 and a deed of dissolution was executed on 18-3-1972 and consequently the firm ceased to exist and the power of attorney given in favour of the 4th defendant to manage the affairs of the firm came to an end therefore actions performed by the 3rd and 4th defendants thereafter representing the 1st defendant-firm are not binding on the 2nd defendant; (4) In any event the power of attorney given in favour of the 4th defendant did not authorise the 4th defendant to give any valid acknowledgements on behalf of the 1st defendant-firm or defendants 2 and 3 and therefore any actions taken by the 4th defendant purporting to be acknowledgements are not binding on the 2nd defendant and would not save limitation as against the 2nd defendant and (6) the liability of the 2nd defendant was confined to cash credit loan of Rs. 1,50,000/-.

17. We shall now deal with the first two contentions which are interconnected. It is the 2nd defendant's case that since only copies of the title deeds were deposited, no equitable mortgage was created. In this connection, learned counsel for the appellant heavily relied on Section 58(f) of the Transfer of Property Act which reads as follows:

"Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent, documents of, title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds."

It is not disputed that the deposit was made in a town specified by notification by the State Government. What is argued by learned counsel for 2nd defendant is that Clause (f) of Section 58 of the Act contemplates only deposit of documents of original title to immovable properties and not copies thereof. In this case, it is

not disputed that it was only registration copies of the documents of title of immovable property, which were deposited by 2nd defendant in the Bank, Exts. A18 to A22 are documents deposited and they relate to items 1 and 2. Ext. A19(a) is English translation of document evidenced by Ext. A19. Ext. A19 is a gift-deed executed by one C. Mohammed in favour of his wife and children. 6th Executant therein is 2nd defendant. In that document, Fschedule properties were allotted to 6th defendant. Since properties were gifted to other persons also thereunder, only one of the donees would be able to keep the original and the other donees had to be satisfied with a registration copy of the document. Ext. A20 is encumbrance certificate relating to property in Sy. No. 119/5 and 113/7 for a period of 13 years from 1st January, 1958 to March 1970. One half right in Sy. Nos. 119/5 and 113/7 belonging to the executant No. 1, the donor is included in Schedlue F to Ext. A19 document as property gifted to 2nd defendant herein. Ext. A22 is a certificate issued by the President Kutnbala Panchayat stating that Door Nos. 5/422, 425, 426, 427, 428, 429, 430 and 431 and Door Nos. 7/298, 299, 300, 301, 302 and 303 of Kumbala Panchayat are situated respectively in R.S. No. 119/5 and R.S. No. 113/7 of Koipady Village. Ext. A17 dated 1-2-3-1971 is a letter sent by 2nd defendant to the Manager, State Bank of Mysore, Cochin Branch, under which she confirmed that she had deposited with the Bank, on 24-2-1971 title deeds relating to the properties described in the said letter with the intention of creating an equitable mortgage on the said property by way of collateral security for the amounts due to the Bank from the concern under (a) cash credit pledge, (b) documentary bills purchase, and (c) clean bills purchase. Properties have been described therein as dry land with a house 9 cents in extent in R.S. No. 119/5 of Koippadi Village old Sy. No. 292-6, 7, 8 and land with house, 5 cents in extent in R.S. 113/7 of Koipadi Village. It is clear from Ext. A17 that title deeds mentioned therein were deposited on 24-2-1971 and it was by way of confirmation that the deposit was made with the intention of creating an equitable mortgage that Ext. A17 letter was written. Ext. A18 is only a rectification document executed by the donor, executant No. 1 in Ext. A19 to correct a mistake. Along with A18 and A19, Ext. A20 encumbrance certificate in respect of the above properties Exts. A21 and A21(a) tax receipts in respect of buildings in the said properties and Ext. A22 certificate of the President of the Kumbala Panchayat indicating that the buildings shown therein are situated in Sy. Nos. 119/5 were also deposited. According to learned counsel for 2nd defendant, deposit of the above documents was not sufficient to create an equitable mortgage, as the original document of title deed was not among the documents of title deposited. In support of his contention, learned counsel relied on a decision of a Division Bench of this Court in Syndicate Bank v. Modern Tile and Clay Works, 1980 Ker LT 550. In that case, Janaki Amma J. speaking for the Bench said as follows:

"By "documents of title" we mean the legal instruments which prove the right of a person in a particular property. Evidence supplied by documents may in some Cases be conclusive while in other cases it may be insufficient in proving the title

or the right claimed. When a person who is acclaimed and recognised by law as the owner of property transfers his rights by an instrument which satisfies all the requirements of law, the instrument of transfer is a title deed in respect of the property so far as the transferee is concerned. The document may amount to conclusive proof of such transfer. On the other hand a document may be of such a kind that it tends to prove such transfer of right but is not conclusive of a transfer of ownership. Thus a receipt for payment of revenue may not be conclusive proof of the ownership of the person in whose name it is issued even though the liability to pay revenue is on the owner. This is because in practice revenue is received by the concerned authorities from a person even without an enquiry whether he is the owner of the property. A revenue receipt is therefore insufficient evidence to prove title to property and is therefore not by itself a document of title.....A parity of reasoning applies in the case of a copy of deed of transfer. A copy of a deed of transfer is not ordinarily a document of title for the purposes of an equitable mortgage. It is the original deed of transfer that is the document of title. This is because the rules for the issue of copies permit the obtaining of copies by an owner even while he is in possession of the original document of title. To hold that a copy of a deed of transfer is also a document of title for purposes of Section 58(f) of the Transfer of Property Act would amount to giving facilities to the owner to misuse the provision. He may get an advance from one person by delivering the original document of title and then use the copy of the document for getting an advance from some other who may not be aware of the earlier equitable mortgage. It should be the policy of law to see that such contingencies are avoided. At the same time there may be cases where the original document is lost and there are no chances of that document being made use of for any purpose. In the absence of the original deed of transfer the next best evidence of the owner's title to the property is a certified copy of that document. A certified copy in such cases may with sufficient safeguards be received as a document of title. The essential prerequisite for the use of a certified copy as a document of title is the loss of the original deed. Unless and until it is made out that the original is lost, a certified copy of a document cannot be considered to be a document of title for the purpose of Section 58(f) of the Transfer of Property Act.

We have not understood observation of the Division Bench to mean that only in cases where the original title deed, is lost that deposit of a registration copy can validly create an equitable mortgage. The Division Bench has referred to the rulings in *Mrs. Jessie Moyle Stewart v. Bank of Upper India Ltd. Simla (1916) Ind Cas 937 : AIR 1916 Lah 39*), in which it was held that "title include copies, where the originals are not forthcoming" and also to *Surendra Mohan Rai Choudhury Vs. Mohendra Nath Banerjee and Others*, where a similar view was expressed. In the latter decision, a Division Bench of the Calcutta High Court made the following observations:

"It is sufficient if the deeds deposited bona fide relating to the property are material evidence of title and are shown to have been deposited with the

intention of creating a charge; see *Exp. Wetherell Supra* (1805) 11 Ves 398, *Lacon v. Alien* (1856) 3 Dre 579, *Robert v. Croft* (1857) 24 Bea 223 and *Re Roche's Estate*, ILR (1890) 58. As regards attested copies, there is no clear decision but it seems that an attested copy would not be enough unless, perhaps, there is proof of the original not being available : *Re. Barrow, Ex parte Broadbent* (1834) 1 MA 635."

It is to be noticed that in the *Calcutta* case, besides the certificate of probate, only a certified copy of the redemption certificate was produced and the Court held that deposit of certified copy of redemption certificate taken along with the probate clearly indicates an intention to create a security on the probate.

18. Supreme Court had occasion to consider the question of creation of equitable mortgage in *K.J. Nathan Vs. S.V. Maruty Reddy and Others*, . After referring to the observations in *V.E.R.M.A.R. Chettiyar Firm v. Ma Joo Teen* to the effect that what the terms "documents of title" and "title deeds" denote is that such a document or documents as show a prima facie or apparent title in the depositor or some interests therein, quoted with approval the following passage from the judgment (at p;435 of AIR):

"If the form of the documents of title that have been delivered to the creditor is such that from the deposit of such documents alone the Court would be entitled to conclude that the documents were deposited with the intention of creating a security for the repayment of the debt, prima facie a mortgage by deposit of title deeds would be proved; although, of course, such an inference would not be irrebuttable, and would not be drawn if the weight of the evidence as a whole told against it."

After reviewing the relevant decisions on the subject Supreme Court finally held that (at p. 436 of AIR):

"A court will have to ascertain in each case whether in substance there is a delivery of title-deeds by the debtor to the creditor. If the creditor was already in possession of the title-deeds it would be hyper-technical to insist upon the formality of the creditor delivering the title deeds to the debtor and the debtor re-delivering them to the creditor. What would be necessary in those circumstances is whether the parties agreed to treat the documents in the possession of the creditor or his agent as delivery to him for the purpose of the transaction".

A Full Bench of the Rangoon High Court considered the question in *K.L.C.T. Chidambaram Chettiyar v. Aziz Meah*, AIR 1938 Rang 149. Justice Dunkley, who delivered the main judgment observed as follows:

"In our opinion the correct statement of the law is that in order to create a valid mortgage by deposit of title deeds u/s 58(f), T.P. Act, it is not necessary that the whole, or even the most material of the documents of title to the property should be deposited, nor that the documents deposited should show a complete or good title in the deposition. It is sufficient if the deeds deposited bona fide relate to

the property or are material evidence of title or are shown to have been deposited with the intention of creating a security thereon"

Roberts C.J. agreed with the main judgment and Mya Bu J added as follows :

"The documents enumerated in my learned brother's judgment, in my opinion, show prima facie or apparent title of the mortgagors to the land covered by those documents. The grant shows that the original owner of the property was the mortgagors' vendor. The certificate of transfer shows the factum of the transfer having taken place about 14 years before the alleged mortgage. Although it is not a valid document of conveyance, yet it is useful as showing that a transfer as a matter of fact had taken place. Then there were tax tickets or revenue receipts, which showed that during the years that elapsed between the transfer and the alleged mortgage the mortgagors were paying the revenue as persons who owned the land In these circumstances in my opinion, the documents enumerated in my learned brother's judgment are sufficient to show that there was prima facie title in the mortgagors to the property mentioned in the documents."

The same question came up for consideration of a Division Bench of the Madras High Court in Angu Pillai and Others Vs. M.S.M. Kasiviswanathan Chettiar and Others, The Court relied on the Full Bench decision of the Rangoon High Court in Chidambaram Chettiar's case (supra) and held that it was not necessary that the whole, or even the most material of the documents of title to the property should be deposited; nor that the documents deposited should show a complete or good title in the depositor and it is sufficient if the deeds deposited bona fide, relate to the property or are material evidence of title or are shown to have been deposited with the intention of creating a security thereon. In an earlier decision in (Mandala) Donganna and Another Vs. Mandala Jammanna and Another, the Madras High Court has taken the same view.

19. In the instant case, registration copy of the title deed Ext. A19, tax receipts Exts A21 and A21(a) and the certificate issued by the President of Kumbala Panchayat Ext. A22 to the effect that door Nos. referred to therein are situated in Sy. Nos. 119/5, and 113/7 of Koipady Village clearly establish the title of the 2nd defendant to the properties in Sy. Nos. 119/5 and 113/7 of Koipadi Village covered by Ext. A19. The intention of the appellant to create an equitable mortgage in respect of those properties was confirmed by the 2nd defendant in Ext. A17 in clear and unambiguous terms. In our view, this is sufficient to constitute an equitable mortgage by the 2nd defendant in favour of the Bank in respect of right of 2nd defendant in properties in schedule "F" to Ext. A19. It is evident from the correspondence between the 2nd defendant and the Bank that the 2nd defendant had made it clear to the Bank that the original title deed was not available with her as properties were gifted to her mother, brothers and sisters also thereunder. It was impossible for all the donees in such circumstances to possess the original deed.

20. D.W. 1 is the husband of 2nd defendant. He stated that original document is not with 2nd defendant. Learned counsel for 2nd defendant contended that Ext. B4 dated 28-6-1971, a letter sent by the Bank to the 2nd defendant would indicate that the Bank had not accepted the creation of equitable mortgage and at best deposit of documents and Ext. A17 would only constitute an offer. Learned counsel invited our attention to the statement in Ext. B4 to the effect that "in the absence of the original document, it will not be in order for us to continue the advance on the strength of certified copy as it is an equitable mortgage and not a registered mortgage and in case there is any difficulty to produce the original document, there appears to be no alternative except to execute a registered mortgage in Bank's favour" and argued that the Bank had not accepted the offer. We are unable to uphold this contention. The insistence of the Bank to either produce the original title deed or to execute a registered mortgage deed cannot render the deposit of title deed and the subsequent confirmation of the same for the purpose of creation of an equitable mortgage valueless or convert deposit and confirmation under Ext. A17 to a mere offer. Repelling the contention that the fact that at the time the titles were deposited, there was an intention to execute a mortgage deed indicated absence of intention to create an equitable mortgage by deposit of title, Supreme Court in K.J. Nathan Vs. S.V. Maruty Reddy and Others, made the following observations (at p. 436 of AIR):

"Nor the fact that at the time the title deeds were deposited there was an intention to create mortgage deed in itself negatives or is inconsistent with, the intention to create a mortgage by deposit of title deeds to be in force till the mortgage deed was executed."

Ext. B4 at best would only establish that to safeguard its interest the plaintiff was insisting that the 2nd defendant should either deposit the original deed or execute a registered document. Until that is done, deposit of title deeds would continue as an equitable mortgage. That it is only to strengthen the security, 2nd defendant was Called upon to produce either the original deed or register mortgage deed is clear from Ext. B4. It cannot be interpreted as an indication to nullify the equitable mortgage already created by deposit.

21. The next contention raised by the counsel for the 2nd defendant is that 2nd defendant retired from partnership on 1-1-1972 and a deed of dissolution of partnership was executed on 18-3-1972. According to the counsel, partnership ceased to exist after retirement of 2nd defendant and the transactions entered into by defendants 3 and 4 subsequent to 1-1-1972 would not be binding on the 2nd defendant. Ext. B10 dated 28-11-71 is alleged to be a notice issued by the 2nd defendant to 3rd defendant intimating her intention to retire from the partnership of M/s. Hilal Traders with effect from 1-1-1972. Ext. B11 dated 29-11-71 is a reply letter sent by the 3rd defendant to the 2nd defendant informing that she may retire from the partnership by 31-12-1971. Ext. B8 is the deed of dissolution of partnership, which recites that the 2nd defendant by her

letter date 28-11-71 gave notice of her intention to retire from the 1st defendant firm with effect from 1-1-1972, that by reply dated 29-11-71, the 3rd defendant acceded to the desire of the 2nd defendant and that therefore the partnership was dissolved with effect from 1-1-1972. It is also provided therein that the 3rd defendant shall take over business as going concern with all assets and its liabilities as appearing in the books of accounts as on 31-12-1971, that she will have all the rights to collect the outstanding debts as on that date, that she will undertake to indemnify the 2nd defendant against all claims and liabilities on the firm, that the 2nd defendant is not responsible for debts or liabilities of the firm whatsoever and that the 3rd defendant was entitled to the full ownership of the assets of the firm and is responsible to discharge all the liabilities of the dissolved firm. It is the case of 2nd defendant that Ext. B9 is a copy of intimation given to the Bank of the dissolution of partnership of the 1st defendant-firm with effect from 1-1-1972 and this was personally delivered by her husband D.W. 1 to the Manager of the Bank. The plaintiff-Bank has denied the receipt of any such intimation. D.W. 1 admitted that he did not get any acknowledgement from the Manager of the Bank for delivering Ext. B4 letter. P.W. 3 the Manager of the Bank stated that no intimation of dissolution was given to him and that no such intimation was found in the file of the Bank. Admittedly the 2nd defendant and her husband D.W. 1 were permanently residing at Mangalore. We would normally expect the 2nd defendant to send such an important document as Ext. B9 by registered post. We find that Ext. A17 was sent by 2nd defendant by registered post. Ext. A17(a) is the registered cover in which Ext. A17 was sent No explanation is also forthcoming from D.W. 1 or 2nd defendant for not insisting for an acknowledgement from the Bank. There is no reference to Exts. B10 or fill in Ext. B9, though there is reference to Exts. B10 and B11 in Ext. B8. There is no case for defendants 3 and 4 that they had intimated the Bank of the retirement of 2nd defendant with effect from 1-1-1972, though in their written statements they would oblige the 2nd defendant by averring that the 2nd defendant retired from the firm with effect from 1-1-1972. Ext. A23 dated 8-7-1972 is a letter sent by 3rd defendant to the plaintiff. No reference has been made to the dissolution of partnership therein and she has described herself in that letter as a partner of M/s. Hilal Traders. That letter was sent in connection with the creation of equitable mortgage for the concern M/s. Hilal Traders under cash credit pledge lock and key, cash credit pledge mudy type, clean bills-cheques purchase and demand documentary bills purchase accounts. Ext. A24 is a document executed by the 3rd defendant acknowledging the balance outstanding from the firm under different accounts (cash credit pledge, lock and key account Rs. 1,25,534.17, cash credit pledge, mudy type account Rs. 25,765.11 and demand bills purchase, documentary account Rs. 83,593.65) and giving power of attorney to the Bank to sell the properties described in the schedule therein belonging to 3rd defendant after giving publicity for the highest purchase by, the intending purchasers or by negotiating private sale and to appropriate the proceeds towards discharging the debts mentioned above. It is significant to note that all these documents proceed on the basis that she was one of the partners and that

the partnership continued to exist.

22. Learned counsel for 2nd defendant raised a contention that it is because the 3rd defendant undertook to discharge the debts that the 3rd defendant created equitable mortgage by deposit of title deeds. We are unable to accept this contention as there is absolutely no reference in any of the above documents to dissolution of partnership. Ext. A25 is a letter sent by 3rd defendant to the Manager of the plaintiff-Bank confirming the deposit of her title deed relating to property with an extent of 75 cents in Sy. No. 110 of Vengola Village in Perumbavoor Sub-District by way of collateral security for the amounts due from M/s. Hilal Traders under the credit facilities of (a) cash credit pledge lock and key with a limit of Rs. 1,25,000/- (b) cash credit pledge mundry type with limit of Rs. 25,000/-,(c) demand documentary bills purchase with limit of Rs. 90,000/- and (d) clean bills cheques purchase with limit of Rs. 15,000/-. Ext. A.25(a) is the registered cover in which Ext. A25 letter of confirmation was sent. Ext. A26 dated 8-6-1972 is the title deed in favour of 3rd defendant, Ext. A27 is the title deed of the assignor of the 3rd defendant land Ext. A28 is the receipt issued by the assignor of the 3rd defendant for receipt of the consideration reserved under Ext. A26 Ext. A29 is the document executed by the 3rd defendant empowering the Bank to sell 75 cents of land in Sy. No. 110/1-16/3 of Vengola Village in Kunnathunadu Taluk, which belonged to the 3rd defendant and to appropriate sale amounts towards the debts outstanding to the Bank from M/s. Hilal Traders. Ext. A35 dated 21-3-1972 is a letter written three days after execution of deed of dissolution. This document also proceeds on the basis that the partnership continue. In none of these documents anything is mentioned about the dissolution of the partnership. For the reasons stated above, we agree with the lower court, that there is no evidence of any intimation to the plaintiff-Bank of the alleged retirement of 2nd defendant or the dissolution of partnership on 1-1-1972.

23. In this connection, reference has also to be made to Section 32(3) of the Partnership Act. It lays down that:

"Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement."

Section 45(1) provides that notwithstanding the dissolution of a firm the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution until public notice is given of the dissolution. The mode of giving notice has been laid down in Section 72 of the Partnership Act which says that a public notice has to be given by intimation to the Registrar of Firms u/s 63 and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business. It is not contended that notice was given to the Registrar of Firms of

the dissolution of retirement or a publication was effected in the Official, Gazette. What is relied on to prove the public notice is the publication in the "Sathyanadam", which is a Sunday Edition of Malayalam Daily, "Kerala Times", as evidenced by Ext. B12. That alone would not satisfy the requirement of public notice is clear from Section 72 of the Partnership Act. Further D.W. 1 admitted that he is not a reader of "Kerala Times of Sathyanadam". It is difficult to attribute knowledge of dissolution to the Bank from publication Sathyanadam. In any event, as there is no publication in the Official Gazette, or proof of notice to the Registrar, there is no public notice as contemplated in Section 45(1) and 72 of the Partnership Act. In the circumstances the retirement of the 2nd defendant, even if it be true, cannot affect the rights of the plaintiff-Bank who is a third party in view of Section 32(3) of the Partnership Act.

24. Another contention raised by the learned counsel for the appellant is that the power of attorney executed in favour of the 4th defendant stood revoked on the retirement of the 2nd defendant and consequent dissolution of the firm. We have already found that there was neither any valid retirement nor dissolution of the firm which had the effect of affecting the rights of a third party with whom the firm had dealings. Nor has the 2nd defendant or the 3rd defendant got a case that Ext. A2 power of attorney in favour of the 4th defendant was revoked by the 2nd or 3rd defendant by giving notice to the 4th defendant or by executing a deed of revocation. Admittedly, no notice was given to the plaintiff-Bank intimating any revocation of Ext. A2. In this connection reference has to be made to Section 208 of the Contract Act. It lays down that:--

"The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them."

In view of the above provisions in Section 208 of the Contract Act, termination of authority cannot take effect against 4th defendant or the plaintiff-Bank. Therefore all actions taken by the 4th defendant by virtue of power conferred by power of attorney in his favour are binding on defendants 1 to 3.

25. The next contention raised by the learned counsel for the 2nd defendant is that the suit was barred by limitation as against 2nd defendant. We have already found that an equitable mortgage was created by 2nd defendant by deposit of the title deeds on 24-2-1971 and that creation of equitable mortgage was by deposit of title as aforesaid was confirmed by the 2nd defendant as per Ext. A17 letter. This mortgage was created as collateral security in respect of outstanding amounts in cash credit pledge, documentary bills purchase and clean bills purchase accounts. Suit was filed on 18-1-1977 and therefore there is no bar of limitation. Plaintiff also relied on Exts. A8 to A15 to contend that there were acknowledgements. Ext. A8 is the receipt for payment of Rs. 150/- on 9-12-1975 and Ext. A9 is the receipt for payment of another amount of Rs. 100/- on the same day. Ext. A10 is a document signed by 4th defendant on behalf of 1st defendant-firm, confirming that the balance amount due to plaintiff-Bank in cash

credit pledge mundry type account as on 31-12-1972 was Rupees 28,178.51. Ext. A11 is a similar document executed by the 4th defendant confirming that the balance due to the Bank in cash credit pledge lock and key account as on 31-12-1972 was Rs. 1,36, 830,05. Ext. A12 is another document executed by the 4th defendant confirming that the balance due to the Bank in (DBI-Doc) DDR account as on 31-12-1972 was Rs. 83,593,65. Ext. A13 is a similar document executed by the 4th defendant confirming that the balance due to the Bank in cash credit mundry type account as on 21-3-1974 was Rs. 10,822.31. Ext. A14 is also a document signed by 4th defendant confirming that the balance due to the Bank in cash credit pledge (lock and key) account as on 21-3-1974 was Rs. 1,58,220.72. Ext. A15 is a similar document executed by 4th defendant confirming that the balance due to the Bank in DDR Account of M/s. Hilal Traders as on 21-3-1974 was Rs. 83,593.65. We have already held that as far as the Bank is concerned, the authority of the 4th defendant continued to operate in view of Section 208 of the Contract. We have also found that the alleged retirement of 2nd defendant or dissolution of the firm, would not affect the rights of the Bank as there was no valid public notice Further all advances were made by the Bank to the firm before Ext. A8 which could be seen from Ext. A6, and no debt was incurred by the firm after 18-3-1972. After that date, the 4th defendant had given only certain instructions to the Bank as to how the goods covered by the 9 bills mentioned in the plaint were to be dealt with.

26. Learned counsel for the 2nd defendant contended that the 4th defendant has no authority to make acknowledgement of the debts. Reliance was placed on Section 18 of the Limitation Act which reads as follows:

"Where before the: expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or rights has been made in writing signed by the party against whom such property or rights is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed."

27. The word "signed" has been defined in explanation (b) of Section 18 of the Act as meaning signed either personally or by an agent duly authorised in this behalf. It is the contention of learned counsel that this means that there should be specific authorisation for the purpose of acknowledging the debts to bring the case within the ambit of explanation (b) of Section 18 of Limitation Act. According to him the general authorisation contained in Ext. A2 would not suffice. Clause 6 of Ext. A2 authorises the 4th defendant to sign bills or any other document, and Clause 3 of Ext. A2 empowers the 4th defendant to state, settle, adjust, compound, compromise or submit to arbitration all actions, suits accounts, claims and disputes between the firm M./s. Hilal Traders and any other person or persons companies or firms. In our view these clauses are sufficient to clothe the 4th defendant with authority to make acknowledgments in respect of debts due to the Bank from the Firm. We do not find any justification to hold that

powers conferred on 4th defendant who is the Manager of the Firm in so wide terms as contained in Clauses 3 and 6 of Ext. A2 would not attract Explanation (b) to Section 18 or to accept the wide proposition advanced by learned counsel that in order to attract the explanation a special power of attorney authorising the 4th defendant for the specific purpose of acknowledging the debts is necessary. Such a course would only do violence to the language of Explanation contained in Section 18 of the Limitation Act.

28. In *Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd.*, , the Supreme Court had to consider the question whether Ext. A1 in that case a letter of acknowledgement given by the Corporation's secretary who also combined the position of Chief Accountant was an acknowledgement signed by an agent within the meaning of Explanation (b) of Section 18 of the Limitation Act. Supreme Court answered the question in the affirmative. This apart, in view of the equitable mortgage created by the 2nd defendant by deposit of title deeds as evidenced by Ext. A17 a suit filed within 12 years from that date, cannot be held to be barred by limitation.

29. It was next contended by learned counsel for the appellant that the 2nd defendant had liability only in respect of cash credit loan of Rs. 1,50,000/ -. This contention also is without any force. Ext. A17 shows that the equitable mortgage was created as a collateral security not only in regard to cash credit pledge, but in regard to other accounts as well ext. A17 and equitable mortgage came into existence after the enhanced facilities were given. Ext. A4 is the letter by the 4th defendant to enhance the key loan facilities to Rs. 1,00,000/- open loan facilities to Rupees 50,000/- and D.D. facilities to Rs. 25,000/-. Ext. A5 is a letter sent by the 4th defendant requesting to enhance facilities to Rupees 1,50,000/-. Ext. A63 dated 24-4-1971 is a letter sent by the Bank granting enhanced facilities. Ext. A17 was sent in March, 1971 creating equitable mortgage on properties of the 2nd defendant in respect of the cash credit pledge, documentary bills purchase and clean bills purchase. In view of this, it is not open to the 2nd defendant to contend that he is not liable for enhanced facilities.

30. It was finally contended by learned counsel for 2nd defendant that the accounts are not correct, that the claim is excessive, that the Bank did not make proper sale in respect of goods covered by bills purchase account, that 55 bags of pepper dust was released by the Bank for a paltry sum of Rs. 500/- and that thereby the Bank had caused avoidable loss to her. Counsel has not pointed out any mistakes in any particular entries in the account kept by the Bank. Ext. A6 is the certified copy of the account, which is consistent with Exts.A10 to A12 confirmation letters given by the 4th defendant. In the circumstances, it is not open to defendants 2 to 4 to contend that the accounts as reflected in Ext. A6 are not correct.

31. We will now deal with the bills purchase account. Among the 9 bills, which were returned, items 3 and 5 relate to the goods sent to Cuttack. Nothing was realised in respect of these bills which remained in the godown of the carrier.

Exts. A61 and A62 are the demand drafts drawn by 4th defendant on behalf of the Firm in respect of the two Cuttack bills. Exts. A30 are copies of receipts given by the carrier to the consignor. The plaintiff Bank sent the bills together with Exts. A30 and A32 to the State Bank of India, Cuttack Branch but the receipts and bills were returned as per Ext. A34 letter dated 5-12-1973 as the drawee did not turn up. Items 1, 2 and 4 bills mentioned in paragraph 9 relate to goods sent to Cannanore. Exts. A48, A49 and A57 are demand drafts issued by 4th defendant in respect of those bills. Those bills were sent for collection by the plaintiff Bank to the State Bank of India, Cannanore. But as per Exts. A50 and A58, they were returned unrealised. The other bills relate to goods sent to Bombay. Exts. A51, A53, A55 and A59 are demand drafts in respect of goods covered by the bills sent to Bombay. These bills were also returned by Mandvi Branch of the State Bank of India as per Exts. A52, A56 and A60 letters. Thereafter there was correspondence between the plaintiff-Bank and 4th defendant and Exts. A35, A37, A38, A41, A44 and A45 are some of the important letters sent by 4th defendant instructing as to how these goods should be dealt with. According to the directions contained in these letters the Bank released the Cannanore bills to the Central Produce Committee for Rs. 3,000/- and Bombay bills to Mangalore Spices Agencies for Rs.2,500/-. In Exts. A41 and A47, 4th defendant expressed his inability to make arrangements for the disposal of goods covered by Cuttack bills. These documents would clearly show that the plaintiff-Bank had only acted according to instructions given by 4th defendant. As regards the release of 55 bags of pepper dust also, the plaintiff cannot be blamed and it was as per the instructions contained in Ext. A36 of 4th defendant that the Bank released the pepper for Rs. 500/- to M/s. :Westcost Hill Produce Corporation, Similarly, 529 bags of supari held under the loan and key account was delivered to M/s. Sharon Traders against payment of Rupees 25,000/- as per Ext. A39 requisition made by the 4th defendant. Plaintiff had done all that was possible to realise the maximum price for these goods. Though collusion was alleged between the Officers of the Bank and the 4th defendant, D.W. 1 husband of 2nd defendant admitted that he had no personal knowledge about the relation between 4th defendant and the Officers of the Bank. Foregoing discussion would show that there is no merit in the various contentions raised by the learned counsel for the 2nd defendant/appellant. We therefore dismiss the appeal with costs of the plaintiff 1st respondent.