

(1919) 11 MAD CK 0021
In the Madras High Court

Chekkur Puthalath Poothak Etathil Kunhi Sankaran Nambiar	APPELLANT
Vs	
Ponniath Akathoothu Narain Thirumumpu and Others	RESPONDENT

Date of Decision : 19-11-1919

Acts Referred:

Citation : (1920) ILR (Mad) 405 : (1920) 38 MLJ 251

Judgement

1. This is a suit on a mortgage. The first defendant, the owner of the property executed Exhibit A to the third defendant in 1908. The third defendant assigned it to the plaintiff. The defence is that the mortgage is invalid for want of proper execution, proper attestation and proper registration.

2. The first item of the plaint property was the only property originally intended to be mortgaged. The deed was engrossed and signed by the first defendant and attested by two witnesses with this intention. Subsequently the second item of property was included. The finding is that this was done with the consent and knowledge of the mortgagor and in the presence of the attesting witnesses.

3. The lower Courts have expressed themselves somewhat loosely in giving findings upon this part of the case. Both the Courts are agreed that there was no fraud either against the registration laws or against any of the parties to the contract, in making this interpolation. It is also clear from what both the lower Courts say that the object of adding the second item was not so much to give an additional security to the mortgagee as it was to enable the mortgagor to get the document registered near the place where he was living. The evidence makes it clear that it was to serve the convenience of both the parties to the transaction that this item was included,

because the aim was to be taken as laying to avoid delay in registering the deed. On these facts, we feel no hesitation in holding that the deed does not offend the rule enunciated in *Harendra Lal Roy*

Ghowdhuri v. Hari Das Debi I.L.R.(1914) C. 972 if it is otherwise valid. The object of the interpolation was not to effect a fraud upon the

registration law. Whatever might have been the original intention of the parties, they deliberately included the second item in the mortgage.

4. The contentions raised by Mr. Madhavan Nair were these. The document was not executed by the mortgagor with reference to the second

item. It was not attested by the witnesses with respect to this item. Therefore, although the document-might be valid so far as the execution and

attestation of the first item of property are concerned, as the document could not have been validly registered if the second item had not been

included, the whole document is inoperative.

5. There is no authority directly bearing on this question. There is a decision in *David Yule v. Ram Khelawan Sahai* 6 C.W.N. 329 which, on the

face of it, supports the respondent. In that case a document was signed by the executant before the body of the document was written up. The

learned judges held that it was not open to the executant to dispute its validity. As Mr. Madhavan Nair pointed out, it was an obiter dictum; and

we doubt very much, whether this decision is right.

6. In *Burgis v. Constantine* (1908) 2 K.B. 484 it was held that where a material part of the document was left blank the document should not be

regarded as valid. The principle is thus summarised in 10 Halsbury para 687. "A deed must be written before it is sealed. If, therefore, a man

seal and deliver a writing which is left blank in some material part, that is void for uncertainty and is not his deed, and it cannot be made his deed

merely by filling up the blanks after his execution of it." Therefore we are not prepared to rest our decision upon the obiter dictum contained in

David Yule v. Ram Khelawan Sahai 6 C.W.N. 329. But it seems to us that the present case comes within the principle of *Hall v. Handless* (1827)

4 Bin 123. There were blanks in that case which were subsequently filled up and some of the interpolations were of material character. In that case

it was held that, where, after the execution of the deed by some of the parties, the deed was altered with the consent and privity of the promisee,

the document is not vitiated. The alteration in that case was the deleting of the property which was included by mistake. Such an omission was held

not to affect the validity of the deed. In *Doe dem Lewis v. Bingham* (1821) 4 B. & Ald. 672 : 106 E.R. 1082 where there were material alterations

by filling up the blanks left in the body of the document after it was executed, the learned Judges held, that the document was enforceable. Bayley

J. said ""I am of opinion that any alteration made in the progress of the Transaction (the italics are ours) still leaves the deed valid as to the parties

previously executing it, provided such alteration has not affected the situation in which they stood."" Abbott C.J. Holroyd J. and Best J. agreed with

this view. In the language of Bayley J. it can be said of the present case that the alteration was made in the progress of the transaction, to give

validity to the document which had not yet been registered; before the document was taken to registration, with the consent of all the parties this

interpolation was made. Applying the principle in *Doe dem Lewis v. Bingham* (1821) 4 B.&Ald. 672 : 106 E.R. 1082 we are of opinion that the

interpolation does not affect the validity of the document.

7. In *Tupper v. Foulkes* (1861) 9 C.B.N.S. 797 : 142 E.R. 314 the defendant had authorised his son to execute the document. After its execution

he accepted it as his own. Subsequently in an action on the bond, he pleaded non est factum. Earle C.J. held, "" I am clearly of opinion that the

admission of the defendant is always evidence to prove anything that he intended to admit."" William J. and Keating J. agreed with the Chief Justice.

Keating J. expressed himself very strongly on the point. He said, ""First, there was an admission by the defendant that he had given authority to his

son to execute the deed in his name.* * * The deed being present and seen by the defendant, he deliberately adopts the act of his son. But the

evidence does not stop there. It was proved that the defendant afterwards took an active part in directing the proceedings under this very deed. It

was clear from his statements and his acts that he intended to acknowledge the deed as his deed. That amounts to a delivery in law, and is

evidence upon non est factum

8. In the present case, it is in evidence that the defendant himself inserted in the body of the deed the words which he complains to have vitiated it.

He subsequently had it registered. This is therefore an a foritori case.

9. We may also refer to the case of *Adsetts v. Hives* (1863) 33 Baven 52 : 55 E.R. 286. No doubt there it was held that an immaterial alteration

which was intended to supply formal defects did not vitiate the deed. We cite this case because Sir John Romilly refers with approval to *Doe dem*

Lewis v. Bingham (1821) 4 B.&Ald. 672.

10. On the authority of the above cases, we are of opinion that by the fact of himself inserting the interpolation and presenting the altered document

for registration, the defendant must be deemed to have executed the document not only with reference to the first item but also with reference to

the second item.

11. The second question is whether it can be said that there was proper attestation in respect of the document as altered. The interpolation is found

to have been made in the presence of the attesting witnesses. Reliance was placed by Mr. Madhavan Nair upon *Shamu Pattar v. Abdul Kadir*

Rowthen I.L.R.(1912) Mad. 607 for the proposition that unless the attesting witnesses see to execution by the party, there can be no valid

attestation. The difficulty felt in *Shamu Pattar v. Abdul Kadir Rowthen* I.L.R. (1912) Mad. 607 does not arise in this case. The attesting witnesses

were present when the mortgagor put his signature to the document and they were also present when the mortgagor made the interpolation. They

must therefore be deemed to have agreed to regard their attestation as applicable not only to the first item of the property comprised in the

document but also to the second item as well. This is not a case where the attestors did not see the signature of the executant, but only relied on his

acknowledgment. The only other authority which need be referred to is *Muniappa Chettiar v. Vellachami Mannadi* (1918) M.W.N. 858 In that

case two persons intended to execute a document. One alone executed it and then the attestor attested. Then the document was taken to the

second executant who signed it. It was held that the attestation would not cover the execution by the second party. This conclusion follows directly

from *Shamu Pattar v. Abdul Kadir Rowthen* I.L.R.(1912) Mad. 607 The attestors did not see the second executant sign the document and

therefore, so far as that party was concerned, there was no valid attestation.

12. We may briefly notice the last argument addressed by the Learned Counsel for the appellant regarding registration. There are two decisions,

one of the Allahabad High Court in Pahladi Lal v. Mussammai Laraiti I.L.R.(1918) All. 22 and the other of the Patna High Court in Ramdei v.

Chunderballi Bibi 44 Ind.Cas. 390 cited by Mr. Menon in support of his contention. In both the cases where property over which the mortgagor

had no power of disposition was included with a view to facilitate registration in a particular sub-district, it was held that there was no fraud upon

the Registration Law and that Harendra Lal Roy Choudhri v. Hari Das Debt I.L.R. (1914) Cal. 972 did not apply.

13. If we did not hold that there was valid execution and attestation, we would have felt considerable doubts on this part of the case. Where a

party who has no disposing power over a property includes it for the purpose of getting the document registered within a particular jurisdiction, as

at present advised, we are not satisfied that there would not be a fraud upon the registration law within the language of the Judicial Committee in

Harendra Lal Boy Choudhri v. Hari Das Debi I.L.R.(1914) Cal. 972 but, as we have held that there was valid execution and attestation, we need

not pursue this question any further. In our opinion, the decision of the Courts below is right and this second appeal must be dismissed with costs.