

(1919) 11 MAD CK 0014
In the Madras High Court

Chekkur Puthalath Pothak Etathil Kunhi Sankaran Nambiar	APPELLANT
Vs	
Ponniath Akathoothu Narayanan Thirumumpu and Others	RESPONDENT

Date of Decision : 19-11-1919

Acts Referred:

Citation : 55 Ind. Cas. 86 : (1920) 11 LW 192

Hon'ble Judges : Seshagiri Aiyar, J; Moore, J

Bench : Division Bench

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 3rd

defendant assigned it to plaintiff. The defence is that the mortgage is invalid for want of proper execution, proper attestation and proper

registration.

2. The 1st item of the plaint property was the only property originally intended to be mortgaged. The deed was engrossed and signed by the 1st

defendant and attested by two witnesses with this intention. Subsequently the 2nd item of the property was included. The finding is that this was

done with the consent and knowledge of the mortgagor and 1 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 2nd 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 avoid delay in registering the deed. On these facts, we feel no hesitation in holding that the deed does not offend against the rule enunciated in *Harendra Lal Roy Chowdhury v. Srimati Hari Dasi* 23 Ind. Cas. 637 : 41 C.p 972 : 27 M.L.J. 80 : 12 A.L.J. 774 : 16 M.L.T. 6 : (1914) M.W.N. 462 : I.L.W. 1050 : 18 C.W.N. 817 : 19 C.L.J. 484 : 16 Bom. L.R. 400 : 41 I.A. 110 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 2nd 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 2nd item. It was not attested by the witnesses with respect to that 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 in the Sub-District where it was registered if the 2nd item had not been included, the whole document is inoperative.

5. There is no authority directly bearing on this question. There is a decision, *David Yule v. Bam Khelwan Sahai* 46. Ind. Cas. 200 : 41 A.p 22 : 16 A.L.J. 871 which, on the face of it, supports the respondents. 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 : 77 L.J.K.B. 1045 : 99 L.T. 490 : 13 Com. Cas. 299 : 24 T.L.R. 682 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, paragraph 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 Kkeiwan Sahai 6 C.W.N. 329. But it seems to us that the present case comes within the principle of Hall v. Chaniless (1827) 4 Bing 123 : 12 Moore 316 : 130 E.R. 714. There were blanks in that case which were subsequently filled up and some of the interpolations were of a 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 d Lewis v. Bingham (1821) 4 B. & Ald. 672 : 23 R.R. 438 : 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."" Abbot, 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 for registration, With the consent of all the parties this interpolation was made. Applying the principle in Doe d Lewis v. Bingham (1821) 4 B. & Ald. 672 : 23 R.R. 438 : 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.) 767 : 80 L.J.C.P. 204 : 7 Jur. (N.S.) 709 : 3 L.T. 741 : 9 W.R. 849 : 142 E.R. 314 : 127 R.R.

889. 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 everything that he intended to admit."" Williams, 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 *won 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 fortiori* case.

9. We may also refer to the case of *Adsetts v. Hivts* (1863) 83 Beav. 62 : 2 N.R. 474 : 9 Jun. (N.S.) 1063 : 9 L.T. 110 : 11 W. B. 1098 : 55

E.R. 286 : 140 R.R. 14. No doubt there it was held that an immaterial alteration, which is intended to supply formal defects, did not vitiate the

deed. We cite this case because Sir John Romilly refers with approval to *Dos d. Lewis v. Bingham* (1821) 4 B. & Ald. 672 : 23 R.R. 438 : 106

E.R. 1082.

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 1st item, but also with reference to the

2nd item.

11. The 2nd 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 Fatter v. Abdul Kadir*

Rowthan 16 Ind. Cas. 250 : 35 M.P 607 : 10 A.L.J. 259 : 14 Bom. L.R. 1034 : 16 C.L.J. 596 : 39 I.A. 218 for the proposition that unless the

attesting witnesses see the execution by the party, there can be no valid attestation. The difficulty felt in *Shamu Fatter v. Abdul Kadir* *Rowthan* 16

Ind. Cas. 250 : (1912) M.W.N. 938 : 10 A.L.J. 259 : 14 Bom. L.R. 1034 : 16 C.L.J. 596 : 39 I.A. 218 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 2nd 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 he referred to is Muniapra Chettiar v. Vellachamy Mannadi 49 Ind. Cas.

278 : (1918) M.W.N. 853 : 25 M.L. 19 : 9 L.W. 5. In that case two persons intended to execute a document. One alone executed it and then the

attestors attested. Then the document was taken to the 2nd executant who signed it. It was held that the attestation would not cover the execution

by the 2nd party. This conclusion follows directly from Shamu Patter v. Abdul Kadir Routhan 16 Ind. Cas. 250 : 35 M. 607 : 16 C.W.N. 1009 :

23 M.L.J. 32 : 12 M.L.T. 335 : (1912) M.W.N. 938 : 10 A.L.J. 259 : 14 Bom. L.R. 1034 : 16 C.L.J. 596 : 39 I.A. 218 The attestors did not

see the 2nd 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, Pahladi Lal v. Laraiti 46. Ind. Cas. 200 : 41 A. 22 : 16 A.L.J. 871 and the other of the Patna High Court,

Ramdei v. Chandra Bali Bibi 44 Ind. Cas. 399 : 4 P.L.W. 237 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 Chowdhury v. Stimati Hari Dasi Debi 23 Ind. Cas. 637 : 41 C. 972 : 27

M.L.J. 80 : 12 A.L.J. 774 : 16 M.L.T. 6 : (1914) M.W.N. 462 : I.L.W. 1050 : 18 C.W.N. 817 : 19 C.L.J. 484 : 16 Bom. L.R. 400 : 41 I.A.

110 did not apply.

13. Even 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 Roy Chowdhury v. Srimati Hari Dasi Debi 23 Ind. Cas. 637 : 41 C. 972 : 27 M.L.J. 80 : 12 A.L.J. 774 : 16 M.L.T. 6 : (1914)

M.W.N. 462 : I.L.W. 1050 : 18 C.W.N. 817 : 19 C.L.J. 484 : 16 Bom. L.R. 400 :

41 I.A. 110 but as we have held that there was valid execution and attestation, we need not pursue this question any farther. In our opinion the decision of the Courts below is right and this second appeal must be dismissed with costs.