
(1999) 06 MAD CK 0018
In the Madras High Court

Dr. Kumari Shantha Arogyadoss (deceased) and Others APPELLANT
Vs
Smt. G.C. Kamala Sri Hari and Others RESPONDENT

Date of Decision : 30-06-1999

Acts Referred:

Evidence Act, 1872 — Section 114
Registration Act, 1908 — Section 23

Citation : (1999) 3 MLJ 577

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Defendants 2 to 5 in O.S.No. 5097 of 1985 on the file of VIII Assistant Judge, City Civil Court, Madras are the

appellants before this Court.

2. The material facts necessary for disposal of this appeal could be summarised thus: One R.N. Danapal Mudaliar was the owner of the plaint

schedule property. He left his widow Philomina Ammal, Maria Soosai, R.N.K. Sundaram, Papoo Ammal and Abirami Soosai, as his legal heirs.

Defendants 1 to 5 in the suit are the children of Papoo Ammal, one of the daughter of Danapal Mudaliar. Plaintiffs and 8th defendant are the

children of R.N.K. Sundaram, one of the sons of deceased acquirer.

3. It is the case of plaintiff that late Danapal Mudaliar died intestate. On the death of his widow Philomina Ammal, entire plaint property devolved

on their two daughters and two sons in equal shares, plaintiffs haying entitled to 1/4th share in the plaint property. It is their further case that

documents have been created by defendants as if their late father R.N.K. Sundaram released his right over the property in favour of first defendant

in the case. Though the document is dated 12.7.19 48, the same seems to be registered only on 14.7.1954, that means after six years and

consequently, it violates the mandatory provisions of Section 23 of Indian Registration Act.

4. It is also alleged that on the basis of Ex.B-1, defendants are not getting any exclusive right nor the rights of their late father is taken away.

Notices were issued to defendants to effect partition by metes and bounds without taking into consideration the so called release deed dated

12.7.1948. Since they have refused to do so, this suit was filed claiming partition of 1.4th share in the plaint schedule property.

5. Eighth defendant, who is one of the sons of R.N.K. Sundaram filed written statement supporting the claim of plaintiffs.

6. Other defendants disputed the claim of plaintiffs. All the defendants admit the relationship of plaintiff with Danapal Mudaliar. It is their case that

on 12.7.1954. all the then legal heirs of late Danapal Mudaliar executed a release deed in favour of first defendant and first defendant alone is the

exclusive owner of entire property. They also pleaded that during the year 1948, a draft was prepared for execution of release deed and the same

was taken by late R.N.K. Sundaram. Though he did not sign the draft, it was approved by him. During that time, he was employed at Coimbatore.

Since property is situated at Madras, registration has to be effected only at Madras. Therefore, there was some delay in registering the document.

7. It is also said that only when first defendants father also died in 1953, it was decided to have the deed registered. All the legal heirs of late

Danapal Mudaliar assembled in the plaint property and sub-registrar was asked to register the document. The reason why release deed was

executed was also stated in the written statement. Original acquirer had executed a will wherein it was provided that immovable properties go to

their sons. One of the sons filed a suit for partition as O.S.No. 64 of 1944. Each of the sons were given properties worth Rs. 8,200. But when the

plaint property was valued, it came to Rs. 12,000. But it was decided that these properties must be taken by late Danapal Mudaliar on condition

that he will pay the excess amount to other legal heirs. One of the legal heirs were not amenable to the suggestion and she objected to the valuation

made by the Commissioner in that case fixing value at Rs. 12,000. Danapal Mudaliar had to pursue those legal heirs to withdraw the objection and

for the said purpose he paid Rs. 3,000 more for the same. Therefore, he had to pay excess of Rs. 6,000. Danapal Mudaliar was not in a position to pay the amount and that amount was paid by first defendant's mother through her husband who was then an officer in Madras Port Trust. At the time when the amount was paid, it was agreed that property will be assigned in favour of Pappu Ammal, mother of first defendant. It was under those circumstances, the release deed was prepared in the year 1948. But unfortunately, Danapal Mudaliar died and the document could not be executed. Since all the other legal heirs were aware of the real facts, they all agreed to release their rights in favour of Pappu Ammal. It is said that under those circumstances, Ex.B-1 was happened to be executed. Plaintiffs' father also released his right on receipt of consideration and he did not have any right over the property at the time of his death and plaintiffs have not inherited any property from him.

8. Even regarding share a contention was raised by defendants. According to them, plaintiff is not entitled to 1/4th share. As per the Indian Succession Act, when Danapal Mudaliar died, his widow is entitled to 1/3rd share and the remaining 2/3rd share will have to be divided between four children. If that be so, plaintiffs' father will be entitled to 1/6th share in the entire property. It is also said that even as per the present plaint, plaintiffs did not dispute regarding execution of release deed. They prayed for dismissal of the suit.

9. Lower court after suggesting issues, took oral and documentary evidence. P. W. 1 is third plaintiff and through him Exs.A-1 to A-14 were marked. On the side of appellants, Exs.B-1 to B-5 were marked and D.Ws.1 to 3 were examined. Seventh defendant, who is one of the attester to Ex.B-1 was examined as D.W. 1. First defendant was examined as D.W.2 and second defendant was examined as D. W.3. Lower court took the view that Ex.B-1 purports to have been executed on 12.7.1948 and the same has been registered only on 12.7.1954, far beyond 4 months stipulated u/s 23 of the Registration Act and consequently the registration is invalid. It also expressed some doubts as to whether plaintiffs' father signed Ex.B-1. Lower court further took the view that it is for the defendants to explain that disparity regarding the date of execution, which they have miserably failed to explain. Holding that Ex.D-1 is not valid, a preliminary decree was granted declaring that plaintiffs and 8th defendant are

entitled to 1/4th share in the property. That preliminary decree and judgment are assailed in this appeal.

10. Learned Counsel for appellants seriously challenged the decree and judgment of lower court. According to them, the burden of proof in this

case has been wrongly cast on the appellants. It is further argued that suit has been filed long after 30 years when all the executants are dead. In

such cases, certain legal presumptions are available under law, which lower court did not take into consideration. It is further submitted that if in

fact Ex.B-1 is invalid, other legal heirs of late Danapal Mudaliar are also necessary parties to the suit and without them partition cannot take place.

It is also argued inter alia, that 1954 onwards first defendant alone is in physical possession of the property to the exclusion of all others and the

title is also lost by ouster and adverse possession. Learned Counsel prayed for dismissal of the suit.

11. As against the said contention raised by the appellants, learned Counsel for respondents submitted that the document purported to have been

executed in the year 1948 and the same has been registered on 12.7.1954. u/s 23 of the Registration Act, Registering authority can register a

document only if it is presented for registration within 4 months from the date of execution. Court will have to assume that 12.7.1948 is the date of

execution.

12. It is argued that there are certain suspicious circumstances surround Ex.B-1 which ought to have been explained by the first defendant. It is

said that when execution of release deed by plaintiffs father is denied, it is for the defendants to prove the execution of document in accordance

with law. Evidence of P.Ws.1 and 3 will not prove the execution of Ex.B-1. Counsel submitted that there is no interference sought for in the decree

and judgment of lower court.

13. Following points are raised for consideration in this appeal:

1. Whether plaintiffs' father late R.N.K. Sundararn has also executed Ex.B-1 ?

2. Whether Ex.B-1 has been properly registered?

3. Whether first defendant has proved execution of Ex.B-1 in accordance with law?

4. Whether the claim of plaintiffs is barred by ouster and adverse possession?

5. Whether the share claimed by plaintiffs is correct?

14. Point Nos.1 to 3 and 5 could be considered together.

15. The property originally belonged to late Danapal Mudaliar is admitted. It has also come out in evidence that the same devolved on him on the

basis of Will executed by his father. Danapal Mudaliar admittedly died in the year 1947 and according to plaintiffs. His widow Philomina Ammal

died in the year 1962. Late Danapal Mudaliar had two sons and two daughters: (1) R.M. Maria Susai; (2) R.N.K. Sundaram; (3) Pappu Ammal

and (4) Abirami Susai. All these children are also dead. Pappu Ammal died in the year 1953 and R.N.K. Sundaran died in the year 1963. There is

no evidence as to the death of other two children, but it is admitted that they are dead long long before institution of the suit.

16. Danapal Mudaliar had died intestate and the property devolved as per Indian Succession Act, whereby his widow entitled to 1/3rd share and

the remaining 2/3rd share devolved on his children in equal shares. If Ex.B-1 is found to be not valid, R.N.K. Sundararn will be entitled to 1/6th

share i.e., 1/4th share in 2/3rd share.

17. In this case, plaintiffs are claiming 1/4th share on the ground that on the death of Danapal Mudaliar even though his widow also inherited

property, since she also died intestate, all the four children must be given equal shares and therefore plaintiffs are entitled to 1/4th share. But, I do

not know the reason why plaintiffs have not impleaded the legal heirs of Mariya Susai and Abirami Susai. If Ex.B-1 is found to be invalid, for

effective partition, legal heirs of these two children are also necessary parties. I find the suit is defective in that regard.

18. The other question that is to be considered is whether Ex.B-1 is valid?

19. Ex.B-1 is dated 12.7.1948. But the same is registered only on 12.7.1954. u/s 23 of the Indian Registration Act, no document other than a Will

shall be accepted for registration unless presented for that purpose to the proper officer within 4 months from the date of its execution. The

question is whether the date mentioned in the document is the date of execution? There is no presumption that the date which is mentioned in the

document is the date of execution though under normal circumstances it happens to be so. In this connection under the earlier Act, there was an

explanation to Section 23 which said that the date which purports to have been

executed shall be the date of execution. That explanation has been omitted under the Act 1908. Under Act, 1971. the explanation read thus, The date of execution of document means the date on which it purports to have been executed.

The omission of explanation under the present Act is also a matter of great relevance.

20. What is meant by date of execution? The word, "execution" has not been defined under the statute. In the commentaries to Evidence Act, by

Sarkar Section 67 says, "executed means completed. "Execution" is, when applied to a document, the last act or series of acts, which complete it,

It might be defined as formal completion. Thus, execution of deeds is the signing, sealing and delivering of them in the presence of witnesses.

Execution of a will includes attestation. "Execution" does not mean merely signing. It should be accompanied by the intention to give effect and operation to the instrument signed.

21. For the purpose of Section 23, it is a document executed that has to be presented for registration. An unsigned document or when there is no

intention to give effect to the document cannot be said to have been executed. Sanjiva Row on his commentaries to Registration Act (Eighth edition), at page 323 has said thus,

The execution shall mean that the deed was executed with all the formalities necessary for its completion. It has to be a valid execution and not

nearly signing of the document. It means something more than mere writing on a document and signing execution includes due execution i.e., it

includes all facts which would be necessary in order to establish due execution. It has been observed in Phimpson on Evidence that execution of a

document containing certain clauses will imply the knowledge of its content, signature must be intended to govern and authenticate every material

part of the instrument. Execution by an unauthorised person is void. Though the word ""execution"" has not been defined in the statute but it has been

accepted that execution consists in signing a document which has been written, read over and understood, and it does not mean merely signing a

name upon blank paper-sheet. Executing where applied to document means the last act or the series of acts necessary to complete it. Thus the

execution of the deed is signing by the parties, the attesting by the witnesses

and the delivery of the same. The execution includes a process which is to be gone through to complete a document. All the formalities necessary for the validity of a legal Act have to be completed or given validity by performing that law requires to be done as by signing. Sealing, etc. It means something more than signed.

[Italics supplied]

22. In *Krishna Iyer v. Chandy* 1963 K.L. T. 252, as the question came for consideration was regarding priority of claims. In that connection His

Lordships considered what is meant by "execution of a document" while considering the same his Lordships held thus,

The contention of the appellant, as formulated by counsel, is two fold: firstly, that Ex.P-2 was executed only after Ex.D-2 had come to effect" and

secondly that the plaintiff cannot claim priority on the basis of a deed which he had not accepted. Strong reliance was placed on *Aithres Haji v.*

Sekharan Nair 6 Coch 345, wherein *Anantharaman Iyer, J.*, has observed thus:

Under the Indian Law signing and delivery alone are necessary to give complete operation to a document. The word "Execute" under the Indian

law (the Registration Act for instance) is used in the sense of "signing" and the execution of a document therefore means signing it. But as stated

before the date of signing or execution need not necessarily be the date on which the deed was written up, since when once the executants affixes

his signature, the deed will, as was observed in an English case, speak from the date of its execution and not from the date apparent on the face of

it *Browns v. Durtin* 17 L.J. Q.B. 49. There is also provision in the Registration Act for registering a deed executed by several persons at different

time. (Section 24 of Act XVI of 1908), Such provision clearly shows that the date of execution of a deed need not necessarily be the date

appearing on the deed so far as persons executing the deed subsequently. Hence, it is very doubtful that proving the execution of a deed in any

way implies the inference that execution was on the date appearing on the face of the document. In my opinion on the mere proof that a person

admits the execution of a document does not in any way necessarily lead to the inference that the signature was affixed on the date appearing on

the document or that the date appearing on a deed was the date in which it was really written. The one need not have any connection, with the

other. In a case therefore, where the genuineness of a deed is impeached by a third party on the ground that it was not really executed on the date

appearing on the deed it was not enough for the party who relies on the deed to prove merely its execution since as already remarked, the date of

execution may be quite different from the date apparent on the face of the deed, Hence proof of genuineness of a deed, when its genuineness is

impeached not merely on the ground that it was not really executed but also not on the date of the deed bears, must consist of evidence of persons

who are in a position to say not merely that they saw the executants sign the deed but also that they signed it on the date the deed was written up.

In the absence of such evidence no inference can be drawn that the date of execution is identical with the date appearing on the deed. As in the

present case, there is no evidence to show that executants of Ex.B-1 affixed their signatures on the date appearing on the face of Ex.B-1, I must

hold that there is no legal proof that Ext.1 was really executed on 8th Mesnam 76.

4. Counsel for the respondent relied on *Mina Kumari Bibi v. Bijoy Singh Dudhurie* (1916) 44 LA, 72. The relevant passage therein read thus:

It is a general, though not a conclusive, presumption that a document was made on the day of the date it bears, so that for what it is worth the

plaintiff starts with that in her favour; be her case does not rest there, for such oral evidence as there is on the point supports the presumption, and

was not seriously challenged by the cross-examination. It has been suggested that the plaintiff should have called other witnesses to the date of

execution. But her advisers had no reason to apprehend that this contention would be advanced. It is not pleaded in the written statement, it is not

raised in the issues, and the judgment of the first court certainly does not suggest that it was given prominence even at the trial.

The above passage is clear that the presumption of execution on the date borne by the deed is of a weak type. It is a presumption that generally

comes into play in the absence of a challenge as to the date of execution of the deed....

[Italics supplied]

23. If a document is prepared on 12.7.1948 and is not signed by any person, it cannot be said that the document is executed on that date. The

document comes into effect only when it is signed and delivered to the registering authority for having it registered with an intention that the document must come into effect. If there are more executants than one, it is not law that all the executants shall sign with time and date and they must sign within four months and the document comes into effect only as regards those persons who signed it and regarding others, it cannot be said that the document is executed. In such cases, the date for presentation for registration is the date on which last of the persons executed it (See:

AIR 1928 239 (Nagpur) . In that case, it was held thus:

Execution mentioned in Section 23 is the complete execution of the document, and where a document is executed by several persons the section contemplates registration within four months of the last execution in respect of all previous executions, whether they were within the four months or not. Section 24 merely provides a safeguard for the case of a document never executed at all by one or more of the people by whom it was to have been executed, when each execution is good to the extent of the executant's interest in the subject matter.

[Italics supplied]

24. In this case, plaintiffs' father is alleged to have signed the document on 12.7.1954. I find that in all the pages of Ex.B-1 late R.N.K. Sundaram signed on 12.7.1954 and on the same date, Sub Registrar registered the document at the residence of first defendant. One circumstance also will have to be considered in this connection that plaintiffs are not disputing execution of Ex.B-1 by other legal heirs. With regard to other sharers, there is no averment in the plaint that other executants have not signed the deed. Denial is only as regards R.N.K. Sundaram.

25. According to me, even the denial as regards R.N.K. Sundaram in the plaint is only an afterthought. In fact, plaintiffs themselves admitted execution of document by R.N.K. Sundaram. In the various notices issued, they admit that Ex.B-1 was executed. But they contend that it is invalid since it was executed under suspicious circumstances such as fraud and misrepresentation. Even though three or four notices are issued before institution of suit, in none of the notices, plaintiff has stated that R.N.K. Sundaran has not signed the document. After admitting execution, they challenged the validity of the same. The evidence of RW.1 is also of no use since

he is only aged 40 years when he was examined 1987. that

means in 1954, he would have been aged 5 years old. Therefore, he is not competent to speak anything about Ex.B-1. Before considering the oral

evidence on the side of appellants, other legal presumptions are also to be considered, on the basis of which alone evidence of defendants will have

to be considered.

26. Admittedly, Ex.B-1 is a registered document. The Sub Registrar has endorsed that all the executants have admitted execution of the deed and

has certified to that effect. What is the effect of certification by Sub Registrar? Section 60 of the Indian Registration Act provides for certification of

registration which reads thus:

60.(1) After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with,

the registering officer shall endorse thereon a certificate containing the word ""registered"", together with the number and page of the book in which

the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the

document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in Section 59 have

occurred as therein mentioned.

Commenting on Section 60, in "Registration Act" -4th Edition, Rustomiji has stated thus:

...A document registered in and brought from a public registry office requires to be proved when it is desired that it should be used as evidence

against any party who does not admit it, quite as much as if it came out of private custody."" ""This does not, however, mean (as has sometimes been

supposed) that the admission of execution proved by the registration endorsement is no evidence whatever of execution. As held by Jenkins, C.J.,

the question whether the admission of execution made before the Registrar is sufficient to prove execution of the document, is primarily a question

of fact, i.e., it is a question which has to be decided by a tribunal of fact (e.g., by the first appellate court) and cannot be disposed of by the High

Court in second appeal as a matter of law. Moreover, in view of the pronouncements of the Privy Council, the certificate of registration would

raise the general and important presumption usually embodied in the maxim *omnia praesumuntur rite et solemniter* at the act (as to which, see illustration (e) to Section 114, Evidence Act). In other words, though the registration endorsement is not the conclusive proof of the fact of execution, it is at least *prima facie* evidence of such execution i.e., the registration endorsement is (under Sections 58 to 60) a relevant piece of evidence for proving the execution of the document. But if the original registered document is not before the court and there are suspicious circumstances attending the execution of the document, the registration endorsement cannot be resorted to for the purpose of holding that execution has been proved. Moreover, though the registration endorsement (as to admission of execution) is *prima facie* evidence of execution as against the person executing the document, it is not evidence as against a third party, e.g., a stranger who was not a party to the transaction. When a registered document is more than 30 years old (as to which, see Section 90, Evidence Act). Execution will usually be presumed from the registration endorsement alone....

[Italics supplied]

27. It is seen that when the document is presented at the residence of first defendant for registration, and executants were identified by D.W.1 and also by husband of third defendant, who is 6th defendant in the case. The fact that they are cousins of plaintiffs is not a matter in dispute. That is, they are the children of brother of late Danapal Mudaliar. They have also married to the family of Poovammal. Two daughters of Poovammal are given in marriage to defendants 6 and 7. Identity of those persons and the relationship is not denied and they are competent persons to speak about the identity of person. They are also attestors to the Deed.

28. Late R.N.K. Sundaram retired as Deputy Director of Agriculture in the State of Tamil Nadu. It is not possible to impersonate such an important official. In such cases, what is the presumption that is to be raised. One of the earlier decision of Privy Council reported in *M.D. Ithishan*

Ali v. Jamna Prasad AIR 1922 P.C. 56, their Lordships held thus:

...There is no doubt that the deed was executed, for it was registered, and registered in a regular way, and it is the duty of the registrar, before registering, to examine the grantor, or some one who, he is satisfied, is the

proper representative of the grantor, before he allows the deed to be registered. There can be no doubt, therefore, that Ehsen Ali Khan executed the deed and was party to its registration, and in the deed there is an admission that he has received Rs. 200, which would be the full consideration as the vendee had to take upon himself the liability for the mortgage money. He says in the deed that he has received the consideration money in full and that out of it he has left Rs. 2,800 with the vendees for the purpose of making payment to the mortgagee and defraying court expenses, and that he has no further claim to the property sold or the consideration money. That he should have taken part in having such a deed registered if he did not received the consideration money is highly improbable. At any rate, the burden is on him and on people claiming under him to prove that what apparently happened did not happen....

29. In AIR 1943 83 (Privy Council) also a similar question came for consideration. Their Lordships followed the decision in Md. Ihlshan Ali's

case AIR 1922 P.C. 56 and held thus:

...The plaintiffs claim as reversioners of Parshotam Das and any statement proved to have been made by him is evidence against them as an

admission. The registrar's endorsements show (see Sub-section (2) of Section 60, Registration Act, 1877) that in 1881 a person claiming to be

this Parshotam Das, and to have become son of Harish Chandra by adoption made by his widow Manki Bahu, presented the receipt for

registration and admitted execution. He was identified by two persons one Sheo Prasad and the other Girja Prasad, who was the scribe of the

document and was known to the Registrar. What remains to be shown is that the person admitting execution before the Registrar was this

Parshotam Das and no impostor. The question is one of fact except in so far as there was as matter of law a presumption that the registration

proceedings were regular and honestly carried out: 22 LA. 60 : 48 I.A. 365 . It seems clear that any objection to the sufficiency of the proof upon

this point would have been idle, the circumstances being such that the evidence of due registration is itself some evidence of execution as against

the plaintiffs....

[Italics supplied]

30. Our High Court also had an occasion to consider this question and the same

is reported in *Irudayam Ammal and Others Vs. Salayath Mary*, .

The question was, what is the extent of presumption? In para 6 of the judgment, their Lordships held thus:

...It is true that registration by itself in all cases, is not proof of execution, but if no other evidence is available the certificate of registration is prima

facie evidence of its execution and the certificate of the registering officer u/s 60 of the Registration Act is relevant for proving execution. (See

discussion in Sarkar's Evidence latest, 12th Edition, p.640). As observed by the Privy Council in *Md. Ihtishan Ali v. Jamna Prasad* AIR 1992

P.C. 56, registration is a solemn act and if no other evidence is available the court can presume that the Registrar performed his duty of satisfying

himself that the document presented to him for registration was duly executed by the executant and the executant was duly and properly identified

before him. The same view was taken in AIR 1943 83 (Privy Council) , in which, after referring to the earlier decision of the Privy Council in A.I.R

1922 P.C. 56 (referred to above) Sir George Rankin observed that the evidence of due registration is itself some evidence of execution as against

the other side. There is a full discussion on this question as to the presumption arising from the fact of due registration, coupled with the

presumption arising u/s 114 of the Indian Evidence Act in a Bench decision of the Mysore High Court in *Huthegowda v. Chennigowda* AIR

1953 Mys. 49, in which it was held that the evidence that a document was duly registered is some evidence of its execution by the person by

whom it purports to have been executed.

There is a full discussion of the relevant case law including the decision of the Privy Council in *Md. Ihtishan Ali v. Jamna Prasad* AIR 1922 P.C.

56, aforesaid. In *Revanna v. Dr. A.V. Ranga Rao* AIR 1952 Mys. 119, it was observed that in cases where it is impossible for any person to

prove execution of a document on account of the death of all the persons concerned the best and the only possible evidence that may be available

is that of a certified copy of the registered document and that in such cases, a presumption could arise u/s 60 of the Registration Act alone with

Section 114 of the Evidence Act. See also *Kashibai Martand Vs. Vinayak Ganesh and Others*, . It will be seen that in the ultimate analysis, the

problem in each case is "has the required evidence been adduced on the facts of

each case"; in the instant case, we have not the slightest hesitation in holding that this essential test for arriving at the truth has been amply satisfied.
[Emphasis supplied]

31. Even in regard to documents which do require attestation, their Lordships of Supreme Court in Rani Purnima Devi and Another Vs. Kumar

Khagendra Narayan Dev and Another, , held that, "if a Will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness."

32. Regarding presumption u/s 60 of the Registration Act, apart from the decisions cited above, in Vishvanath v. Rahibai AIR 1931 Bom. 105, a

Division Bench of Bombay High Court has held that the presumption of execution can be had when there is certification u/s 60 of the Registration

Act.

33. In Pandappa v. Shivalingappa AIR 1946 Bom. 193 , their Lordships held thus:

...The deed being registered, the certified copy bears the necessary endorsements of the Sub-Registrar before whom the executant acknowledged

the execution and was duly identified. As held in 9 Bom.L.R. 401, Sections 58, 59 and 60, Registration Act, provide that the facts mentioned in

the endorsement may be proved by those endorsements, provided the provisions of Section 60 have been complied with. The facts in 55 Bom.

702 were quite akin to the facts of this case. There also the certified copy of a deed of adoption was admitted in evidence merely on the ground

that the original was lost and that it was more than thirty years old. The first appellate court held that as the execution of the deed had not been

proved it should not have been exhibited. Then in second appeal Baker, J. observed (p. 107):

As to the proof, the document in this particular instance has been registered and bears the necessary endorsements by the Sub-Registrar before

whom the executant was identified by the Kulkarni of the village. The effect of registration has been considered by this Court in 9 Bom. L.R. 401,

where it was held that Sections 58, 59 and 60, Registration Act provide that the facts mentioned in the endorsement may be proved by those

endorsements, provided the provisions of Section 60 have been complied with. The endorsement of the Sub-Registrar in the present case shows

that Ramji the executant admitted execution of the document and gave his , thumb impression and that he was identified before the Sub-Registrar

by Keshav Hari Talati who was known to the Sub-Registrar. In these circumstances the view of the first court that the copy of the adoption deed

is admissible in evidence and that it is sufficiently proved appears to be correct.

By parity of reasoning the certified copy of the mortgage-deed in this case also is admissible in evidence, as it bears the requisite endorsement of

the Sub-Registrar regarding the admission of its execution by the execution....

34. In *Kalu v. Bapurao* AIR 1950 Nag. 6, it is held thus,

Where the original deed is lost, a certified copy of it is admissible u/s 65(c). Where the original is more than 30 years old, the certified copy can

prove the contents of the documents but not its execution as Section 90 requires production, in Court, of the particular document in regard to

which it is asked to draw the statutory presumption of execution.

In answering the question whether a certificate of registration wherein is noted the admission of execution of a party is prima facie evidence of the

execution of the document, documents which are required by law to be attested must be distinguished from documents which are not so required

to be attested. As regards the latter class the certificate of registration is some evidence of execution against the party making the admission.

35. In *Sumathi Amma v. Kunjulsakshmi Ammal* 1964 K.L.T. 945, it is held thus:

In cases where Section 68 of the Evidence Act has no application, the certificate of registration in the light of the presumption in Section 114,

Illustration (e) of the Evidence Act is evidence of execution, and can, in fit cases, be accepted as proof thereof. The facts required to be proved u/s

67 can be proved by any kind of evidence and there is nothing in the section to indicate that the evidence furnished by the registration certificate

and by the presumption in Illustration (e) of Section 114 of the Evidence Act, is to be excluded. The court is not bound to accept the certificate as

sufficient proof, and where better evidence is available, can insist on better evidence, drawing the presumption in Illustration (g) of Section 114 of

the Evidence Act.

36. If this is the legal position even in regard to document which require attestation, I feel that in cases where no attestation is required, the

certificate of registration will be prima facie evidence of execution. Ex.B-1 is a document which do not require attestation.

37. As I said earlier, the suit is filed after the death of all the legal heirs and they cannot come and speak either about the execution or non-

execution of the document. Defendants 1 to 5 are the children of Poovammal of whom first defendant has taken the document. Defendants 2 to 5

also signed Ex.B-1. So the independent evidence that could be adduced is only of the attesor. D. W. 1 is 7th defendant. He says that he has seen

R.K.N. Sundaram signing the deed on 12.7.1954 and he has attested the document. Taking into consideration the lapse of long period, I feel the

evidence of D. W. 1 is to be taken into consideration in considering the genuineness of Ex.B-1.

38. While appreciating the evidence of D.W.1. We must also take note of the fact that plaintiff has no case that Philomina Ammal, Maria Susai and

Abirami Susai have not signed the deed. It is also not the case of plaintiffs that these executants have any intention of forging signature or to collude

with other executants so as to deprive the rights of plaintiffs. Late RNK Sundaram, Maria Susai Mudaliar Philomina Ammal and Abirami Susai are

all in good terms, is clear from the evidence of the case. Document is also 30 years old on the date of suit and when the document is tendered in

evidence. Court is also entitled to take presumption as to due execution of those deeds u/s 90 of the Evidence Act, though it is not obligatory on

the part of the court to have presumption. Court has got discretion to raise presumption u/s 90. It is on the basis of those presumption, and

circumstances, we will have to consider whether the approach of lower court is correct.

39. Lower court assumed that the date appearing in the document is the date of document. It was the definite case of defendants that it is not date

of execution and they have placed certain circumstances to disprove the same. One big circumstances in their favour is between 1948 - 1954,

some of the legal heirs, or original owner died. If the document prepared already, was "executed" in 1948, death would not have been anticipated.

In their place legal heirs have been substituted. In fact in first page of the document, there are some erasures and retyping which shows the

document would have been executed only after death of those persons. It was also verified with draft produced by plaintiffs Ex.A-1. Ex.A-1 was

prepared in the year 1948 where the names of all legal heirs" are mentioned. Apart from the same, R.N.K. Sundaram has signed it and also given

the date of execution beneath his signature. So far as R.N.K. Sundaram is concerned, the date of execution is only 12.7.1954.

40. D.W.3, who is the second defendant in the suit has stated that the typing "1948" is a mistake and he has said that it was hewhocorrected and

made erasure and retyped the same in the cover page. Defendants 2 to 4 are also legal heirs of Poovammal who are entitled to 1/4th share along

with first defendant. If the release deed is denied by them they are also beneficiaries and they also will be entitled to a share in the property. The

admission by them that they have executed Ex.B-1 and R.N.K. Sundaram also signed it is an admission against their own interest. That is also an

added circumstance against plaintiffs.

41. u/s 114 of the Evidence Act, all official acts are presumed to have been done in accordance with law. It has to be presumed that the Sub-

Registrar when he registers a document knows the laws of registration and also implications u/s 23 of the Act. By registering a document at the

residence and certifying that it has been duly registered, law presumes that the execution was within four months from the date of registration.

42. Defendants have also produced documents to show that circumstances under which Ex.B-1 Release Deed had to be executed. As stated

earlier, property originally belonged to father of late Danapal Mudaliar. There was a suit as O.S.No. 64 of 1944 filed by one of the sons of

Danapal Mudaliar for partition. It was by virtue of allotment in the suit Danapal Mudaliar got right over the property. Plaintiff property was valued

more than the share allotted and therefore Danapal Mudaliar had to pay amounts to other sharers for equalisation. He was not in a position to raise

funds in time and consequently he had to execute promissory note and became debtor. It is the case of first defendant that his mother paid the

amount on understanding that plaintiff property will be released to her in consideration for the amounts discharged. But, Danapal Mudaliar and

Poovammal died and it is only in 1954, ""they could register the deed. The fact that there was a talk to release the entire property in favour of the

first defendant's mother is clear from Ex.A-1 itself. In Ex.B-1, it is further stated, that the legal heirs have received consideration from first

defendant for executing release deed.

43. Lower court disbelieved the evidence of D. W. 1 on the ground that he admitted that there is disparity in the signature of his wife as seen in

Ex.B-1 with that of written statement filed in the case. But the lower court failed to note that even plaintiff has no such case and 4th defendant has

admitted the execution of Ex.B-1 in her written statement.

44. The argument of learned Counsel for appellant that the burden of proof in this case is only on plaintiff is well founded. Lower court on the other

hand held that it is for defendants to prove the execution of deed without taking into consideration the legal position stated above. I find force in the

said contention.

45. If the evidence of D.W.1 is discarded, since he is incompetent to speak about Ex.B-1, there is no other evidence to hold that Ex.B-1 is in-

valid. As I said earlier, before institution of suit, case of plaintiffs is only that Ex.B-1 is invalid due to suspicious circumstances on the ground that it

is executed due to undue influence and fraud. It has come out in evidence and also specifically alleged in written statement that R.N.K. Sundaram

had to reside in a rented building at Madras. If in fact he was also entitled to a share in the property, he would not have resided in rented building

but would have resided in the scheduled building. Long silence on the part of all legal heirs in claiming share in the property is also a matter which

has to be taken note of by court. I find that Ex.B-1 is valid and was executed by R.N.K. Sundaram and consequently plaintiffs are not entitled to

any relief. Ex.B-1 is properly registered.

46. The only other question which requires consideration is whether the suit is barred by ouster and adverse possession.

47. Ex.B-1 was executed on 12.7.1954. Even assuming that registration is invalid, what is its effect? In view of various statements in the notice,

execution by R.N.K. Sundaram is admitted. Even if registration is invalid u/s 23, that will not give any right to plaintiffs to claim any share in the

property. The definite case of defendants is that from the date of Ex.B-1, they have prescribed title by adverse possession.

48. In Padma Vithoba v. Mohd. Multani AIR 1963 S.C. 70, the question that came for consideration was how far possession of mortgage could

be adverse against mortgagor? Their Lordships held thus:

When a person gets into possession of properties as mortgagee, he cannot by any unilateral act or declaration of his prescribe for a title by adverse

possession against the mortgagor, because in law his possession is that of the mortgagor. But if the mortgagor and mortgagee subsequently enter

into a transaction under which the mortgagee is to hold the properties thereafter not as a mortgagee but as owner that would be sufficient to start

adverse possession against the mortgagor if the transaction is for any reason inoperative under the law.

[Italics supplied]

49. Similar is the case in *Soni Lalji Jetha and Others Vs. Soni Kalidas Devchand and Others*, .

50. How far the unregistered sale deed can be the basis for adverse possession, came for consideration before this High Court in the decision

reported in *Kandaswami Mudaliar and Another Vs. Ponnuswami Mudaliar*, and their Lordships held thus:

Section 60 expressly enacts that mortgagors have got the right to redeem unless such right has been extinguished by act of the parties, or by order

of a court. It is thus clear that such a right could be extinguished by act of the parties subsequent to the mortgage. If the subsequent acts are

evidenced by proper documents, then the equity of redemption would be affected directly on the execution of these documents. If, however, the

documents are inadmissible, for want of registration, or in case the subsequent transaction between the mortgagor and the mortgagee be not

evidenced by any writing at all, but simply be oral, then the result would be that the mortgagor's equity of redemption would not be put an end to

at once but the subsequent possession on the part of the mortgagee would not be that of a mortgagee but that of an absolute owner. As against

parties entering into such transactions the mortgagee would acquire an absolute title to the property after the expiry of 12 years from the date of

those transactions.

[Italics supplied]

51. Similar view has been taken by Patna High Court in the decisions reported in *Markanda mahapatra Vs. Varada Kameswar Rao Naidu and*

Others, and in *Sukhdeo Singh v. Lekha Singh* AIR 1957 Pat. 502.

52. The same analogy could be applied in this case also. Even Ex.B-1 is taken an

unregistered that is an admission by late R.N.K. Sundaram releasing all his rights in favour of first defendant. From that date possession of first defendant will be adverse. Thereafter possession of first defendant cannot be said as co-owners. On the basis of agreement between R.N.K. Sundaram and first defendant, first defendant is permitted to exclusively enjoy the property. Ouster has been put to his knowledge. Therefore as between them there cannot be any co-ownership. The continued possession after Ex.B-1 will be adverse to the other co-owners i.e., R.N.K. Sundaram. Title of plaintiffs is also lost for that reason also.

53. In the result, I set aside the judgment and decree of the lower court. O.S.No. 5097 of 1985 on the file of VIII Assistant Judge, City Civil Court, Madras is dismissed. This appeal is allowed. Taking into consideration the close relationship of parties, I direct them to suffer their costs.