

(1926) 05 MAD CK 0013
In the Madras High Court

Krishna Iyer

APPELLANT

Vs

Ponappa Nadar and Another

RESPONDENT

Date of Decision : 04-05-1926

Acts Referred:

Registration Act, 1908 — Section 22

Citation : 97 Ind. Cas. 676

Hon'ble Judges : Ramesam, J; Charles Gordon Spencer, J

Bench : Division Bench

Judgement

Charles Gordon Spencer, J.—The 1st defendant agreed on the 26th September, 1919, to supply timber and as a pledge for the due performance of his contract and for repayment of Rs. 5,000 advanced to him, he mortgaged certain property. Exhibit A is the mortgage document. It describes itself as a karat or agreement and was stamped at first with an eight annas stamp. After it was presented for registration, the deficient stamp duty and a penalty was collected and it was registered as a mortgage. The plaintiff sued upon this document and got a personal decree against the 1st defendant for Rs. 649 and a mortgage-decree for the balance. The 2nd defendant who appeals is a simple mortgagee under another document which is Ex. I. The point taken in appeal is that Ex. A regarded as a mortgage is defective as regards attestation because the attestors signed at the end of the document after the executant had signed and afterwards (apparently at the time of presentation for registration) the survey numbers of the items mortgaged (with one exception) were added. Then the executant again signed but the attestors, though they were present according to the evidence, and witnessed his signature, did not themselves repeat their act of signing. The document, Ex. A, is a peculiar one, because it begins as an agreement, it goes on as if it was an equitable mortgage with deposit of title-deeds and it concludes as a simple mortgage in which the mortgagor and the properties referred to are made liable for damages and for the balance that may be found due to the mortgagee. It is argued that the addition of the survey numbers constituted a material alteration in the document and that, as the attestors did not affix their

signatures to that alteration, the whole document is invalid. We have ascertained that one of the survey numbers, namely 36/2 has been omitted, that being the field to which document 2827 relates. This appears from Ex. I which also covers the same property and contains a full description. The question is whether the addition of these survey numbers was such a material alteration of the document as to make it something different from what it was when it was first signed and attested. In the body of the document all the property which has been charged is described as the property contained in certain documents of which numbers are given and those documents are declared to be handed over to the mortgagee. It was, therefore, possible for the mortgagee or for any one else who had those documents in his hand to ascertain the survey number of each of the mortgaged items. I think that this is a case in which the maxim *id certum est quod certum reddi potest* applies. The document was complete as it stood after the executant and the attesting witnesses had signed. What was added was a further definition of the properties, probably made for the purpose of registration. Section 22 of the Registration Act (XVI of 1908) provides that the Local Government may by a rule made under the Act require both houses in towns and lands to be described with reference to a Government map or survey. But the rules do not show that in respect of the South Malabar District it has been made compulsory for persons presenting documents for registration that they should give the survey numbers. Moreover, Rule 17 states that if a property is described in a document by specific reference to an instrument which has already been registered and if that instrument contains the particulars required by Rule 16, the description need not be repeated in the document. In this view of the case Ex. A is not defective on account of the omission of the attesting witnesses to sign a second time. In *Sankaran Nambiar v. Narayanan Thirumumpu* 55 Ind. Cas. 86 : (1920) M.W.N. 205 a mortgage document which had been attested by attesting witnesses received an addition of another item so as to enable the document to be registered in a certain registration office. The learned Judges held that the interpolation which had been made in the presence of the attesting witnesses did not vitiate the document seeing that there had been no fraud on the registration law and that the attesting witnesses were present when the mortgagor signed and when he made the interpolation. In their view, therefore, they were persons who could in the language of the Lord Chancellor in *Burdett v. Spilsbury* (1843) 10 Cl. & F. 340 quoted in *Shamu Patter v. Abdul Kadir Rowthan* 16 C.W.N 1009 23 (1912) M.W.N. 935 : 10 A.L.J. 259 : 39 I.A. 218 be treated as "persons who had seen the Will executed and were witnesses to its execution and having subscribed to it were also attesting witnesses." It is not necessary to go so far as the learned Judges went in *Chekkur Puthalath Poothak Etathil Kunhi Sankaran Nambiar Vs. Ponniath Akathoothu Narain Thirumumpu and Others*, to say that the document before us has been duly attested I would, therefore, uphold the decision of the lower Court and dismiss the appeal.

2. As regards Item No. 36/2 which has been omitted from the description at the end of the document, the objection to making this item liable has not been taken

in the written statement or in the grounds of appeal and therefore, it is rather difficult to assume that the appellant has been misled by the omission. Apart from this I regard the body of the document as the operative part of the document and it cannot be said that this number has been omitted from the body of the document seeing that by reference to the documents therein described, the survey number could have been ascertained. This point must, therefore, also be decided against the appellant. The appeal is dismissed with costs of the first respondent.

Ramesam, J.

3. I agree.