
(1970) 02 AP CK 0015

In the Andhra Pradesh High Court

Case No : Second Appeal No. 481 of 1968

Malepati Ramanaiah and Another

APPELLANT

Vs

Malepati China Tirupalureddy

RESPONDENT

Date of Decision : 11-02-1970

Acts Referred:

Evidence Act, 1872 — Section 68

Citation : AIR 1971 AP 319

Hon'ble Judges : A.D.V. Reddy, J

Bench : Single Bench

Advocate : A. Gangadhara Rao, for the Appellant; N. Subbareddy, for the Respondent

Judgement

1. This Second Appeal is by the plaintiffs in O. S. No. 4/66 on the file of the District Munsif, Atmakur. The dispute is in respect of 50 dents of land situated in S. Nos. 813/7 and 813/2 in Vinjamoor Village of Udayagiri Taluk Nellore District and is between the plaintiffs who are minors represented by their father, and their paternal uncle. Admittedly the land belonged to Subbamma the paternal grandmother of the plaintiffs and mother of the defendant, she having obtained it from her father under a will. The plaintiffs being her grandsons thought her elder so contended that a few days before her death she had executed Ex. A-2 settlement deed bequeathing the above said property to them and sought a declaration of their right in the land and an injunction against the defendant who is their father's brother from interfering with their possession. The defendant on the other hand contended that this property along with other properties of his mother were divided between him and his elder brother. Pedda Thirupalu Reddi who is the father of the plaintiffs even before his death that the suit property fell to him and he was in enjoyment of the same in lieu of maintaining their mother that the alleged settlement deed is false, that it has not been executed in a sound and disposing state of mind, that there was fraud and undue influence in the execution of the same. The District Munsif held that Subbamma did not surrender possession of this property prior to the settlement deed, that she was

in exclusive possession and, enjoyment of the same that the defendant has not acquired any title to the same and that the settlement deed executed is true valid and binding on the parties and decree the suit. In appeal, the District Judge negative the contention of the defendant that his mother had surrendered possession of this property and had given it to him in lieu of maintenance. But on the question of the execution of the settlement deed he held that it was not properly proved as no attesting witness was examined, that it was also vitiated by fraud and undue influence and dismissed the suit setting aside the decree of the lower court. Hence this appeal.

2. Only the finding of the lower court that the settlement deed Ex. A-2 has been properly prayed is now challenged in appeal. Admittedly none of the attesting witnesses has been examined in this case in order to prove the execution of the deed. Identifying witnesses and the scribe has also not been examined. But, the Joint Registrar of Nellore who registered the document was examined as P.W.3 to prove the execution. The District Munsif held that the examination of this witness satisfied the requirements of Section 68 of the Evidence Act and held that the document has properly been proved. On this question the learned District Judge held, relying on *H. Venkata Sastri and Sons and Others Vs. Rahilna Bi and Others*, that as the execution of Ex. A-2 has been denied in the written statement, proviso to Section 68 of the Evidence Act is therefore not attracted and that Ex. A-2 the settlement deed had not been proved in accordance with law by examination of attesting witnesses. In the above decision it was pointed out that ordinarily attesting witness to a deed is one who sees the execution of the deed and signs it, and being an attesting witness testifying to the genuineness of the signature of the executing, he should have the necessary intention to do so, that under the definition of the word attested u/s 3 of the Transfer of Property Act as it stands now, there could be a valid attestation even in cases where the witness has not personally witnessed the execution of the deed but has received from the executing a personal acknowledgment of his signature to the deed, but even in such cases before a witness to a document can be held to be an attesting witness to it he should have the animus to attest, and that this could be proved by evidence. In *M. L. Abdul Jabbar Sahib Vs. M. V. Venkata Sastri and Sons and Others*, it was observed as follows:

"It is to be noted that the word "attested the thing to be defined, occurs as part of the definition itself. To attest is to bear witness to a fact. Briefly put the essential conditions of a valid attestation u/s 3 are (1) Two or more witnesses have seen the executant sign the instrument or have received from him a personal acknowledgment of his signature; (2) with a view to attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant. It is essential that the witness should have put his signature animo attestandi, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgment of his signature. If a person puts his signature on the document for some other purpose. e.g., to certify that he is a scribe or an identifier or a registering officer,

he is not an attesting witness."

They went no to further point out:

"In every case the Court must be satisfied that the names ere written animo attestandi..... The attesting witnesses must subscribe with the intention that the subscription made should be complete attestation of the will, and evendence is admissible to show whether such was the intention or not." In this case, P.W. 3 the Joint Register has stated that even before the document was presented to him fior registration, it had already contained the thumb mark and signature of the attestors to it. Therefore, his endorsement with regard to execution would not show animo attestandi as pointed oyt in Girja Datt Singh Vs. Gangotri Datt Singh, . The Indian Registration Act, 1908 laid down a detailed procedure of registration of documents. The registering officer is under a duty to enquire whether the document is executed by the person by whom it purports to have been executed and to satisfy himself as to the indentify the executant; under S. 34(3) and prima facie the registering officer puts his signature on the document in discharge of his statutory duty u/s 59 of the Registration Act and not for the purpose of the executant a personal acknowledgement of his signature (sic). Therefore examining P.W. 3 does not satisfy the provisions of S. 68 of the Evidence Act. The District Judge was therefore right in holding that the document was not proved.

3. Apart from these, on a question of fact the District Judge also held that there was fraud and undue influence in the execution of the document. This finding is not liable o be challenged there., Even on this ground this lended there. Even on this ground this appeal fails. In the result, the appeal is dismissed. No costs.

4. Appeal dismissed.