
(1915) 03 CAL CK 0045
In the Calcutta High Court

Musammat Rukmini Koeri

APPELLANT

Vs

Nilmani Bandyopadhyaya

RESPONDENT

Date of Decision : 29-03-1915

Acts Referred:

Transfer of Property Act, 1882 — Section 59

Citation : 32 Ind. Cas. 170

Hon'ble Judges : D. Chatterjee, J;Chapman, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit on a mortgage-bond executed by a pardanashin lady. The signature on the document is admitted, but the lady says it was not explained to her. That it was explained to her, is proved by her husband whom we have examined and also by the witnesses for the plaintiff. The receipt of the consideration is also proved. The objection mainly pressed by learned Counsel on her behalf is that the document has not been duly attested in accordance with law. He relies on the recent decision of the Privy Council in the case of Shamu Patter v. Abdul Kadir. 16 Ind. Cas. 250; 23 M.L.J. 321; 12 M.L.T. 338; (1912) M.W.N. 935; 10 A.L.S. 259; 14 Bom. L.R. 1034; 35 M. 607; 16 C.L.J. 596; 39 I.A. 218; 16 C.W.N. 1009 (P.C.) which confirms the decision of the Madras High Court Shamu Patter v. Abdul Kadir 31 M. 215; 3 M.L.T. 300; 18 M.L.J. The learned Judges of the Madras High Court held that a mortgage-deed is attested by witnesses within the meaning of Section 59 of the Transfer of Property Act, only when such attesting witnesses are actually present at the time of the execution and that the provisions of the section are not complied with when the witnesses are not present at the execution but attest on subsequent acknowledgment. The same view had been taken by this Court in several cases arising u/s 59 of the Transfer of Property Act: see Girindra Nath v. Bejoy Gopal 3 C.W.N. 84; 26 C. 246 and Abdul Karim v. Salimun 27 C. 190. The decision of the Privy Council, therefore, does not make any departure from the Calcutta view of the case. The criterion is the presence of the witnesses at the time of the execution. In this case the husband actually saw the signature being made, and

the husband is one of the attesting witnesses. The witness Surendra says he was present just outside the screen in the same room with the lady and he knew her voice and heard her say hum (yes) when the document was explained to her. We think this presence of Surendra in the same room with the executant and at the time of the execution which is admitted and proved, taken with the presence of Kuldip Sahai who saw her put her signature, is sufficient to meet the requirements of the law. This is the view that was taken in the case of Harmongal Narain Singh v. Ganaur Singh 3 Ind. Cas. 309; 13 C.W.N. 40 Isri Prasad v. Rai Gunga Prosad Singh Bahadur 3 Ind. Cas. 311; 14 C.W.N. 165 and Sarurjigar Begam v. Baroda Kant Mitter 5 Ind. Cas. 539; 11 C.L.J. 563; 37 C. 526; 14 C.W.N. 974 and we do not think that the Privy Council has laid down a different law.

2. We are sorry to say that the conduct of Babu Kuldip Sahai who is an enrolled Mukhtear of this Court in this matter is not beyond reproach and he cut a rather sorry figure in the witness-box. As he has said, however, that he has practically retired from practice we do not think it necessary to press this matter further.

3. In the result we dismiss the appeal with costs.