

Kesho Deo and Another Vs Hari Das and Others

Court: Allahabad High Court

Date of Decision: March 18, 1899

Citation: (1899) ILR (All) 281

Hon'ble Judges: Burkitt, J; Blair, J; Aikman, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Aikman, Blair and Burkitt, JJ.

This appeal arises out of a suit brought by the plaintiffs, who are appellants here, on a mortgage bond, dated

1st February 1889. The defendants are a Hindu father, Hari Das, and his two sons, Babu Ram and Mannu Lal. The executants of the bond are

Hari Das and Babu Ram. In the bond, Hari Das describes himself as acting for himself and ""as guardian and next friend of Mannu Lal, minor, my

son."" The bond was registered on the admission of the two executants, Hari Das and Babu Ram.

2. The learned Subordinate Judge gave the plaintiffs a decree, but only as against the shares of Hari Das and Babu Ram, exempting the one-third

share of Mannu Lal, on the sole ground that the bond had not been registered on his behalf.

3. The judgment of the lower Court is based on, and is supported by, the decision of the Court in Shankar Das v. Jograj Singh ILR (1883) All.

599. The facts of that case were similar to those of the case before us. The bond in suit had been executed by one Harbans Singh for himself and

as guardian of his minor son Jograj Singh, and by an adult son named Balbir Singh. It was registered on the admission of Harbans Singh and Balbir

Singh. The learned Judges observe:--""There is no question but that Jograj Singh was an executing party to the bond by representation of his father.

But he was not represented in the registration of the instrument. Now, u/s 35 of the Indian Registration Act, as explained and applied by the

Judicial Committee of the Privy Council in Muhammad Ewaz v. Birj Lal I .L.R (1877). All. 465, this document was unregistered quoad Jograj

Singh, disabled from executing or registering it by reason of minority and not represented for the purpose of registration by any person, far less by

such a person as alone is capable of representation under part VI of the Registration Act. This being so, the instrument on which the suit is founded

shall not affect any Immovable property comprised therein, in so far as Jograj Singh is interested in the same."" In the result the learned Judges

affirmed the decree of the lower Court which had dismissed the suit as regards Jograj Singh and his share of the property.

4. When the present appeal came on for hearing before a Division Bench of this Court, the Judges composing that Bench, finding themselves

unable to concur with the judgment in Shankar Das v. Jograj Singh, referred the appeal for hearing by a Full Bench, and it has now come before us

for decision.

5. With all deference to the learned Judges who decided the case of Shankar Das v. Jograj Singh, we find ourselves unable to agree with them in

the view they took of the provisions of the Registration Act. What Section 35 of that Act requires is that "" the persons executing the document

presented for registration should appear before the registering officer,"" either in person or by a duly qualified representative, assign or agent. When

they so appear and admit execution, the registering officer must register the document, unless it appears to him that any of the persons by whom it

purports to have been executed is a minor, an idiot, or a lunatic. It is the actual executants of the document who are required to appear. The law

nowhere requires for the purposes of registration the appearance of the person on behalf of whom a document purports to have been executed.

The learned Judges who decided the case of Shankar Das v. Jograj Singh have, it appears to us, misapprehended the scope of the decision of the

Privy Council in Muhammad Ewaz v. Birj Lal ILR (1877) All. 465, on which they rely. The document in that case was a deed of sale which, on

the face of it, purported to have been executed by three persons, namely, Mubarak Jan, a Muhammadan lady, and her two sons Hyat Muhammad

and Salamat-ulla. There was an admission of execution by the two sons before the registering officer, but not by the third executant, Mubarak Jan.

Under these circumstances their Lordships sustained the decree of the Court of First Instance which had held the deed of sale to be valid as

regards the sons' shares, but invalid as regards the share of the mother.

6. In the judgment in the case, In the matter of Ram Chunder Biswas, petitioner (1871) 16 W.R.C.R., 180, the following passage occurs:--""As all

the parties to the deed in question by whom it purports to have been executed had appeared before the Registrar and admitted the execution of the

deed, the Registrar to whom the same was presented for registration had nothing whatever to do with the recitals of that deed or with its possible

operation as regards parties who do not purport to execute it, and who must therefore be considered as third parties. If the Registrar finds that all

the executants of the deed admit the execution, his duty is clear, that is, he must register the deed." We concur in these observations.

7. For the above reasons we dissent from and overrule the judgment of this Court in Shankar Das v. Jograj Singh ILR (1883) All. 599, and hold

that there is no defect in the registration of the bond in suit which would prevent it affecting the share of the defendant Mannu Lal. The fact of the

debt is not disputed, and it is not alleged that it was incurred for any purpose which would exempt the son from the pious obligation of paying it.

On the authority of the decision of the Full Bench of this Court in Badri Prasad v. Madan Lal ILR (1893) All. 75, the plaintiffs are therefore

entitled to a decree against the whole of the joint family property hypothecated in the bond.

8. We accordingly allow the appeal, and, modifying the decree of the Court below, order that the defendants pay to the plaintiff or into Court the

sum of Rs. 7,255-8-0 within three months from the date of this decree, in default whereof the hypothecated property or a sufficient portion thereof

shall be sold, and the proceeds of the sale shall be applied in payment of what has been found due to the plaintiffs, and the balance, if any, shall be

paid to the persons entitled to the same. The plaintiffs will get future interest on the sum decreed up to the date of realization and proportionate

costs from the mortgaged property as well as from the person of the defendant Har Dasu Mal. The persons of Babu Ram and Mannu Lal are

exempted. The costs will include the costs of this appeal.

9. In the decree as modified we have left untouched that portion of the decree of the lower Court which awarded future interest as to which no

appeal was preferred.