

(1924) 06 AHC CK 0029

Allahabad High Court

Case No: None

Ram Adhar

APPELLANT

Vs

Bhagwan Singh and Others

RESPONDENT

Date of Decision: June 4, 1924

Citation: AIR 1925 All 209 : 85 Ind. Cas. 580

Final Decision: Disposed Of

Judgement

1. This appeal arises out of a suit for the enforcement of a mortgage by sale of the mortgaged property. The mortgage was executed by Mt. Gulbari, a Hindu widow in possession of the estate of her deceased husband. The defendants to the present suit are the reversioners, her husband's brother and nephew, who have succeeded to the estate after her death. The point on which the Courts below have differed is whether the defendants are estopped from questioning the mortgage by reason of the fact that they or rather the first defendant and the father of the second defendant through whom the second defendant claims, were assenting parties to the mortgage. The learned Munsif held that they were estopped. The learned Subordinata Judge considered that there was no evidence on the record from which the Court could legally infer their consent. It is this finding which is challenged in appeal. The facts are practically undisputed. The debt in respect of which the mortgage was executed was a debt due from the defendant Bhagwan Singh and from Buddhi Singh the father of the second defendant. They were at the time presumptive reversioners to the estate. They attested the mortgage-deed. They also identified Mt. Gulbari before the execution officer. The learned Subordinata Judge relies on the numerous rulings in which it has been held that mere attestation is not sufficient to fix a party with knowledge of the deed attested. This principle is not open to dispute but in all the rulings in which it has been laid down their Lordships of the Privy Council have been careful to safeguard it by stating that attestation combined with other circumstances may amount to evidence of consent. Thus in Hari Kishen Bhagat v. Kashi Prasad Singh AIR 1914 P.C. 90, their Lordships are careful to point out that there was no evidence that the reversioners benefited by

the transaction or that so far as they were concerned there was any need for the mortgages. Similarly in *Pandurang Krishnaji v. Markandeya Tukaram* AIR 1922 P.C. 20, a case specially relied on by the learned Subordinate Judge, it is pointed out that attestation may take place in circumstances that would indicate that the witness did in fact know of the nature of the transaction. Here the facts speak for themselves. Not only did the reversioners attend before the Registrar, identify the executant, and attest the deed, but the debt in respect of which the deed was executed was a debt from the reversioners themselves as principal debtors. It is impossible to believe under these circumstances that they were not aware of the nature of the transaction or that their attestation was not meant to indicate their assent to it. We cannot, therefore, agree with the learned Subordinate Judge that there was no evidence on the record from which the consent of the reversioners could be inferred. It is pointed out on behalf of the respondents that the widow was surety for the debt and that this fact is recited in the deed. We do not think that this fact affects the merits of the case. The mortgage did not purport to be a mortgage of the widow's limited interest only but of the entire estate and when we find that that mortgage was executed with the assent of the reversioners in respect of the debt due from themselves, we agree with the trial Court that they and their successors are estopped from questioning it now that the estate has fallen into possession.

2. We, therefore, set aside the decree of the Court below and restore that of the trial Court with costs both in this Court and in the lower Appellate Court, Costa in this Court will include fees on the higher scale. We extend the time for payment to six months from this date.