

(1878) 03 CAL CK 0016

Calcutta High Court

Case No: None

Ubilack Rai and  
Others

APPELLANT

Vs

Dallial Rai and Others

RESPONDENT

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Date of Decision: March 29, 1878

Acts Referred:

- Evidence Act, 1872 - Section 90

Citation: (1878) ILR (Cal) 557

Hon'ble Judges: White, J; R.C. Mitter, J

Bench: Division Bench

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### Judgement

White, J.

So far as the pottah bears the seal of Futtey Ali, we have no reason to find fault with the mode by which the Court below has arrived at the conclusion that the seal was the genuine seal of Futtey Ali; but inasmuch as besides Futtey Ali, there were two other maliks, who have not sealed or signed the pottah, the authority of Shyam Lall to sign for them should be proved; and such proof is a necessary preliminary to the admission of the document in evidence.

2. The Judge states thus--"The issue which I have to try is the mokurrari pottah genuine; and if so, was it effectuated or not." "What the Judge says on this issue is this:--"The evidence adduced on behalf of the pottah is fully satisfactory. True that no direct evidence was given to establish its authenticity, but it is also true that no direct evidence was available. The pottah is more than forty years old. The writing of the lease was proved by the evidence given by Soonder Lall, the son of Shyam Lall, the writer of it. The seal of Ali Buksh, alias Futtey Ali, on the pottah is, on comparison with another seal impressed on a document of 1236 (1830), which was duly registered, inferentially proved, Defendants' possession of the lands under the said pottah has also been proved. From these significant facts the inference is irresistible that the pottah is true. Now a few words will do to dispose of the objections

advanced against it,--(1) All the maliks did not sign the lease. True that all of them did not, but it is also true that one of them, Futtey Ali, did; and Shyam Lall, their chief officer, signed for them. The evidence of the impression of one of the maliks' seal proves its authenticity beyond all doubt."

3. Although the pottah may be an authentic document, it will not bind the maliks who did not affix their seals, or those who claim under them, unless it is shown that Shyam Lall had authority to sign their names. As regards the authority of Shyam to bind these two maliks, all that is found in the passage I have read, from which such authority can be inferred, is that "Shyam Lall, their chief officer, signed for them."

4. That in our opinion is not sufficient. It was necessary to show either that Shyam Lall received a special authority from these two maliks to sign their names to this document, or that he had a general authority from them to sign on their behalf all documents of the same description as this pottah. Until such proof was given, the pottah was not admissible in evidence. The fact that it was more than thirty years old only gave rise to the presumption mentioned in Section 90 of the Evidence Act,<sup>1</sup>--namely, that the signature at the foot of the pottah which purported to be in the handwriting of Shyam Lall was in his handwriting, and that the execution which on the face of the pottah appears to be the execution of Shyam Lall was an execution of the pottah by him. To make the pottah evidence against the two maliks who did not execute it, and those claiming through them, the defendants must go further and show that Shyam Lall had the authority of those two maliks to sign their names.

5. This point is of such vital importance in the case, that although it has been pressed upon us on behalf of the defendants that there is a great deal of evidence in support of the view that Shyam Lall had the requisite authority, we have thought it desirable to remand the case for an express finding of the lower Appellate Court on the point. As the lower Appellate Court did not have its attention specially drawn to the point, we cannot treat any conclusion that it has come to [560] or any inference that may be drawn from the facts referred to by the defendants' vakils, as satisfactorily establishing that Shyam Lall was duly authorized. We are also influenced in remanding the case by the further circumstance, that the Judge appears to have been under the erroneous impression that there was no direct evidence available to establish the authenticity of the pottah.

6. The rest of the judgment is not material to this report.

[Section 90: Where any document, purporting or proved to be thirty years old, is in the handwriting of any particular person is in that person's handwriting, and, in the Explanation,-- Documents are said to be in proper custody if there are in the custody of the person or persons in whose possession or control the document is found. Illustrations, (a) A has been in possession of landed property for a long time.