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FULL BENCH.

1899  
March 18.

*Before Mr. Justice Blair, Mr. Justice Burkitt and Mr. Justice Aikman.*

KESHO DEO AND ANOTHER (PLAINTIFFS) v. HARI DAS AND OTHERS  
(DEFENDANTS)\*

*Joint Hindu family—Mortgage—Mortgage executed and registered by major son and by the father for himself and for a minor son—Registration—Act No. III of 1877 (Registration Act), section 35.*

A joint Hindu family consisted of the father and two sons, the one of full age, the other a minor. The father and the major son executed a mortgage of the joint family property, the father describing himself in the bond as acting for himself and as guardian and next friend of the minor son. The bond was registered on the admission of the father and the major son.

*Held*, on suit by the mortgagees for sale, that there being no dispute as to the fact of the debt for which the mortgage was executed, and it not being alleged that such debt was incurred for any purpose which would exempt the son from the pious obligation of paying it, that there was no defect in the registration of the bond in suit which would prevent its affecting the share of the minor son. *Shankar Das v. Jograj Singh* (1) overruled. *Muhammad Ewaz v. Birj Lal* (2): "In the matter of *Ram Chunder Biswas* (3) and *Badri Prasad v. Madan Lal* (4), referred to.

THIS was a suit to recover the balance of a debt alleged to be due on a hypothecation bond dated the 1st February 1889. The defendants were Hari Das, and his two sons Babu Ram and Mannu Lal, the three defendants forming a joint Hindu family. At the time of the execution of the bond Mannu Lal was a minor and the bond purported to be executed by Babu Ram for himself, and by Hari Das "for self and as guardian and next friend of Mannu Lal minor my son." The bond was registered by Hari Das and Babu Ram, but did not purport to be registered on behalf of Mannu Lal. At the time of suit the defendant Mannu Lal was of full age, and in his written statement he took the plea that the bond sued on not having been registered at his instance was inoperative as against him. On the issue raised by this plea the Court of first instance

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\* First Appeal No. 270 of 1896, from a decree of Syed Siraj-ud-din, Subordinate Judge of Agra, dated the 6th June 1896.

(1) (1883) I. L. R., 5 All., 599.

(3) (1871) 16 W. R., C. R., 180.

(2) (1877) I. L. R., 1 All., 465.

(4) (1893) I. L. R., 15 All., 75.

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(Subordinate Judge of Agra), relying on the ruling in the case of *Shankar Das v. Jograj Singh* (1), held that the person and property of Mannu Lal must be exempted from liability in respect to the bond in suit. The Court gave the plaintiffs a decree against the two other defendants. Against this decree the plaintiffs appealed urging that the Court of first instance was in error in holding that Mannu Lal was not liable to the plaintiffs' claim.

Pandit *Moti Lal* and *Kunwar Parmanand*, for the appellants.

Mr. *E. A. Howard*, for the respondents.

AIKMAN, J. (BLAIR and BURKITT, JJ., concurring)—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.

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 Maunu Lal, on the sole ground that the bond had not been registered on his behalf.

The judgment of the lower Court is based on, and is supported by, the decision of the Court in *Shankar Das v. Jograj Singh* (1). 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, under section 35 of the Indian Registration Act, as explained and applied by the Judicial Committee of the Privy Council in *Muhammad Erqaz v. Birj Lal* (1), 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.

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.

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

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Privy Council in *Muhammad Ewaz v. Birj Lal* (1) 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.

In the judgment in the case *In the matter of Ram Chunder Biswas, petitioner*, (2) 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.

For the above reasons we dissent from and overrule the judgment of this Court in *Shankar Das v. Jograj Singh* (3), 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* (4), the plaintiffs are therefore entitled to a decree against the whole of the joint family property hypothecated in the bond.

(1) (1877) L. L. R., 1 All., 465.

(2) (1871) 16 W. R., C. R., 180.

(3) (1883) 1, L. R., 5 All., 599.

(4) (1893) 1, L. R., 15 All., 75.

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.

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.

*Decree modified.*

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## APPELLATE CIVIL.

1899  
March 25.

*Before Mr. Justice Aikman.*

JAGWANT SINGH AND OTHERS (PLAINTIFFS) v. SILAN SINGH AND OTHERS (DEFENDANTS).\*

*Act No. I of 1872 (Indian Evidence Act), section 115. - Admission—  
Estoppel—Admission of point of law no estoppel.*

An admission on a point of law is not an admission of a "thing" so as to make the admission matter of estoppel within the meaning of section 115 of the Evidence Act. *Juttendro Mohun Tagore v. Ganendro Mohun Tagore* (1) and *Gopee Lall v. Mussamat Sree Chundrawalee Bhuoojee* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Maulvi Muhammad Ishaq for the appellants.

Mr. Abdul Raoof for the respondents.

\*Second appeal No. 403 of 1898, from a decree of H. D. Griffin, Esq., District Judge of Azamgarh, dated the 22nd February 1898, modifying a decree of Babu Raj Nath Prasad, Munsif of Azamgarh, dated the 13th December 1897.

(1) (1872) L. R., Sup. I. A., 47.

(2) (1872) 11 B. L. R., 391.