

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

1936
February, 7

MOHAMMAD AZIM (DEFENDANT-APPELLANT) v. SPECIAL
MANAGER, COURT OF WARDS, BALRAMPUR
(PLAINTIFF-RESPONDENT)*

Evidence Act (I of 1872), section 90—Deed over 30 years old—Deed signed by another on behalf of executant—Authority to sign, whether can be presumed under section 90—No proof of authority to sign—Document, whether admissible in evidence.

Where a document, which is more than 30 years old, is not signed by the executant himself but purports to have been signed by another on his behalf there can be no presumption under section 90 of the Evidence Act as regards the authority to sign on behalf of the executant. Where there is no evidence to prove that the executant had authorised the person, who signed the deed for him, to do so, no presumption can be made about the genuineness of the document under section 90 and the document is inadmissible in evidence and no decree can be passed on the basis of it. *Shed Ahmad v. Ibrahim* (1), distinguished. *Sheo Nandan Ahir v. Ram Lagan Singh* (2). *Kashi Singh v. Ram Narain* (3), and *Rai Rajeshwar Bali v. Har Kishen Bali* (4), relied on.

Mr. S. C. Dass, for the appellant.

The Government Advocate (Mr. H. S. Gupta), for the respondent.

SRIVASTAVA, J.:—This is a defendant's appeal arising out of a claim for recovery of *zar-i-chaharum*. The plaintiff based his claim on a deed of agreement, exhibit 1, dated the 30th of October, 1886, alleged to have been executed by Hub Lal, a predecessor-in-title of the defendant, in favour of the plaintiff. The defendant denied the document. Both the lower Courts have presumed

*Second Civil Appeal No. 248 of 1934, against the decree of Pandit Girja Shankar Misra, Second Additional Judge, Small Cause Court, sitting as Additional Subordinate Judge, Lucknow, dated the 9th of May, 1934, reversing the decree of Maulvi Munir Uddin Ahmad Kirmani, Munsif North, Lucknow, dated the 17th of February, 1934.

(1) (1919) 52 I.C., 314.

(2) (1915) 13 A.L.J., 921.

(3) (1916) 19 O.C., 321.

(4) (1933) I.L.R., 8 Luck., 538.

its genuineness under section 90 of the Evidence Act. It has been contended on behalf of the appellant that as exhibit 1 was not signed by Hub Lal himself but purports to have been signed by Bhola Das on his behalf therefore there could be no presumption as regards the authority of Bhola Das to sign it on behalf of Hub Lal. In my opinion the contention is correct and must succeed. Section 90 authorises a Court to presume that the signature and every other part of a document satisfying the requirements of that section which purports to be in the handwriting of any particular person is in that person's handwriting and in the case of a document executed or attested that it was duly executed and attested by the persons by whom it purports to be executed and attested. In the present case the agreement exhibit 1 does not bear the signature of the alleged executant Hub Lal. It purports to have been signed and executed by one Bhola Das on behalf of Hub Lal. There is nothing in the terms of section 90 to justify a presumption that Bhola Das had been authorised by Hub Lal to sign or execute the document on his behalf. This view also appears to be supported by authority. In *Sheo Nandan Ahir v. Ram Lagan Singh* (1) it was held that where a mortgage-deed purporting to be more than thirty years old was not executed by the mortgagors at all but by the scribe, the Court could presume under section 90 of the Evidence Act that the signature was in the handwriting of the scribe and was executed by him but not that he had authority from the mortgagors to sign their names upon that document and therefore the document was not admissible in evidence without such proof. In *Kashi Singh v. Ram Narain* (2) it was held in the late Judicial Commissioner's Court that it cannot be presumed under any provision of the Evidence Act that a person signing on behalf of another had authority to make the signature on his behalf. A Bench of this Court in *Rai Rajeshar*

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Bali v. Har Kishen Bali (1) held that no presumption could be raised under section 90 of the Evidence Act about the authority of any person to sign on behalf of the executant which must be proved. This decision is binding upon me sitting as a single Judge. The only authority cited against this view is the decision of a single Judge of the Calcutta High Court in *Shed Ahmad v. Ibrahim* (2). It was held in this case that the presumption arising under section 90 of the Evidence Act can be applied to a deed executed by an illiterate person whose signature has been made by some other person on his behalf. With all respect to the learned Judge who decided the case I am unable to discover anything in the terms of section 90 to justify a presumption that the person who purports to have signed for an illiterate person had been authorised to do so. However the facts of the case have not been fully stated in the report and it might be distinguished inasmuch as it was observed in the judgment that it appeared from the body of the deed that it was actually executed by the person whose signature had been put by another. It should also be pointed out that in the present case there is no evidence even to show that Hub Lal was illiterate or was unable to sign his name. It is not denied that there is no evidence to prove that Hub Lal had authorised Bhola Das to sign for him. I must therefore hold that the lower Courts were wrong in making a presumption about the genuineness of the document under section 90. The document has in the circumstances not been proved and is inadmissible in evidence and the decree passed on the basis of it cannot be supported.

I therefore allow the appeal, set aside the decree of the lower Court and dismiss the plaintiff's suit with costs throughout.

Appeal allowed.

(1) (1933) I.L.R., 8 Luck., 538.

(2) (1919) 52 I.C., 314.