

APPELLATE CIVIL.

Before Mullick and Ross, J.J.

ARJUN SAHU

v.

KELAI RATH.*

1922.

Nov. 24.

Attestation—admission of execution by executant, effect of, as against others—Evidence Act, 1872 (1 of 1872), sections 70 and 53.

Although, under section 70 of the Evidence Act, 1870, an admission of execution of a document requiring attestation is sufficient proof as against the executant himself, the document is not for that reason binding on other persons.

Therefore, where in a suit on a mortgage bond against the executant and transferees from him, the former admitted execution, *held*, that the plaintiff was not entitled to any relief against the transferees unless, by reason of an admission of attestation made by them, section 53 applied to the case, or the plaintiff was otherwise able to prove proper attestation of the bond.

Appeal by defendant No. 2.

Appeal from an order remanding a mortgage suit for the trial of an issue. The facts of the case material to this report are stated in the judgment of Mullick, J.

B. N. Sinha, for the appellant.

Mr. B. R. Choudhuri, for the respondents.

MULLICK, J.—The plaintiffs brought a suit against defendant No. 1 on a mortgage bond alleging that it had been executed by defendant No. 1. The remaining nine defendants are alleged to be transferees from the plaintiffs.

*Appeal from Remand Order No. 1 of 1922, from a decision of H. E. Horsfield, Esq., District Judge of Cuttack, dated the 3rd March 1922, reversing a decision of Babu Nagendra Nath Das, Munsif of Puri, dated the 3rd February, 1922.

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The Munsif found that the witnesses who were alleged to have attested the deed had not really attested it according to law but had signed their names on the document before the executant had signed it. He accordingly dismissed the whole suit.

There was an appeal to the District Judge who was of opinion that inasmuch as the executant had in his written statement, admitted the execution of the document no further proof of attestation was necessary, and he has remanded the suit to the Munsif for the trial of the remaining issues in the suit. The present appeal has been preferred against that order of remand by defendant No. 2 only.

Now, it is clear that under section 70 of the Indian Evidence Act, the admission of the execution of the document is sufficient proof as against the executant himself, but there is no authority for the proposition that the document is for that reason binding upon the other defendants who were not parties to it. The document must be proved according to law as against them unless section 58 of the Indian Evidence Act applies to the case and relieves the plaintiffs from the burden of proving attestation in respect of any of the defendants who have admitted the fact of attestation. The learned District Judge must find on the evidence whether the Munsif's finding on the question of attestation is correct, and in considering this question he will no doubt refer to the written statement of the defendant No. 2 which is alleged by the respondents before us to contain an admission that there was attestation.

The result is that the appeal will be decreed and the case remanded to the District Judge in order that he may dispose of it according to law. Costs will abide the result.

Ross, J.—I agree.

Appeal decreed.

Case remanded.