

1927

MAUNG THA  
DUN AND  
ONE  
v.  
FO KA AND  
ONE.  
HEALD AND  
DARWOOD,  
Jl.

misdescription of the appellants in the proclamation, nor both combined, are a good ground for setting aside the sale which was completed as soon as the purchase-money was paid in full. The purchasers were then entitled to a conveyance even without any confirmation of the sale by the Court. There are no grounds for setting aside this sale and the appeal must therefore be dismissed with costs.

### APPELLATE CIVIL.

*Before Mr. Justice Carr.*

S.M.A.R.A.L. FIRM

v.

R.M.M.A. FIRM AND THREE.\*

1927

Aug. 2.

*Transfer of Property (Amendment) Act (XXVII of 1926)—Repealing and Amending Act (X of 1927), Sched. I, penultimate item—"Attested," meaning of—Retrospective effect of Act XXVII of 1926.*

One of the witnesses to a mortgage deed attested the deed on the personal acknowledgment by the mortgagor of his signature. The question of attestation came up before the trial Court before the passing of Act XXVII of 1926; the Court decided, as the law stood then, that such attestation was invalid. The said Act came into force before the District Court decided the first appeal in suit and since then Act X of 1927 came into force.

*Held*, that Act XXVII of 1926 was meant to be retrospective and that Act X of 1927 has expressly made it so; and that such attestation must be held to be valid.

*Query*.—Where a person signs a deed only as a writer, before the mortgagor signs, can he now be regarded as an attesting witness? Can a sub-registrar's endorsement of the mortgagor's admission of execution be regarded as attestation?

*Radha Mohan Dutt v. Nripendra Nath Nandi*, 31 C.W.N. clx—referred to.

*Anklesaria*—for Appellants.

*Barnabas*—for 1st Respondent.

CARR, J.—The most important question in this appeal is whether the mortgage deed on which the

\* Civil Second Appeal No. 596 of 1926.

plaintiff sued was duly attested. The deed purported to be signed by Maung Myin as writer and by Ma Taik and Anamale Chettyar. Their signatures are not expressed to be those of attesting witnesses. On Maung Myin's evidence it is clear that he signed only as writer and that he did so before the mortgagor, Maung Pan Tha, himself signed. He says that he did see Pan Tha sign afterwards but I do not think that would make him an attesting witness. The wording of section 2 of Act XXVII of 1926 is not altogether clear on this point, so I will not at present give any definite decision on it.

Anamale Chettyar in his evidence said that he did not see Pan Tha sign, but that before he signed Pan Tha admitted his signature.

Ma Taik was not examined, nor was there any evidence as to the circumstances in which she signed.

As the law stood when the Subdivisional Court decided the suit it was clear that neither Maung Myin nor Anamale Chettyar had duly attested the deed. Consequently the question whether Ma Taik had done so or not was unimportant since her attestation alone could not validate the deed. On that ground alone the Subdivisional Court was justified in refusing the plaintiff's belated request to have Ma Taik examined.

But since that decision the law has been changed by Act XXVII of 1926, which came into force before the District Court decided the first appeal on the 29th June 1926 but which was overlooked by that Court.

Since the decision of the District Court Act X of 1927 has come into force, and it settles the previously disputed question whether Act XXVII of 1926 has retrospective effect or not by giving it such effect.

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IN

R.M.M.A.

FIRM AND

THREE.

CARR, J.

The result of Act XXVII of 1926 is that as the law now stands the attestation by Anamale Chettyar is certainly valid. Whether that by Ma Taik was also valid or not remains to be determined and there is no evidence on the record either way.

The first question for decision is whether the law to be followed is that in force when the Subdivisional Court decided the suit or that in force now. I find no definite authority on this question, though the various judgments on the question of the retrospective effect of Act XXVII of 1926 strongly suggest that the law to be applied is the law as it now stands, since all that I have seen were appeals from judgments passed before that Act came into force. The present question does not seem, however, to have been expressly considered.

I think that Act X of 1927 itself settles the question. The amendment made by the penultimate item of its Schedule I provides that the word *attested* shall be deemed always to have borne the meaning given to it by section 2 of Act XXVII of 1926. The effect of this is that although at the time of the decision of the Subdivisional Court the law applied by that Court was in fact correct it must now be deemed that the law then was the same as the law now in force. It follows from this that it must now be deemed that the Subdivisional Court applied the law incorrectly. The law to be applied therefore is the law as it now stands.

I note that a Bench of the Calcutta High Court has held in *Radha Mohan Dutt v. Nripendra Nath Nandi* (1), that the signature of the sub-registrar to the registration endorsement to the effect that the mortgagor has admitted execution to him now makes that officer an attesting witness. This goes very far,

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(1) (1927) 31 C.W.N. clx.

and, without expressly refusing to accept that decision as correct, I am not at present prepared to follow it, the more so that so far as regards this aspect of the appeal the hearing has been *ex parte*.

The present situation therefore is that the attestation by Anamale Chettyar must be taken to be good and that there is as yet no evidence as to the attestation by Ma Taik.

[The appeal was dismissed against the 1st respondent for reasons not material for the purposes of this report, and the case was remanded for the trial of the issue as to whether the mortgage deed was duly attested by Ma Taik.]

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 FIRM AND  
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 CARR, J.

## APPELLATE CIVIL.

*Before Sir Guy Ruddle, Kt., K.C., Chief Justice, and Mr. Justice Carr.*

NACHIAMMA ACHI

v.

S.N. SUBRAMONIAN CHETTY.\*

1927  
 Aug. 3.

*Order for transmission of decree for execution, a ministerial act—Allowing execution against legal representative of deceased judgment-debtor without notice whether valid—Question whether decree is barred when a question for executing Court and not the transmitting Court to decide—Letters Patent, Cause 13—Civil Procedure Code (Act V of 1908), ss. 48, 50—Limitation Act (IX of 1908), Sched. I, Art. 181.*

A decree of the Chief Court of Lower Burma passed in June 1910 was transmitted in July 1910 to the District Court of Ramnad for execution. It remained there till February 1922 when it was returned with a certificate of non-satisfaction and a letter stating that the decree was returned so as to enable the decree-holder to bring in the legal representatives of a deceased defendant on the record. The Ramnad Court had stated in one of its orders also that the request of the decree-holder to keep the execution petition on the file need not be granted. In April 1923 the decree-holder applied to the High Court to have the appellant brought on the record as the legal representative, and the order was made *ex parte* in July 1923. In January 1926 appellant got the *ex parte* order set aside, and in December 1926, she was ordered by the Original

\* Civil First Appeal No. 32 of 1927 arising out of Civil Execution Case No. 301 of 1923 of the Original Side.