

order of the Magistrate closing the prosecution evidence and acquitting the respondent is illegal and improper. The appeal is, accordingly, accepted, the Magistrate's order acquitting the respondent is set aside, and the case remitted to the trial Court for proceeding with the trial in accordance with law after affording the prosecution an opportunity to produce its evidence, and if necessary to apply for summoning its witnesses.

S. B. CAPOOR, J.—I agree.

R. N. M.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

JUGRAJ SINGH AND ANOTHER,—*Appellants.*

versus

JASWANT SINGH, AND OTHERS,—*Respondents.*

Regular Second Appeal No. 399 of 1966.

December 14, 1966.

Evidence Act (I of 1872)—S. 85—Authentication—Meaning of—Words “Subscribed and sworn to before me”—Whether amount to authentication—Registration Act (XVI of 1908)—S. 32—Attorney executing the document—Whether entitled to present it for registration.

Held, that no specific form of authentication is prescribed under section 85 of the Evidence Act. ‘Authentication’ ordinarily means ‘establish the truth of, establish the authorship of, make valid.’ The words ‘subscribed and sworn to before me this 23rd day of March, 1964’ in Exhibit D/2, clearly show that Vernon Seth Chotia, the executant of this document, had admitted on oath in the presence of the Notary Public that he had executed and signed the document. ‘Subscribed’ means ‘to write one’s name at the foot of a document, or sign a document’. This attestation by the Notary Public shows that he had satisfied himself about the identity of Vernon Seth Chotia and also about the fact that the executant had signed the document after having admitted its contents to be correct. This will mean authentication as envisaged in section 85 of the Evidence Act and it was not necessary for the Notary Public to use the particular word ‘authentication’ in the attestation made by him on the said document.

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Held, that an agent or attorney who has executed the document by virtue of the power-of-attorney granted to him by the principal, is a proper person, within the meaning of section 32(a) of the Registration Act, to present the document for registration before the Sub-Registrar.

Second Appeal from the decree of the Court of Shri Mohan Lal Verma, 11nd Additional District Judge, Ferozepur, dated the 17th day of March, 1966 affirming with costs that of the Sub-Judge, 1st Class, Muktsar, dated the 19th July, 1965, dismissing the plaintiffs suit and leaving the parties to bear their own costs.

K. L. KAPUR, ADVOCATE, for the Appellant.

H. L. SIBAL, ADVOCATE, AND MR. RAMESH SETIA ADVOCATE, for the Respondents.

JUDGMENT.

PANDIT, J.—One Bagh Singh was the owner of the land in dispute, measuring about 371 Kanals and situate in village Sangrana, district Ferozepore. In 1923, he mortgaged the same with possession for Rs. 5,500 in favour of Ran Jang Singh. Later on, he migrated to America and died there. According to Jug Raj Singh and his brother Balbir Singh, sons of Ran Jang Singh, plaintiffs, he was succeeded by his widow and two sons including Vernon Seth Chotia.

On 30th May, 1963, the said Chotia sold this land through his *mukhtiar khas* Shri Kartar Singh Chawla to Jaswant Singh and 7 others, defendants, for Rs. 24,000. Subsequently Ran Jang Singh also died and he was succeeded by his two sons, Jugraj Singh and Balbir Singh. In June, 1963, Jaswant Singh and others made an application for the redemption of this land under section 4 of the Punjab Redemption of Mortgages Act, 1913. On 5th of August, 1963, the Collector granted this application and ordered redemption on payment of Rs. 5,500 to the plaintiffs. On 7th of August, 1963, the plaintiffs instituted a suit under section 12 of the Punjab Redemption of Mortgages Act, 1913, for a declaration that the defendants were not competent to redeem the land and the order of the Collector, dated 5th of August, 1963, was void and illegal. Their allegations were that the sale effected on 30th of May, 1963, in favour of the defendants was not valid, inasmuch as it was not made through a properly authorised agent of Vernon Seth Chotia and, consequently, they had no right to redeem the land with the result that the order passed by the Collector on 5th of August, 1963, was illegal. It was claimed by them that they were still the mortgagees of the land and

the defendants were not entitled to get possession from them under the order of the Collector. According to them, the defendants were liable to pay them certain amounts on account of taxes including land revenue, etc., in the event of the redemption of the land.

The suit was contested by the defendants, *inter-alia*, on the ground that Vernon Seth Chotia had sold the land to them through his duly authorised attorney, Shri Kartar Singh Chawla, that the said sale was valid and for consideration and that the order of the Collector was in accordance with law. It was also averred by them that the plaintiffs had not paid any taxes to the Government at any rate, they were not entitled to recover anything more than the mortgage amount from them under the conditions of the mortgage.

The trial Judge came to the conclusion that Shri Kartar Singh Chawla was the duly authorised agent of Vernon Seth Chotia and had validly sold the land to the defendants. That being so, the order of the Collector, dated 5th of August, 1963, was legal and binding on the plaintiffs. It was also found by him that there was nothing on the record to show that the plaintiffs were entitled to recover the taxes, etc., paid by them from the defendants. The plaintiffs could withdraw the mortgage amount of Rs. 5,500 already deposited by the defendants in the Court of the Collector, Muktsar. The plaintiffs were not still the mortgagees of the suit-land. On these findings, the suit was dismissed.

Aggrieved by this decision, the plaintiffs went in appeal before the Additional District Judge, Ferozepore, who rejected the same after having affirmed the findings recorded by the trial court. Against this, the present second appeal has been filed by the plaintiffs.

The only point urged by the learned counsel for the appellants was that the sale effected in favour of the defendants by Vernon Seth Chotia was not valid in law, inasmuch as it had not been proved on the record that Shri Kartar Singh Chawla was the properly authorised agent of the said Vernon Seth Chotia.

The facts relevant for the decision of this point are these. Since Vernon Seth Chotia was residing in America, he sent a special power of attorney, dated 6th of September, 1961, Exhibit P/2, in favour of Shri Kartar Singh Chawla empowering him to sell the land in dispute and get the sale-deed registered in this behalf. On the basis

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of this power of attorney, Shri Kartar Singh Chawla, executed the sale-deed, Exhibit D/1, on 30th of May, 1963, in favour of the defendants. As the power of attorney, Exhibit P/2, was not authenticated by a Notary Public, Vernon Seth Chotia sent another special power of attorney, Exhibit D/2, dated 23rd of March, 1964, in favour of Shri Kartar Singh Chawla. Exhibit D/2 was attested by a Notary Public. Its contents were practically the same as of Exhibit P/2 but in addition it was mentioned therein that "this power of attorney is executed in ratification of a prior power of attorney, dated the 6th day of September, 1961". The attestation of the Notary Public was in these words "Subscribed and sworn to before me this 23rd day of March, 1964, sd/- , Notary Public in and for the County of Alameda, State of California". Along with this power of attorney, the County Clerk's certificate as to Notary Public was also attached.

The sale in favour of the defendants was challenged by the plaintiffs on two grounds—

- (i) Shri Kartar Singh Chawla was not an authorised agent to sell the said land on behalf of Vernon Seth Chotia; and
- (ii) the registration of the sale-deed, Exhibit D/1, was invalid, inasmuch as it was not presented by a proper person for registration under the provisions of sections 32 and 33 of the Indian Registration Act, 1908.

The objection of the plaintiffs in respect of Exhibit P/2, was that it had not been executed before and authenticated by a Notary Public or any authority mentioned in section 85 of the Evidence Act and, consequently, it could not be said that Shri Kartar Singh Chawla had been duly appointed as *mukhtiar khas*. So far as Exhibit D/2 was concerned, it was submitted that this power of attorney was also invalid, because it had not been authenticated as required by section 85 of the Evidence Act. The Notary Public while attesting it had merely written "subscribed and sworn to before me this 23rd day of March, 1964". This attestation was not authentication as required by law under section 85. The Notary Public had not said that Vernon Seth Chotia had executed the power of attorney before him and that he had authenticated it. On the basis of these objections, the argument was that the sale-deed, Exhibit D/1, had not been executed by a duly authorised agent of Vernon Seth Chotia and as such it had not passed any title in favour of the defendants. The objection with regard to the validity of the registration of the sale-deed, Exhibit D/1, was that it had not been presented before the

Sub-Registrar for registration by a competent person. Shri Kartar Singh Chawla, according to the plaintiffs, was not, under the law, entitled to present it for registration, because he would not be covered by the words 'some person executing' occurring in section 32(a) of the Registration Act, which said that every document to be registered under that Act should be presented at the proper registration office by some person executing or claiming under the same. It was conceded that the sale-deed could be presented for registration by the agent of Vernon Seth Chotia, but that agent had to be duly authorised by a power of attorney executed and authenticated in the manner mentioned in Section 33 of the Registration Act, clause (c) of sub-section (1) of which provided that if the principal at the time of registration did not reside in India, the power of attorney executed before and authenticated by a Notary Public or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or the representative of the Central Government, was alone to be recognised. The power of attorney executed in favour of Shri Kartar Singh Chawla, according to the plaintiffs, did not fulfil this condition, with the result that he could not be considered as the agent of Vernon Seth Chotia within the meaning of section 32(c) of the Registration Act and he could, consequently, not present, Exhibit D/1, before the Sub-Registrar for registration.

As regards the power of attorney, Exhibit P/2, learned counsel for the appellants could not point out any law under which it was necessary that it should have been executed before or authenticated by a Notary Public or any authority mentioned in section 85 of the Evidence Act. Learned counsel could not also show in what other way the power of attorney was defective. He, however, relied on the admission of the counsel for the defendants before the lower appellate court that the said power of attorney standing alone could not be taken into consideration, in view of the fact that it was not executed or authenticated as required by section 85 of the Evidence Act. In my opinion, it is needless to decide whether this concession was correctly made by the counsel for the defendants or not, because this power of attorney had later on been ratified and validated by Vernon Seth Chotia by executing the second power of attorney, Exhibit D/2, on 23rd of March, 1964, in which he specifically mentioned that that power of attorney was executed in ratification of a prior power of attorney, dated 6th of September, 1961. By the said ratification, the power of attorney, Exhibit P/2, was validated from the date of its execution, i.e., 6th of September, 1961, and all actions of Shri Kartar Singh Chawla on the basis thereof were automatically regularised, with the result that the sale-deed, Exhibit D/1, would

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also be considered to be good in law, inasmuch as it would be deemed to have been executed by a duly authorised agent of Vernon Seth Chotia. For this ratification, I have assumed that Exhibit D/2, was a valid power of attorney in law. Let us now see whether the objection raised against it by the plaintiffs to the effect that it had not been authenticated as required by section 85 of the Evidence Act is sound in law. Section 85 reads thus:—

“The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.”

As rightly pointed out by the learned Additional District Judge, no specific form of authentication is prescribed under section 85 of the Evidence Act.

‘Authentication’ ordinarily means ‘establish the truth of, establish the authorship of, make valid’. The words ‘subscribed and sworn to before me this 23rd day of March, 1964’, in Exhibit D/2, clearly show that Vernon Seth Chotia, the executant of this document, had admitted on oath in the presence of the Notary Public that he had executed and signed the document. ‘Subscribed’ means ‘to write one’s name at the foot of a document, or sign a document’. This attestation by the Notary Public shows that he had satisfied himself about the identity of Vernon Seth Chotia and also about the fact that the executant had signed the document after having admitted its contents to be correct. This would, in my opinion, mean authentication as envisaged in section 85 of the Evidence Act and it was not necessary for the Notary Public to use the particular word ‘authentication’ in the attestation made by him on the said document. There is thus no merit in the objection raised by the plaintiffs.

Coming to the second objection of the plaintiffs regarding the presentation of D/1, by a proper person for registration, it is enough to say that the same is covered by a Bench decision of this Court in *Ram Gopal v. Lala Mohan Lal and others* (1), where it was held—

“Section 32 of the Registration Act requires the document sought to be registered, to be presented, *inter alia*, by

(1) A.I.R. 1960 Punj. 220.

“some person executing” it; this expression means the person actually and in fact executing the document and it does not refer to the principal who may be considered to be executing the document by means of an agent. The basic principle underlying these provisions of the Registration Act is to get before the Sub-Registrar the actual executant who in fact executes the document in question.”

Following this decision, it has to be held that Shri Kartar Singh Chawla, who had actually and in fact executed the sale-deed, Exhibit D/1, was a proper person, within the meaning of section 32(a) of the Registration Act, to present the document for registration before the Sub-Registrar. That being so, the question of the applicability of the provisions of sections 32(c) and 33(a) does not arise in the instant case. There is thus no force in this objection as well. It may be mentioned that the learned counsel for the appellants challenged the correctness of the decision in *Ram Gopal's case* and cited *Puran Chand Nahatta v. Monmotho Nath Mukherjee and others* (2), *D. Sardar Singh v. Seth Pissumal-Harbhagwandas, Bankers* (3), and *Abdus Samad v. Majitan Bibi and another* (4), which, according to him, had taken a contrary view. Sitting singly, however, I am bound by the Bench decision of this Court.

In view of what I have said above, this appeal fails and is dismissed. In the circumstances, of this case, however, I will leave the parties to bear their own costs throughout.

B. R. T.

APPELLATE CIVIL

Before Harbans Singh and J. N. Kaushal, JJ.

SANTOKH SINGH,—Appellant.

versus

DALIP KAUR AND OTHERS,—Respondents.

Execution First Appeal No. 34 of 1962.

December 16, 1966.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—S. 37—Decree passed by Tribunal directing its adjustment from compensation payable to

(2) A.I.R. 1928 P.C. 38.

(3) A.I.R. 1958 And. Prad. 107.

(4) A.I.R. 1961 Cal. 540.