

Wali Mohammad Chaudhari And Ors. vs Jamal Uddin Chaudhari on 22 March, 1950

Equivalent citations: AIR1950ALL524, AIR 1950 ALLAHABAD 524

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal. The defendants are brothers of Jamaluddin Chaudhari, plaintiff respondent. Jamaluddin lives in Dutch Guiana. The fourth brother Shahabuddin filed a suit on his behalf for possession over his one-fourth share in the family property described at the -foot of the plaint. Shahabuddin claimed that under a power of attorney executed by Jamaluddin, he had been given power to institute the suit on his behalf. The suit was decreed by both the Courts below. The defendants, brothers of Jamaluddin, have filed this second appeal.

2. During the pendency of this second appeal, the appellants filed a compromise executed by Tajammul Husain as general attorney for Jamaluddin plaintiff respondent. This compromise was sent to the lower Court for verification. It was duly verified by Tajammul Hussain who produced the power of attorney purporting to have been executed by Jamaluddin. Shahabuddin objected to this compromise on the ground that Tajammul Husain had no authority to enter into a compromise on behalf of Jamaluddin. The original deed of attorney has been filed before me, a copy of which was filed in the Court below. This is dated 4th March 1949, and appears to have been signed by Jamaluddin and signed and authenticated by a notary public.

3. Under Section 85, Evidence Act, "there is a presumption 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, British Counsel or Vice-Counsel or representative of Her Majesty or of the Central Government, was so executed and authenticated. The authentication is not merely attestation, but something more. It means that the person authenticating has assured himself of the identity of the person who has signed the instrument as well as the fact of execution. It is for this reason that a power of attorney bearing the authentication of a notary public or an authority mentioned in Section 85 is taken as sufficient evidence of the execution of the instrument by the person who appears to be the executant on the face of it. The presumption, no doubt, is rebuttable. But unless rebutted the presumption stands and the document can be admitted in evidence as a document executed by the person alleged to have executed it without any further proof: vide *Haggitt v. Ineff*, (1855) 24 L. J. Ch. 120 : (3 W. R. 141) and *Performing Right Society Ltd. v. Indian Morning Post Restaurant*, A. I. R. (26) 1939 Bom. 347: (I. L. R. (1939) Bom. 295).

4. The power of attorney, therefore, is admissible in evidence. No evidence was tendered in support of the objection made by Shahabuddin although three months' time was allowed to him for the

purpose. Mr. Ishaq Ahmad wants further time. I do not think that the time already granted was insufficient. The case is an old one and I will not be justified in granting any more time.

5. Another point urged by Mr. Ishaq Ahmad, who has been instructed by Shahabuddin, is that the power of attorney filed by the appellants does not empower the attorney to compromise the appeal. The words of the power of attorney are very wide, They are as follows :

"I, Jamaluddin, appoint, nominate and constitute Mr. Tajammul Husain to be my lawful attorney to represent me in India Union generally in all matters of any kind of nature whatsoever as effectually as I may or can do, with the right of substitution or subrogation, save and except for the sale, mortgage or transfer of property. I hereby promising and agreeing to ratify and confirm all that my said attorney may or shall do under virtue of these presents."

The terms of the power of attorney authorise the attorney to do everything on behalf of Jamaluddin just as effectually as Jamaluddin himself could have done these things with the exception that the attorney shall not be entitled to sell or mortgage any property. The attorney was, therefore, entitled to compromise the appeal. One of the appellants is a minor. The compromise is for his benefit as reported by the lower Court.

6. The appeal, therefore, must be decided in terms of the compromise. I order accordingly.

7. Costs shall be borne by the parties.