SURVEY – COMPULSORILY ATTESTABLE DOCUMENTS AND THEIR MODE OF PROOF FOCUSING ON THE PRINCIPLE LAID DOWN BY HIS LORDSHIP JUSTICE L. NARSIMHA REDDY AS HE THEN WAS REPORTED IN 2012 (2) ALD 423 LAYING DOWN THE DENIAL OF EXECUTION NEED NOT BE BY THE EXECUTED ALONE AND IT MIGHT BE BY ANY PARTY TO THE SUIT OVER AND ABOVE THE EXEMPTION LAID DOWN IN THE LAST PART OF THE PROVISO TO SECTION 68 EVIDENCE ACT AND THE NECESSITY TO EXAMINE THE ATTESTORS IRRESPECTIVE OF NON-DENIAL OF EXECUTION OF THE DOCUMENT, BY THE EXECUTANT.

By

–POOLLA SAMBASIVARAO,
Advocate, Narsipatnam

The Bench and the Bar very often come across this knotty problem and for the facility of reference the relevant sections of the Evidence Act and Transfer of Property Act are reproduced in order to get a hang over the matter and everyone concerned with law, cannot be oblivious to the well settled principles.

Compulsorily attestable documents are

1. Mortgage Bond, other then a mortgage by deposit of Title deeds (According to Section 59 of the Transfer Property Act).
2. Gift deed of immovable property (Section 123 T.P. Act)
3. Will (Section 63 of the Indian Succession Act, 1925).

Evidence Act, mode of proof

68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness atleast has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908) unless its execution by the person by whom it purports to have been executed is specifically denied.

69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the united kingdom, it must be proved that the attestation of one attesting witness atleast is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

90. Presumption as to documents thirty years old.—Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document 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.

Explanation.—Document are said to be in proper custody if they are in the place in

which, and under the care of the person with whom, they would maturally be; but no custody is improper if it is proved to have had a legitimate origin or if the circumstance of the particular case are such as to render such an origin probable.

This Explanation applies also to Section 81.

Sections 68 and 69 Evidence Act stipulate the norms for the proof document which are required to be attested.

It is thus evident Section 68 of the Evidence Act mandates that if a document is required to be attested, it shall not be used in evidence until atleast one attesting witness has been examined to prove it. The proviso there to directs that in case the document is registered, it shall not be necessary to examine any witness, unless the executant of the document has denied execution. The procedure to prove a document required to be attested, in the event of none of the attesting witnesses being available is prescribed under Section 69 of the Evidence Act, which is delineated as above. A close reading of the proviso to Section 68 of the Evidence Act, discloses that the exemption from calling any witness to prove such a document would be available only if the execution of the document is not denied.

However, His Lordship Justice *Narasimhareddy* as he then was after taking into consideration several other land mark judgments laid down to the effect that denial of execution need not necessarily be by the executants alone but by any party to the suit, extending the scope of exemption and the relevant observations as reported in 2012 (3) ALD 423 at 429, Paragraph 13 are delineated as follows.

Para 17 :—The last part of the proviso, *viz*., unless its execution by the person by whom it proports to have been executed specifically denied "was the subject-matter of discussion in several judgments and interpretation there of is not uniform A plain reading of the expression, referred to above would give an indication that it is only when the executant of the document denies its execution, that, the necessity to examine the attestors would arise, not withstanding the fact, that the document was registered. A pertinent question as to whether the denial can be by the executant alone, or by any party to a suit, who is adversely affected on account in of the document arose in many cases. One view is which the Kerala High Court in *Paramu Radhakrishan*, 1990 Ker. 146, the erstwhile High Court of Oudh in *Chandrakali Bhabuti Prasad*, AIR 1943 Udh 416 and the High Court of Nagpur Jodhpur in *Zaharul Mahadeo Ramjieshmuk and others*, AIR 1949 Nag. 149, subscribed, was that the denial need not be by the executant alone. This view appears to be correct."

To the extent of my ability and deligent search made by me subject to scrutiny there appears no other contra view either of the A.P. High Court or Supreme Court and an authoritative pronouncement either of the Division Bench of the High Court of A.P. or Supreme Court is on the anvil.

It appears this important aspect is being ignorantly ignored and it cannot be oblivious to this endeavour.

Now adverting to Section 90 of the Evidence Act. With regard to presumption as to documents thirty years old, under Section 90, before any question of presuming a document's valid execution canemerge, the document must purport and be proved to be thirty years old.

The law surrounding the date of computation of the elapse of thirty years stands long-settled, since the verdict of the Privy Council in *Surendra Krishna Roy v. Mirza Mahammad Syed Lali Mutavalli*, AIR 1936 PC 15, which held that the period of thirty years, is to be reckoned, not from the date up on

which the deed is filed into the Court but otherwise becomes the province of proof. General speaking although the date on which has been tendered in evidence or subjected to being proved/exhibited is the relevant date from which its antiquity is to be computed we think it necessary to underscore that it should be produced at the earliest so that it is not looked upon askance and with suspicion so far as its authenticity is concerned. (Please see Supreme Appeals Reported 2015 Page 229 at Page 301)

To maintain brevity the computation of thirty years is to be from the date of execution and ends with date of tendering the document in evidence.

It is well settled when once a document which is thirty years old is produced and the party relying on the same insists upon the presumption as to his proof under Section 90 of the Evidence Act the party who opposes such presumption has to disprove it. If he fails in the attempt to disprove, nothing remains to be done and the Court shall have to presume the proof and validity of the document.

WHETHER THE DOCTRINE OF "LIS PENDES" APPLIES EVEN AFTER THE DISMISSAL OF A SUIT

By
—POOLLA SAMBASIVARAO,
Advocate, Narsipatnam

Section 52 T.P. Act provides that pendente lite neither party to the litigation, in which any right to immovable property is in question can alienate or otherwise deal with such property so as to affect his opponents. In other words, the doctrine is intended to protect the parties to a litigation against alienations by their opponent during the pendency of a suit.

It is also well settled the law of *lis pendes* is an extension to the law of *res judicata.*

Be this prefatory analysis as it may regard the scope of Section 52 T.P. Act.

The brod principle underlying Section 52 T.P. Act is to maintain *status quo* unaffected by the Act of any party to the litigation pending its determination. Even after dismissal of a suit the purchaser is subject to *lis pendens*, if an appeal is after words filed as held in *Krishnaji Padmavathi v. Anusayavai*, AIR 1959 Bom. 475. The explanation to the section lays down that pending of a suit or a proceeding shall be deemed to continue until the suit or proceeding is disposed of by final decree or order and complete satisfaction or discharge of such decree or order has been obtained or has become unobtainable by reason of any explanation of any period of limitation prescribed for the execution there of by any law for the time being in force.

It is thus evident, the doctrine of *lis pendens* is founded in public policy and equity and if it has to be read meaningfully such a sale until the period of limitation for preferring any appeal is over will have to be held as covered under Section 52 T.P. Act.

Any sophisticated contra view is worth welcome in view of day-to-day importance.
