

PETITIONER:
THAKKAR VRAJLAL BHIMJEE

Vs.

RESPONDENT:
THAKKAR JAMNADAS VALJEE ANDANOTHER

DATE OF JUDGMENT 11/05/1994

BENCH:
SAHAI, R.M. (J)
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SAHAI, R.M. (J)
HANSARIA B.L. (J)

CITATION:
1994 SCC (4) 723

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. The only question of law that arises for consideration in this appeal is whether the mortgage deed was proved in accordance with law in absence of examination of any of the attesting witnesses.

2. The High Court held that since the appellant, who was a guarantor, having admitted his signature on the mortgage deed and he having not specifically denied in the written statement the execution of the document it was not necessary for the respondent-plaintiff to examine any attesting witness to prove the execution of the mortgage deed.

3. In *Kunwar Surendra Bahadur Singh v. Thakur Behari Singh*, it has been held that one of the essentials of mortgage deed is that each of the attesting witnesses must have signed the document in the presence of the executant. The Court held that if the provisions of Sections 58 and 59 of the Registration Act and Sections 3 and 59 of the Transfer of Property Act are read together, there was no escape from the conclusion that a mortgage deed was required to be proved by producing ;it least one of the attesting witnesses. In view of this decision the judgment of the High Court cannot be upheld. The observation of the High Court that there was no specific denial by the appellant in his written statement also does not appear to be correct as the appellant in paragraph 11 clearly stated that he did not admit the document dated 22-4-1958. There was thus a specific denial and as held by the Privy Council in absence of production of any attesting witness the document could not be deemed to have been proved in accordance with law.

4. In the result, this appeal succeeds and is allowed. The order and decree of the courts below against the appellant-guarantor is set aside and the suit against him shall stand dismissed. We may make it clear that the mortgagee having not appealed in the High Court against the decree passed by the two courts below, it has become final against him. Parties shall bear their own costs.

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JUDIS