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## CASE COMMENTARY ON M.L ABDUL JABHAR SAHIB VS VENKATA SASTRI AND SONS & ORS

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**BEST CITATION** – YASHVARDHAN VATS, CASE COMMENTARY ON M.L ABDUL JABHAR SAHIB VS VENKATA SASTRI AND SONS&ORS, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (2) OF 2024, PG. 23-25, APIS – 3920 – 0001 & ISSN – 2583-2344

### FACTS:

The case revolves around one of the most important sections which is section 3 of the Transfer of Property Act. The applicant (M.L Abdul jabhar sahib) filed a suit against H.V.Venkata Sastri For the recovery of the monies on the basis of the promissory notes. The suit was initially filed under the Madras High Court.

Likewise, H executed for the Record, Madras High Court, a security bond charging certain properties for the instalment of Rs. 50,000, The report was validated by just a single observer. At the hour of enlistment, it was endorsed by two recognizing observers and the Sub-Recorder

The preliminary Appointed authority excused their applications. In Letters Patent Requests the High Court held that without even a trace of verification by the two witnesses the security bond executed by H was invalid because a charge on property made under s. 100 of the Move of Property Act pulled in the arrangements of s. 59.

Concerning the declaration passed in suit No, 56 of 1953 the High Court had that in perspective of the declaration holder's oversight to correct the plaint by adding a request for requirement of the charge the declaration ought to be interpreted as containing just a presentation of the way that a security bond had been executed. On these discoveries the High Court held that the respondents were qualified for rateables circulation.

Against the High Court's requests the litigant documented requests in this Court. n Letters Patent Requests the High Court held that without confirmation by the two observers the

security bond executed by H was invalid because a charge on property made under s. 100 of the Exchange of Property Act pulled in the arrangements of s. 59. With regards to the pronouncement passed in suit No, 56 of 1953 the High Court had that in perspective of the declaration holder's oversight to revise the plaint by adding a request for implementation of the charge the pronouncement ought to be understood as containing just a presentation of the way that a security bond had been executed.

The case raised the question that whether the essential conditions of attestation has been fulfilled or not. While we talk about this case M.L Abdul jabhar vs

H.V Venkata Sastri the evidence did not displayed that registering officer and the witness identified signed the document with the wilful intention of attesting it, the party failed to prove that they attested willingly was not even shown that the registering officer signed the document in the presence of the executant.

### ISSUES:

The Main issue of the case was that **whether the Attestation done under this case is valid or not** according to the section 3 of the transfer of property act which briefly defines what is attestation and how is the attestation

considered Legal.

**LAWS INVOLVED:**

**1. SECTION 3 OF THE TRANSFER OF PROPERTY ACT<sup>50</sup>:**

- The Section 3 of the transfer of property act is known as the Interpretation clause, this section briefly defines majority of the important terms in the transfer of property act and in this case the term referred is **Attestation, within this section attestation is discussed with respect to an instrument.** Attestation is basically done in order to validate or scrutinize a document after attestation the document becomes more powerful and legal. The definition of Attestation was included with the Amendment of the act done in 1926.

**-In section 3 of this act under attestation, there are few essentials given only on the basis of which a document can be attested. The essentials are enlisted below:**

- a) To Attest a particular document there must be Two or more competent by law witness.
- b) Each and every witness present at the time of attestation they should with their eyes see the executant sign the document.
- c) The witness present at the time of attestation cannot be a party to transfer.
- d) Each witness should sign the instrument
- e) Every witness should receive the confirmation that the instrument is signed.
- f) Each witness should sign the instrument in the presence of the executant
- g) Every witness should receive the confirmation that the instrument is signed.
- h) There is no exact form of attestation under prescrae nistatnce the
- i) It is not mandatory that both the Witness is present at the same time for signing the instrument

**2. SECTION 59 OF THE TRANSFER OF PROPERTY ACT<sup>51</sup>:**

Another Important section referred in this case section 59 of the transfer of property act which is mortgage when to be by assurance, the act says that when the principal money secured is more than 100 rupees or 100 rupees itself then in such case a mortgage can only be affected by a registered instrument signed by the mortgager and the witness (at least two of them).

**3. SECTION 73(1) OF THE TRANSFER OF PROPERTY ACT<sup>52</sup>:**

This section explains the situation when any Mortgaged property or any part of such property or any interest is sold because of the failure to pay arrears or revenue of other damages.

**4. SECTION 100 OF THE TRANSFER OF PROPERTY ACT<sup>53</sup>:**

Section 100 of the transfer of property act defines the term CHARGE.

**ANALYSIS:**

The case M.L. Abdul Jabbar VS H.VENKATA SASTRI emphasizes the importance of valid attestation when signing any legal instrument. It stresses that the witness should sign the instrument with genuine intention to avoid any legal troubles. As we saw in this case there was no evidence shown by the party that the registering officer put their signature on the document with the intention of signing the document, the court made the document illegal which is my understanding is the correct step because in certain cases there are such kinds of acts noticed where the registering officer signed the instrument under pressure making the instrument illegal and invalid. There was even no evidence shown by the party that the instrument was signed in the presence of the executant.

<sup>51</sup> (Section 59 of Transfer of property Act)

<sup>52</sup> (Section 73(1) of the Transfer of Property Act)

<sup>53</sup> (Section 100 of Transfer of Property Act)

<sup>50</sup> (Section 3 of the Transfer of Property Act)

**CONCLUSION: The Full Seat held that As they would see it, such marks of the registering officer and the recognizing observers supported on a home loan report can be treated as those of confirming observers if'**

(1) the signatories are the people who have seen the execution or gotten an individual affirmation from the executant of his having executed the record

(2) they sign their names within the sight of the executant and (3) while, so doing they had the enmity to validate. The simple presence of the marks of the enrolling official or the recognizing observers on the enlistment supports wouldn't without help from anyone else be adequate to fulfil the necessities of a Substantial validation; yet it would be skilled for the gatherings to show by proof that any or these people did as a matter of fact plan to and endorsed as verifying observer too,

The Full Seat held that the choice in Veerappa Chettiar's Case(1) can be held to, be right to this restricted degree just and not in any case. At the last becoming aware of the requests, that's what the Divisional Seat held ( 1 ) a charge by demonstration of gatherings could be made exclusively by a record enrolled and validated by two observers; (2) the security bond was not confirmed by two observers and was in this way invalid; (3) the pronouncement in C.S. No. 56 of 1953 ought to be understood as containing just a presentation of the reality of there having been a security for the offended party; and the deal in execution of the declaration should be viewed as a deal in execution of a cash pronouncement; and (4) tie respondents were qualified for a request for rateable dispersion. In like manner, the Divisional Banch permitted the requests, coordinated connection of the deal continues and announced that the respondents were qualified for rateable conveyance alongside the appealing party. The current requests have been documented in the wake of acquiring exceptional leave from this Court.

It is to be seen that "validated", what to be characterized, happens as a component of the

actual definition. To verify is to give testimony. to a reality. Momentarily put, the fundamental states of a legitimate confirmation under s. 3 are : (1 ) at least two observers. have seen the executant sign the instrument or have gotten from him an individual affirmation of his mark; (2) so as to confirm or to demonstrate the veracity of this reality every one of them has. marked the instrument within the sight of the executant. It is fundamental that the observer ought to have-put his mark animo attestandi, or at least, to validate that he has seen the executant sign or has gotten from him an ideal put his unmistakable on the record for another reason, e.g., to confirm that he is a copyist or an identifier or an enlisting official, he isn't a validating observer.

**And thus, the Appeal was allowed and the registration of the deed was held valid.**