

1977 Present: Sirimane, J., Perera, J. and Wanasundera, J.

M. K. A. MOHAMED MUTHALIB and another, Plaintiffs-  
Appellants

and

ALIYA MOHAMED SEYED ABBAS, Defendant-Respondent

S. 20/76—D. C. Kandy L. 10201

*Power of Attorney—Objection taken at trial to production thereof—Document executed in India and ex-facie duly authenticated—Evidence Ordinance, sections 85, 4(2)—Whether presumption under this section, applicable.*

A power of attorney executed before a sub-registrar in India was sought to be produced by the plaintiffs but was objected to unless its execution was proved. The learned District Judge made order admitting the document "subject to proof". The plaintiffs appealed from this order.

*Held*: That a power of attorney which is *ex-facie* duly executed in India attracts the presumption laid down in section 85 of the Evidence Ordinance that it was so duly executed and authenticated.

*Held further*: That according to the provisions of the Indian Law applicable, a Sub-Registrar is a person duly authorised by law to execute and authenticate a document such as a Power of Attorney and therefore the document in the present case is *ex facie* duly executed.

Case referred to:

*Sreenivasaraghawa Iyengar vs. Jainambabee Ammal*, 48 N.L.R. 49.

**A**PPEAL from an order of the District Court of Kandy.

C. R. Gunaratne, with J. C. Ratwatte, for the plaintiffs-appellants.

C. Thiagalingam, Q.C., with R. Kanag Iswaran, for the defendant-respondent.

May 17, 1977. SIRIMANE, J.

The only question on this appeal is the admissibility in evidence of the document P13 which is a power of attorney executed in India. The plaintiffs-appellants sought to produce this document and it was objected to by the respondent unless its execution was proved. The learned trial Judge admitted the document "subject to proof" and the plaintiffs appeal from that order.

The document P13 is the original of a power of attorney executed before a sub-registrar in India and an examination of this document itself shows that it is *ex-facie* a duly executed and authenticated document. Indeed even learned counsel for the respondent, who had himself appeared for the respondent in the original Court, had stated there that *ex-facie* it appears to be a duly authenticated document. In these circumstances learned counsel for the appellants relies on section 85 of the Evidence Ordinance which reads:—

“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, a person duly authorised by law in that behalf, or any court, Judge, Magistrate, British Consul or Vice Consul or representative of His Majesty, or of the Governor-General of the Island, or of the Government of India, was so executed and authenticated.”.

He also relied on the case of *Seenivasaraghawa Iyengar vs. Jainambabee Ammand*, 48 N. L. R. 49, where it was held that a power of attorney purported to have been executed in British India in the presence of two witnesses and a notary public could be admitted under section 85 of the Evidence Ordinance without evidence as to the signature of the notary or the identity of these executant.

Learned counsel for respondent submitted that “the notary public or person duly authorized by the law in that behalf” in section 85 of the Evidence Ordinance refers to persons in Sri Lanka only, and that in any case it has not been shown that a sub-registrar in India is a person duly authorized by law to execute and authenticate a power of attorney. We have considered these submissions but we are unable, as regards the first submission, to give such a restricted interpretation to that section. We respectfully agree with the decision in the case cited above by learned counsel for the appellants that a power of attorney which is ex-facie duly executed in India attracts the presumption laid down in section 85. As regards the second submission section 33(1) (a) of the India Registration Act 16 of 1908 provides that a power of attorney executed before and authenticated by a Registrar within whose district or sub districts the principal resides shall be recognized for registration under the Act and subsection 4 of the same section provides that any power of attorney mentioned in that section may be proved by its production without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court mentioned in that section. It would therefore be seen that this Act recognises a power of attorney executed before a sub-registrar as a valid and lawful document entitled to registration and requiring no further proof apart from its production. For these reasons we are of the view that the power of attorney P13 (which is the original) can be produced and admitted without further proof under section 85 of the Evidence Ordinance. In view of the presumption contained in that section the Court will in terms of section 4 (2) of the Evidence Ordinance, regard P15 as duly proved unless and until it is disproved.

We therefore allow the appeal and set aside the order of the learned District Judge admitting the document P13 "subject to proof" and direct that it be admitted in terms of section 85 of the Evidence Ordinance. The appellants will be entitled to the costs of this appeal from the respondent.

PERERA, J.—I agree.

WANASUNDERA, J.—I agree.

*Appeal allowed.*

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