

PRIVY COUNCIL.

BAIJNATH SINGH AND OTHERS (DEFENDANTS)

v.

JAMAL BROTHERS & CO., LTD., AND OTHERS
(PLAINTIFFS).

[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER, UPPER
BURMA.]

Registration—Presentation—Endorsement—Signature conflicting with endorsement—Admission of execution—Defect in procedure—Upper Burma Registration Regulation (II of 1897), Rules 4, 5, 7.

On presentation of a mortgage for registration under the Upper Burma Registration Regulation, 1897, it was endorsed by the registering officer with two statements; (i) that it was presented for registration by the mortgagees, and (ii) that one of the two mortgagors had admitted execution. Rule 4, made under the Regulation, required presentation by some person executing or claiming under the document or by the agent of such person duly authorised by power of attorney; by rule 5, where any party was unable or refused to appear a note of the circumstances was to be made by the officer. After the first endorsement there appeared words in Tamil being the signature of a person with a statement that he was clerk to the mortgagees. The mortgage admittedly bore the signatures of both mortgagees.

Held, that the mortgage was duly registered. The endorsement as to the person presenting was to be presumed to be correct, since the rules did not require the signature of the person presenting, and provided that registration should be effected by an endorsement such as was made. In registering without the second mortgagor appearing, the officer was to be presumed to have acted under Rule 5; the omission of the note required by that rule was one for which the person presenting could not be held responsible, and was at most a defect in procedure which did not vitiate the registration made, as it was, on a proper presentation.

Judgment of the Court of the Judicial Commissioner affirmed.

* *Present*: LORD DUNEDIN, LORD PHILLIMORE, SIR JOHN EDGE, MR. ANEER ALI AND SIR LAWRENCE JENKINS.

C.
1923.
Nov. 22.

APPEAL (No. 40 of 1922) from a decree (January 10, 1921) of the Court of the Judicial Commissioner, reversing a decree (July 31, 1913) of the Additional District Judge of Yenangyaung.

The suit was brought by the respondents Jamal Brothers and Company, Limited, against the appellants to enforce a mortgage of oil-well sites dated August 16, 1904. The mortgage was to secure money advanced to the appellants by the firm of Jamal Brothers and Company, but was taken in the name of a Chetty firm as *benamidars*. By a deed of transfer dated September 11, 1914, made by the Chetty firm, Jamal Brothers and Company, and the respondents, the limited company, the mortgage was transferred to those respondents. The deed of transfer is more particularly described in the judgment of the Judicial Committee.

The mortgage of 1904 had been presented for registration under the Upper Burma Registration Regulation (II of 1897) and the rules made under section 8 thereof. It was endorsed with a statement signed by the registering officer that the document had been presented by "S. R. M. Venkatachellam, son of Raman Chetty. Under, or at the side of, the signature of the registering officer there were words in Tamil, which were translated as follows: "Ramasawmy Chetty, clerk on behalf of S. R. M. Venkatachellam Chettyar". Below was a further statement by the registering officer "Execution was admitted by Baijnath Singh, "son of A. D. Singh Twinza of Yenangyaung".

The trial Judge dismissed the suit on the ground of want of consideration and defect of pleading. Upon appeal to the Court of the Judicial Commissioner the pleadings were allowed to be amended, and after further evidence had been taken with regard to the execution of the deed of transfer, a decree was made in favour of the plaintiff company.

1923

BAIJNATH
SINGH

v.

JAMAL
BROTHERS
& Co., LTD.

1923
 BAIJNATH
 SINGH
 v.
 JAMAL
 BROTHERS &
 Co., LTD.

De Gruyther, K. C., and *Parikh* for the appellants. The registration of the mortgage was defective; the signature in Tamil shows that it was presented by a person who is not shown to have been duly authorised; Upper Burma Reg. II of 1897, rules 4, 6, 7; s. 32 of Act III of 1877: *Jambu Pershad v. Muhammad Aflab Ali Khan* (1), *Bharat Indu v. Hamid Ali Khan* (2); *Chhotey Lal v. Collector of Moradabad* (3), *Ma Shwe Mya v. Maung Ho Hnaung* (4). Further, execution of the mortgage was not admitted before the registering officer by one of the mortgagors. That is not a mere defect of procedure, but a fundamental defect. The registration of the deed of transfer was also defective, as the power of attorney is not in evidence, and there is nothing to show that it specifically authorised the presentation. Moreover, the deed cannot be read as a transfer by Jamal Brothers and Co.; if it is so read the registration was defective as there was no presentation by the firm.

Micklem, K. C., and *Dube*, for the respondents. The mortgage was duly registered. Under the rules proof of execution is sufficient even if there is no indorsement. But in any case the indorsement is to be presumed to be correct and it establishes that presentation as made by the mortgagees. The mortgage bears the admitted signature of the second mortgagor. A mere omission by the officer to record that he did not appear would be merely an error of procedure, and not fatal: *Mukhun Lall Panday v. Koondun Lall* (5), *Bharat Indu v. Hamid Ali Khan* (2). They were stopped.

(1) (1914) I. L. R. 37 All. 49; (3) (1922) I. L. R. 44 All. 514;
 L. R. 42 I. A. 22. L. R. 49 I. A. 375.

(2) (1920) I. L. R. 42 All. 487; (4) (1922) I. L. R. 50 Calc. 166;
 L. R. 47 I. A. 117. L. R. 49 I. A. 375.

(5) (1875) L. R. 2 I. A. 210, 215.

De Gruyther, K. C., replied.

1923

BAIJNATH
SINGH

v.

JAMAL
BROTHERS &
CO., LTD.

Nov. 22.

The judgment of their Lordships was delivered by
SIR LAWRENCE JENKINS. This is an appeal from a
decree, dated January 10th, 1921, of the Court of the
Judicial Commissioner of Upper Burma, which reversed
a decree dated July 31st, 1916, of the Court of the
Additional District Judge of Yenangyaung.

The suit is to enforce a mortgage of August 16th,
1904, for Rs. 25,000 advanced by the firm of Abdul
Shakoor Jamal Brothers and Company to the defend-
ants Baijnath Singh and Fateh Bahadur Singh. The
mortgage was taken in the name of Sana Ravana
Mona Vengarachellum Chetty, but as *benamidar* for
the firm of Jamal Brothers and Company.

The present plaintiffs are Jamal Brothers and
Company, Limited, who claim to be transferees from
the firm of Jamal Brothers and Company and their
benamidars of the mortgage debt and the security.

The suit was dismissed in the first Court but was
decreed on appeal. From the Appellate Court's decree
the present appeal is preferred.

Though numerous pleas in defence were urged in
the early stages of the suit which has been needlessly
and lamentably prolonged, the only pleas that now
survive are by way of objection to the execution and
registration of the mortgage and the transfer.

The mortgage purports to be signed by both the
mortgagors and its execution is admitted by them.

But then it is contended that there has been no
valid registration of the document. The law appli-
cable is at that date to be found in Regulation II of
1897, and the rules made in exercise of the powers
conferred by it. By the 4th rule "every document to
"be registered under the rules must be presented by
"some person executing or claiming under the same

1923
 BALNATH
 SINGH
 v.
 JAMAL
 BROTHERS &
 Co., LTD.

“ . . . or by the agent of such person Only
 “ authorized by power of attorney.”

It is urged that the mortgage was presented for registration by an agent, and to comply with the terms of the rule it was incumbent on the plaintiffs to produce a duly authenticated power of attorney authorizing the agent's presentation. In support of this contention reliance was placed on the decision of this Board in *Jambu Parshad v. Muhammad Aftab Ali Khan* (1).

But the whole structure of this argument has no real foundation. It rests on the supposition that the writing at the foot of the document purporting to be the Tamil signature of Ramasawmy Chetty shows that it was he who presented the document and that he was only an agent. This theory owes its origin to the belated and unfortunate discovery of one of the defendants' legal advisers, and is directly opposed to the official statement signed by the Registering Officer that the document was presented for registration by the mortgagee.

There is no provision in the Regulation or the Rules that requires the signature of the person presenting the document for registration. But under Rule 7 registration shall be affected by the Registering Officer writing on it an endorsement in the terms of that appearing at the foot of the document. The correctness of this official endorsement is to be presumed, and the Tamil signature, for which there was no legal sanction, cannot operate to contradict it.

The presentation, therefore, was by a person claiming under the document.

It is next objected that execution of the mortgage was not admitted before the Registering Officer by

Fateh Bahadur Singh. It, however, admittedly bears his signature and it is a fair presumption in the circumstances that the officer acted under Rule 5 when he registered the document. It is true that where any party to a document is unable or refuses to appear the rule requires a note of the circumstances to be made, and that has not been done. But the omission is one for which the person presenting the document cannot be held responsible : it is at most a defect in procedure which did not vitiate the registration made as it was on a proper presentation.

Then the transfer of the mortgage to the limited company, the plaintiffs, is assailed.

It is dated 11th September 1914 and the parties to it are S. R. M. Soobramaniyan Chetty, S. R. M. Mayappa Chetty, S. R. M. Chinnayu Chetty *alias* Ramasawmy Chetty, and S. R. M. Arunachellam, described as carrying on business in partnership under the style of S. R. M. of the 1st part, Jamal Brothers and Company of the 2nd part, and Jamal Brothers and Company, Limited, the present plaintiffs, of the 3rd part.

The Chetty partners, by the direction of the Jamal Brothers assigned, and Jamal Brothers confirmed, the mortgage debt of Rs. 25,000 with interest and also the mortgaged property to the plaintiff Company, and the deed if executed and duly registered would unquestionably vest the debt and the security in the plaintiff Company.

It is contended, however, that there is no formal proof of execution by the Chettys. It is true that the evidence of M. A. S. Jamal, as recorded on 11th July, 1915, does not speak specifically to execution by them. But later affidavits were sworn by M. A. S. Jamal and his advocate Mr. Ormiston to the effect that the witness had deposed to execution by the attorney of the Chetty firm. A petition was accordingly presented

1923

BAIJNATH
SINGH
v.
JAMAL
BROTHERS
& Co., LTD

1923

BAIJNATH
SINGH
v.
JAMAL
BROTHERS
& Co, LTD.

praying that the witness might be examined further on the point of the execution by the assignors of the deed of assignment. Interrogatories directed to this point were prepared under an order of the Court, and though^u no answers are on the record it is apparent from what is said by the Judicial Commissioner that on further examination under the order of the Court the formal defect was remedied.

It is next urged that though Mayappa was expressed to be a party, he did not execute. But in the attestation clause it is stated that the parties (other than the plaintiff Company) had set their hands and the document is expressed to be signed by all four of the Chetty partners. The signature was in fact by their attorney and in the circumstances their Lordships are satisfied that the attorney acted for all four partners. This view gains support from the endorsement of presentation from which it is apparent that the signatory held a power of attorney authorizing him to act for the four partners. The transfer was also signed by the Jamal Brothers, and execution by them was admitted by their duly authorized attorney. The result then is that the transfer has been sufficiently executed and its registration has been effected in accordance with the law that then applied.

The appeal therefore fails and should be dismissed, and their Lordships will humbly advise His Majesty accordingly.

The appellants must pay the costs of the appeal.

Solicitors for the appellants : *E. Dalgado.*

Solicitors for the respondents : *Waterhouse & Co.*

A. M. T.