

1927

SWARNA  
MANJURI  
DASSI  
v.

SECRETARY  
OF STATE  
FOR INDIA.

and, if it is necessary, he would have to take evidence on the subject.

For all these reasons the case should go back for a reconsideration of the question of valuation.

A. K. D.

*Appeal allowed; case remanded.*

---

**APPELLATE CIVIL.**

---

*Before Page and Duval JJ.*

MADHU MOLLA

v.

BABONSA KARIKAR. \*

1927

Dec. 22.

*Registration—Registration Act (XVI of 1908), s. 32, construction of.*

Under section 32 of the Indian Registration Act any one of the co-heirs of the deceased executant is "the representative of such person" and may present a document for registration.

*Ezikiel & Co. v. Annada Charan Sen* (1) referred to.

SECOND APPEAL by Madhu Molla, defendant No. 1.

This second appeal arose out of a suit for declaration of title and for partition. The plaintiff based their claim to certain property on a *kabala* which was executed in 1896 by one Panchu. After the death of Panchu the *kabala* was presented for registration by his widow alone. Panchu died leaving the widow

\* Appeal from Appellate Decree, No. 1669 of 1925, against the decree of N. Bhattacharjee, Subordinate Judge of Jessore, dated March 25, 1925, modifying the decision of Babu Naranath Mukerjee, Munsif, 2nd Court of Magura, dated July 17, 1923.

(1) (1922) I. L. R. 50 Calc 180.

and three other persons as his heirs and representatives. The trial Court decreed the suit and the lower Appellate Court modified the decree.

*Babu Profulla Kamal Das*, for the appellant, contended that under section 32 of the Indian Registration Act the term "representative of such person" means "all the persons who legally represent such persons" and unless the heirs of Panchu jointly presented the document for registration it could not be duly registered.

*Babu Hemendra Chandra Sen*, for the respondents contended that section 32 contemplates that any person interested in the property could present the document for registration. The intention of the Legislature was to prevent an outsider from presenting a document for registration in which he had no interest whatsoever.

PAGE J. This appeal raises an interesting question with respect to the construction of section 32 of the Indian Registration Act (III of 1877), now section 32 of Act XVI of 1908. The suit was brought by the plaintiffs for a declaration of their title to a share in certain lands comprised in two *jamas* and for partition. As regards an eight annas share of the lands in suit, the plaintiffs traced their title through a *kabala* which was granted to their vendors by one Panchu. This *kabala* was executed in 1896 by Panchu, who died shortly after; and, on his death, was presented for registration by his widow. Panchu left him surviving his widow, a brother, a sister, and a mother, and if this *kabala* was inadmissible as "evidence of any transaction affecting the immoveable property comprised therein", (section 32) it is common ground that each of these four persons as

1927

MADHU  
MOLLA

v.

BABONSA  
KARIFAR.

1927

MADHU  
MOLLA  
v.  
BABONSA  
KARIKAR

PAGE J

the heirs of Panchu would be entitled to a share of his estate. The *kabala* having been presented by the widow was registered. The contention of the appellant is that inasmuch as the *kabala* was presented for registration by the widow alone under section 49 of the Indian Registration Act it could not "be received as evidence of any transaction affecting the property". The question is, was the *kabala* presented for registration by "the representative" of Panchu? It is contended on behalf of the appellant that in section 32 the term "representative of such person" means "all the persons who legally represent such person"; and that unless all the heirs jointly presented this document to the Registrar the document was not duly presented, and the Registrar had no jurisdiction to effect the registration of it. In support of this contention a number of authorities were canvassed before us. It was conceded, however, that there is no direct authority upon the question that falls for determination in this appeal. It has been laid down by Lord Robertson, expressing the opinion of the Judicial Committee of the Privy Council in the case of *Mujibunnissa v. Abdul Rahim* (1) "that the power and jurisdiction of the Registrar only come into play when he is invoked by some person having a direct relation to the deed", and later in his judgment His Lordship added that no case had been cited that "gives any countenance to the view that the absence of any party legally entitled to present a deed for registration is a defect in procedure falling under section 87". In that case the Judicial Committee held that the deed not having been presented by a person entitled in that behalf the registration was illegal. The question which we have to consider is whether, when the widow of Panchu presented the

(1) (1900) L. R. 28 I. A. 15, 23.

*kabala* for registration, the jurisdiction of the Registrar was invoked "by the representative" of Panchu. It is not contended that the widow's interest in Panchu's estate was not directly affected by the deed. But it is said that the intention of the Legislature was that all the heirs must combine in presenting a document for registration in order that the jurisdiction of the Registrar should duly be invoked. I am of opinion that that contention is ill-founded. It may be (though it is unnecessary to decide), that the four heirs of Panchu were bound to admit the execution of the deed under section 35, although the failure of any of the heirs so to do would amount to a mere irregularity, and would not vitiate the registration. But why was it necessary that all the heirs of Panchu should have presented the document for registration? The object of the Legislature, as I apprehend, in enacting section 32 was to prevent a mere outsider from presenting for registration a document with which he had no concern, and in which he had no interest. To allow all and sundry to present documents for registration would be to open a door to fraud and forgery, and the Legislature, therefore, intended to provide that the registration should be initiated by the document being presented for registration by a person "having a direct relation to the deed". But in order to give effect to that intention I do not think that it was necessary or reasonable that the other heirs of Panchu should have joined with the widow in presenting the *kabala* for registration. If it had been intended that all persons directly concerned in the execution of a document should present the document one would have expected to find in a case in which, for instance, four persons had jointly executed a registrable document, that the document could only duly be presented for

1927

---

 MADHU  
 MOLLA  
 v.  
 BABUNSA  
 KARIKAR.  


---

 PAGE J. \*

1927  
 MADHU  
 MOLLA  
 v.  
 BABONSA  
 KARIKAR.  
 PAGE J.

registration by all four of such persons jointly and in combination. But it is provided by section 32 that any one of such persons may present the document for registration: *Ezekiel & Co. v. Annada Charan Sen* (1). I see no reason if one of four persons who are jointly interested in the execution of a document may present the document for registration why one of the persons who were the heirs and representatives of Panchu, and who had "a direct relation to the deed", should not in like manner be entitled duly to present the document for registration. In my opinion, in the circumstances of this case, the presentation of the *kabala* for registration by the widow of Panchu conformed with the requirements of section 32 of the Indian Registration Act, and that the *kabala* was presented for registration according to law. There are no other points raised on behalf of the appellant to which I need advert, or which possess any substance. The result is that the appeal fails, and is dismissed with costs.

DUVAL J. I agree.

B. M. S.

*Appeal dismissed.*

(1) (1922) I. L. R. 50 Cal. 186.