

APPELLATE CIVIL.

Before G. C. Ghose and Pearson JJ.

GAYESHALI SARKAR

v.

CHINTAHARAN CHANDA.*

1930

Nov. 13.

Registration—Indian Registration Act (XVI of 1908), ss. 32, 33, 35 and 87, construction of—Document presented for registration by some only of the heirs of the deceased executant—Effect of registration.

The registration of a document presented by some of the representatives of an executant who is dead at the time of the presentation of the document is good registration within the meaning of sections 32, 33 and 35 of the Indian Registration Act.

Madhu Molla v. Babansa Karikar (1) followed.

The non-joinder of all the representatives of the deceased executant of a document in presenting the same for registration is a mere defect in procedure curable under section 87 of the Indian Registration Act.

SECOND APPEAL by the defendants, Gayeshali Sarkar and others.

This Second Appeal arose out of a suit to enforce a simple mortgage bond executed by one Baramuddin Sarkar in favour of the predecessor of the plaintiff respondent. After executing the mortgage bond, but before registering the same, the said Baramuddin Sarkar died, leaving, as his heirs, his two sons, his widow and his daughter. Thereafter his said two sons alone presented the said mortgage bond for registration and admitted execution, whereupon the same was registered. The widow and the daughter of the said Baramuddin Sarkar *inter alia* challenged the validity of the registration of the said mortgage bond. Both the trial court and the lower appellate court decreed the suit.

Bhupendrakishore Basu for the appellants.

Gunadacharan Sen and *Hemendrakumar Das* for the respondents.

*Appeal from Appellate Decree, No. 354 of 1929, against the decree of C. Bartley, District Judge of Dacca, dated July 24, 1928, affirming the decree of A. K. Das, Subordinate Judge of Dacca, dated Jan. 28, 1925.

(1) (1927) I. L. R. 55 Cal. 1008.

C. C. GHOSE AND PEARSON JJ. Mr. Basu, who has argued this appeal with great care and fullness, has presented this question for solution, namely, whether the registration of a document presented by a representative of an executant, who is dead at the time of the presentation of the document, is good registration within the meaning of the relevant sections in the Registration Act. So far as the facts are concerned, they lie in a narrow compass. It appears that the mortgagor was one Baramuddin Sarkar. He executed a mortgage in favour of the predecessor of the plaintiffs respondents. After execution and before the presentation of the document for registration, he died, leaving as his heirs two sons, his widow and a daughter. It is unnecessary to add that Baramuddin Sarkar was a Mahomedan and, therefore, under the Mahomedan law, the daughter would be entitled to a share, as also the widow in addition to the sons. It appears that the two sons, after the death of their father, presented the document for registration before the Sub-Registrar. They admitted execution of the document. The Sub-Registrar, being satisfied that the document had been duly executed by the executant, registered the document. Mr. Basu's contention is that the registration was invalid, inasmuch as all the representatives of the deceased executant did not join in presenting the document to the Sub-Registrar for registration; in other words, his contention is that the registration was entirely invalid and, in the second place, assuming that it was not entirely invalid, such registration could not affect any portion of the immoveable property covered by the mortgage so far as the interests of the widow and the daughter were concerned. This point has come up before the courts on previous occasions. Some of the cases are noticed in the judgment of the lower appellate court. But it is quite clear, having regard to the sections referred by Mr. Basu, namely sections 32, 33 and 35 of the Indian Registration Act, and having regard to the combined operation of the decisions in the cases of

1930

*Gayeshali
Sarkar
v.
Chinicharar
Chanda.*

1930

*Gayeshali
Surkar
v.
Chintaharan
Chanda.*

Madhu Molla v. Babonsa Karikar (1), *Sujan Bibi v. Asafa Khatun* (2) and *Rafat-un-nissa Begam v. Husaini Begam* (3), that it was not incumbent under the law that all the representatives of the deceased executant should join in presenting the document, and that, supposing it was so incumbent, the defect, such as it was in this case, was a mere defect in procedure curable under section 87 of the Registration Act. If that is so, and as we read the cases to which reference has just been made that is so, there cannot be much doubt that Mr. Basu has very little chance of winning in this appeal.

That being so, we see no reason whatsoever to interfere in any way with the judgment and decree of the lower appellate court, and the result is that this appeal must stand dismissed with costs.

Appeal dismissed.

A. K. D.

(1) (1927) I. L. R. 55 Cal. 1008.

(2) (1909) 13 C. W. N. 722.

(3) (1924) I. L. R. 47 All. 294.