

## APPELLATE CIVIL.

Before Guha and M. C. Ghose J.J.

SELAMATULLA CHAUDHURI

v.

AKTARERNESSA.\*

1930

July 22, 25.

*Suit—Suit under section 77 of the Registration Act, if maintainable by the real owner on allegation of benâmi—Real owner, if a representative of the benâmdâr—Indian Registration Act (XVI of 1908), s. 77.*

A person claiming, as a real owner, under a deed of sale, on the allegation that the ostensible recipient was a *benâmdâr*, is not a representative of the latter, under the Indian Registration Act, and, as such, cannot present the document for registration.

*Mujib-un-nissa v. Abdur Rahim* (1) referred to.

Such a person cannot also maintain a suit under section 77 of the Act, to compel registration on the allegation that the alleged *benâmdâr*, in collusion with the executant, omitted to take proper steps to have the document registered.

SECOND APPEAL by the plaintiff.

The facts appear sufficiently from the judgment of the Court.

*Jitendrakumar Sen Gupta* for the appellant.

*Nagendrachandra Chaudhuri* for the respondent.

*Birajmohan Majumdar* for the Deputy Registrar.

GUHA J. This is an appeal by the plaintiffs in a suit instituted under the provisions contained in section 77 of the Indian Registration Act. The document, in respect of which the suit was brought, is a deed of sale alleged to have been executed by defendant No. 1 in the suit as originally instituted in favour of defendant No. 2. In view of the question arising for consideration in this appeal, the facts, as they appear from the pleadings of the parties, may be

\*Appeal from Appellate Decree, No. 1008 of 1928, against the decree of K. C. Chunder, District Judge of Noakhali, dated Dec. 19, 1927, affirming the decree of Gopalchandra Basu, Subordinate Judge of Noakhali, dated Jan. 21, 1926.

1930

*Salamatulla*  
*Chaudhuri*  
v.  
*Aktarenessa.*  
*Guha J.*

briefly stated. The document was not presented for registration by defendant No. 1, and it was, accordingly, presented for registration by defendant No. 2, under section 32 of the Indian Registration Act. The execution was denied by the defendant No. 1 and registration was refused by the Sub-Registrar. Defendant No. 2 appealed from the order of the registering officer, refusing registration; the appeal was not, however, proceeded with, defendant No. 2 filing a petition refusing to go on with the appeal preferred by him. The appeal against the order of the Sub-Registrar was, accordingly, dismissed for non-prosecution. The plaintiffs' case, as stated in the plaint, was that defendant No. 2 acted in collusion with defendant No. 1 in not prosecuting the appeal against the order of the Sub-Registrar refusing registration of the document. The case of the plaintiffs further was that defendant No. 2, their *benâmdâr*, had played false with them, and that they were entitled to have the question of *benâmi* decided in the suit, and have a declaration that defendant No. 2 was their *benâmdâr*, and have a consequential relief in the shape of a decree as contemplated by section 77 of the Indian Registration Act.

The contesting defendants, the heirs and legal representatives of the original defendant No. 1, resisted the plaintiffs' claim and contended that the plaintiffs had no *locus standi* to maintain the suit, that the plaintiffs must be held to be bound by the acts of their alleged *benâmdâr*, defendant No. 2. The main question discussed before the courts below, and the question that has been raised in the appeal to this Court, relates to this: whether the plaintiffs had any *locus standi* to institute the suit, out of which this appeal has arisen, and if they were bound by the acts of their alleged *benâmdâr*, defendant No. 2. The trial court gave its decision against the plaintiffs, and dismissed the suit. On appeal by the plaintiffs, the learned District Judge has upheld the decision arrived at by the court of first instance. In the present appeal, it has been urged before us that the

learned District Judge has erred in law in holding that the plaintiffs had no *locus standi* to bring the suit; it has been argued that the court had jurisdiction to decide in the present action, the question as to whether defendant No. 2 was the *benâmdâr* of the plaintiffs in respect of the document in question. It has further been contended that the courts below have erred in holding that the suit under section 77 of the Indian Registration Act did not lie, for the reason that defendant No. 2, the alleged *benâmdâr*, did not proceed with the appeal preferred by him against the order of the Sub-Registrar, refusing registration of the document.

Now, with reference to the first branch of the argument advanced in support of this appeal, the question for consideration is whether the plaintiffs were persons who could, under the law, present the document for registration: are they persons claiming under the same or could they be said to be the representatives of defendant No. 2 or his agents or assigns. It is admitted in this case that there has been no assignment. It is the case of the plaintiffs that defendant No. 2 is acting in collusion with defendant No. 1, and the plaintiffs could not therefore be the agents of defendant No. 2. According to the definition of the word "representative" as contained in the Indian Registration Act, the plaintiffs are not the representatives of defendant No. 2. In the above view of the case, the plaintiffs could not be said to be persons having a direct relation to the document, and who could therefore present the document for registration under section 32 of the Indian Registration Act. See in this connection the observations of their Lordships of the Judicial Committee of the Privy Council in the case of *Mujibunnissa v. Abdul Rahim* (1).

It is further to be noticed that so far as the conditions precedent to the institution of a suit under section 77 of the Indian Registration Act were

1930

Selamatulla  
Chaudhuri  
v.  
Altarenessa.  
Guha J.

1930

*Selamatulla  
Chaudhuri*

v.

*Aktarenessa.**Guha J.*

concerned, in the case in hand, two of the most essential conditions had not been and could not possibly be fulfilled; the non-fulfilment of any of these conditions was, however, fatal to the plaintiffs' case, which rests upon the special provisions of the statute. There could be no presentation of the document by the plaintiffs for registration, under the law, as it stands; there was, and there could be no appeal by the plaintiffs to the Registrar under section 72. An appeal under this provision of the law was a pre-requisite of a suit under section 77 of the Indian Registration Act. In point of fact, as has been mentioned already, the defendant No. 2 had appealed, and having given up his appeal, even he could not have instituted a suit under section 77. The plaintiffs could not, therefore, be heard to say that their alleged *benâmdâr*, defendant No. 2, having given up his appeal, they were in a position to exercise a right conferred by the provisions contained in section 77 of the Indian Registration Act. The learned District Judge is correct in the view he has taken of the case, and we are in agreement with him in holding that the plaintiffs cannot be allowed, in a suit of the present description to have the question of *benâmi* determined, and then get a decree from the civil court directing the document to be registered. The learned judge is also right in holding that, on the plaintiffs' case, as presented in the plaint, they were bound by the act of their alleged *benâmdâr*, defendant No. 2. The defendant No. 2 having given up the appeal presented by him under section 72, could not bring a suit under section 77 of the Indian Registration Act, and the plaintiffs had no *locus standi* to bring the suit, on the footing that defendant No. 2 was their *benâmdâr*.

We hold, therefore, that the suit out of which this appeal has arisen, to compel registration, that is, a suit for a decree directing the deed of sale, dated the 23rd *Agrahâyan*, 1329 B.S., said to have been executed by defendant No. 1 in the suit (as originally instituted), in favour of defendant No. 2 upon a

declaration that defendant No. 2 was a *benâmdâr* of for the plaintiffs, in the matter of the transaction evidenced by the document of sale, was not maintainable and we affirm the decisions arrived at by the courts below.

1930  
Selamatulla  
*Chaudhuri*  
v.  
Aktarernessa.  
*Guha J.*

The appeal is dismissed with costs.

M. C. GHOSE J. I agree.

*Appeal dismissed.*

A. C. R. C.