

at the time of the death of the testatrix, and with the expenses of the *parbans*, and of the *poojas* and other religious acts and ceremonies in the said will mentioned; that, after defraying such expenses, the surplus belonged to the members of the joint family, of whom Doorga Churn was one, and that his interest in the taluk under the said will was liable to be attached and sold in execution of the decree of the High Court of the 16th of November 1864; and to order that the summary order of the Judge of Hooghly be set aside, but that the appellant be at liberty to proceed to a sale in execution of the right, title, and interest of Doorga Churn in the said taluk under the said will, and that each party do bear his own costs of the suit in both the Courts below.

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The appellants having failed in their attempt to impeach the genuineness and *bona fides* of the will, their Lordships are of opinion that they are not entitled to the costs of this appeal.

Agents for the appellant: Messrs. *Robert Oldersham and Son*.

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

RADHAKISSEN ROWRA DAKNA v. CHOONELOLL DUTT.

1879
Aug. 16.

Registration—Denial of Execution, What is—Suit to compel Registration—Party to Suit—Registration Act (III of 1877), ss. 34—36, 73—77.

Refusal to admit execution of a document is a denial of execution within the meaning of the Registration Act of 1877, and so also is a wilful refusal or neglect to attend and admit execution; and where such refusal or neglect occurs, a suit will lie under s. 77 for the purpose of having the document registered.

The Registrar is not a necessary party to such a suit.

IN this case the defendant entered into a deed of agreement and covenant with the plaintiff for valuable consideration, whereby he mortgaged certain premises, and covenanted to give an assurance in the English form whenever required by

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the plaintiff. After the execution of the above deed, the defendant refused to attend at the office of the Registrar of Assurances for the purpose of admitting execution, and registration was, in consequence, refused. The plaintiff then brought the present suit, praying for an order directing the Registrar to register the document, and that the defendant should pay all costs and charges.

Mr. *Hill* for the plaintiff.—Claiming under this document as we do, we are entitled to have it registered—Section 32, Act III of 1877. Here the executant refused to appear before the Registrar, who, taking this as equivalent to a denial of execution, refused to register under s. 35. In this he was wrong, he should have made enquiries and enforced the executant's appearance under s. 75. Under s. 77 I am entitled to a decree directing the document to be registered. [WILSON, J.—You ask me for relief under s. 77, but that section assumes that the Registrar was wrong, and your complaint should be against the Registrar.] No, the proper person to be defendant is the defaulting executant. [WILSON, J.—At any rate the defect of parties could not, under the Civil Procedure Code, defeat your suit. I shall look into the case, and if I find that the Registrar is a necessary party, I shall allow you to add him as a party.]

No one appeared for the defendant.

Cur. ad. vult.

The judgment of the Court was delivered by

WILSON, J. — This case raises a point upon the construction of the Registration Act of 1877. The suit is brought under s. 77 of the Act; and the plaintiff asks for a decree against the defendant, ordering the registration of a deed of mortgage executed by the defendant in favor of the plaintiff. The due execution of the deed by the defendant on the 27th of September 1878, was clearly proved. It was presented for registration to the Registrar for Calcutta on the 12th of October following. The defendant not appearing to admit execution, a summons was issued against him on the

same day. The summons was served personally, and that he perfectly understood its object is clear, because it is in evidence that, when served, he said, "why have you taken out this summons, I will go personally and register." He, however, disobeyed the summons, and did not at any time attend to admit execution, but kept out of the way to avoid any further process. I am satisfied that the defendant disobeyed the summons and took the course he did take, expressly to avoid admitting execution, and so prevent the registration of the deed. The Registrar heard the statements of the witnesses to the execution. A long delay intervened, and ultimately, on the 28th of March 1879, the Registrar refused to register. The question is, whether under these circumstances the present suit will lie. This depends on several sections of the Registration Act of 1877. Sections 34 and 35 give the rules ordinarily to be observed on the presentation of a document for registration, and the cases in which it is and is not to be registered. Among the cases excepted in s. 34 are those under ss. 75 and 77. To understand these latter sections it is necessary first to read those that immediately precede,—namely, ss. 73 and 74 as well as s. 76. These various sections deal in terms only with two cases,—that in which execution is admitted, and that in which it is denied: they say nothing of any intermediate case. I think, therefore, it is reasonable to say that a refusal to admit is a denial within the meaning of the Act. Again s. 34 excepts cases under ss. 75 and 77 from its provisions, which in other cases rigidly require the attendance before the Registrar of the person by whom the documents purport to have been executed. It, therefore, implies, I think, that there may be a denial other than an actual denial in the presence of the Registrar. Section 73 dealing with proceedings before a Sub-Registrar, merely speaks of his refusing to register a document on the ground that the person in question "denies its execution." Section 74 says—"That in such case, and also where such denial is made before a Registrar in respect of a document presented for registration to him," he may inquire into the fact of execution. This section speaks of a denial before the Registrar. But this means, in my judgment, only a denial in a proceeding before the Registrar.

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I have already stated that I think a refusal to admit execution is a denial within the meaning of the Act. I further think that a wilful refusal or neglect to attend and admit execution, in obedience to a summons for that purpose, is a refusal to admit, and, therefore, a denial. It follows that in this case there was a denial within the meaning of s. 74, and that the refusal to register was a refusal under s. 76, and, therefore, this suit is properly brought under s. 77. I do not think the Registrar is a necessary party to the suit. Had there been anything in the circumstances of the case that led me to think he ought to be made a party, I should have adjourned the hearing to allow of this being done.

The decree will be for the plaintiff in terms of the first prayer in the plaint, with costs on scale No. 1.

Attorney for the plaintiff: *H. H. Remfry.*

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Prinsep.

1879
 Dec. 10.

RAJENDRONATH ROY BAHADOOR (JUDGMENT-DEBTOR) v. CHUNNOOMUL AND KALEE CHURN LAHOREE (DECREE-HOLDERS).*

Application for Certificate of part-satisfaction—Act X of 1877, s. 258.

Where a judgment-debtor has out of Court partly satisfied his decree-holder subsequent to the transmission of the decree for execution to another Court, but before actual execution has been applied for, he is entitled, on execution in full being demanded, to an order from the Court to which the decree is transferred for execution, calling upon the decree-holder to certify the fact of such part-payment.

In this case one Chunnoomul and others obtained a decree against the defendant, in the Original Side of the High Court, which was transferred to the District Court of Rajshahye for

* Appeal, No. 143 of 1879, from a decision of T. T. Allen, Esq., Judge of Rajshahye, dated the 25th April 1877.