

Before Mr. Justice Prinsep and Mr. Justice Field.

1881
August 15.

MOHIMA CHUNDER DHUR (DEFENDANT) v. JUGUL KISHORE
BHUTTACHARJI (PLAINTIFF).*

Declaratory Decree—Cause of Action—Civil Suit to contest the Genuineness and Validity of a Registered Document—Registration—Onus of Proof—Registration Act (III of 1877), ss. 74, 75—Specific Relief Act (I of 1877), s. 39.

Under the special procedure provided in the Registration Act (III of 1877), the defendant, in whose favour a document was said to have been executed, succeeded in obtaining an order from the District Registrar for the registration of the same, although the plaintiff, who was alleged to have executed it, appeared before the Sub-Registrar, and subsequently before the Registrar, and denied executing it, and alleged it to be a forgery.

In a suit brought under the above circumstances to have the document declared void, and to have it cancelled, the Court placed the onus of proving its genuineness and its execution by the plaintiff on the defendant,—

Held, that the proceedings of the Registrar, when he enquired whether the document had been duly executed or not, were in no sense those of a “competent Court,” but only those of an executive officer invested with quasi-judicial functions, and that, consequently, such a suit was maintainable; and that, under the circumstances, the onus of proof was properly placed on the defendant.

Held also, that the Specific Relief Act (I of 1877) applied, s. 39 evidently contemplating and providing for such a suit.

Ram Chunder Paul v. Becharam Dey (1) dissented from.

Prasana Kumar Sandyal v. Mathurnath Banerjee (2) followed.

THIS was a suit to have a registered kobala, dated the 22nd Chait 1284 (corresponding with April 3rd, 1878), set aside on the ground that it was a forged document. The plaintiff alleged that the defendant Mohima Chunder Dhur presented the kobala for registration before the Sub-Registrar of Maniekgunge on the 6th May 1878, and that thereupon a summons was issued against him, as he appeared on the face of the document to have executed it; that, upon the receipt of such summons, he appeared before

* Appeal from Appellate Decree, No. 632 of 1880, against the decree of Baboo Nobin Chunder Ganguly, Second Subordinate Judge of Dacca, dated the 21st January 1880, affirming the decree of Baboo Okhoy Kumar Sen, Additional Munsif of Maniekgunge, dated the 21st February 1879.

(1) 10 W. R., 329.

(2) 8 B. L. R., Ap., 26.

the Sub-Registrar and denied having executed it; but that the defendant had then appealed to the Registrar, who heard evidence on both sides and ordered its registration on the 22nd August 1878.

The defendant stated that the plaintiff had executed the document in his favor after having received 152 rupees, the consideration-money; and that, after its execution, the plaintiff had been persuaded by his co-sharers in the property covered by the kobala not to register the same, whereupon he had taken the proper steps to have it registered; and having succeeded in getting registration effected, had taken possession of the property in the usual way by fixing up a bamboo-post.

The original Court, after hearing evidence on both sides, found the kobala to be a forgery and ordered it to be set aside; and the decision was upheld on appeal by the lower Appellate Court.

The defendant now appealed to the High Court, on the ground that the kobala having been duly registered, the present suit would not lie, and that the original Court was in error in placing the onus of proving the genuineness of the document on him.

Mr. L. Ghose and Baboo Bungshedhur Sen for the appellant.

Baboo Mohiny Mohun Roy and Baboo Grija Sunker Mozoomdar for the respondent.

The judgment of the Court (PRINSEP and FIELD, JJ.) was delivered by

FIELD, J.—In this case the plaintiff sued to have a kobala or bill of sale set aside and declared spurious. It appears that the defendant presented this bill of sale for registration, and, under the special procedure provided in the Registration Act, he succeeded in obtaining an order of the District Registrar for the registration of the document. The first contention raised before us on appeal is, that this suit is not maintainable; and, in support of this contention, the case of *Ram Chunder Paul v. Becharam Dey* (1) is quoted. Now, that case we think to have

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been virtually overruled by the case of *Prasanna Kumar Sandyal v. Mathurnath Banerjee* (1), which latter case has been since followed in several other cases in this Court. Most decidedly, if we had to form an independent opinion, our view would be the same as that taken by the learned Judges in the latter case; but we think that, whatever may have been the state of the law before the passing of the present Registration Act and the present Specific Relief Act, these two enactments have put the point beyond doubt. The case of *Ram Chunder Paul v. Becharam Dey* (2) was decided when Act XX of 1866 was in force, and under the provisions of s. 84 of that Act, it was the District Judge who heard the petition made against the order of the registering officer refusing registration. Phear, J., who delivered judgment in that case, certainly regarded that as a decision of a "competent Court." The present Registration Act enacts, that where the registering officer refuses to register, the procedure is by way of an appeal to the Registrar, and the Registrar is then to enquire—*first*, whether the document has been executed; and *secondly*, whether the requirements of the Registration Law have been complied with. It appears to us, that it is impossible to say that the proceedings of the Registrar, when he enquired whether the document had been executed, are in any sense proceedings of a "competent Court." They are the proceedings of an executive officer invested with quasi-judicial functions for the limited purposes of the Registration Act. In this view we think that, even if the case of *Ram Chunder Paul v. Becharam Dey* (2) had not been overruled and dissented from in several other cases, it would no longer have a binding effect, regard being had to the alteration made in the Registration Law. Then, if we turn to s. 39 of the Specific Relief Act, I of 1877, we find that a suit of this nature is there contemplated and provided for. That section enacts, that "any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled."

(1) 8 B. L. R., Ap., 26.

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It then proceeds: "If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in the books the facts of its cancellation." We think, having reference to these specific enactments of the Legislature, there can be no doubt that a suit of this kind is maintainable.

The second point taken is, that the burden of proof has been wrongly placed upon the defendant. It appears to us that this contention is untenable. The plaintiff himself came forward and denied the execution of the document, and this was sufficient to cast upon the defendant the burden of proving its execution and its genuineness. Under these circumstances, we think that this appeal must be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Field.

BUNGSEE SINGH AND OTHERS (DEFENDANTS) *v.* SOODIST MALI
(PLAINTIFF).*

1881
August 5.

Jurisdiction—Property situated in different Districts—Pleading—Multifariousness—Civil Procedure Code (Act X of 1877), ss. 23, 31—Parties—One Member of Joint Hindu Family contracting alone—Undisclosed Principal—Splitting Cause of Action.

A, B, C, and D were the proprietors of a 2a. 13g. share in mouza *E*, and also of a 2a. 13g. share in mouza *F*, both in the district of Bhagalpore. On the 19th September 1872, *A* mortgaged a 1a. 4p. share of *E* to *H*. On the 20th September 1872, *A, B, C, and D* mortgaged their shares in *E* and *F*, together with property in the district of Tirhoot, to the plaintiff. On the 24th March 1873, *A* mortgaged his share in *E* and *F* to *J*. On the 13th November 1874, *A* and *B* mortgaged their shares in *E* to *K*.

On the 25th March 1874, *J* obtained a decree on his mortgage, and the interests of *A* and *B* were purchased on the 5th January 1875 by *L*.

Appeal from Original Decree, No. 102 of 1880, against the decree of Moulvi Hafiz Abdul Kurim, Subordinate Judge of Bhagalpore, dated the 17th February 1880.