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had held these lands under a colour of title. In that case their Lordships of the Privy Council said: "The result is, their Lordships think, that the defendants, even if not in possession under a well-proved legal title, are in possession under a colour of title which might have been avoided as far back as the year 1838; and that, inasmuch as no proceedings were then taken to avoid it, time has run in their favor. Their Lordships will therefore humbly advise Her Majesty that the decree of the Courts below must be affirmed, and that this appeal be dismissed." Following that case we think that the present case should also be dismissed. But even if that decision were not final of the matter, as we think it is, the plaintiff would fail on another ground, namely, that as regards the lands in dispute he has shown neither title nor possession. That he was never in possession was found, and we think rightly, by the Court below, and he is not able to show us any title whatever to lands not *ayma* lands. In this view also the suit must fail.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Wilson and Mr. Justice Beverley.

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 July 16.

SHAMA CHARAN DAS (PLAINTIFF) v. JOYENOLAH AND ANOTHER
 (DEFENDANTS).*

Registration Act (III of 1877), ss. 23, 34 77—Presentation for registration—Limitation for completion of registration—Attendance of executant before Registrar, Time for—Refusal to register.

There is no provision, either in the Registration Act or in the Stamp Act, which lays down that where a document is presented for registration insufficiently stamped, such a presentation shall have no effect. The only effect of such a presentation is that the actual registration is delayed.

There is in law no limitation for the actual fact of registration, provided that the requirements of the Act have been complied with in the matters for which a limitation of time is provided. *Sah Mahshun Lall Pandey v. Sah Kundun Lall* (1), followed.

* Appeal from Appellate Decree No. 1512 of 1884, against the decree of Baboo Mati Lal Sirkar, Subordinate Judge of Rungpore, dated the 26th of May 1884, affirming the decree of Baboo Sharoda Prosad Chatterji, Second Munsiff of Koorigram, dated the 6th of February 1884.

(1) 15 B. L. R., 228.

Although s. 34 lays down that no document shall be registered unless the persons executing the same, their representatives, assigns, or authorized agents appear before the Sub-Registrar within the periods allowed for presentation, yet this section is directly subject to s. 77, and that section nowhere provides any time within which the parties, their representatives, assigns, or authorized agents, shall appear to admit execution.

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All that is required in order to maintain a suit under s. 77 is that there must be a refusal to register by the Sub-Registrar, an appeal within time to the Registrar, a refusal by the Registrar, and a suit filed in the Civil Court within one month from the order of the Registrar refusing registration.

THIS was a suit under s. 77 of the Registration Act of 1877.

It appeared that the defendants on the 10th June 1882 executed a mortgage of certain properties in favor of the plaintiff. This mortgage was presented for registration on the 6th October 1882, but the Sub-Registrar, finding the stamp of one rupee affixed thereon to be insufficient, impounded the document, sending it to the Collector of the district. On the 7th November 1882 the Collector passed an order directing the realization of Rs. 2-8 as additional stamp duty, and Rs. 7 as penalty; this order was duly served on the defendants. The defendants, however, took no steps in compliance with this order, and the plaintiff, therefore, on the 10th August 1883, paid the money himself. On the 23rd August 1883 the document was then returned to the Sub-Registrar, but that officer refused to register it on the ground that the executants had not appeared before him within the time allowed for presentation by ss. 23, 24, 25 and 26 of the Registration Act as required by s. 34 of the Registration Act. The plaintiff then unsuccessfully appealed to the Registrar on the 7th September 1883, and on the 27th September 1883 brought this suit to compel registration.

The defendants contended that the provisions of the Registration Act had not been complied with.

The Munsiff held that the executants had not under s. 34 appeared before the Sub-Registrar within the time allowed for presentation under ss. 23, 24, 25 and 26; that no application for a direction under the proviso of s. 34 had been lodged with the Sub-Registrar; and that therefore the Sub-Registrar could not have registered the document; that there was nothing in the Registration Act which would allow the time expended in getting the document

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sufficiently stamped being deducted from the period allowed for registration; and that therefore the plaintiff had not complied with the conditions precedent to the bringing of his suit; and on the authority of the cases of *Edun v. Mahomed Siddik* (1); *Lakshmoni Chowdhraïn v. Akroomoni Chowdhraïn* (2); *Bhagwan Singh v. Khuda Bakshi* (3), and *Rahmatulla v. Sariutulla Kagchi* (4), dismissed the suit.

The plaintiff appealed to the Subordinate Judge, who held that the document, having been insufficiently stamped on its presentation on the 6th October 1882, could not, at the times when it came before the Sub-Registrar sufficiently stamped on the 23rd August 1883, be said to have been presented within the time allowed by the Act; and that no application for a direction having been lodged with the Sub-Registrar as required by s. 34, it could not be said that the plaintiff had done all he was bound to do under the Act before he brought his suit under s. 77. He therefore dismissed the appeal.

The plaintiff appealed to the High Court.

Baboo *Girish Chunder Chowdhry* for the appellant. contended that, even admitting that the document was insufficiently stamped on the day of presentation, the subsequent payment of the stamp duty entitled the document to registration, as though it had been duly stamped on the date of presentation; that all the requirements of s. 23 had been complied with; and that the provisions of s. 34 did not apply, inasmuch as the executant did not appear at all before the Sub-Registrar.

Baboo *Dwarkanath Chowdhry* and Baboo *Degumber Chatterjee* for the respondents.

The judgment of the Court (WILSON and BEVERLEY, JJ.) was as follows:—

This was a suit brought under s. 77 of the Registration Act to compel registration of an alleged mortgage bond.

The bond was executed by the defendants on the 10th June 1882. It was presented for registration by the plaintiff, the mortgagee, on the 6th October of the same year. It was then

(1) I. L. R., 9 Cal., 150.

(3) I. L. R., 3 All., 397.

(2) I. L. R., 9 Cal., 851.

(4) 1 B. L. R., 58.

found by the Sub-Registrar, to whom it was presented, that the stamp on the document was insufficient. The Sub-Registrar, acting under the directions contained in the Stamp Act, impounded the document and sent it to the Collector. The Collector thereupon issued an order directing that the deficiency of stamp duty with a penalty should be paid by the person who was bound to pay the stamp duty on the document, that is to say, the defendants. It is not necessary to go into details of what happened with reference to that matter. It is enough to say that the money not having been recovered from the defendants, the executant of the document, the plaintiff ultimately paid the deficiency of stamp duty and the penalty on the 10th August 1883.

On the 23rd August, the Sub-Registrar refused to register the document, and made the proper endorsement upon it that registration was refused, and made the entry, which the law requires, in his book. Upon that the plaintiff appealed to the Registrar under s. 72 of the Registration Act. On the 7th September 1883 the Registrar dismissed that appeal and refused to order the registration. This plaint was filed on the 27th September 1883.

The suit has been dismissed in both the lower Courts without investigation into the merits, on legal grounds arising on the construction of the Registration Act. Before examining those grounds it will be convenient to point out in outline what the scheme of the Registration Act is as bearing upon this matter.

Section 23, which is in part IV of the Act, the title of which is "of the time of Registration," directs as a general rule that every document of this nature shall be presented for registration within four months from the date of its execution, which time may in certain contingencies be extended to four months more, the total period being eight months.

The next matter of importance to notice is what is required by s. 32. That section says: "Except in the cases mentioned in s. 31 and s. 30, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office, by some person executing or claiming under the same." Then we come to s. 34, which says, no document shall be regis-

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tered, "unless the persons executing such document appears before the registering officer within four months from the date of execution," provided again that in certain contingencies that period of four months may be extended to eight months. But it must be observed that that section is expressly made subject, amongst other sections, to s. 77, under which this suit is brought. Now, for those matters, periods of limitation are provided, but there is one matter for which no limitation is provided for at all, and that is for the fact of registration. Accordingly it has been held by the Privy Council in the case of *Sah Mukhun Lall Pandey v. Sah Kundun Lall* (1) that there is in law no limitation for registration, provided the requirements of the law have been complied with in those matters for which a limitation of time is provided.

Now several objections have been taken to the proceedings in this case, and effect has been given to them in the Courts below. In the first place in the lower Appellate Court it has been said that the document was not presented in due time. And the ground on which that is said is, because it was found not to have been duly stamped when presented. But there is no provision in the Registration Act or in the Stamp Act which says that if the document when presented is insufficiently stamped, the presentation shall be no presentation. On the contrary the procedure provided is wholly inconsistent with that idea, because what the procedure requires (and the procedure was carried out in the present instance) is that the registering officer to whom the document is presented, receives it and makes his entry accordingly; he impounds it and sends it to the Collector; the Collector takes the necessary steps to compel payment of the proper stamp duty and the penalty; he then returns the document to the registering officer, who shall proceed with the matter. The effect is that the presentation is a good presentation, though the actual registration is delayed. But, as I have pointed out, there is no period limited for registering. We think, therefore, that the lower Appellate Court is wrong in saying that there was no proper presentation of this document within four months as required by law.

(1) 15 B. L. R., 228.

The next objection taken is that this suit will not lie, because the second requirement has not been complied with, inasmuch as the parties who executed the document did not, as required by s. 34, appear to admit execution before the registering officer within four months nor within eight months. That ground appears to have been relied on in both Courts. In the first Court it is said: "According to the provisions of s. 34 of the Registration Act, a deed can only be registered if the persons executing the document or their representatives, assigns or agents appear before the registering officer within the time allowed." And in the lower Appellate Court also the same view appears to have been taken. But it must be observed, as we have already pointed out, that that section is expressly subject to s. 77; and s. 77 is the section which enables the Civil Court to direct registration of a document. In s. 77 there is no such provision as to the time within which the parties are to appear to admit execution; and indeed one of the most obvious reasons which may make it necessary for any party to come to the Civil Court under s. 77 to compel registration, must be his inability to procure the attendance of the party executing before the registering officer. We think, therefore, that on that point also the lower Appellate Court is in error.

Then, thirdly, it is said in the first Court, "registration could not have been directed after eight months." We are not sure whether the Munsiff intended to lay this down broadly as a proposition, or whether it ought not to be justified by the context. If he intended to lay that down as a broad proposition of law, it is clear that that is inconsistent with the decision of the Privy Council.

Let us now turn to see the exact sequence of the sections immediately connected with s. 77 under which the suit is brought. The first of those sections, which it is necessary to notice, is section 71. The Sub-Registrar, if he refuses to register, is to make an endorsement on the document that the registration is refused. That is done in two cases—the case in which the Sub-Registrar refuses to register on the ground that execution is not admitted, and the case in which he refuses on any other ground. Section 72 deals with the case where the refusal of the Sub-

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1885 Registrar is on any ground other than the denial of execution, in which case there is an appeal to the Registrar within a month from the refusal; and the Registrar is to deal with the matter, and to order registration or refuse it. Sections 73 and 74 deal with cases where registration is refused on the ground of denial of execution, whether before the Sub-Registrar or the Registrar himself. In the case of denial of execution before the Sub-Registrar, again there is an appeal to the Registrar, and he is to deal with the matter in the manner provided in the following sections.

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Then, according to s. 76, the Registrar also is to endorse his refusal.

Then comes section 77, which deals with both cases—the case in which the refusal has been on the ground of denial of execution, and the case of refusal on any other ground; and it says that within a month from the Registrar's order, a suit may be filed in the Civil Court.

Now, it seems pretty clear on the face of those sections that what is required in order to maintain a suit under s. 77 is that the procedure laid down in those sections shall be followed, that is to say, that there must be a refusal to register by the Sub-Registrar, an appeal within due time to the Registrar, a refusal by the Registrar, and a suit filed in the Civil Court within time. That is exactly what has happened in this case.

Of the cases bearing on the matter the first in point of time is the case of *Bhagwan Singh v. Khuda Buksh* (1). There the Sub-Registrar refused registration on the ground of denial of execution. Instead of taking the course that the Act points out, by appealing to the Registrar, the plaintiff in that case brought a suit in the Civil Court, and the suit was dismissed on the ground that he failed to fulfil the necessary preliminaries required by the preceding sections which lead up to a suit under s. 77.

The same point came before the Calcutta High Court, in the case of *Edun v. Mahomed Siddik* (2). There again the same thing was said, that in order to entitle a person to bring a suit under s. 77 (the refusal in that case being on a ground

(1) I. L. R., 3 All., 397.

(2) I. L. R., 9 Calc., 150.

other than denial of execution,) the previous step must have been taken of appealing against the Sub-Registrar's order of refusal.

The last case, which will be found in the same volume at page 851, is the case of *Lakhimoni Chowdhraïn v. Akroomoni Chowdhraïn* (1). That case appears to decide substantially the same thing. It is exactly similar to the Allahabad case.

Now those cases appear to us to establish exactly the conclusion which we should be disposed to arrive at on the construction of ss. 72 to 77, but we do not think that they support the propositions laid down in the Courts below, namely, that deficiency of stamp duty will invalidate the presentation, or that the non-attendance of the executing party within four or eight months is fatal to a suit in the Civil Court under s. 77, or that registration cannot be made after eight months.

For these reasons we think that the decree of the lower Court cannot be sustained. The case has been dealt with only on this preliminary point, the merits have not been gone into. The case must, therefore, go back to the Munsiff's Court for trial on the merits with this statement of the law.

Costs of this appeal will abide the result.

Appeal allowed and case remanded.

Before Mr. Justice Field and Mr. Justice O'Keenaly.

PEARI MOHUN MUKHERJI (PLAINTIFF) v. BANSHI MAJHI
(DEFENDANT.)*

1885
July 1.

Landlord and tenant—Enhancement of rent, Suit for—Beng. Act VIII of 1869, s. 4—Presumption of Evidence.

In a suit for arrears of rent at enhanced rates where the defendant relies on the presumption contained in s. 4 of Beng. Act VIII of 1869, it is not sufficient, in order to do away with that presumption, to show that the land has not been in cultivation from the time of the permanent settlement. It must be shown that the land has not been held since the time of the permanent settlement.

* Appeal from Appellate Decree No 2563 of 1883, against the decree of J. G. Charles, Esq., Additional District Judge of 24 Pergunnahs, dated the 23rd of June 1883, affirming the decree of Baboo Bepin Chundra Rai, Munsiff of Diamond Harbour, dated the 80th of June 1882.

(1) I. L. R., 9 Calo., 851.

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