

## APPELLATE CIVIL.

Before Mr. Justice Abdur Rahin, Mr. Justice Spencer and  
Mr. Justice Srinivasa Ayyangar.

GANGADARA MUDALI (DEFENDANT), APPELLANT,

v.

SAMBASIVA MUDALI (PLAINTIFF), RESPONDENT.\*

1916,  
October, 3,  
and  
November, 1.

*Registration Act (III of 1908), ss. 72 (1), 76 and 77—Refusal of Registrar to direct Sub-Registrar to register a document, whether a refusal to register it—Limitation—‘Thirty days’ in section 77—Time from which to be computed.*

A document was presented for registration to the Sub-Registrar on the last day of the four months allowed for presentation, but the Sub-Registrar declined to receive it owing to pressure of other work. At the suggestion of the Sub-Registrar, it was presented the next day with an application to the Registrar to excuse the delay in presentation. On the refusal of the Registrar to excuse the delay, the Sub-Registrar refused to register the document. From this order an appeal was filed before the Registrar and it was dismissed. The present suit was filed within thirty days of the dismissal of the appeal under section 77 of the Indian Registration Act, but more than thirty days after the order refusing to extend time.

*Held:*

(1) that the order of the Registrar on appeal, refusing to direct the Sub-Registrar to register the document was a “refusal to register” within sections 77, 76 and 72 (1) of the Act and

(2) that the suit was filed in time, as the thirty days allowed for filing by section 77 must be counted from the date of the order on appeal and not from the date of the order refusing to extend time.

There is no distinction between a refusal to accept a document for registration and a refusal to register it.

*Narasimha Nayanevaru v. Rumalingam Rao* (1900) 10 M.L.J., 104 and *Sivarama Pattar Kariakar v. Krishnaiyar* (1914) 26 M.L.J., 307, followed.

*Kunhimmu v. Viyyathamma* (1884) I.L.R., 7 Mad., 535, distinguished.

*Ganguva v. Sayava* (1897) I.L.R., 21 Bom., 699, *Balambal Ammal v. Arunachala Chetti* (1895) I.L.R., 18 Mad., 255 and *Veeramma v. Abbiah* (1895) I.L.R., 18 Mad., 99, not followed.

APPEAL under clause 15 of the Letters Patent against the judgment of SESHAGIRI AYYAR, J. (dissenting from BAKEWELL, J.) in *Gangadhara v. Sambasiva*. SECOND APPEAL † against the decree of G. KOTHANDARAMANUJALU NAIDU, the Temporary Subordinate Judge of Tanjore in Appeal Suit No. 113 of 1914, preferred against the decree of C. VEERASWAMI REDDI the District Munsif of Tirutturaippundi in Original Suit No. 71 of 1913.

\* Letters Patent Appeal No. 120 of 1916.

† Second Appeal No. 2348 of 1914.

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SAMBASIVA. The facts and arguments are stated in the judgment of  
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Second Appeal No. 2348 of 1914.

*A. V. Viswanatha Sastriyar* for *G. S. Ramachandra Ayyar*  
for the appellant.

*K. S. Ramabadra Ayyar* for the respondent, *amicus curiæ*.

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SESHAGIRI AYYAR, J.—The facts are not in dispute in this case. The defendant executed a sale-deed to the plaintiff on the 3rd of September 1912. Owing to the non-payment of the consideration in full, the defendant refused to get the document registered. The plaintiff presented it to the Sub-Registrar for compulsory registration on the 3rd January 1913. On that day, according to the evidence of the Sub-Registrar, he was so busy that he was not able to find time to receive the document and to issue summons to the defendant. The Sub-Registrar therefore suggested that the document should be presented the next day with an application for excusing the delay in not having presented it earlier. This was done. The application for excusing the delay was lodged with the Sub-Registrar under section 25, clause (2) of the Registration Act to be forwarded to the Registrar. The Registrar did not excuse the delay. His order has not been put on the record. The Sub-Registrar passed final orders on the 14th January 1913 in these words :

“Inasmuch as no permission has been given for accepting the said document for registration under section 25 of the Registration Act, in Current Memo. No. 79 General, dated 11th January, current year, issued by the Registrar, the registration of this document is refused under sub-section (v) of section 24 of the Registration Rules”—(Exhibit E).

Thereupon an appeal was preferred to the Registrar. This was dismissed on the 1st February, 1913. The present plaint was presented under section 77 of the Registration Act on the 3rd of March, 1913. It was conceded before us that the suit was within thirty days of the order of the Registrar. The Sub-ordinate Judge differing from the District Munsif gave a decree to the plaintiff.

In this Second Appeal as the respondent was not represented, we requested Mr. Ramabadra Ayyar to assist us as *amicus curiæ*. We are indebted to him for his clear and able argument. The appellant's case was presented to us with equal ability and clearness by Mr. Visvanatha Sastri.

The main contention for the appellant was that this suit is not within the purview of section 77 of the Registration Act. Mr. Visvanatha Sastri argued that the order of the Sub-Registrar communicating the opinion of the Registrar that the delay in presentation will not be excused is not an order "refusing to admit a document to registration" as contemplated by section 72, clause (1) of the Act and that no appeal lay to the Registrar against that communication. Therefore the appeal to the Registrar and the order thereon (Exhibit F) were both incompetent and furnished no ground for a suit under section 77. Before dealing with the few cases cited in argument, I shall examine the sections. It is true that under section 25, the power to excuse the delay in presentation is vested solely in the Registrar. What the Sub-Registrar has to do is simply to send up the papers to the Registrar. The party is still before the Sub-Registrar; the final word has to be said by him although he is bound by the opinion of his superior. The next question: is did the Sub-Registrar "refuse to admit the document to registration?" The fact that he has no option in the matter does not affect the solution of the question. In his order, Exhibit E, he says that "the registration of this document is refused." Of course, if he had no power to pass the order, the words used by him will not avail the plaintiff. In my opinion, he has the power to pass an order whether he would register the document or not, and that order would be strictly within his rights. The Registration Act uses two or three expressions which have caused some confusion of thought. *Refusal to register, refusal to accept for registration* and *refusal to admit for registration*, are used in the body of the Act without indicating the difference in the meaning to be attributed to these expressions. In my view, the order of the Sub-Registrar is "a refusal to admit the document for registration" and as such is appealable. Mr. Visvanatha Sastri pointed to an anomaly which this interpretation would involve. By the appeal to the Registrar in such cases the officer is asked to review his own opinion given on the *ex-parte* representation of the Sub-Registrar. There is force in this argument. The only answer is that on the previous occasion when he passed orders on the papers sent to him by the Sub-Registrar, the Registrar was acting in his advisory capacity. My attention has not been drawn to any provision which enables a party who has lodged

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his application for excusing his delay before the Sub-Registrar to appear before the Registrar in support of his application ; but when he hears an appeal he is performing a judicial act and the parties have a right of audience. It may be that the Legislature intended that he should re-consider his decision for good cause shown. However that may be, I am unable to say that the order of the Sub-Registrar is not one refusing to admit the document to registration. An argument was founded on the use of a similar expression in section 58 and it was said that "admitting to registration" is a technical language which contemplates some preliminary steps. I am not convinced by this argument.

There is one other aspect of the question. Section 76, clause (1) (b) contemplates an original application to the Registrar to direct the registration of a document by a Sub-Registrar. No doubt such an application may be lodged with the Sub-Registrar for its being forwarded to the Registrar. But the language is not mandatory. Under clause (1) of section 25, it is competent to the Registrar if the delay does not exceed four months to excuse it on certain conditions and direct the registration of the document. There is nothing in the Act to prevent a party from applying direct to the Registrar to excuse the delay. Section 76, clause (1) (b) implies that such a direct application is competent. If this is correct, the appeal preferred by the plaintiff against the order of the Sub-Registrar may be regarded as an original application to the Registrar to excuse the delay. The fact that he expressed an unfavourable opinion when the papers were forwarded by him would not prevent his entertaining an original application. His dismissal of the appeal would be in effect refusing to direct the Sub-Registrar to register the document. Such a refusal would furnish a cause of action for a suit under section 77.

I have thus far avoided discussing the case-law on the point. The decision strongly relied upon is *Gangava v. Sayava*(1). In this case immediately on the receipt of the order refusing to excuse the delay, the suit under section 77 was filed. With all respect, I am unable to concur in the view that the refusal to excuse the delay is not a refusal to register. I am justified in

my opinion by the view taken in Madras in *Narasimha Nayanevaru v. Ramalingam Rao*(1) and *Sivarama Pattar Kariakur v. Krishnaiyar*(2), which seem to disapprove of the Bombay decision. The decision in *Kanhaya Lal v. Sardar Singh*(3) is in conflict with the Bombay decision, although it is not referred to in the judgment. The reasoning in *Kudrathi Begum v. Najibunesa*(4) is also in favour of the view I have taken. *Udit Upadhia v. Imam Bandi Bibi*(5) does not really touch this case.

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For the reasons above given, I am of opinion that the suit was properly laid under section 77 of the Registration Act.

I would therefore dismiss the Second Appeal.

BAKEWELL, J.—For the purposes of this appeal it is necessary to examine the procedure prescribed by the Indian Registration Act, 1908, for the registration of documents. A party claiming under a document must present it at the proper registration office (section 32), and in certain cases, the registering officer is forbidden to accept it for registration: see sections 20 (1), 21 (1) (4), 23 and 71 (2). Sections 34 and 35 and Part VI prescribe the procedure to be followed upon the inquiry held by the registering officer when he has accepted a document for registration, and Part XI (B) deals with the procedure after this inquiry when he has decided to admit it to registration.

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There are therefore three principal stages in the registration of a document: first its acceptance by the officer, secondly his inquiry as to its admissibility to the register and thirdly his placing it upon the register.

The Act is silent as to the effect of a refusal by the officer to accept a document for registration, except where the time limited for presentation has expired, in which case the principal registering officer has a discretion to enlarge the time (section 25); but possibly the Registrar might act under section 68 (2).

Section 73 provides for an application to the Registrar where, in the inquiry before a Sub-Registrar, a party has denied execution and section 72 provides an appeal to the Registrar where a Sub-Registrar has in other cases refused to admit a document to registration. Section 75 deals with the order of the

(1) (1890) 10 M.L.J., 104.

(2) (1914) 26 M.L.J., 307.

(3) (1907) I.L.R., 29 All., 284.

(4) (1898) I.L.R., 25 Calc., 93.

(5) (1902) I.L.R., 24 All., 402.

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Registrar in an inquiry by him as to the execution of a document by a party. Section 76 prescribes the procedure to be followed by the Registrar when he refuses to register a document or to direct its registration under section 72 or section 75. Section 77 provides a remedy by suit in a Civil Court in cases where the Registrar has refused to order a document to be registered under either of the last-mentioned sections. This section therefore provides in effect for a new trial of the question of admissibility of a document to the register after the inquiry directed by sections 34 and 35.

Section 34 prohibits the officer from registering a document unless the executants appear within the period limited by section 23 for the presentation of the document, and provides that in such cases an application may be made to the Registrar to enlarge the time.

There appears to be no remedy given by the Act in cases where the Registrar refuses to enlarge the time for presentation on inquiry under section 25 or section 34.

In the present case the respondent presented a document to a Sub-Registrar on the last day of the period fixed by section 23 and was advised by him to present a petition to the Registrar for further time, and the respondent accepted his advice and applied accordingly under section 25. It is clear that the Sub-Registrar should have accepted the document for registration, and that the party should then have applied to the Registrar under section 34. I think that it is equally clear that the Sub-Registrar did not refuse to accept the document for registration and did not consider whether it was admissible to the register, and therefore, did not refuse to admit it to registration, but merely offered advice. There was therefore no order refusing to admit the document to registration from which an appeal would lie under section 72, and no order of the Registrar refusing to direct registration under that section. Section 77 is expressly limited to orders of refusal under section 72 or section 76, and when there is no such order, a suit will not lie thereunder.

The subsequent proceedings by the respondent were taken after the expiration of the period limited by section 23, and after the order of the Registrar refusing to enlarge the time and the Sub-Registrar and Registrar were prohibited by that section from accepting the document for registration, and the orders

passed by them were therefore not orders refusing to admit a document to registration within the meaning of the Act.

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If the respondent had followed the procedure prescribed by section 34, it would still have been within the discretion of the Registrar to refuse an enlargement of the time, and I do not think that the Act provides any means of revising such an order. If the action of the Sub-Registrar be taken as equivalent to an acceptance of a document for registration and a refusal to admit it to registration under section 34, it would seem that the respondent has not adopted the remedy prescribed by that section. If however the application for enlargement of time be regarded as made under section 34 and not under section 25, the Registrar has exercised his discretion by refusing further time.

If under the circumstances of this case, the Court passed a decree directing the document to be registered, it would in my opinion be either exercising a discretion expressly conferred upon the Registrar or revising his order refusing to enlarge the time for acceptance of a document, and the Act gives no such jurisdiction to the Court.

It is regrettable that the Sub-Registrar should have tendered and the respondent have accepted advice which was not in accordance with the provisions of the Act, but the Act does not appear to afford any remedy, unless the action of the Sub-Registrar be held not to fall within section 86.

I respectfully dissent from the dictum contained in *Narasimha Narayanevaru v. Ramalingam Rao*(1), which is not binding on this Court, and accept the ruling in *Gangava v. Sayava*(2), which draws a distinction between a refusal to accept and a refusal to register a document.

There has been no argument before us as to whether proceedings could be taken otherwise than under the Act against a Registrar or Sub-Registrar who has refused to accept a document for registration, but in the case of a Sub-Registrar I am inclined to the opinion that section 68 provides a remedy. I would allow this appeal and restore the decree of the District Munsif with costs throughout.

SESHAGIRI AYYAR, J.—As my learned brother has taken a different view, my judgment which confirms that of the lower Appellate Court prevails. In the result the Second Appeal is

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(1) (1900) 10 M.L.J., 104.

(2) (1897) I.L.R., 21 Bom., 699.

GANGADARA dismissed. As the respondent does not appear, there will be no  
 v. order as to costs.  
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Thereupon this defendant preferred this appeal under the Letters Patent.

*A. V. Viswanatha Sastri* for *G. S. Ramachandra Ayyar* for the appellant.

*K. S. Ramabhadra Ayyar* for the respondent *amicus Curiae*.

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 JJ.

JUDGMENT.—We agree with SESHAGIRI AYYAR, J., that this case falls within section 77 of the Registration Act. This is in agreement with the interpretation adopted by our Court in *Narasimha Narayanavaru v. Ramalinganna Rao*(1) and *Sivarama Pattar Kariakar v. Krishnaiyar*(2), and we also may point out that the rules framed under the Act are in accordance with this view.

A contrary view, it is true, has prevailed in *Gangava v. Sayava*(3); but the fallacy of the reasoning in that case, if we may say so with respect, lies in thinking that there is any substantial distinction between refusal to accept a document for registration and a refusal to register within the meaning of section 77 read with sections 76 and 72. Here the District Registrar did in fact refuse to direct registration of the document and none the less so because he made no enquiry as to whether the document was executed or not, proceeding on the ground that the document was in his opinion presented out of time.

We may mention that a ruling (referred to at the bar) in *Kunhimmu v. Viyyathamma*(4), can be distinguished on the ground that the appeal to the Registrar in that case having been presented after the expiry of the prescribed period, it was considered as if there was no appeal and admittedly where there has been no appeal to the Registrar no suit will lie under section 77. There are also some observations in *Balambal Ammal v. Arunachala Chetti*(5) and *Veeramma v. Abbiah*(6) which might be taken to support the interpretation put upon section 77 in *Gangava v. Sayava*(3), but they are in the nature of *obiter dicta*.

(1) (1900) 10 M.L.J., 104.

(2) (1914) 26 M.L.J., 307.

(3) (1891) I.L.R., 21 Bom., 699.

(4) (1884) I.L.R., 7 Mad., 535.

(5) (1895) I.L.R., 18 Mad., 255 at p. 256

(6) (1895) I.L.R., 18 Mad., 99.



It is also argued that the suit is barred. But time should be computed from the order of the Registrar, dated 1st February, 1913, when on appeal, he refused to direct the registration and not from his previous order refusing to extend time.

The appeal is dismissed.

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## APPELLATE CIVIL.

*Before Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.*

PICHU VADHIAR (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL  
AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

1916,  
October, 27  
and  
November, 2.

*Transfer of Property Act (IV of 1882), sec. 69—Sale by mortgagee—Surplus proceeds retained by mortgagee—Whether attachable under warrant under Criminal Procedure Code (V of 1898), sec. 386—Priority of Crown over attaching creditor.*

A mortgagee sold the mortgaged property under a power of sale, and after discharging his own dues, retained the surplus sale-proceeds for payment to the mortgagor. The mortgagor was convicted and sentenced to pay a fine which, if recovered, was directed to be paid to the complainant. A warrant for recovery of the fine was issued under section 386 of the Criminal Procedure Code against the fund in the hands of the mortgagee who paid the amount to the bailiff. The plaintiff who had attached the mortgaged property in execution of a decree against the mortgagor, disputed the right of the Crown to proceed against the fund or at least in preference to him, and sued the Secretary of State for India and the complainant to whom the amount was paid;

*Held:*

(1) that the surplus amount retained by the mortgagee was money held in trust by him for the mortgagor under section 69 of the Transfer of Property Act;

(2) that a warrant could be issued for the levy of the fine by distress on the amount in the hands of the mortgagee under section 386 of the Criminal Procedure Code; and

(3) that the fine was a Crown debt which had priority over the plaintiff's debt, though the fine, if recovered, was directed to be paid to the complainant.

APPEAL against the decree of C. R. TIRUVENKATACHARYAR, the Madras City Civil Judge, in Original Suit No. 130 of 1915.

\* City Civil Court Appeal No. 12 of 1916.