

limitation was deliberately placed by the legislature in the first schedule of the Civil Procedure Code and therefore alterable as a matter of procedure by force of section 122. Section 122, as I read it, gives power to annul this provision in Order XXII, rule 9, and therefore would, if that provision were not found in Order XXII, rule 9, give power to insert such a provision in that Order, if advisable. If such a power can be legally exercised in case of Order XXII, rule 9, I cannot see any possible reason why it should not be exercised in the case of Order IX, rule 13.

KRISHNAMA-
GHABIAH
v.
SRIRANG-
AMMAL.
WALLACE, J.

N.R.

APPELLATE CIVIL.

*Before Mr. Victor Murray Coutts Trotter, Chief Justice,
Mr. Justice Ramesam and Mr. Justice Wallace.*

BOLLA GURUVAYYA AND FOUR OTHERS (DEFENDANTS),
(APPELLANTS),

1924,
April 10.

v.

CHERUKURI VENKATARATHNAM (PLAINTIFF),
RESPONDENT.*

Suit under sec. 77 of Indian Registration Act—Tender of tampered document for registration—Scope of Registrar's inquiry before registration—Scope of Court's inquiry under sec. 77 after Registrar's refusal to register.

The duty of a Registrar to whom a document which appears to have been tampered with after execution is presented for registration by the claimant, is to ascertain whether it is actually in the state in which it was executed by the parties and not to go into a roving inquiry whether the document tendered represents the substance of the agreement between the parties; and the duty of the Court in which a suit is filed under section 77 of the Registration Act to have it registered after refusal by Registrar is exactly the same.

* Letters Patent Appeal No. 6 of 1923.

GURUVAYYA
v.
VENKATA-
RATHNAM.

APPEAL under clause 15 of the Letters Patent against the judgment of PHILLIPS, J., dated 19th February 1923, and passed in Appeal No. 300 of 1921 preferred against the decree of the District Court of Kistna at Masulipatam in Original Suit No. 17 of 1920.

In this case the plaintiffs as purchasers of certain lands from defendants presented for registration a sale-deed purporting to have been executed in their favour by defendants in June 1918. Upholding the defendants' objection that the sale-deed as presented was a forgery in that its date was altered from April to June and many portions of the contents and signatures therein were altered by erasure, additions and substitutions by the plaintiffs to whom it was given after execution, the Registrar declined to register it. On a suit being brought under section 77 of the Registration Act to have it registered, the District Court decreed the suit. On appeal to the High Court, PHILLIPS, J., concurred with the lower Court, while DEVADOSS, J., accepted the defendants' case and held that the suit should be dismissed. As the judgment of PHILLIPS, J., concurred with that of the lower Court, the appeal was dismissed and the defendants preferred this Appeal under clause 15 of the Letters Patent.

K. Krishnama Achariyar for appellant.

S. Varada Achariyar and *N. Rama Rao* for respondents.

JUDGMENT.

COURTS
TROTTER,
C.J.

COURTS TROTTER, C.J.—This was a suit brought under section 77 of the Indian Registration Act which enables a person who has tendered a document for registration to bring a suit in a Civil Court against the refusal of the Registrar to register it.

In this case the plaintiff tendered a document, which is before us, for registration. The document bears the

most apparent traces of having been tampered with. In one sheet all the glaze of the paper has been destroyed and there is very deep discoloration. Other sheets bear obvious signs of the surface of the paper having been chemically dealt with, but throughout, although the discoloration is extensive in the operative sheets of the document, the signature, which is admitted, and the stamp paper at the top, are practically intact. Expert evidence has shown that the discoloration and the destruction of the glaze on the surface of the paper are due to chemical action. The inference that those alterations were made after the execution of the document in its original state by the defendants is almost irresistible. Naturally enough the plaintiff was asked what explanation he proposed to offer. The one he gave was so childish that hardly any of the learned Judges who considered this matter have treated it seriously. That being so, what is the position? Is this Court to enter on a roving inquiry into the probabilities and the surrounding circumstances and put itself the question, Does this document, whatever its history, represent the substance of the agreement between the parties? In my opinion, that is a wholly otiose and irrelevant inquiry. The Registrar has to ask himself merely this: Is this document now tendered to me to be registered actually in the state in which it was executed by the parties to it? In my opinion, he would be exceeding his functions if he went into a roving inquiry as to whether the substance of the document truly represented the agreement actually concluded. He is concerned alone with the form, and not with the substance of the document. It appears that, in a suit under section 77, the same considerations should guide the Court which should guide the Registrar in considering his duty to register or to refuse registration. Indeed,

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were it otherwise, the Court would be called upon to say, in effect, that the Registrar was perfectly justified in refusing registration, but that the Court will nevertheless order it to be registered; and the result might be that the Court would order registration of a document which had been altered behind the back of the person who executed it and after its execution and signature on the ground not that he had ever executed it in its present state, but that it represented what had actually been agreed between the parties. In my opinion, such a conclusion is so absurd as to refute itself.

The appeal must be allowed and the suit dismissed with costs throughout.

I may add that, if the facts were as the plaintiff contends, namely, that, although he has tampered with the document, the agreement was that which he contended it to be, he has a remedy other than by proceedings under this Act, or at any rate he had, though perhaps by now he may have lost it by limitation.

If the impugned document has been registered in pursuance of the order of the District Judge—and we are given to understand that it has—the registration stands cancelled. This order will be communicated to the Registrar of Kistna district.

RAMESAN, J.

RAMESAN, J.—I agree.

WALLACE, J.

WALLACE, J.—I agree and have nothing to add.

N.B.