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QUEEN
v.
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consummation of the offence but for the intervention of circumstances independent of the will of the party, be accepted, it is clear that the prisoner's act in causing the banns of marriage between himself and Miss Guise to be published was not, in the eye of the law, an attempt to marry her, inasmuch as he might, before any ceremony of marriage was commenced, have willed not to carry out his criminal intention of marrying her. For the reasons above stated the verdict of the jury by which the prisoner is convicted of an offence punishable under ss. 511, 494, Indian Penal Code, and the sentence passed on him under those sections by the Sessions Court must be and hereby are annulled.

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December 16.

BEFORE A FULL BENCH.

(*Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

IN THE MATTER OF THE PETITION OF BISH NATH.

*Act VIII of 1871 (Registration Act), s. 73—Refusal to Register—Petition to have Document registered—Person "claiming" under Document.**

A deed of sale, executed by the vendor alone, which recited that the vendor had received the purchase-money, and that the purchaser had been put into possession, was presented for registration by the vendor, the purchaser not being present. The Registrar refused to register the document on the ground that the deed had not been delivered, and no consideration had passed, the vendor having stated that he had not received the purchase-money. In refusing to register, the Registrar believed that the deed was of the vendor's own creation. The vendor applied by petition to the High Court to establish his right to have the document registered. The alleged purchaser repudiated the sale.

Held (by the majority of the Full Bench) that as it appeared on the face of the document itself that the petitioner was not a person "claiming" under it, the petition could not be entertained under the provisions of s. 73 of the Registration Act.

Per STUART, C. J.—That the mere fact that it did not appear on the face of the deed that the petitioner could claim under it did not preclude the Court from entertaining the petition, but that, under the circumstances of the case, the registration of the deed should not be ordered.

Per OLDFIELD, J.—That it was the duty of the Court to order the registration of the deed as it was duly executed and the requirements of the law fulfilled, without entering into the question whether or not the petitioner could claim under it.

* Miscellaneous Application, No. 71 B. of 1876.

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This was a petition to the High Court to establish the petitioner's right to have a deed of sale registered. The material portion of the deed, which was dated the 8th May, 1875, was as follows :— "I, Bish Nath, hereby sell all the property detailed below to Lachman Parshad for Rs. 460. I make this sale of my own free will. I have received the whole of the purchase-money in a lump sum. I have declared the said purchaser to be my representative, and put him into possession of the entire property. I have transferred to the said purchaser, from the date of the execution of this document, all rights I possess in respect of the property sold. I have not, nor shall my heirs have, any claim or right to the property sold, or to the purchase-money." The deed was executed by the vendor only, who presented it for registration on the 19th August, 1875, to Mr. J. H. Prinsep, District Judge of Cawnpore and the Registrar of the District, the purchaser not being present. On learning, by inquiry from the vendor, that he had not received the purchase-money, the Registrar refused on that ground to register the deed, and also on the ground that the deed had not been delivered.

On the Court (Stuart, C. J., and Oldfield, J.) calling for the records of the registration proceedings, the Registrar stated that, in refusing to register, he believed that the vendor was seeking to have registered a document of his own creation, and that the deed could not be registered in the absence of the purchaser. The purchaser denied the contract of sale.

The Court referred to the Full Bench the question whether, under the circumstances, and with reference to the provisions of Act VIII of 1871, the registration of the document should be ordered.

Munshi *Hanuman Parshad* and Munshi *Sukh Ram*, for the petitioner.

Pandit *Bishambar Nath* and Pandit *Nand Lal*, for the opposite party.

Pandit *Nand Lal*.—The petition cannot be entertained. The right of petitioning against a refusal to register is given by s. 73 of the Registration Act to a party "claiming" under the document. The petitioner cannot be said to claim under the sale-deed.

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Munshi *Sukh Ram* contended that the petitioner was a party "claiming" under the sale-deed. He can claim the purchase-money under it. The court can therefore entertain the petition.

STUART, C. J.—It was objected by the respondent that, under s. 73 of the Registration Act, there was no appeal in a case like the present, by which, as I understand, is meant that, inasmuch as the appellant could not be said to "claim" under the document, he had no right to make the present application to this Court, being the remedy provided by s. 76 where the Judge of the District was, as in this case, the registering officer. But I am not satisfied that for the purposes of this section he must be regarded as not claiming under the document. He might not succeed in establishing his claim, say, to the purchase-money, but, although the deed was unilateral and executed by the vendor alone, it appears to be in the form of sale-deed customary in these Provinces, and, on the face of it, therefore, and so far as its form is concerned, and whether it be registrable or not, I do not see that we are obliged at once to assume that it could not be given effect to, or that because it is in form unilateral the appellant could not claim the purchase-money. There is, however, in relation to this point a curious inconsistency in the Act; for, whereas by this s. 73 the party desirous of making an application under it must be a person "claiming" under the document, by s. 32 documents for registration shall be presented "by some person executing or claiming under the same," not executing *and* claiming, but executing *or* claiming. Why this should be, and the parties proceeding under these two sections in different positions, it is not easy to understand, unless it was intended that a party against whom an order refusing to register had been made was in a different position, at such a stage of the proceeding, from a party merely executing the document. Be this as it may, I do not see that for the purposes of s. 73 we are bound to assume *in limine* that the applicant did not, or could not claim under it. I therefore consider that he was not precluded from his remedy by the application he has made to this Court.

But on the merits of the question embraced in the reference before us, I must express the opinion I have formed on it, and that is, that registration of the document in question should not be ordered. Even on the assumption that the applicant may be understood to

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claim under this sale-deed, I am not satisfied that it is a document or instrument within the meaning of the Registration Act. It is not only not executed by the alleged purchaser, but has been repudiated by him altogether, and this is a state of the case which I think may be allowed to come within the scope and intention of s. 35 of the Act, which provides that, if all or any of the persons by whom the document purports to be executed deny its execution, the registration shall be refused.

Was this so-called sale-deed a legal and enforceable document at all? I think not. As I have remarked, such unilateral instruments are not uncommon in these Provinces, and I may add that, in the practice of Scottish conveyancing, such instruments as sale-deeds, or deeds in the nature of mortgages, and the like, are only signed by the seller or obligor, and no inconvenience is experienced from this where the instrument records a true contract. But when there is no evidence at hand of such a contract, the unilateral character of the instrument leaves it open to the alleged purchaser or obligee to repudiate it. In the case before us, the alleged sale-deed recites no previous contract or agreement, the repudiation of it is express, and there is also the serious fact that no consideration had passed upon it. It was suggested at the hearing that there was no limit to the nature or character of the documents which might be presented for registration, but that the registering officer was bound to accept and register all documents without exception which purported to be executed at all. But this is a view of the law which I cannot concur in. If such was the position of the registrars under the Act, the public time would be wasted, and their duties would become intolerable. On the other hand, the consequences of registration are very serious, and I cannot allow that these consequences should be visited on the heads of innocent persons. The registering officers must satisfy themselves by evidence and inquiry that documents are honestly presented in their office, otherwise no one would be safe.

PEARSON, J.—The vendee was not a party to the instrument in question, which does not in any way bind him. It was executed by the vendor alone, and merely declares that he has sold the property therein mentioned, for a consideration which he has received, to Lachman

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Parshad. But no claim could be founded upon it against Lachman Parshad or anyone else. The vendor could not, therefore, as a person claiming under it, apply by petition, under s. 73, Act VIII of 1871, to the High Court, in consequence of the Judge's refusal to register it, with a view to establish his right to have the document registered. His petition cannot be entertained. Whether the Judge was right or wrong in refusing to register it is a question which we are not required to consider and determine.

TURNER and SPANKIE, JJ.—The petitioner having, as he alleges, agreed to sell certain lands and other property to the respondent, executed a conveyance and presented it to the Registrar for registration. That officer refused registration on the grounds that the deed had not been delivered nor the consideration paid. Had the question before us rested here, there would have been little difficulty in disposing of it, as the law does not prescribe either of the grounds recorded by the Registrar as justifying the refusal of registration. The deed was in a form not uncommon, if not most usual, in these Provinces, that is to say, it was unilateral, the seller alone being a party to it. It was duly executed by the seller, who appeared before the Registrar and admitted its execution. It is not alleged, and it does not appear that there had been any failure to comply with the requirements of the law, consequently registration should not have been refused. But it is contended on the part of the respondent that the petitioner is not entitled to apply to this Court for an order for the registration of the instrument, seeing that the law accords that privilege only to a person claiming under such instrument, or his representative, and that on the face of the instrument it appears that the petitioner does not claim under it. The only claim which it is suggested the petitioner could assert would be a claim to the purchase-money, but inasmuch as the instrument purports to be and is executed by the petitioner alone, it is clear that he cannot claim the purchase-money under it. It would not be the duty of the Court, we apprehend, on such an application to enter into any involved question of construction to determine whether or not the person presenting such an application has not a claim, but when, on the face of the document, it clearly appears that he can claim nothing under it, we hold that a mere unfounded assertion of a claim will not give him a *locus standi*, and that his application should be refused.

OLDFIELD, J.—All documents to which the Registration Act applies may be presented for registration by some person executing or claiming under the same (s. 32), and it is the duty of the registering officer, on presentation of the document, to inquire (a) whether or not such document was executed by the persons by whom it purports to have been executed, (b) satisfy himself as to the identity of the persons appearing before him, and alleging that they have executed the document, and (c) in the case of any person appearing as a representative, assign, or agent, satisfy himself of the right of such person so to appear (s. 34), and, if satisfied on these points, it is his duty to register it (s. 35). In the present case the Judge should have ordered registration, as the above conditions were satisfied.

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By s. 76 an appeal lies to this Court from the Registrar's order refusing registration, on the application of any person claiming under the document, or his representative, assign, or agent, in order to establish his right to have the document registered, and the Court's duty is to order registration if it finds that the document has been executed, and the requirements of the law have been satisfied (s. 76).

It is, however, argued that the petitioner in the present case cannot appeal, for though he executed the document, he is not claiming under it, since it is a document which can support no claim. The document purports to effect a sale of certain lands on the part of the petitioner to Lachman Parshad. As such, it is certainly one of those documents capable of registration, and to which the law applies as purporting or operating to create, declare, or assign, an interest in immoveable property; it is a document which the Registrar should register on application by the petitioner. No doubt the deed is signed by the vendor only as executor, but I do not think we can look into the document and say, that since it is unilateral it can give to the petitioner no valid claim, and therefore he has no *locus standi* to appeal; the document by itself may make no complete contract, but it may go to form one; for it is possible that another forming the counterpart may have been executed completing the contract, and so we cannot say that petitioner may not be in a position to assert a claim under it as forming part of a contract. In

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entering on these questions, I think we go beyond the powers given by the Act, which confines the inquiry to the question of the right to have the document registered, dependent on due execution and fulfilment of the requirements of the law. Documents of this character are not uncommon, and our refusal to allow the appeal, and order registration of such documents, may have prejudicial effects. I would admit the appeal, and order the Registrar to register the document.

Petition refused.

APPELLATE CIVIL.

1876

December 16.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.*)

ILAHI BAKSH AND OTHERS (DEFENDANTS), *v.* IMAM BAKSH AND OTHERS
(PLAINTIFFS).*

Act VIII of 1859, ss. 7, 97—Omission of part of Claim—Withdrawal of Suit—Institution of Fresh Suit, including part of Claim omitted.

Where the plaintiffs in a suit were permitted to withdraw from the same, with a view to bringing a fresh suit which should include a portion which had been omitted of the claim arising out of the cause of action, and such fresh suit was brought, the additional portion of the claim in that suit was not barred by s. 7 of Act VIII of 1859.

The plaintiffs in the present suit brought a suit on the 1st September, 1875, to be maintained in possession as theretofore of a plot of land, alleging as their cause of action that the defendants had on the 2nd June, 1875, prohibited them from watering the trees thereon. On the 8th November the plaintiffs applied for permission to withdraw from the suit, with liberty to bring a fresh suit. This application did not contain the grounds upon which the plaintiffs applied for such permission. The Court of first instance granted such permission without recording any reason for granting the same, on payment of certain costs. On the 18th December the plaintiffs brought the present suit in which they claimed on the same cause of action to be maintained in possession of three plots of land. The Court of first instance gave them a decree, which was affirmed on appeal by the defendants.

*Special Appeal, No. 1012 of 1876, against a decree of Shankar Dás, Subordinate Judge of Saharanpur, dated the 7th July, 1876, affirming a decree of Ahmad Hasan, Munsif of Deoband, dated the 9th May, 1876.