

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.*

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August 1

GANGA RAM GUARDIAN OF KUAR GIR PRASAD, A MINOR, (DEFENDANT) v. BANSI AND ANOTHER (PLAINTIFFS).\*

*Effect of Registration and Non-Registration—Optional and Compulsory Registration—Act VIII of 1871 (Registration Act)—Act III of 1877 (Registration Act), s. 50.*

*Held* that under s. 50 of Act III of 1877 a document of which the registration was compulsory under that Act, and which was registered thereunder, took effect, as regards the property comprised in the document, as against another document of a prior date, relating to the same property, executed while Act VIII of 1871 was in force, and which did not require, under that Act, to be registered, and was not registered under it.

THIS was a suit for money charged upon certain immoveable property, the claim being based upon a bond dated the 20th August, 1875, given by the owners of the property to the plaintiffs. Under Act VIII of 1871, the Registration Act in force at the time of the execution of this bond, the registration of the bond was optional. The bond was not registered. On the 27th September, 1877, the property in suit was purchased from the obligors of the bond by one Ganga Ram on behalf of the defendant Kuar Gir Prasad, a minor. The deed of sale required under the provisions of Act III of 1877 to be registered, and it was duly registered. It was contended on behalf of the defendant that the plaintiffs' bond being unregistered could not, under the provisions of s. 50 of Act III of 1877, take effect, as regards the property in suit, as against the deed of sale which, although of a later date, was duly registered under that Act. The Court of first instance allowed this contention, but for reasons which it is not necessary to state held that the property was liable irrespective of the bond for a portion of the money sought to be charged on it, and gave the plaintiffs a decree to that amount in respect of the property. On appeal by the defendant the lower appellate Court held that the provisions of s. 50 of Act III of 1877 were not applicable in this case, and consequently the deed of sale, being of a later date than the bond, did not take effect as against the latter document, and gave the plaintiffs a decree enforcing the entire charge they claimed.

\* Second Appeal, No. 1196 of 1878, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 16th June, 1878, modifying a decree of Babu Ganga Saran, Munsif of Khair, dated the 30th January, 1878.

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The defendant appealed to the High Court, raising the same contention as he had raised in the lower Courts.

Babus *Oprokash Chandar Mukarji* and *Jogindro Nath Chaudhri*,  
for the appellant.

Pandit *Ajulhia Nath* and *Lala Harkishen Das*, for the respondents.

STUART, C.J.—The Munsif was clearly right in holding that the registered sale-deed, although subsequent in date, had preference over the unregistered bond, and the Subordinate Judge as clearly wrong in deciding to the contrary. In stating this conclusion it is at the same time difficult to resist a certain feeling of its injustice, for it seems unreasonable to allow a discretion, and at the same time to impose a penalty or disability on its exercise. That is plainly what has been brought about. The last Registration Act, III of 1877, not less than its predecessors, allows a discretion as to the registering or not registering certain documents of which the bond in this case is one, and if such an instrument has been legally and validly prepared and executed, and is effectual for its purpose, it might be justly contended it should be so as from its date. Yet one can appreciate the policy, and, in a real sense, the convenience, of compelling, as far as may be, the registration of the contracts of the people of this country. The Subordinate Judge's remark that "agreeably to the principle of the law no law can have retrospective effect," is generally correct, and a right once conferred by law cannot be taken away by implication, and if we had nothing but s. 50 itself, we might possibly have applied these principles of law to the present case, and have held that the sale-deed of 1877, although registered, had no priority over the mortgage of 1875. But the "explanation" appended to s. 50 removes all doubt, and may be said to have a repealing effect by expressly negating the application of the principles of law referred to. On the other hand, Act III of 1877 does not affect, in the sense of invalidating, the class of instruments mentioned in s. 18. It simply says that such instruments, if registered, shall have preference over any other unregistered document relating to the same property, and such a law it was quite competent to the Legislature to pass. The meaning, however, of s. 50 of Act III of

1877, together with the explanation appended to it respecting the three preceding Registration Acts, is too clear, and as that section provides the law to be applied to the present case, we cannot do otherwise than hold that the sale-deed of the 27th September, 1877, has preference over the previous mortgage-bond of the 20th August, 1875. We must, therefore, reverse the judgment of the Subordinate Judge on this point, and, with this decision, send back the case to him for disposal on the merits, costs to abide the result.

SPANKIE, J.—The ruling of the Subordinate Judge appears to be wrong. Under the provisions of s. 50, Act III of 1877, the defendant's instrument, which is registered, would take effect as against the plaintiffs', which might have been, but was not registered under Act VIII of 1871. The defendant's instrument was executed after Act III of 1877 came into operation. The plaintiffs' deed was executed after the 1st day of July, 1871, and was not registered under Act VIII of 1871. It is therefore "unregistered" within the meaning of the explanation appended to s. 50 of the new Act III of 1877. The appeal on the part of the defendant was not decided by the lower appellate Court on the merits. I feel, therefore, the necessity of reversing the decision of the Subordinate Judge on the point of law and would remand the case to him for trial on the points regarding which the parties are at issue. Costs to abide the result of a new trial.

*Cause remanded.*

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

LACHMI NARAIN (PLAINTIFF) v. WILAYTI BEGAM AND OTHERS (DEPENDANTS).\*

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August

*Gift—Illegal consideration—Immoral consideration.*

In the year 1870 *H* made a gift of certain immoveable property to *W*, who was his mistress but lived with him as his wife, "on condition of her continuing to be his wife and remaining obedient to him, her husband." *W* acquired possession of the property in virtue of the gift, and had held it for eight years, when a creditor of *H*, under a decree enforcing a debt created by *H* subsequently to the gift, sued, amongst other things, for a declaration that the gift was invalid, as it had been made for an illegal consideration, viz, the future immoral co-habitation of *W* with *H*. *Held* that, assuming that the consideration for the gift was illegal, in the absence of fraud, the gift could not be set aside so many years after *W* had acquired possession thereunder. *Ayerst v. Jenkins* (1) followed.

\* First Appeal, No. 9 of 1879, from a decree of Maulvi Maqsood Ali Khan, Subordinate Judge of Bareilly, dated the 13th September, 1879.

(1) L. R., 16 Eq. 275.