

moveable property, for, if by delivery of possession alone a gift of moveable property becomes effective, the Legislature would not direct that it becomes effective by delivery of possession and something more. Therefore, as regards moveable property, it is clear that the gift of such property can be effected simply by a registered instrument. That being the meaning of the second para. of s. 123 of the Transfer of Property Act, it seems to us that the word "must," in the first para. of the section, means that the gift of immoveable property can be effected by the execution of a registered instrument only. The word "must" is used in the first para. and the word "may" in the second para. "May" is used in the second para. because there are two effective modes of effecting a gift of moveable property, and in the first para. "must" is used because there is only one mode of effecting a gift of immoveable property. We, therefore, think that there is an express provision in s. 123 that a gift of immoveable property can be effected by the execution of a registered instrument, and that is the only mode of effecting it.

The view taken by the District Judge appears to us therefore to be correct, and this appeal must be dismissed with costs.

J. V. W.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Beverley.

BENI MADHAB MITTER (PLAINTIFF) *v.* KHATIR MONDUL
(DEFENDANT).^a

1887
March 7.

Registration Act, s. 60—Certificate of Registration—Document registered by officer having no jurisdiction—Admissibility of Evidence.

The Court can go behind a certificate of registration, and where it finds that a document was registered by an officer who had no jurisdiction to register it, will refuse to receive it in evidence on the ground that it is not duly registered. *Ram Coomar Sen v. Khoda Newaz* (1) distinguished.

THE following was the judgment appealed from, in which the facts are stated sufficiently for this report.

"This was a suit for recovery of rents based on a kabuliati. The defendant denied the execution of the kabuliati, and also stated that the kabuliati, not being registered in the proper office, was not admissible in evidence.

* Appeals from Appellate Decrees Nos. 1365 and 1366 of 1886, against the decrees of Baboo Parbati Kumar Mitter, Subordinate Judge of Jessore, dated the 2nd April, 1886, affirming the decrees of Baboo Gopal Chunder Banerji, Munsiff of Bongram, dated the 16th December, 1885.

1887

BENI MA-
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"The lower Court dismissed the suit, holding that the document was not registered in the proper office. The plaintiff appeals.

"The only point to be considered in this appeal is, whether the registration of the document was legal so as to make it admissible in evidence. The document was registered in the Sub-Registrar's Office at Chuadanga, and it would be admissible in evidence if the Sub-Registrar was competent to register it. It is an admitted fact that the lands covered by the kabuliati are situate within the limits of Thana Moheshpur which is beyond the limits of the Sub-district of Chuadanga, and consequently the Sub-Registrar of Chuadanga was not competent to register the document. The document not being registered in the proper office is not admissible in evidence. The plaintiff attempted to prove that some of the plots, though appertaining to the hamlet called Balihuda in Thana Moheshpur were, in fact, situate within the local limits of Thana Jibannu ggur in Chuadanga, in order to give jurisdiction to the Chuadanga Sub-Registrar, but he failed to prove that fact. The document was not legally registered, and the Muasiff was right in his decision. The appeal will be dismissed with costs."

The defendant appealed.

Baboo *Bhobani Churn Dutt* for the appellant contended that no defect in the registration of a registered document could affect its admissibility in evidence : the fact that it was registered in an office which had no jurisdiction over the land affected by that document does not nullify the effect of the registration, so as to make it inadmissible in evidence, and the lower Courts should consequently have accepted the certificate of the Sub-Registrar of Chuadanga as legally sufficient to prove that the kabuliati was duly registered in accordance with law. The cases of *Sheosunker Sahoy v. Hurley Narain Sahu* (1), *Ram Coomar Sen v. Khoda Newaz* (2) and *Mukhun Lal Pandey v. Koondun Lall* (3) were referred to.

Baboo *Mohit Chunder Bose* for the respondent.

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

We think that the judgments of the lower Courts in this case are correct. Under s. 60 the certificate is adducible in evidence to prove that the document was duly registered by the particular officer whose signature it bears, but it has been shown that that officer had no jurisdiction to register it. That being so the document was not duly registered within the provisions of

(1) I. L. R., 5 Calc., 25 ; 5 C. L. R., 195.

(2) 7 C. L. R., 223.

(3) 15 B. L. R., 228.

the Registration Act. A decision was referred to in the course of the argument, *Ram Coomar Sen v. Khoda Newaz* (1), but we find that that decision is entirely based upon a Privy Council judgment *Makhun Lall Pandey v. Koondun Lall* (2), and the Privy Council decision does not support the contention put forward in this case. There the document which was in question was registered by an officer who had jurisdiction to register it, but in this case the document has been registered by an officer who had no jurisdiction to register it. That being so, the observations of their Lordships of the Judicial Committee upon which the decision proceeds are not applicable to this case. We dismiss these appeals with costs.

J. V. W.

*Appeals dismissed.**Before Mr Justice Wilson and Mr. Justice Beverley.*

BAIJ-NATH PERSHAD NARAIN SINGH AND ANOTHER (DEFENDANTS)
 APPELLANTS *v.* MOHESWARI PERSHAD NARAIN SINGH AND
 ANOTHER (PLAINTIFFS) RESPONDENTS.*

1887
 BENI MA-
 DHAB
 MITTER
v.
 KHATIR
 MONDUL.

1887
 March 8.

Mortgage—Foreclosure—Regulation XVII of 1806, s. 8—Provision as to the year of grace—Extension of time by mutual agreement—Transfer of Property Act, s. 2, cl. (c).

The year of grace allowed by s. 8, Regulation XVII of 1806 is a matter of procedure, which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely.

The right so acquired by the mortgagee while the Regulation was in force is a right which falls within the meaning of cl. (c) s. 2 of the Transfer of Property Act.

Proceedings under s. 8 had come to a close by the expiration of the stipulated period of extension while the Regulation was still in force, and the mortgagee brought his suit for possession, in pursuance thereof after the passing of the Transfer of Property Act. *Held*, that the mortgagee was entitled to a decree such as he would have had if the Regulation had been still in force.

RANJIT NARAIN SINGH by a deed of *baibilwafa*, or conditional sale, dated the 31st January 1879, conveyed his shares in certain

* Appeal from Original Decree No. 491 of 1885, against the decree of Moulvie Mahomed Nurul Hossein, Khan Bahadur, Subordinate Judge of Sarun, dated the 29th of June 1885.

(1). 7 C. L. R., 223.

(2) 15 B. L. R., 228.