

Relief Act. In the opinion I have arrived at, I am supported by a long series of authorities in this Court and in the Calcutta Court, and till recently in the Bombay Court, and by the lucid and exhaustive judgment of Mr. Justice Blashyam Ayyangar in *Ratnamasari v. Akilandammal* (1).

For the above reasons holding that the limitation article applicable to the suit is article 144 and not article 119, I am of opinion that the decree of the lower Court in favour of the plaintiff respondent is right, and I would dismiss this appeal with costs.

BY THE COURT:—The order of the Court is that this appeal be dismissed with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

RAZI-UN-NISSA (DEFENDANT) v. SABIR HUSAIN AND ANOTHER
(PLAINTIFFS.)*

Act No. III of 1877 (Indian Registration Act), section 35—Registration—Denial of execution—Deed nevertheless registered as against person denying execution—Admissibility of deed in evidence.

Where a Sub-Registrar in disregard of the provisions of section 35 of the Registration Act, 1877, registered a document as against a person denying execution thereof, it was held that his action was *ultra vires* and without jurisdiction, and that the document could not be admitted in evidence as against the party denying execution. *Muhammad Ewaz v. Birj Lal* (2), *Malkarjun v. Narhari* (3), and *Mujib-un-nissa v. Abdur Rahim* (4) referred to.

THIS was a suit upon a bond alleged to have been executed by one Saadat-ullah, the grandfather of the plaintiffs, in favour of the plaintiffs' mother. Amongst other defences to the suit raised by the principal defendant, Musammatt Razi-un-nissa, it was pleaded that "the registration of the document sued on without summoning the heirs of the executant was quite contrary to law. It is not admissible in evidence according to law." In fact the document was not registered in the lifetime of Saadat-ullah, but after his death an application was

1903
May 29.

1903
CHANDANTA
v.
SALIG RAM.
Burkitt, J.

* Second Appeal No. 651 of 1901, from a decree of T. C. Piggott, Esq., District Judge of Moradabad, dated the 27th of March, 1901, confirming a decree of Pandit Rajnath, Subordinate Judge of Moradabad, dated the 17th of February 1898.

(1) (1902) I. L. R., 26 Mad., 291,
at p. 297.

(2) (1877) I. L. R., 1 All., 465.

(3) (1900) I. L. R., 25 Bom., 337.

(4) (1900) L. R., 20 I. A., 16; s. o.,
I. L. R., 23 All., 233.

1908

RAZI-UN-
NISSA
v.
SABIR
HUSAIN.

made by the plaintiffs' mother, through her agent specially authorized in that behalf, for registration. Upon that application the defendant, Musammat Razi-un-nissa, appeared and objected to the registration, denying due execution of the document. Notwithstanding the denial of execution by Musammat Razi-un-nissa, the Sub-Registrar registered the document, not merely as against the parties who did not deny execution, but also as against the defendant-appellant.

The Court of first instance (Subordinate Judge of Moradabad) decreed the plaintiffs' claim, and on appeal the lower appellate Court (District Judge of Moradabad) affirmed the decree, holding, upon the authority of *Ikbal Begam v. Sham Sundar* (1) and *Hardei v. Ram Lal* (2), that the Court cannot go behind the certificate of registration on the ground that the Sub-Registrar acted in contravention of the terms of the Registration Act, and that the certificate of registration must be accepted as conclusive. Against this decree the defendant, Musammat Razi-un-nissa, appealed to the High Court.

Mr. *Karamat Husain*, for the appellant.

Mr. *W. M. Colvin* (for whom Mr. *G. W. Dillon*), for the respondents.

STANLEY, C. J., and BURKITT, J.—The plaintiffs in the suit out of which this appeal has arisen sued on a bond which was executed in favour of their mother by their grandfather, one Saadat-ullah. The bond was not registered in the life-time of Saadat-ullah. After his death an application was made by the plaintiff's mother, who claimed under it, through her agent specially authorized in that behalf, for registration, and upon this application the present appellant appeared, and objected to the registration, denying due execution of the document. Notwithstanding the denial of execution by the appellant, the Sub-Registrar registered the document, not merely as against the parties who did not deny execution, but also as against the defendant-appellant. The Court of first instance decreed the plaintiffs' claim, and the lower appellate Court affirmed the decree, holding, upon the authority of two cases decided in this High Court, that the Court cannot go behind the certificate of

(1) (1882) I. L. R., 4 All., 384. (2) (1889) I. L. R., 11 All., 316.

registration on the ground that the Sub-Registrar acted in contravention of the terms of the Registration Act, and that the certificate of registration must be accepted as conclusive. The present appeal is from this decision.

The 35th section of the Registration Act was amended by Act No. XII of 1879 by the insertion of the following words at the end of the section :—“The Registering Officer shall refuse to register the document as to the person so denying” (*i.e.* denying execution of it). These words were added after the decision of their Lordships of the Privy Council in the case of *Muhammad Ewaz v. Brij Lal* (1). The words of the section are prohibitive, and cannot be interpreted as being merely directory. It is a direction to the Registration Officer to refuse to register a document as against a person who denies execution. The omission to do an act which is directed by a Statute may not amount to more than an irregularity in procedure; such was the case in *Malkarjun v. Narhari* (2); but where the words of the Statute are prohibitive, as in this case, the doing of the prohibited act by the Court or an official of the Court is *ultra vires* and illegal, and if *ultra vires* or illegal it must be held to have been done without jurisdiction. In the case of *Mujib-un-nissa v. Abdur Rahim* (3) their Lordships of the Privy Council held that where a Registrar registered a deed at the request of one whom he knew to derive his power of attorney from a dead man, and accepted his admission of the dead man's execution of the deed, the Registrar disregarded the provisions of section 32 and section 34 of the Registration Act, and in consequence the registration was invalid. Section 32 provides that a document which is offered for registration shall be presented at the Registration Office by persons holding a certain position, amongst others by a person executing or claiming under the document, or by the representative or assign of such person, or by the agent of such person, &c. In the case before their Lordships the person who presented the document for execution, was the attorney of the deceased executant of the deed, and was not a person authorized by the Statute to present

1903

 RAZI-UN-
 NISSA
 v.
 SABIR
 HUSAIN.

(1) (1877) I. L. R., 1 All., 465.

(2) (1900) I. L. R., 25-Bom., 337.

(3) (1900) L. R., 20 I. A., 15; s.c., I. L. R., 23 All., 233.

1908

RAZI-UN-
NISSA
v.
SABIR
HUSAIN.

the document for registration. He was in fact a mere volunteer, his authority as attorney having expired on the death of his principal. In that case the words of the Statute are not so mandatory as the words contained in section 35. In section 32 the Act prescribes that the document shall be presented; whereas in section 35 the Act declares that the Registration Officer shall refuse to register. Under the direction contained in section 32 their Lordships held that the registration of the document under the circumstances to which we have referred was *ultra vires* and invalid. This ruling of their Lordships overrules the two cases which were relied upon by the learned District Judge, and, in our opinion, is a clear authority for the contention advanced on behalf of the appellant by her learned counsel that the registration in this case was invalid so far as she was concerned, and that it was therefore not properly admitted in evidence against her. This case is not on all fours with the case of *Mujib-un-nissa v. Abdur Rahim*, inasmuch as in that case the Registration Officer had no authority to entertain the application, it not having been made by a person authorized by the Act to make it. In the present case the presentation of the petition was in accordance with the requirements of the Statute; the error committed by the Registration Officer was that he neglected the prohibitory provisions of section 35, and registered it as against a person who denied the due execution of the instrument. Her denial, we hold, deprived him of jurisdiction to register the document as against her, just as the Registrar in the case to which we have referred was held to have no jurisdiction to register the document, it not having been presented by a person authorized to present it. We, therefore, hold that this document has not been duly registered as against the appellant, and the appeal must be allowed. We do not think it necessary to consider the other questions which have been raised in this appeal, having regard to our view upon this point. We, therefore, allow the appeal, set aside the decrees of the lower Courts, and dismiss the suit with costs in all Courts.

Appeal decreed,