

diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged. We have no hesitation in quashing the conviction under section 193 of the Indian Penal Code and setting aside the sentences passed thereon.

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EMPEROR
v.
RAM KHILA-
WAN.

APPELLATE CIVIL.

1906
June 5.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Sir George Knox.

ISHRI PRASAD (DEFENDANT) v. BALJNATH AND OTHERS (PLAINTIFFS).
Act No. III of 1877 (Indian Registration Act), sections 32, 33 and 87—Validity of registration—Power-of-attorney—Authority of registering officer.

One Daulat Ram, after selling certain immovable property to Musammat Ram Bai, the mother of the plaintiff, on the 6th August, 1900, sold the same property again on the 12th August, 1900, to the defendant. The latter sale-deed was duly registered on the 13th August, 1900, and on the same day the sale-deed of the 6th August, 1900 was presented for registration by a pleader acting under a power-of-attorney from Musammat Ram Bai. The power-of-attorney admittedly was not executed or authenticated in accordance with the provisions of section 33 of the Registration Act. The registering officer, however, took no notice of the defect; and, after summoning Daulat Ram, who admitted execution, registered the sale-deed of the 6th August on the 17th November, 1900.

Held that the document of the 6th August had not been legally registered. The terms of sections 32 and 33 of the Registration Act are imperative and proper presentation by an authorized agent is an indispensable foundation of the registering officer's jurisdiction; nor was the error of the Sub-Registrar a mere defect in procedure that could be cured by section 87 of the Registration Act or by the fact that the executant, when summoned by the registering officer, consented to the registration of the sale-deed of the 6th August. *Mujib-un-nissa v. Abdur Rahim* (1), followed.

THE facts of this case are fully stated in the judgment of the Court.

Babu Jogindro Nath Chaudhri and the Hon'ble Pandit Sundar Lal, for the appellant.

The Hon'ble Pandit Madan Mohan Malaviya, Babu Satya Chandra Mukerji and Munshi Jang Bahadur Lal for the respondent.

* Second Appeal No. 1191 of 1904, from a decree of Manvi Muhammad Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 31st of May, 1904, confirming the decree of Babu Gokul Prasad, Munsif of Hathras, dated the 25th of November, 1903.

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v.
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STANLEY, C.J. and KNOX, J.—A question of registration law of some difficulty is involved in this appeal. One Daulat Ram, who was the owner of certain property situate in the village of Daryapur, sold it to Musammat Ram Bai, the mother of the plaintiff Baijnath, on the 6th of August, 1900, and executed on that date a sale-deed in her favour. Notwithstanding this sale, a few days later, namely, on the 12th of August, he again sold the same property to the defendant appellant Ishri Prasad, and on the following day a sale-deed in favour of the defendant appellant was duly registered. On the same day the sale-deed of the 6th of August, 1900, was presented for registration by one Inayat-ullah, a pleader, acting under a power-of-attorney from Musammat Ram Bai. He was accompanied on the occasion by the plaintiff. The power-of-attorney, which Inayat-ullah held was not executed or authenticated in the manner prescribed by section 33 of the Registration Act. This is admitted. The Sub-Registrar took no notice of this defect and summoned the executant, Daulat Ram, and, on his admission that the document was executed by him, registered it on the 17th of November, 1900.

The competition in this litigation is between Baijnath, the heir of Musammat Ram Bai, who is dead, and Ishri Prasad. Baijnath claims to be entitled to the property by virtue of the sale made in favour of his mother on the 6th of August, 1900, while Ishri Prasad contends that that document was not properly registered, and that by virtue of his sale-deed of the 13th of August, 1900, which was admittedly duly registered on the same day, he is entitled to the property.

Both the lower Courts held that the neglect of the requirements of section 33 in regard to the power-of-attorney was not sufficient to invalidate the registration of the sale-deed of the 6th of August and therefore decreed the plaintiff's claim. From this decision the present appeal has been preferred.

Section 32 of the Registration Act provides that except in the cases mentioned in sections 31 and 39 (neither of which sections is applicable to the present case) every document to be registered under the Act, whether such registration be compulsory or optional, shall be presented at the proper registration office by

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some person executing or claiming under the same or by the representative or assign of such person, or by the agent of such person, representative or assign duly authorized by power-of-attorney executed and authenticated in the manner thereafter mentioned. By the succeeding section it is enacted that for the purposes of section 32 *the powers-of-attorney thereafter mentioned shall alone be recognised*, that is to say, if the principal at the time of executing the power-of-attorney resides in any part of British India in which the Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides. This provision of section 33 is admittedly applicable in the present case. Section 32 clearly prescribes in the case of a document presented at the registration office for registration, if presented by an agent, that the agent shall be duly authorized by power-of-attorney, executed and authenticated, in the manner subsequently prescribed, and section 33 directs that powers-of-attorney executed and authenticated as required by the Act, "shall alone be recognised." The language used is imperative. It is admitted, as we have said, that the power-of-attorney under which Inayat-ullah purported to act was not executed or authenticated in the manner so prescribed. Therefore on the part of the defendant appellant, it has been strenuously contended that the due presentation of the sale-deed in favour of Musammat Ram Bai for registration being a condition precedent to the exercise of his jurisdiction by the Sub-Registrar and that document not having been duly presented, as required by the Act, the Sub-Registrar had no authority to register it; in other words, that the jurisdiction of the registration officer only arises when a document has been presented to him for registration in strict accordance with the provisions of the Act. On behalf of the plaintiff, Baijnath, this contention was repelled and it was further contended that the defect in the presentation was cured by the attendance before the Sub-Registrar of Daulat Ram, the vendor, and the admission made by him of the execution of the deed of sale, and further that the defect was one of procedure merely, and so is remedied by section 87.

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The defendant appellant relied upon a ruling of their Lordships of the Privy Council in the case of *Mujib-un-nissa v. Abdur Rahim* (1), as governing the case. In that case the executant of a document disposing of immovable property executed a power-of-attorney in favour of an agent authorizing him to present it for registration, but died before the presentation. The Sub-Registrar accepted and registered the document. It was held that this was not a mere defect in procedure falling under section 87 of the Registration Act (which provides that nothing done in good faith pursuant to the Act by any registering officer shall be deemed invalid merely by reason of any defect in his appointment or procedure), but that the registration was illegal and invalid. In the course of their judgment their Lordships say :—“ When the terms of section 32 are considered with due regard to the nature of registration of deeds, it is clear that the power and jurisdiction of the Registrar only come into play when he is invoked by some person having a direct relation to the deed. It is for those persons to consider whether they will or will not give to the deed the efficacy conferred by registration. The Registrar could not be held to exercise the jurisdiction conferred on him, if, hearing of the execution of a deed, he got possession of it and registered it; and the same objection applies to his proceeding at the instigation of a third party who might be a busy body.” The facts of that case are distinguishable from those of the present case. In it the power-of-attorney had come to an end by the death of the executant of it, while in this case the executant of the power-of-attorney was alive when the presentation of the sale-deed was made. This fact is strongly relied upon by Mr. *Malaviya* as differentiating the two cases. Their Lordships in their judgment emphasize this fact. They say :—“ In the interval between the execution of the completed deed and its presentation to the Registrar, the Munshi (i.e. the executant of the power-of-attorney) died. The legal question now to be considered turns on this last fact.” But their Lordships do not seem to us to have rested their decision upon this fact alone, for they say in their judgment :—“ It is perfectly plain not merely from the general law, but from the terms of this section 32 itself, that after the man's death the only attorney who

would have any *locus standi* would have been the attorney of the representative or assign of the deceased." They based their decision as well on the terms of section 32 as on the general law, and as we have pointed out, section 32 is clear and specific in its direction that where a document is presented for registration by an agent, such agent shall be duly authorized by a power-of-attorney executed and attested in the manner prescribed by the Act, and that only powers-of-attorney duly executed and authenticated as by the Act is prescribed shall be recognised. Inayat-ullah was not legally entitled to present the deed for registration as he did not hold such a power-of-attorney as could be recognised by the Registrar. He had no authority to invoke the power and jurisdiction of the registration officer, and the latter, we think, not being legally invoked, had no jurisdiction to entertain his application. The Statute has made presentation by a duly authorized agent the indispensable foundation of the jurisdiction of the registration officer if a document is presented for registration by an agent.

In answer to the argument that the error of the Sub-Registrar was a defect in procedure only, and, in view of section 87 of the Act, did not invalidate the act of registration, it is only necessary to refer to the comment of their Lordships in the case above mentioned upon two cases which were cited and relied upon by the appellants before them. "Neither case," they say, "gives any countenance to the view that the absence of any party legally entitled to present a deed for registration is a defect in procedure falling under section 87." Now Inayat-ullah was not legally entitled to present the deed for registration, and therefore the Registrar was not justified in accepting the deed for registration from him. The fact that the Sub-Registrar summoned Daulat Ram before him and obtained his consent to the registration of the deed does not, we think, help the plaintiff respondent, inasmuch as the Sub-Registrar had no authority whatever to carry out the registration, the document not having been duly presented to him for registration. His jurisdiction only comes into force if and when a document is presented to him in accordance with law. The principle which underlies the ruling of their

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Lordships in the case to which we have referred seems to us to be applicable to this case.

For these reasons we allow the appeal, set aside the decrees of both the lower Courts and dismiss the plaintiff's claim with costs in all Courts.

Appeal decreed.

1906
June 6.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice
Sir George Knox.*

CHATTAR MAL (DEFENDANT) v. BALJ NATH (PLAINTIFF).*

Mortgage—Clog on the equity of redemption—Profits—Interest.

Held that the following terms contained in a usufructuary mortgage did not constitute a clog on the mortgagors' right of redemption :—

"The interest of the mortgage money and the profits of the lands mortgaged, have been declared to be equal. We shall obtain redemption of the mortgaged property from the possession of the mortgagee on payment of the whole of the mortgage money in a lump sum in the month of Jeth, when the land is unoccupied by crops. The mortgagee is at liberty to cultivate the land mortgaged himself or have it cultivated by any other person. We shall have no objection. Should the whole or part of the land mortgaged be cultivated by us in any year, we shall pay the arrears due by us at the time of harvest and before the Government instalment has fallen due. If we raise any objection, the mortgagee shall be at liberty to recover the same from us and our mortgaged and other movable and immovable properties by means of distress or a suit. Should any part thereof remain unpaid we shall pay it together with interest at one rupee per cent. per mensem and the mortgage money, in a lump sum at the time of the mortgage. We shall not be entitled to redemption without its payment." *Sheo Shankar v. Parma Mahlon* (1), distinguished.

THE plaintiff sued to redeem a usufructuary mortgage, dated the 16th April, 1884. The mortgage contained the following clause :—"The interest of the mortgage money and the profits of the lands mortgaged have been declared to be equal. We shall obtain redemption of the mortgaged property from the possession of the mortgagee on payment of the whole of the mortgage money in a lump sum in the month of Jeth, when the land is unoccupied by crops. The mortgagee is at liberty to cultivate the land mortgaged himself or have it cultivated by any other person. We shall have no objection. Should

* Second Appeal No. 163 of 1905, from a decree of A. B. Bruce, Esq., District Judge of Agra, dated the 5th of December, 1904, confirming the decree of Munshi Raj Nath Prasad, Subordinate Judge of Agra dated the 31st of March, 1904.

(1) (1904) I. L. R., 26 All., 559.