

reversionary heir refuses without sufficient cause to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or has concurred in the act alleged to be wrongful, the next presumable reversionary heir would be entitled to sue."

These are the only questions discussed in the appeal and the appeal appears to us to be without force. We therefore dismiss it with costs.

Appeal dismissed.

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

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December 17.

CHHUTAN LAL (DEFENDANT) v. SHIAM PRASAD AND OTHERS (PLAINTIFFS) AND MUSAMMAT MUL KUNWAR AND OTHERS (DEFENDANTS).*

Act No. III of 1877 (Indian Registration Act), section 33—Registration—Presentation of document by agent holding a power of attorney—Authentication of power.

A document was presented for registration by the agent of a *parda-nashin* lady acting under a power of attorney authorizing him generally to present documents for registration on behalf of his principal. The power of attorney was not executed in the presence of the Sub-Registrar; but the Sub-Registrar had gone to the house of the executant, questioned her, and satisfied himself that the power of attorney had been voluntarily executed, and had endorsed the power of attorney with a statement that he had so satisfied himself. *Held* that the power of attorney was properly executed and authenticated within the meaning of section 33 of the Indian Registration Act, 1877, and the document presented by the executant's agent was validly presented.

THIS was a suit for sale on a mortgage executed under the following circumstances. The mortgagor Musammat Mul Kunwar, a *parda-nashin* lady, on the 28th October, 1897, executed a general power of attorney in favour of Narain Prasad and Mazhar Ali Khan, and on the 31st October following executed the mortgage deed in suit. On the 4th November, 1897, both the documents were presented for registration on behalf of the lady at the office of a Sub-Registrar by Mazhar Ali Khan. On the next day the Sub-Registrar proceeded to the dwelling house of the lady and on her admitting the execution and the completion of the documents registered the power of attorney and the mortgage deed. On suit brought by the mortgagees for sale one of

* First Appeal No. 206 of 1908, from a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 25th May, 1908.

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the defendants pleaded that the registration of the mortgage deed was not valid, inasmuch as the power of attorney in virtue of which it was effected had not been authenticated in the manner required by section 33 of the Indian Registration Act, 1877. The court of first instance repelled the objection as to the validity of the registration and decreed the suit. One of the defendants appealed.

Babu *Jogindro Nath Chaudhri* (with him The Hon'ble Pandit *Moti Lal Nehru* and Dr. *Satish Chandra Banerji*), for the appellant, referred to sections 31, 32 and 33 of the Registration Act (III of 1877) and contended that the registration was invalid because the mortgage deed had not been presented by an agent or representative of Mul. Kunwar duly authorized by a power of attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resided. He relied upon *Mujib-un-nissa v. Abdur Rahim* (1) and *Ishri Prasad v. Baij Nath* (2).

The Hon'ble Pandit *Sundar Lal* (with him Mr. G. W. Dillon, Babu *Durga Charan Banerji* and Munshi *Jang Bahadur Lal*), for the respondents, relied upon the *proviso* to section 33 of the Registration Act and contended that Mul. Kunwar as a *pardanashin* lady was exempt by law from personal appearance in court and was not therefore required to attend at any registration office for the purpose of executing any power of attorney. The Sub-Registrar in this case went to the house of the lady and was satisfied that the power of attorney had been voluntarily executed by her.

Babu *Jogindro Nath Chaudhri*, in reply :—

The *proviso* does not dispense with execution before the Sub-Registrar, but makes provision for the case where a question is raised as to the *voluntary* execution of a power of attorney. There is moreover a distinction between an endorsement regarding execution and an authentication by the Registrar (*vide* rule 147, Registration Manual). Here the power of attorney was never authenticated by the Sub-Registrar.

STANLEY, C.J., and BANERJI, J.—The suit out of which this appeal has arisen was brought by the plaintiffs respondents for

(1) (1900) I. L. R., 23 All., 238, 241. (2) (1906) I. L. R., 28 All., 707.

sale upon a mortgage executed on the 31st October, 1897, by Musammat Mul Kunwar and one Budh Sen. The appellant, who was the fifth defendant to the suit, is the purchaser of the mortgaged property. It is contended on his behalf that the mortgage deed was not validly registered and cannot therefore affect the mortgaged property. The foundation for this contention is that the document was presented for registration by one Mazhar Ali, who purported to hold a general power of attorney from Musammat Mul Kunwar. It is urged that the power of attorney was not registered and authenticated in accordance with the provisions of the Registration Act, and that therefore the presentation of the mortgage deed for registration was not a valid presentation. In our judgment this contention has no force. The mortgage deed was presented for registration by Mazhar Ali, who held a power of attorney which authorized him to produce any document executed by Musammat Mul Kunwar in the registration department and have the same registered. Section 32 of the Registration Act provides that a document shall be presented for registration by some person executing or claiming under it, or, among others, by the agent of such person duly authorized by power of attorney executed and authenticated in the manner provided in the following section. Section 33 provides that 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, would be recognized as a power of attorney authorizing the agent to present the document for registration. This section, however, has a *proviso* to the effect that persons exempt by law from personal attendance in court would not be required to attend at a registration office or court for the purpose of executing such power of attorney; and that in the case of such a person, if the Registrar or Sub-Registrar be satisfied that the power of attorney has been voluntarily executed by the person purporting to be the principal, he may attest it without requiring the personal attendance of the principal. The *proviso* further lays down that to obtain evidence as to the voluntary nature of the execution the Registrar or

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Sub-Registrar may either go himself to the house of the person purporting to be the principal and examine him or issue a commission for his examination. Musammat Mul Kunwar was a *parda-nashin* lady who was exempt from personal attendance in court. In the case of such a person, under the *proviso* to which we have referred, it is not necessary that she should execute the power of attorney in the presence of the Registrar or Sub-Registrar, but all that is required is that the Registrar or Sub-Registrar should satisfy himself that the power of attorney was voluntarily executed by her. We are unable to agree with the contention of the learned advocate for the appellant that the *proviso* requires that an executant of a power of attorney should sign it in the presence of the Registrar or Sub-Registrar. In the present case the Sub-Registrar has endorsed on the power of attorney that he had satisfied himself that Musammat Mul Kunwar had of her own free will executed the mukhtar-nama. He went to her house and questioned her and she admitted to him that she had executed the document of her own free will and accord. We think that the requirements of section 33 were carried out in the case of the power of attorney executed by Musammat Mul Kunwar, inasmuch as even if she executed it before its presentation for registration, she admitted execution, and the Sub-Registrar satisfied himself that she had voluntarily executed it, and authenticated the document by a certificate to the effect that he had satisfied himself that she had voluntarily executed it. As the mortgage deed in question was presented for registration by the agent who held a power of attorney authenticated in the manner provided by section 33, there was a valid presentation of the document and there was no defect in it in the matter of registration. We therefore dismiss the appeal with costs to be paid to the plaintiffs respondents. The objections under section 561 of Act No. XIV of 1882 are dismissed.

Appeal dismissed.