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under execution in the Court of the Munsiff to that for the Subordinate Judge, so that the Subordinate Judge may deal with both decrees together. The order of the lower Appellate Court is accordingly set aside, and the order of the Munsiff disallowing execution of this decree restored, but not on the grounds stated by the Munsiff, which are still open for consideration before a properly constituted Court.

J. V. W.

Appeal allowed.

PRIVY COUNCIL.

P. C.*
 1888
 November
 18th.

MAJID HOSSAIN AND OTHERS (PLAINTIFFS) v. FAZL-UN-NISSA
 (DEFENDANT).

[On appeal from the Court of the Judicial Commissioner of
 Oudh.]

Registration—Registration in accordance with the rules of 1862, regulating the place and mode of it, in Oudh—Oudh Estates Act I of 1869, s. 13.

An Oudh talukdarni made a grant of a village, part of her talukdari, to her adopted daughter; the instrument requiring, in order to be valid under Act I of 1869, s. 13, to be registered within one month after execution. With a view to its registration, she, being a purdanaschin, sent for the neighbouring Pargana Registrar, who attended at her house for her convenience, took her acknowledgment of the document, recorded the registration, and filed a copy of the document in his office.

Held, that this proceeding was a registration of the document, complete and effective; having been, substantially, a registration at the Pargana office.

APPEAL from a decree (26th August 1885) affirming a decree (1st June 1885) of the District Judge of Lucknow.

The question was, whether a deed of gift required to be registered under Act I of 1869, s. 13, had been effectively registered.

The suit in which this question was raised was brought by Amir Haidar, talukdar of Gauria in the Lucknow District, to have set aside a deed of gift, of village Nizampur, executed, on 21st March 1871, by the late Mussammut Kutb-un-Nissa, his

* *Present*: LORD FITZGERALD, LORD HOBHOUSE, SIR R. COOKE, and MR. STEPHEN WOLFE FLANAGAN.

predecessor in estate, in favour of her sister Mussammut Fazl-un-Nissa, the defendant. Amir Haidar was brother and heir of the last male talukdar; and he had, in March 1884, obtained the order of Her Majesty in Council, affirming a decree for the taluk against his nephew, Abdool Razzak, to whom Kutb-un-Nissa had bequeathed it by a will, which, not having been duly registered in accordance with Act I of 1869, s. 13, was held invalid (1).

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The village in suit being a portion of the talukdari estate of Gauria, could not be given to Fazl-un-Nissa, except by an instrument of gift, executed and attested, not less than three months before the death of the donor, and registered within one month from the date of its execution—(Section 13, Act I of 1869). By the term “registered,” according to the interpretation clause of the same Act, is to be understood registered according to the provisions of the Rules relating to the Registration of Assurances for the time being in force in Oudh.

The Judicial Commissioner's Circular, 41 of 1862, dated 25th February 1862, gave the rules for registration in force in Oudh in 1871. The first provided that there should be one Registrar in each pargana, who should register contracts regarding immovable property. The second rule, after providing that all deeds, relating to “real property,” must be registered at the office of the Registrar of the Pargana in which the property was situate, contained the following: “All deeds of a value exceeding Rs. 500 will be registered by tehsildars in outlying tehsils, or by the Sadr Registrar, if the property is within the jurisdiction of the Sadr Tehsil, but they are invariably to send a copy for record in the Pargana office.”

In the present case the donor, an aged purdanashin, sent for the Pargana Registrar to her own house. What followed is set forth in their Lordships' judgment.

The Courts in Oudh concurred in the opinion that there had been substantial compliance with the rules in force; the Judicial Commissioner, Mr. T. B. Tracy, affirming the decree of the District Judge dismissing the suit. Pending an appeal to Her

(1) *Haji Abdool Razzak v. Munshi Amir Haidar*, L. R., 11 I.A., 121; I. L. R., 10 Calc., 976.

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Majesty in Council, Amir Haidar died, and was succeeded by the present appellants, by order of revivor, dated August 1888.

Mr. *R. V. Doyne*, for the appellants, argued that the attempted registration was ineffectual. It occurred in the outlying tehsil of Mohanlalganj, and the proper registering officer was the tehsildar. And even if the Pargana Registrar had authority, he was authorized to effect registration only in his own registry office, in the absence of special cause assigned by him for registering at the house of the party executing.

Mr. *C. W. Arathoon*, for the respondent, was not called upon.

Their Lordships' judgment was delivered by

LORD FITZGERALD.—Their Lordships are of opinion that this objection ought not to prevail.

Kutb-un-Nissa made a grant to her adopted daughter of the village of Nizampur, which required to be executed three months before her death, and to be registered within a month after the date of its execution. The objection taken to the instrument was that it was not presented at the office of the Registrar, but that the Registrar was sent for to Kutb-un-Nissa's residence where the deed was executed and registered. She appears to have been a purdanashin; and the mode in which registration was effected was in this manner: She sent for the Pargana Registrar, whose name is given as Kali Churn, and he attended at her house. Her house appears to be near the office of the Pargana Registrar, and actually within the very village which was the subject of the grant, Kali Churn having attended her, and having the deed acknowledged in his presence, word for word, by the granting party, and having examined it, it was handed to him for registration.

The record of registration by the Registrar is as follows:—

"*No. 131, Volume 2.*—On Tuesday, the 21st March 1871, at 10 A.M., Mussamat Kutb-un-Nissa, aged about 65 years, wife of Jahangir Bakhsh, talukdar of Gauria, sent for me at her house in the village Gauria. She got this document executed in the presence of Ganesh Bakhsh and of Beni Parshad, the witnesses named on the margin, and having presented it for

registration, admitted its execution on her part and attested the contents word for word, and, having seated herself on the threshold of her doorway, marked the document with her own hand in my presence. Mussammatt Amiran, wife of Mahbub Ali, resident of Amethi, identified the obligor : therefore having registered this deed, drawn up on a blue impressed stamp of the value of Rs. 16, it is returned in original through Ganesh Bakhsh, a copy thereof having been kept, and Rs. 5, on account of fees, having been received.

(Sd.) KALI CHARAN,

Pargana Registrar of Mohanlalganj.

No. 26."

Their Lordships presume part of his duty was either to make a copy himself or to examine the copy made. Having thus got the original deed into his hands, and marked it, and having had that deed duly acknowledged so as to give the best testimony of its execution by the grantor, and having examined the copy which was either prepared by himself or prepared for him, and examined it word for word with the deed, his next step is to take those instruments to his office ; to enter the registration in the book ; and to file the copy in the proper Pargana office of the District.

The sole objection to that registration upon which their Lordships are asked to invalidate that deed is that the grantor did not go to the office of the Pargana Registrar. He came to her as a matter of convenience and received the deed and copy at her house. That is the sole objection. And upon that their Lordships are asked to declare this registration to be null and void, and consequently that the deed is worthless.

The registration is to be in accordance with the rules for the time being in force, and the registration is to be judged by those rules, and those alone. The first rule is this : "There must in future be only one registrar in each pargana for the registration of deeds relating to real property, who shall be especially appointed for that purpose, and styled the Pargana Registrar. He may, of course, register any other contracts that can be registered by ordinary registrars, but no other registrar

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may register any contract regarding immoveable property." He certainly could not be more clearly ear-marked as the proper and only registrar to register this deed under the circumstances. But there was something more to be provided for; and accordingly their Lordships find this in rule 2: "All deeds regarding real property, or in any way creating liens and encumbrances upon it, must be registered at the office of the registrar"—that is to say, the Registrar previously named, namely the Pargana Registrar—"of the pargana in which the property is situated, and must be copied in full. If for any special reason, parties at a place distant from the property wish to register a deed affecting it, they must go to the Tehsildar or Sadr Registrar, who will register it, and will immediately transmit a copy to be registered at the office of the pargana in which the property is situated, charging and transmitting an extra fee for the same." That addition to or alteration of the second rule provides for a case of public convenience. These districts are no doubt very large in India, and it may be a very great inconvenience and expense for parties by reason of distance to attend at the Pargana office, and then by this rule they get the facility in place of attending at the Pargana office of going before the Tehsildar, or the Sadr Officer, who receives the deed, and makes the copy, and transmits it to the Pargana Registrar. It is obvious that this is not one of those exceptional cases, for the lady did not live at a distance from the Pargana District. She was within it, and a very short distance from the office of the registrar. The registration in fact took place at the office of the Pargana Registrar, though the officer attended to receive the deed, to receive its acknowledgment, and to compare the deed with the copy. He brought it all to his own office, and the registration is in fact the recording of that copy in the office of the Pargana Registrar, all the other requisites provided by the rule having been otherwise complied with.

Their Lordships are of opinion, without going further, that the registration was effective, complete, and full; and that the Deed ought not to be disturbed on that account.

There is said to be a contradictory provision at the conclusion of clause 2. Their Lordships do not find it necessary to express any

opinion upon that. Their Lordships understand that rule has been superseded; but at any rate, they do not find it necessary to express any opinion on the question whether there is any contradiction between the two clauses. They are of opinion here that the registration was before the proper officer, and substantially a registration at the office of the Pargana District.

Their Lordships will, therefore, humbly recommend Her Majesty that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors for the appellants: Messrs. *Barrow & Rogers*.

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

MOHIMA CHUNDER MOZOOMDAR AND OTHERS (PLAINTIFFS)

v. MOHESH CHUNDER NEOGHI AND OTHERS (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

*Limitation Act (XV of 1877), sched. ii, Art. 142—Burden of proof—
Date of dispossession or discontinuance of possession.*

The claimants had shown that they formerly were proprietors of the land to which they alleged title, and from which they claimed to oust the defendants; but they had been dispossessed, or their possession had been discontinued, some years before this suit was brought by them, and the land was occupied by the defendants who denied their title. That being so, the burden of proof was on the claimants to prove their possession at some time within the twelve years (prescribed by Art. 142 of sched. ii of Act XV of 1877) next preceding the suit.

That the claimants certainly showed an anterior title was not enough, without proof of their possession within twelve years, to shift the burden of proof on to the defence to show that the defendants were entitled to retain possession.

APPEAL from a decree (15th March 1886) of the High Court reversing a decree (10th June 1884) of the Subordinate Judge of Pubna.

On July 30th, 1883, the plaintiffs, now appellants, filed their plaint in the Court of the Subordinate Judge of Pubna, against 81 defendants, for the possession of land, of which the plaintiffs

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