

The result is, that we allow the appeal, modifying the decrees of the courts below, give the appellant a decree for Rs. 2,664-13-8, with interest, from the date of the institution of the suit to that of realization, at the rate of six per cent. per annum. The parties will pay and receive proportionate costs in all three courts. Interest will not be calculated upon costs.

Appeal decreed.

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Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.
RAM CHANDRA DAS (PLAINTIFF) v. FARZAND ALI KHAN AND OTHERS
(DEFENDANTS).*

Act No. III of 1877 (Indian Registration Act), sections 32, 60, 75—Registration—Presentation—Endorsement of registering officer—Presumption—Evidence—Act No. I of 1872 (Indian Evidence Act), section 114.

A document was presented to a Sub-Registrar for registration by a *karinda* of the person in whose favour it was executed. It was received for registration. Simultaneously with the presentation an application was made to summon the executants. They failed to appear, and the Sub-Registrar, considering that execution was not admitted, refused to register the document. The matter came up before the District Registrar by means of an application under section 73 of the Registration Act, and the presence of the executants having been secured, the District Registrar ordered that the document should be registered. The document was apparently then sent by the Registrar to the Sub-Registrar, by whom it was registered.

Held that in the absence of evidence to the contrary it must be presumed that the *karinda* who presented the document was duly authorized in that behalf, and further that, even if the Registrar had in fact sent the document direct to the Sub-Registrar, instead of returning it to the person who had presented it for registration, this fact alone was not sufficient to invalidate the registration. *Mohammed Ewaz v. Birj Lall* (1) referred to. *Mujib-un-nissa v. Abdur Rahim* (2) and *Ishri Prasad v. Baij Nath* (3) distinguished.

THE facts of this case were as follows :—

One Farzand Ali executed a mortgage bond on the 5th of February, 1888. The name of his mother also appeared on the bond as an executant, but she did not execute it. The property admittedly belonged to Farzand Ali. The bond was taken for registration by Jasondhi Rai, a *karinda* of Bansri Rai, in whose favour the bond was executed. There was nothing to show if the

* First Appeal No. 244 of 1910, from a decree of Muhammad Shafi, Subordinate Judge of Saharanpur, dated the 29th of June, 1910.

(1) (1877) I. R., 4 I. A., 166. (2) (1901) I. L. R., 29 All., 293.
(3) (1906) I. L. R., 28 All., 707.

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karinda held a power of attorney executed in his favour. The executant was summoned but failed to appear. The Sub-Registrar issued a warrant, but Farzand Ali again failed to put in any appearance. Taking this to mean a denial of execution, the Sub-Registrar refused registration of the bond on 6th December, 1888. An application under section 73 of the Registration Act, III of 1877, was made to the District Registrar, who ordered registration of the bond, Farzand Ali having appeared before him and admitted execution. The District Registrar, however, instead of returning the bond to the applicant to get it registered, sent it direct to the Sub-Registrar, who registered it. Upon these facts the Subordinate Judge held that the document not having been properly presented was not registered according to law and was inadmissible in evidence. He accordingly dismissed the suit. The plaintiff appealed.

The Hon'ble Pandit *Moti Lal Nehru* (with him Dr. *Satish Chandra Banerji*), for the appellant, contended that there was no defect in the matter of presentation. The question of presentation would have arisen if the document had been returned to the appellant by the District Registrar. If it is not properly presented it is not entitled to registration. The law cast a duty on the officer of satisfying himself that all that should be done has been done.

The Privy Council in *Mujib-un-nissa v. Abdur Rahim* (1) only held that where the agent duly authorized to present the document did so after the death of the principal he could not do so. The death of the principal revoked the authority. The irregularity was apparent there on the face of the certificate. No irregularity appeared here.

[The Hon'ble Pandit *Sundar Lal*, for the respondent referred to F. A. 79 of 1910, decided on 12th February 1911, (unreported) and *Ishri Prasad v. Baij Nath* (2).]

In 28 All. also the registration proceedings clearly showed that the person presenting it had no authority to do so. There is a presumption in favour of everything having been rightly done—section 87 of the Registration Act and 114 of the Evidence Act. A presentation to the registering officer is quite

(1) (1901) I. L. R., 23 All., 239. (2) (1906) I. L. R., 28 All., 707.

sufficient if he accepts it. He must satisfy himself that it was (1) duly executed and (2) duly presented—section 74 of the Registration Act. *Shah Makhun Lal Pandey v. Shah Kundan Lal* (1) and *Mohammed Erwaz v. Birj Lal* (2) were also cited.

The Hon'ble Pandit *Sundar Lal* (with him Babu *Jogindro Nath Chaudhri*), for the respondent:—

There is no presumption that a registered instrument was presented by a person duly authorized to do so. The party relying on it is bound to prove this fact. That is what the Privy Council lay down in 23 All. A court may presume so under circumstances. The production of the certificate is evidence of the particular fact. A special kind of power of attorney in writing properly executed and registered in the presence of the registering officer, has to be shown by the person presenting it for registration. The point is whether such a power can be presumed. Even if the first presentation was correct, it has yet to be shown that the presentation required after the order of the District Registrar was made. Besides, section 73 only speaks of an application for registration to the District Registrar and not a presentation for registration. Under the case in 23 Allahabad, presentation by a proper person was essential. Section 87 would not cure a defect in that respect. When a person wishes the executant to be summoned, as here, then the application can be made by any person, and there is no presumption that a person on applying is duly authorized under section 32. Any presumption in favour of the plaintiff is rebutted by the fact that no power of attorney is produced. The registration officer had to satisfy himself on two points, due registering and presentation in time. There was no inquiry here as to the second point, and the presentation had to be within 30 days of the order of the District Registrar. The person relying on the document must prove how and when it came before the Sub-Registrar for the second time. In 28 All., the document was presented by a pleader who had full authority and the executant admitted it, and yet it was held that presentation by a "proper" person must be proved. Presentation was not a question of

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procedure, as laid down by the Privy Council. The original presentation could not relate back to the second presentation. If section 75 did not exist, it might be argued that it did.

RICHARDS, C. J. and BANERJI, J. :—This appeal arises out of a suit brought by the plaintiff against the defendants to realize the amount of a mortgage bond, dated the 5th February, 1888. The bond was originally made in favour of Bansi Lal, the father of the plaintiff Seth Ram Chandra Das. The bond was apparently executed by the defendant, Rao Farzand Ali Khan, on behalf of himself and also on behalf of his mother. The merits of the case have not been gone into by the court below and the question involved in this appeal is the question whether or not the learned Subordinate Judge was right in holding that the bond in suit had not been duly registered, and accordingly could not be given in evidence by the plaintiff. The bond was, in fact, registered to this extent at least, that it was received in the Registration office and a certificate of registration is endorsed thereon, or rather certain endorsements appear upon the bond. From these endorsements it would appear that the bond was presented for registration in the office of the Sub-Registrar on Monday, the 4th of June, 1888. Assuming for a moment that the bond was duly presented, within the meaning of section 32 of the Registration Act of 1877, the presentation was made in time. Simultaneously with the presentation of the bond an application was made under section 36 of the same Act to summon the executants. They did not appear. The Sub-Registrar considered that execution was not admitted and he therefore refused registration. The matter then came before the District Registrar under an application made on behalf of Bansi Lal under section 73 of the Act. The presence of Farzand Ali was procured and he admitted the execution of the bond. The District Registrar made an order in the following terms :—“ The document be registered as admitted to have been executed by Farzand Ali Khan”. Some way or another the bond found its way back to the Sub-Registrar’s office and was registered. Exactly how the bond found its way back to the Sub-Registrar’s office is not very clear. The plaintiff, who is the son of Bansi Lal, in his evidence says :—“ The document was not returned

to me by the Judge. It was sent to the Roorki Tahsil and it was registered there." Except this statement there is nothing to show how the bond got back to the Sub-Registrar's office, and the witness was speaking of matters which happened more than twenty years before he made his deposition and when he was a boy of about fifteen years of age. The learned Subordinate Judge held that the bond had not been duly registered and that accordingly it was not admissible in evidence. He accordingly dismissed the plaintiff's suit. Hence the present appeal.

It is argued on behalf of the defendants, first, that the bond was not in fact duly presented for registration, on the ground that the person who presented it was not authorized to make the presentation in the manner prescribed by the Registration Act; and, secondly, that, even if it be presumed that the first presentation was in accordance with law, it was necessary that there should be a second presentation by a person duly authorized after the Registrar had made his ruling on the application to him under section 73, to which we have already referred. Section 32 of the Registration Act enumerates the persons who are entitled to present a document for registration; it may be presented by some person executing or claiming under the same, or by a 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 prescribed by the Act. From a document issued by the Registration office, which will be found at page 16 of the appellant's book, it would appear that the document in question was presented by one Dasondhi Rai, *karinda* of Bansi Lal. Section 36 provides means for procuring the attendance before the Registrar of any person whose presence or testimony is necessary for the purpose of registration. Section 60 provides for the endorsements by the Registering Officer of a certificate of registration and further provides that such certificate shall be admissible for the purpose of proving that the document has been duly registered in the manner provided by the Act, and that the facts mentioned in the endorsements referred to have occurred as certified. In our opinion the production of the bond with the certificate of due registration endorsed thereon raised a strong presumption in favour of the *due* registration of the bond;

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and that in the absence of clear proof that the requirements of law were not complied with, the court was bound to admit the document in evidence. Section 114 of the Evidence Act coupled with section 60 of the Registration Act seems to us to be abundant justification for this proposition.

The defendants strongly rely on the case of *Mujib-un-nissa v. Abdul Rahim* (1). In that case the person who had executed the deed and on whose behalf the application for registration purported to have been made was dead at the time of the presentation of the document for registration. Their Lordships of the Privy Council held that the authorization ceased upon the death of the donor of the power of attorney, and that consequently the presentation was made by a volunteer, that is to say, by a person who had no authority whatever to "present" the document. They held also that the presentation of the document was not a mere matter of procedure. The distinction between the facts in this case, and in the case before us is, we think, quite obvious. In the case before their Lordships it was proved by conclusive evidence, and admitted by the parties, that the person presenting the document purported to do so on behalf of the dead person. In the present case (to deal with the two questions separately) it is not at all admitted that the document was presented for registration by an unauthorized person. It is contended that the document to which we have already referred shows that the bond was presented by the *karinda*. It does not at all follow that the *karinda* may not have been duly authorized in the manner prescribed by the Act.

We have already pointed out that in our view the production, of the bond with the registration certificate endorsed thereon raised a strong presumption in favour of due registration. We think that this was the view taken by their Lordships of the Privy Council in the case of *Mohammed Ervaz v. Birj Lall* (2): At page 175 their Lordships say:—

"But there is another part of the judgement of the High Court which their Lordships think required consideration. The High Court say:— 'It has been held by this Court more than once, that unless a deed be registered in accordance with the substantial provisions of the law it must be regarded as unregistered, though it may, in fact, have been improperly admitted to

(1) (1901) I. L. R., 23 All., 233. (2) (1877) L. R., 4 I. A., 166.

registration. Their Lordships think this is too broadly stated, if the High Court is to be understood to mean that in all cases where a registered deed is produced, it is open to the party objecting to the deed, to contend that there was an improper registration,—that the terms of the Registration Act in some substantial respects have not been complied with. Undoubtedly it would be a most inconvenient rule if it were to be laid down generally, that all courts, upon the production of a deed which has the Registrar's endorsement of due registration, should be called on to inquire, before receiving it in evidence, whether the Registrar had properly performed his duty. Their Lordships think that this rule ought not to be thus broadly laid down. The registration is mainly required for the purpose of giving notoriety to the deed, and it is required under the penalty that the deed shall not be given in evidence unless it be registered. If it be registered, the party who has presented it for registration is then under the Act in a position which *prima facie* at least entitles him to give the deed in evidence. If the registration could at any time, at whatever distance of time, be opened, parties would never know what to rely upon, or when they would be safe.'

In our opinion, there is nothing in the judgement of their Lordships in the case of *Mujib-un-nissa v. Abdul Rahim* which is inconsistent with these observations.

The case of *Ishri Prasad v. Baij Nath* (1) is also relied upon by the defendants. In that case the document was presented for registration by a pleader who was not duly authorized in compliance with provisions of the Registration Act, and this fact was admitted by the parties. In our judgement this case is no authority for holding that the *onus* lay in the present case upon the plaintiff of showing that the requirements of the Act were duly complied with. In the case mentioned above, as also in the case of *Mujib-un-nissa v. Abdul Rahim*, the presumption in favour of due registration was rebutted by evidence and by the admission of the parties. In the case before us there is no such evidence and no such admission. We are, therefore, unable to hold that the initial presentation of the bond was defective.

We now deal with the second point. Section 75 of the Registration Act provides as follows:—

"If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered. And if the document has been duly presented for registration within 30 days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60. Such registration shall take effect as if the document had been registered when it was first presented for registration."

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The defendants contended that the provisions of this section render it necessary that there should be a second presentation within 30 days, and that second presentation must be in all respects similar to the initial presentation made under section 32. In the first place we may point out that, but for the evidence of the plaintiff, to which we have already referred, in which he says that bond was not returned to him, but that it was sent to the Roorki Tahsil and was registered there, there is nothing to prove that the document was not in fact duly presented a second time by a duly authorized agent. The evidence of the plaintiff on this particular point is very vague. As we have already pointed out, he is speaking of a very ancient matter, and he does not even say who it was who brought the document for registration, and it is only an inference which may be drawn from his evidence that it was the judge, that is the Registrar, who directed the document to be sent back to the Sub-Registrar for registration. In our opinion, it would be hardly reasonable to bind the plaintiff by this vague statement and to hold that it is sufficient to rebut the strong presumption in favour of everything required by the Act having been duly performed. However, even if we assume in favour of the defendants that the bond after it had been adjudicated upon by the Registrar was not returned by the Registrar to Bansi Lal or his attorney but was forwarded direct to the Sub-Registrar, we think the matter ought to be dealt with as a defect in procedure. Section 87 provides that:—

“Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure”.

If it was irregular of the Registrar to send the bond himself to the Sub-Registrar instead of handing it back to the applicant, the irregularity was the irregularity of the Registrar not of the applicant. It is, no doubt, true that their Lordships of the Privy Council say in this case of *Mujib-un-nissa v. Abdur Rahim*, in dealing with the acceptance by the Registrar of the document from the attorney of a deceased person:—

“It has been suggested, however, that the error of a Registrar was a defect in his procedure only, and accordingly under section 87, does not invalidate the act of registration. To their Lordships the error appears to be of a more radical nature. 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.''

Their Lordships were here dealing with the initial presentation for registration and that presentation was made by a mere volunteer. For the purposes of the point we are now dealing with, it must be presumed that the bond was originally presented by a person duly authorized and that the error, if any, which was committed was the sending of the bond by the Judge to the Sub-Registrar instead of handing it back to the party to be presented. In our opinion the second point which has been argued in support of the decision of the learned Subordinate Judge also fails.

We, therefore, hold that the appeal should be allowed. We accordingly allow the appeal, set aside the decree of the learned Subordinate Judge and remand the case to his court under order XLI, rule 23 of the Code of Civil Procedure, to be heard and determined according to law. The appellant will have his costs in this Court. Other costs will abide the result.

Appeal allowed.

Before Mr. Justice Karamat Husain and Mr. Justice Chamier.

HABIB-ULLAH AND OTHERS (DEFENDANTS) v. ABDUL HAMID AND OTHERS (PLAINTIFFS) AND NABI BAKHSH AND OTHERS (DEFENDANTS).*

Bengal Regulation XV of 1793—Mortgage—Redemption—Limitation—Act No. XIV of 1859 (Limitation Act), section I (12)—Accounts.

A usufructuary mortgage was executed in the year 1852, in a place to which the provisions of Bengal Regulation XV of 1793 applied. It provided that the mortgagees should enter into possession and collect the rent and pay the Government revenue and defray collection charges &c. therefrom and retain the balance in lieu of interest. There was to be no accounting on either side and the mortgagor was to be entitled to redeem on payment of the principal sum of Rs. 252.

Held, on suit by the representative of the mortgagor to redeem, brought within 60 years from the date of the mortgage, that the suit was within time; that the mortgage could not be considered as redeemed in the strict sense of the term from the moment when the profits received by the mortgagees became equal to the amount due to them for principal and interest, and that the mortgagor was, notwithstanding anything contained in the deed, entitled to an account

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* Second Appeal No. 607 of 1910, from a decree of Ram Autar Pande, District Judge of Azamgarh, dated the 2nd of February, 1910, confirming a decree of Ram Chandra Chaudhri, Subordinate Judge of Azamgarh, dated the 30th of June, 1909.