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DAS.

The right to sue on that deed does not appear to have been transferred to the mutawalli for the time being. Under the waqfnamah Abdullah abandoned his title to mauza Lasra, but did not mention or in any way refer to the deed of indemnity. The right to sue on that deed is not appurtenant to the interest of Abdullah in mauza Lasra and did not pass to the mutawalli for the time being under section 8 of the Transfer of Property Act or under any other provision of which I am aware. If it was intended that the mutawalli for the time being should have the right to sue on the deed of indemnity, I can only say that, in my opinion, no such intention has been expressed in the waqfnamah. I agree that the plaintiff should not, at this stage, be allowed to convert the suit by him as mutawalli into a suit by him as one of the heirs of Abdullah.

BY THE COURT:—The appeal is dismissed with costs so far as defendants 1 to 5 are concerned.

Appeal dismissed.

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November, 15.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

KARTA KISHAN, (PLAINTIFF) v. HARNAM CHAND, (DEFENDANT) *

Act No. XVI of 1908 (Indian Registration Act), section 32—"Presentation"—Presentation by a servant of the mortgagor in the presence of mortgagor.

Where a mortgage-deed was handed over to the sub-registrar for the purpose of registration by a person other than the mortgagor, but the mortgagor was present assenting to the registration of the document with full knowledge of what was being done in the office of the sub-registrar: *held* that the presentation was a valid presentation within the meaning of section 32 of the Registration Act. *Nath Mal v. Abdul Wahid Khan* (1) followed. *Mujib-un-nissa v. Abdur Rahim* (2) distinguished. *Jambu Prasad v. Aftab Ali Khan* (3) not followed.

This was a plaintiff's appeal in a suit for sale upon a mortgage. Both the courts below dismissed the suit upon the ground that the registration of the document was defective, and the sole question in appeal before the High Court was whether in the circumstances the mortgage-deed was validly registered. The circumstances in which registration was effected are detailed in the judgement of the Court.

* Second Appeal No. 51 of 1912 from a decree of W. D. Burkitt, District Judge of Saharanpur, dated the 19th of July, 1912, confirming a decree of Muhammad Shafi, Subordinate Judge of Saharanpur, dated the 26th of September, 1911.

(1) (1912) I L. R., 34 All., 355.

(2) (1901) I. L. R., 23 All., 293.

(3) (1912) I. L. R., 34 All., 331.

Mr. *Nihal Chand* (with him *Babu Jogindra Nath Chaudhri* and Mr. *A. P. Dube*), for the appellant—

Mr. *B. E. O'Connor*, for the respondent.

RICHARDS, C. J. and BANERJI, J. :—The only question which has been argued in this appeal is whether or not the mortgage sued upon was duly presented and registered in accordance with the provisions of the Indian Registration Act. The document was in fact registered. It has an endorsement that it was “presented” for registration in the office of the sub-registrar. Below this is the name of a person which is variously read as Santh, Natha, or Sehua. He is described as the servant of the mortgagee. The mortgagor in answer to the interrogatories served upon him admits that he was present when the document was being registered and when it was handed over to the sub-registrar. He cannot remember apparently who actually handed over the document, but he says that some person whose name, probably, was Santha, handed over the document. It is clear, however, from the admitted facts in the case that at the time of registration the mortgagor was present assenting to the registration of the document, with full knowledge of what was being done in the office of the sub-registrar. The real question for consideration is whether or not these circumstances amount to a “presentation” within the meaning of section 32 of the Indian Registration Act. Both the courts below have dismissed the plaintiff’s suit on the preliminary point that the mortgage was not duly “presented” for registration. There has been some conflict of authority on this question and the point was very fully argued recently before a Full Bench of the Court, but unfortunately no decision was pronounced by the Court on the question now before us, the case turning on another point. In the case of *Nath Mal v. Abdul Wahid Khan* (1), a case in which the facts were very similar to those of the present case, it was decided that where a person who was authorized to “present” a document for registration was present assenting to the registration, the mere fact that his was not the hand to give the document to the sub-registrar did not prevent the document being regarded as duly “presented” within the meaning of the section. No doubt a somewhat contrary view was taken in the case of *Jambu Prasad v. Aftab Ali Khan* (2). We think under all the circumstances

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(1) (1912) I. L. R., 4 All., 355.

I. L. R., 34 All., 331.

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we are entitled to consider the question on its merits without feeling bound by authority, particularly as we have had so recently the benefit of the very full arguments advanced in the Full Bench case to which we have referred.

The Privy Council decision in the case of *Mujib-un-nissa v. Abdur Rahim* (1) has in our opinion no application to the circumstances of the present case. In that case the person who presented the document had been the attorney of a deceased person who wished to execute and register a deed of waqf. Before the document was presented for registration the donor of the power of attorney had died. Consequently the person presenting the document for registration had no authority from any one to present the document, nor was there any other person present who could have legally "presented" the document for registration. We think that the remarks of their Lordships in this case must be read and understood in connection with the facts of the case which were before them. After full consideration we see no reason to depart from the view which we expressed in the case of *Nath Mal v. Abdul Wahid Khan* (2). We, accordingly, allow the appeal, set aside the decree of both the courts below and remand the case to the court of first instance, through the lower appellate court, with directions to readmit the case upon its original number in the file, and proceed to hear and determine the same according to law. Costs here and heretofore will be costs in the cause.

Appeal allowed.

1912
November, 19.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

ALLAH DAD KHAN AND OTHERS (DEFENDANTS) v. SANT RAM (PLAINTIFF) AND WAHID-UN-NISSA AND OTHERS (DEFENDANTS)*.

Act No. VII of 1889 (Succession Certificate Act), sections 4 and 16—Succession certificate—Holder of certificate not entitled to assign his rights thereunder.

Held that the rights conferred by the grant of a succession certificate under Succession Certificate Act, 1889, are personal to the grantee and cannot be assigned.

The facts of this case are as follows :—

One Bahadur Khan was a mortgagee. He died, leaving Farzand Ali and others as his heirs. Farzand Ali on the 25th of

*First Appeal No. 43 of 1912 from a decree of Pitambar Joshi, Second Additional Judge of Moradabad, dated the 18th of March, 1911.

(1) (1901) I. L. R., 23 All., 233.

(2) (1912) I. L. B., 34 All., 365.