

FULL BENCH.

1912

November, 5.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Sir George Knox, Mr. Justice Banerji, Mr. Justice Tudball and Mr. Justice Chamier.

KHALIL-UD-DIN AHMAD (PLAINTIFF) v. BANNI BIBI (DEPENDANT) *

Act No. XVI of 1908 (Indian Registration Act), sections 31, 32, 52 and 87—

Presentation by a person not an authorized agent of the executant—Procedure—Invalid presentation not merely a question of procedure.

Where a document is presented for registration by a person not duly authorized to present it according to the law applicable to registration of documents, such presentation is altogether invalid, and its subsequent registration, made upon the admission of the executant before an officer who had no jurisdiction to accept the document for registration, is likewise invalid. *Mujib-un-nissa v. Abdur Rahim* (1) followed.

THIS was a suit on a mortgage bond for Rs. 7,000, executed by one Musammat Banni Bibi, on the 11th of July, 1893, in favour of Niaz Bibi. Niaz Bibi transferred her rights to the plaintiff appellant, Khalil-ud-din, by a sale deed bearing date the 7th of November, 1896. The bond was taken to the office of the sub-registrar of pargana and district Bareilly by Muiz-ud-din, the husband of Musammat Banni Bibi. The sub-registrar endorsed on it that "the document was presented by Muiz-ud-din on Wednesday the 12th July, 1893," that "he stated that the Musammat was a *pardanashin* lady and that the document may be attested from the Musammat at her residence by means of a commission," and that "as the Musammat lived within the local limits of the Municipality the document may be sent to the departmental sub-registrar of Bareilly for attestation." The document was taken to the residence of the lady the same evening by the departmental sub-registrar who endorsed on it that the document had been attested and that the papers be sent back to the sub-registrar of the tahsil Bareilly. It was admitted that Muiz-ud-din held no power of attorney from Musammat Banni Bibi. The defence to the suit was, *inter alia*, that the document had not been legally registered, as it had not been presented for registration by any authorized person within the meaning of section 32 of the Registration Act. The Subordinate Judge held that the document had not been duly registered and dismissed the suit. The plaintiff appealed to the High Court.

* First Appeal No. 170 of 1911, from a decree of Baij Nath Das, Official Subordinate Judge of Bareilly, dated the 10th of March, 1911.

(1) (1900) I. L. R., 23 All, 283.

Dr. *Satish Chandra Banerji* (Mr. *Ibn-i-Ahmad*, with him), for the appellant, referred to sections 31, 32, 33 of the Registration Act, XVI of 1908. Section 32 provided that except in cases governed by sections 31 and 89, every document was to be presented in a particular manner. So in cases coming within section 31 it was not necessary to present the document in person. The maxim *qui facit per alium facit per se* applied, and an agent could present the document. So when an application was to be made under section 31, any agent could make it. The question was if 'presentation' meant the physical act of handing in the document or of tendering the document for registration. There were three Privy Council cases on the point. The first was *Sah Mukhun Lall Panday v. Sah Koondun Lall* (1). The observations in this case were explained in the next case of *Mohammed Ewas v. Birj Lall* (2). There the vendors lived at different places; they did not come together for registration, and the question was if they could appear separately and register the document. Their Lordships held that it could be so registered. It is possible to make a distinction, viz. that presentation is the act of the party and registration that of the officer, but presentation was for registration and the act legally operative and indispensable was that of registration. The last Privy Council case was *Mujib-un-nissa v. Abdur Rahim* (3). There the principal was dead when the document was presented. There was no invocation of the registrar by anyone having anything to do with the deed. Here it was different. The deed was registered at the instance of the lady before whom the document was taken, who identified it, admitted execution and who asked for its registration. The decision in 23 Allahabad did not affect the present case. With the object of satisfying the sub-registrar that there was special cause within the meaning of section 31, the husband may have taken over and shown the document. If he handed it over, that was an act without legal effect, and should not be taken into account. Strictly speaking the sub-registrar should have returned the document. Instead of that he kept it with him and took it to the lady. The error of the sub-registrar was nothing more than a defect in procedure.

1913

 KHALIL-UD-
 DIN AHMAD
 BANNI BISI,

(1) (1875) 2 I. A., 210; 24 W. R., 75. (2) (1877) 4 I. A., 166; I. L. R.,

1 All., 465.

(3) (1900) I. L. R., 29 All., 233.

1912

KHALIL-UD-
DIN AHMAD
v.
BANAI BIRI.

All that the law requires is that the document should be before the sub-registrar and he is to be requested to accept it for registration. The cases in this court were. *Ikbal Begum v. Shum Sunder* (1), following another in the same volume, *Har Sahai v. Chhanni Kuar* (2) and *Hardei v. Ram Lal* (3). This last was considered by the Privy Council in 23 All., and the actual decision must be considered to be overruled by it. Other cases were *Wilaiti Begam v. Fazal Husain Khan* (4) and *Nath Mal v. Abdul Wahid Khan* (5). It was admitted that the *karinda* presenting did not possess the required power of attorney. In another case—*Ram Chandra Das v. Farzand Ali Khan* (6)—there was no evidence to show that he did not. The only difference between *Nath Mal's* case and this was that there the mortgagor was present whereas here the lady was not. But what happened in the presence of the lady had to be taken into consideration. In *Jambu Prasad v. Aftab Ali Khan* (7) it was not proved that the executants were present when the registrar took in the deed and registered it. Another case was *Ishri Prasad v. Baijnath* (8), where it was held that neither section 31 nor 89 applied. When it is a case under section 31, the law does not require that it is any particular kind of agent who should invoke the registrar. The observations of Lord HALSBURY in *Quinn v. Lathem* (9), show that the observations of the Privy Council in 23 All. were to be restricted to the facts of that particular case. If presentation by the husband was at all a presentation, it should be ignored. "Present" is used in section 32 in a technical sense, and is not merely equivalent to handing in; what happened subsequently satisfied the requirements of law, and if the sub-registrar thought that the husband had presented the document and endorsed it to that effect, it was merely a defect in his procedure and could be cured by section 87. The cases in 4 All. show that the mortgagor is estopped from disputing the validity of the registration.

Mr. B. E. O'Connor (Babu *Lalit Mohan Banerji* with him), for the respondent.

(1) (1882) I. L. R., 4 All., 384.

(5) (1912) I. L. R., 34 All., 355.

(2) (1882) I. L. R., 4 All., 14.

(6) (1912) I. L. R., 34 All., 253.

(3) (1889) I. L. R., 11 All., 819.

(7) (1912) I. L. R., 34 All., 381.

(4) (1912) 9 A. L. J., 143.

(8) (1906) 1 L. R., 28 All., 707.

(9) [1901] A. C., 495, (506).

The facts were not disputed. The two processes were performed separately. The husband presented the document to the registrar, who endorsed that fact on it, and then he went to the lady's house to register it.

It is true that the lady was an assenting party to the registration with full knowledge of what was being done; but the question was if in the present view of the law the fact that it was not properly presented was not fatal to it. There were two essential processes incidental to registration, (1) presentation, and there had to be a record made of it; (2) the registrar having been put in motion by a proper presentation he proceeds to the formal registration. Going back to the history of registration we have Act XX of 1866, consolidating the law of registration. All Acts since follow each other closely---those in 1871, 1877 and 1908---both in parts and in the language used. The endorsement of presentation is mentioned in all these Acts, and the provisions are not novel, the conditions are looked upon as essential. Section 31 is in part V and section 32 in part VI of the Act. In part V are grouped together all the provisions relating to the place of registration, and in part VI there are put together provisions which relate to the mode of registration, and section 31 relates to the place of it. Part V itself is in two parts. The first says that only in a proper office can a document be registered. But there is a provision in section 33 itself for cases when the registrar goes to the abode of a person wishing to present a document for registration. In the second we have the procedure the registrar has to follow. As between the first paragraph of section 31 and the first part of 32, there is no conflict. In the second part we have the persons who are to make the presentation. There are three classes of persons. Sections 31 and 32 are not mutually exclusive. Section 31 contemplates that nothing in the shape of presentation is to take place at the office, if the registrar goes to the abode of person wishing to register. It does not alter the formalities. The Privy Council lay stress in 23 All. on section 32, a person not authorized cannot present. If it were merely a matter of procedure it would only authorize the registrar to go to the place asked and register the deed. There is a regular series of steps to be followed. He must act in pursuance of the Act. Failure to do so is not merely a defect of procedure. If it was not necessary

1912

KHALEED-UD-
DIN AHMAD
v.
BANNI BIBI.

that presentation should be by the right person, it would not be necessary to specify the persons who could do it. Anybody might do it then. What was done could not be wiped off. The case in 23 Allahabad was authority for the proposition that registration following on a bad presentation was illegal. Presentation was not defined anywhere; but see *Bartlett v. Holmes* (1). Besides the person who actually went to the lady's house was only a commissioner and the document could not be presented to him. He acted merely as a post office. The lady never came before the sub-registrar at all.

Dr. *Satish Chandra Banerji*, in reply—(on the last point).

This plea was never taken before. In any case it was a mistake of the sub-registrar and was merely a defect in procedure and could be remedied by section 87. The district registrar had sent the document to the sub-registrar in the case in *Ram Chandra Das v. Farzand Ali Khan* (2) and there it was held to be duly registered.

If the sub-registrar sent some one else here, it was his *bond fide* mistake; why should the parties suffer?

RICHARDS, C. J.—This appeal arises out of a suit brought on foot of a mortgage, dated the 11th of July, 1893. Various defences were pleaded, and amongst other things execution and consideration were denied. The court below has found nearly all the issues in favour of the plaintiff. It has found that the bond was duly executed by Musammat Banni Bibi, the mortgagor, and that the consideration was duly paid to her. The court, however, somewhat reluctantly found that the bond had not been duly registered. This question of registration was the question which came before a Bench of this Court. It appears that on the day on which the mortgage purports to have been registered, the husband of Musammat Banni Bibi made an application to the sub-registrar of Bareilly tahsil. The actual application is not before us but there is endorsed on the bond the following note:—

“ This document was presented by Muiz-ud-din Ahmad on Wednesday, the 12th July, 1893, between 8 and 9 a. m., in the office of the sub-registrar of pargana and district Bareilly. He stated that Musammat Banni Bibi, the executant of the document, was a *parda-nashin* lady. The document may be attested from the Musammat at her residence by means of a commission. As the Musammat

(1) (1853) 22 L. J. C. P., N. S., 182, 185. (2) (1912) I. L. R., 34 All., 253.

abovenamed resides within the local limits of the municipality, this document may be sent to the departmental sub-registrar of Bareilly for attestation (Sd.) Wasi-ud-din, sub-registrar. (Sd.) Muiz-ud-din Ahmad, the person presenting this document, in autograph."

It next appears that the departmental sub-registrar of Bareilly went the same day to the lady's house. The lady was duly identified and she admitted execution of the deed. The money was paid over, and the departmental sub-registrar sent the document to the sub-registrar of tahsil Bareilly, who registered the same. It further appears from the endorsement upon the bond that the person who "presented" the document for registration to the sub-registrar of tahsil Bareilly was the husband. It is clear that the sub-registrar understood the husband to be the person who was "presenting" the document to him for registration. In the court below and in this Court it was admitted that when Muiz-ud-din Ahmad, the husband, "presented" the document for registration he was not authorized in the manner prescribed by sections 32 and 33 of the Registration Act of 1877, which was then in force. It was, however, strongly contended that what subsequently happened at the residence of the lady amounted to a good "presentation" within the meaning of the Act, and that the document ought therefore to be considered as having been duly registered.

At the first hearing of the appeal in this Court it was never pointed out that the gentleman who attended at the residence of the lady was not the same sub-registrar who had in the first place received the document from her husband, and the question which the Court considered it had before it was whether or not the lady having admitted the execution and communicated to an officer competent to accept and register the document her desire to have it registered, the document was not sufficiently "presented" within the meaning of the Act. The Bench before whom the appeal came considered that it was desirable that the question should be decided by a larger Bench, and the case was accordingly referred to the Bench as at present constituted.

The arguments in the first instance entirely proceeded upon the basis that the departmental sub-registrar was entitled to receive the document for registration if in fact it had been duly "presented" to him. It has now at the very close of the arguments been

1912

 KHALIL-UD-
 DIN AHMAD
 v.
 BANNT BIEEL.

Richards, C.J.

1912

KHALIL-UD-
DIN AHMAD
v.
BANNE BIBI.

pointed out, that the departmental sub-registrar had no such authority, and the question which it was intended to have decided by this Bench does not really arise. It seems to me that we have now only to decide whether or not the "presentation" which was made by the husband can, from any point of view, be regarded as a good "presentation," and secondly, whether the fact, that the registrar received the deed for registration from an unauthorized person, is merely a defect of procedure which might be disregarded under the provisions of section 87. It seems to me that the "presentation" by Muiz-ud-din Ahmad was a complete nullity. He had no authority whatever to present the document for registration, and in my opinion this question is completely covered by the ruling of their Lordships of the Privy Council in the case of *Mujib-un-nissa v. Abdur Rahim* (1). I am also of opinion that under no circumstances can what subsequently happened at the house be deemed a good presentation, because the gentleman who attended at the house had no authority to receive the document for registration. His authority was confined to ascertaining that the document had been duly executed, that is to say, to examining the executant under the provisions of section 38. I would dismiss the appeal.

KNOX, J.—I concur and have nothing further to add.

BANERJI, J.—I also agree in the conclusion at which the learned Chief Justice has arrived. In the case decided by the Privy Council namely, the case of *Mujib-un-nissa v. Abdur Rahim*, their Lordships observed:—"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 busybody." In the present case the document was not presented for registration by a person having a direct relation to the deed, and the subsequent admission of execution by the executant was before an officer who had no jurisdiction to accept the document for registration. Therefore there was no presentation to a sub-registrar having jurisdiction, and the

registration of the document must, according to the ruling of the Privy Council, be held to be invalid. I also would dismiss the appeal.

TUDBALL, J.—I fully concur and have nothing further to add.

CHAMIER, J.—I agree with the order proposed by the learned Chief Justice. It appears to me that there was neither in fact nor in law any "presentation" of the document by any qualified person to any person authorized to receive it for registration.

BY THE COURT.—The order of the Court is that the appeal is dismissed, but without costs. The objection raised by the respondent as to costs is also dismissed with costs.

Appeal dismissed.

PRIVY COUNCIL.

RAGHUBIR SINGH (DEFENDANT) v. MOTI KUNWAR (PLAINTIFF) AND SATI SINGH AND ANOTHER (PLAINTIFFS) v. MOTI KUNWAR (DEFENDANT).

Two appeals consolidated.

[On appeal from the High Court of Judicature at Allahabad.]

Hindu law—Partition—Requisites for partition—Agreement to hold property in certain specific and defined shares, effect of—Re-union, failure to prove as alleged.

The members of a joint Hindu family came to the following agreement:—
 "Now we have already come to terms, and according to the shares given below we have been in possession and enjoyment of our respective shares. As regards it we have with our mutual consent entered into an agreement according to the terms given below. The same share in the property which is in the possession of a particular person as given below shall be considered to be the property of that very person who is in possession thereof. If any of us brings any suit in the Civil or Revenue Court to the effect that his share is less or he is a loser, it shall be considered to be false in every court. By virtue of this agreement no person shall be competent to bring any claim in any court in respect of any portion of the property other than the property detailed below." Then followed a specification of the villages belonging to the family, and the shares in which those villages were thereafter to be held. From that time the property had been entered in the Register in accordance with the arrangement contained in the agreement, and the agreement had been acted upon up to the time of suit.

Held by the Judicial Committee (affirming the decision of the High Court) that on the evidence and circumstances of the case, the agreement was one which operated as a partition of shares, and the family thenceforth ceased to be joint in accordance with the principle laid down in *Appovier v. Rama Subba*

* *Present*:—Lord Macnaghten, Lord Moulton, Sir John Edge and Mr. Ameer Ali.

1912

KHALIL-UD-
DIN AHMAD
v.
BANKI BIRI.

* P. C.
1912
November,
1, 5, 26.