

Their Lordships will therefore humbly advise His Majesty to dismiss the appeal with costs.

Appeal dismissed.

Solicitors for the appellant : *Barfield & Barfield.*

Solicitor for the respondents : *Edward Delgado.*

J. V. W.

JAMBU PRASAD (PLAINTIFF) v. MUHAMMAD AFTAB ALI KHAN
AND OTHERS (DEFENDANTS).

And another appeal ; two appeals consolidated.

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

Act No. III of 1877 (Indian Registration Act), sections 32, 33, 34, 35—Presentation of documents for registration—Registration, if document is presented by an unauthorized person, not valid—Jurisdiction of Registering Officer to register document—Admission of execution by executant of deed, effect of, on registration—Prevention of fraud, object of sections 32 to 35—Duty of courts not to allow defeat of provisions of Act.

Sections 32 and 33 of the Registration Act (III of 1877) relating to the presentation of documents for registration, are imperative, and their provisions must be strictly followed ; and where it was proved that agents who presented deeds of mortgage for registration had not been duly authorized in the manner prescribed by the Act to present them, the deeds were held not to be validly registered, so as (under section 49) to affect immovable property or to be received in evidence of any transactions affecting such property ; or under section 59 of the Transfer of Property Act (IV of 1882) to be effective as mortgages.

A Registrar or Sub-Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it or by the representative or assign of such person, or by an agent of such person, representative or assign duly authorized by a power of attorney executed and authenticated in the manner prescribed by section 33 of the Act.

Executants of a deed who attend a Registering Officer to admit execution of it cannot be treated for the purposes of section 32 of the Act as presenting the deed for registration. They would no doubt be assenting to the registration, but that would not be sufficient to give the Registering Officer jurisdiction.

One object of sections 32 to 35 of the Registration Act, III of 1877, was to make it difficult for persons to commit frauds by means of registration under the Act ; and it is the duty of the courts in India not to allow the imperative provisions of the Act to be defeated.

Ishri Prasad v. Baijnath (1) and the principle laid down in *Mujib-un-nissa v. Abdur Rahim* (2) followed.

* *Present* :—Lord DUNEDIN, Lord SHAW, Sir JOHN EDGE and Mr. AMEER ALI.
(1) (1903) I. L. R., 28 All., 707. (2) (1900) I. L. R., 23 All., 233 ; L. R., 28 I. A., 15.

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Two consolidated appeals 131 and 132 of 1913 from two judgements and decrees (13th February, 1912,) of the High Court at Allahabad, one of which affirmed, and the other modified two several decrees (26th September, 1910,) of the court of the Subordinate Judge of Saharanpur.

The main questions for determination in these appeals were whether certain mortgage deeds, dated the 2nd of July, 1882, and the 10th of August, 1886, respectively, were duly registered under Act III of 1877, and whether they were admissible in evidence and charged the property comprised therein.

The facts are fully stated in the hearing of the appeals before the High Court (Sir HENRY GRIFFIN and E. M. D. CHAMIER, JJ.) the report of which will be found in I. L. R., 34 All., 331.

The High Court held that the deeds had not been duly registered.

On these appeals—

De Gruyther, K. C., and *G. C. O'Gorman*, for the appellant, contended that the High Court was in error in holding that the mortgage-deeds of the 2nd of July, 1882, and the 10th of August, 1886, were not duly registered under the provisions of Act III of 1877; and that the facts were such as to preclude there having been any invalidity in the registration of the mortgages, or the contention that they were otherwise than valid deeds, charging the property mortgaged, and admissible in evidence under the provisions of the Registration Act. Every presumption should be made in favour of the validity of the registration proceedings, and where the Registering Officer has endorsed the deeds showing that he is satisfied with the registration and has so given his certificate of registration it must be presumed that every requisite for valid registration has been properly and rightly performed. And where, as under section 34, there has been the actual personal presence before the Registrar of the parties executing the deed and admitting execution, that would cure any defect, if necessary, in the registration. Reference was made to Act III of 1877, sections 17, 23, 24, 32, 33, 34, 35, 49, 52, 58, 59 and 60: to the Privy Council decisions on the matter in question *Mukhun Lall Panday v. Koondun Lall* (1); a case under the Registration Act of 1866,

see section 36, *Muhammad Ewaz v. Birj Lal* (1); *Mujib-un-nissa v. Abdur Rahim* (2) which case it was submitted had not much bearing on the present case; and to the cases decided in the High Courts, *Sheo Shunkur Sahoy v. Hirdey Narain Sahu* (3); *Isak Mahamad v. Bai Khatija* (4); *Ishri Prasad v. Baijnath* (5); *Ram Chandra Das v. Farzand Ali Khan* (6); *Karta Kishan v. Harnam Chand* (7); *Atma Ram v. Ugra Sen* (8) and *Wilaiti Begam v. Fazl Husain Khan* (9). [Lord DUNEDIN. The cases show there was a conflict of opinion as to the effect of persons entitled to present the document for registration coming to the Registrar and admitting execution: see *Atma Ram v. Ugra Sen* (8)]. In such a case no power of attorney would be required as the person who had executed the document would be entitled to present it for registration; and it did not matter who presented the document to the Registrar. There was in the present case, it was submitted, sufficient compliance with the provisions of sections 34, 35 and 58, 59 as required by section 60.

G. R. Lowndes, for the respondents, contended that the mortgages had not been duly registered in accordance with the provisions of the Registration Act, 1877, because all the requisites for due registration had not been observed. The omission of anything required by the Act was sufficient, it was submitted, to render the document invalid, and if objected to would justify its rejection as evidence under sections 17 and 49 as not being registered. Section 59 of the Transfer of Property Act declared that immovable property could not be charged except by a registered document. If, therefore, all the provisions for a complete registration of a mortgage have not been complied with, it is unregistered so far as charging immovable property is concerned, that is, it is not a mortgage. In these appeals there is a concurrent finding of both courts in India that the persons by whom the

(1) (1877) I. L. R., 1 All., 465 (475); (5) (1906) I. L. R., 28 All., 707.

L. R., 4 I. A., 166 (175).

(2) (1900) I. L. R., 28 All., 233 (241); (6) (1912) I. L. R., 34 All., 253.

L. R., 28 I. A., 15 (22).

(3) (1880) I. L. R., 6 Cal., 25.

(7) (1912) I. L. R., 35 All., 72.

(4) (1881) I. L. R., 8 Bom., 96.

(8) (1912) I. L. R., 35 All., 134.

(9) (1910) 9 A. L. J., 143.

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mortgages were presented for registration were not duly authorized to do so by power of attorney executed and authenticated as required by the Registration Act. The cases of *Mujib-un-nissa v. Abdur Rahim* (1) and *Ishri Prasad v. Baijnath* (2) are relied upon for the respondents. Reference was made to the later Registration Act, 1908, sections 32, 33 and 49. Documents must be presented for registration in a particular way, and under particular conditions; and if a document has not been so presented it had no effect as a mortgage, sale, &c., whatever its purpose might be. Sections 32 and 33 might as well have been left out of the Act of 1908, if what is required by them was not to be observed. They were, however, not omitted, and the inference was that they are intended to be taken into consideration, and to have effect given to them. Reference was also made to section 23 of Act III of 1877, referred to for the appellant but not then read in its entirety. The decisions of the courts in India were, it was submitted, correct and should be affirmed.

De Gruyther, K., C., replied.

1914, November 25th:—The judgement of their Lordships was delivered by Sir JOHN EDGE:—

These are consolidated appeals from two decrees, dated the 13th of February, 1912, of the High Court of Judicature at Allahabad, one of which affirmed a decree of the Subordinate Judge of Saharanpur of the 26th of September, 1910, and the other of which partly affirmed and partly reversed a decree of the same Subordinate Judge of the 26th of September, 1910. The suits in which the decrees were made were brought in the court of the Subordinate Judge of Saharanpur, one on the 20th of May, 1909, and the other on the 16th of March, 1910. They were suits for sale of immovable property. The suit of 1909 was based on a mortgage-deed of the 10th of August, 1886, the consideration for the mortgage having been Rs. 7,000. The suit of 1910 was based on a mortgage-deed of the 2nd of July, 1882, the consideration for that mortgage-deed having been Rs. 59,000, and upon a mortgage-deed of the 25th of October, 1892. There was in each suit a claim for a money decree. The Subordinate Judge dismissed the suits on the grounds that the

(1) (1900) I. L. R., 28 ALL., 233

(2) (1906) I. L. R., 28 ALL., 707.

mortgage-deeds had not been validly registered, and consequently could not affect the immovable property which was comprised in the mortgages, and that claims for money decrees were time-barred. On appeal to the High Court at Allahabad, the High Court dismissed the appeal in the suit of 1909, which was based on the mortgage of 1886, dismissed the appeal in the suit of 1910 so far as it related to the mortgage of 1882, and allowed the appeal in that suit so far as it related to the mortgage of 1892. These consolidated appeals are from the decrees of dismissal. The plaintiff in the suits is the appellant here. The respondents have been defendants in these suits, and one of them is the representative of a deceased defendant.

The only questions which have to be considered in these consolidated appeals are, whether the mortgage-deed, dated the 2nd of July, 1882, and the mortgage-deed, dated the 10th of August, 1886, were validly registered under Act III of 1877. They were documents which were required by section 17 of Act III of 1877 to be registered. If they were not validly registered they could not, by reason of section 49 of that Act, affect any immovable property comprised in them, or be received as evidence of any transaction affecting such property. Further, if the documents of 1882 and 1886 were not validly registered instruments, no mortgage could, by reason of the first paragraph of section 59 of Act IV of 1882, be effected by them. They were in fact registered, but the question is—was the registration a valid registration? The Subordinate Judge and the High Court found that there was no valid registration in either case.

In section 32 of Act III of 1877 it is enacted that:—

“Except in the cases mentioned in section 81 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,

by some person executing or claiming under the same, or, in the case of copy of a decree or order, claiming under the decree or order,

or by the 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 manner hereinafter mentioned.”

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So far as is material to the decision of these appeals, it is in section 33 of Act III of 1877 enacted:—

“For the purposes of section 32 the powers of attorney next hereinafter mentioned shall alone be recognized (that is to say):—

“(a) If the principal at the time of executing the power of attorney resides in any part of British India in which this 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.”

The mortgage-deed of the 2nd of July, 1882, was presented for registration on the 11th of July, 1882, at Saharanpur, at the proper registration office on behalf of Lala Mitter Sen, the mortgagee, by one Natthu Mal, who held a power of attorney, of the 19th of June, 1882, from Lala Mitter Sen, which, however, did not empower Natthu Mal to present documents for registration. Lala Mitter Sen lived at Saharanpur, and the power of attorney had been duly authenticated by the then Sub-Registrar of Saharanpur on the 19th of June, 1882, but apparently it had not been executed before the Registrar or the Sub-Registrar. The Sub-Registrar's note to the copy of the power of attorney in the Register merely states that Lala Mitter Sen was known to him, and admitted the execution and completion of the document. It has not been proved that Natthu Mal held any other power of attorney from Lala Mitter Sen. The mortgagors admitted before the Sub-Registrar of Saharanpur, on the 11th of July, 1882, the execution and completion of the mortgage-deed, and received in his presence the mortgage money, Rs. 59,000, and thereupon the Sub-Registrar registered the mortgage-deed.

The mortgage-deed of the 10th of August, 1886, was presented for registration on the 9th of September, 1886, at Saharanpur, at the proper registration office, on behalf of Lala Mitter Sen, the mortgagee, by one Ilahi Bakhsh, who held a power of attorney of the 17th of February, 1885, from Lala Mitter Sen, which, however, did not empower Ilahi Bakhsh to present documents for registration. This power of attorney had not been authenticated by the Registrar or the Sub-Registrar of Saharanpur, and it does not appear that it had been executed by Lala Mitter Sen before either of those officials. It has not been proved that Ilahi Bakhsh held any other power of attorney from Lala Mitter Sen. The mortgagors admitted before the Sub-Registrar of Saharanpur, on the 9th of

September, 1886, the execution and completion of the mortgage-deed of the 10th of August, 1886, and acknowledged the receipt by them of the mortgage money, Rs. 7,000, and thereupon the Sub-Registrar registered the mortgage-deed.

It was contended on behalf of the appellant here that it might be presumed the mortgage-deed had been presented for registration by the mortgagors who had executed the deeds, and who attended before the Sub-Registrar. It is, however, obvious that the mortgagors had attended at the office of the Sub-Registrar to admit that they had executed the deeds and not to present them for registration, and that they did not present them for registration. The mortgagors attended to enable the Sub-Registrar to comply with sections 34 and 35 of Act III of 1877 by satisfying himself that they had executed the deeds. In the one case the deed was presented for registration by Natthu Mal, an agent of the mortgagee, and in the other case the deed was presented for registration by Ilahi Bakhsh, another agent of the mortgagee, and in neither case did the agent hold such a power of attorney as was necessary to enable a valid registration to be made.

It was decided, and as their Lordships considered correctly, by Sir JOHN STANLEY, C. J., and Sir GEORGE KNOX, J., in 1906, in *Ishri Prasad v. Baijnath* (1) that the terms of sections 32 and 33 of Act III of 1877 are imperative, and that a presentation of a document for registration by an agent, in that case the agent of a vendee of immovable property, who has not been duly authorized in accordance with those sections, does not give to the Registering Officer the indispensable foundation of his authority to register the document. As those learned Judges said :—

“His (the Sub-Registrar's) jurisdiction only comes into force if and when a document is presented to him in accordance with law.”

These learned Judges also rightly decided in the same case that the fact that the Sub-Registrar had summoned before him the executant of the deed, who was the vendor, and had obtained his consent to the registration of the deed, did not give the Sub-Registrar jurisdiction to register it, and that the omission of the Registering Officer to notice that the power of attorney under which the agent had presented the sale-deed for registration had not been

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executed or authenticated in accordance with section 33 of Act III of 1877 could not be regarded as a defect in procedure within the meaning of section 87 of that Act.

Although the facts in these consolidated appeals are not the same as were the facts in *Mujib-un-nissa v. Abdur Rahim* (1) their Lordships consider that the principle which this Board applied in that case is applicable here. That principle, in their Lordships' opinion, is that a Registrar or Sub-Registrar under Act III of 1877 has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it, or by the representative or assign of such person, or by an agent of such person, representative or assign, duly authorized by a power of attorney executed and authenticated in manner prescribed in section 33 of that Act. It is obvious that executants of a deed who attend a Registrar or Sub-Registrar merely to admit that they have executed it cannot be treated, for the purposes of section 32 of Act III of 1877, as presenting the deed for registration. They, no doubt, would be assenting to the registration, but that would not be sufficient to give the Registrar jurisdiction.

One object of sections 32, 33, 34 and 35 of Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act.

It is the duty of courts in India not to allow the imperative provisions of the Act to be defeated when, as in this case, it is proved that an agent who presented a document for registration had not been duly authorized in the manner prescribed by the Act to present it.

These appeals fail, and their Lordships will humbly advise His Majesty that the appeals should be dismissed. The appellant must pay the costs of these appeals.

Appeals dismissed.

Solicitors for the appellant: *Ranken Ford, Ford & Chester.*

Solicitors for the respondents: *T. L. Wilson & Co.*

J. V. W.

(1) (1900) I. L. R., 23 All., 233; L. R., 28 I. A., 15.