1918

MITHAN LAL v. OHHAJU SINGH.

set aside the decree of the lower appellate court and restore that of the court of first instance. The plaintiff will have his costs in all courts. The court of first instance granted the plaintiff a decree for what it has called "usual interest." This interest will run from the date of the suit up to the date of realization, and at the rate of 6 per cent. per annum simple.

*Appeal decreed.*

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*Before Mr. Justice Piggott and Mr. Justice Walsh.*

1918
*March.* 7.

COLLECTOR OF MORADABAD (PLAINTIFF) *v.* MAQBUL-UL-RAHMAN AND OTHERS (DEFENDANTS).*

*Act No. XVI of* 1908 (*Indian Registration Act*), *sections* 32, 33, 71, 73, 75, 87 *and* 88—*Mortgage-deed—Registration—Presentation—Authority to present document for registration on behalf of executant—Distinction between presentation under Part VI and under Part XII of the Act.*

A mortgage-deed was executed on the 20th of November, 1911. Before, however, the deed could be registered, the mortgagee fell ill. On the 3rd of February, 1912, the mortgagee executed in favour of a pleader, a power of attorney of the kind referred to in section 32 of the Indian Registration Act, 1908. This was duly authenticated by the sub-registrar, and the document was presented for registration by the appointee on the 5th of February, 1912. On the 8th of February the mortgagee died. The mortgagor failed to appear before the sub-registrar and admit execution, and the sub-registrar refused to register the deed. An application was next presented to the Registrar under section 73 of the Act by the widow of the mortgagee in the capacity of guardian of the mortgagee's two minor sons, and on the 28th of June, 1912, the Registrar made an order under section 75(1) of the Act directing that the mortgage-deed should be registered. Meanwhile the estate of the minors had been taken under the superintendence of the Court of Wards, and the Collector, as Manager on behalf of the Court of Wards, on the 23rd of July, 1912, sent the mortgage-deed by a messenger to the sub-registrar, with a copy of the Registrar's order mentioned above and an official letter requesting that the document might be registered, which was accordingly done. On suit having been brought on the mortgage, some of the defendants raised an objection that the mortgage-deed in suit was not validly registered. *Held* that the document was properly registered. No valid objection could be sustained as to its presentation, either on the 5th of February, 1912, when it was presented by the pleader acting under his power of attorney given by the mortgagee, or on the 23rd of July, 1912, when it was sent by the Collector to the sub-registrar. The Collector was not bound to present the document in person, and that being so, it was immaterial what means he took to bring it before the sub-registrar.

*First Appeal No. 139 of 1916, from a decree of Ram Chandar Saksena, Additional Subordinate Judge of Moradabad, dated the 29th of January, 1916.

That officer was perfectly justified in presuming the authenticity of the Collector's official letter and in taking action accordingly.

1918

COLLECTOR OF MORADABAD v. MAQBUL-UL-RAHMAN.

THIS was a plaintiff's appeal in a suit for sale on a mortgage. The question upon which the suit had been dismissed, and the only question raised by the appeal was whether in the circumstances of the case the deed which was the basis of the suit had been validly registered. The facts concerned with the registration of the document are fully stated in the earlier portion of the judgment of PIGGOTT, J.

Mr. *A. E Ryves*, for the appellant.

Dr. *S. M. Sulaiman*, Dr. *Surendra Nath Sen* and Munshi *Gulzari Lal*, for the respondents.

PIGGOTT, J. :—This was a suit on a mortgage, dated the 20th of November, 1911. The persons impleaded are the mortgagor and certain subsequent transferees. The mortgage was in favour of one Sahu Prasadi Lal. The evidence shows that before registration of the document had been effected the mortgagee fell ill. It seems a fair matter of inference that the mortgagor endeavoured to take advantage of this fact to defeat the registration of the document. On the 3rd of February, 1912, a special power of attorney of the kind spoken of in section 33 of the Registration Act (No. XVI of 1908), was registred at the office of the Sub-Registrar of Moradabad, whereby the mortgagee, Sahu Prasadi Lal, purported to authorize a pleader named Pandit Nanak Chand to present the mortgage of the 20th of November, 1911, for registration on his behalf. Accordingly, on the 5th of February, 1912, within the period prescribed by law, the mortgage-deed in suit was presented for registration by the said Pandit Nanak Chand, purporting to act under the authority of the special power of attorney of the 3rd of February, 1912. A question has been raised as to the validity of this presentation, and it is just as well to dispose of it at once. The learned Subordinate Judge who tried this suit seems to have thought that, whatever the facts may have been, the plaintiff had been remiss in the matter of producing satisfactory evidence, and that the Court had before it no evidence from which it was entitled to infer that Pandit Nanak Chand did hold a valid power of attorney under the provisions of section 33 aforesaid, authorizing him to present

1918

COLLECTOR OF MORADABAD v. MAQBUL-UL-RAHMAN.

this document for registration. I think the decision of the court below on this point is clearly wrong. The document in suit was presented for registration at the office of the Sub-Registrar of Moradabad, the very same office in which the special power of attorney had been registered two days previously. In his endorsement on the deed in suit the Sub-Registrar certifies its presentation by Pandit Nanak Chand under a special power of attorney duly authenticated in his office. That certificate is evidence under the Registration Act of the truth of the facts therein stated. There is no reason whatever for presuming that it is in any way an incorrect statement of the facts. What has been contended before us is that the special power of attorney referred to in section 33 of the Registration Act requires, not merely to be authenticated by the Sub-Registrar, but to be executed before him. The argument is that the certificate above referred to does not specify that the document in question had been executed before the Sub-Registrar. Moreover, it is suggested that, on the evidence as to the illness of Sahu Prasadi Lal, it is fairly certain that he did not appear personally before the Sub-Registrar on the 3rd of February, 1912. Had he been able to appear in person at the Sub-Registrar's office on that date, he would presumably have presented the mortgage of the 20th of November, 1911, himself. This argument, moreover, overlooks the proviso to section 33 of Act XVI of 1908. We may take it from the evidence that Sahu Prasadi Lal was suffering from bodily infirmity at the time. Indeed the argument addressed to us on behalf of the respondents on this point assumes that Sahu Prasadi Lal was in fact unable by reason of bodily infirmity to attend in person at the Sub-Registrar's office. It was, therefore, open to the Sub-Registrar to attest the special power of attorney without requiring the personal attendance of the executant at his office, provided only that he satisfied himself that it had been voluntarily executed by the person purporting to be the principal. We have it from his certificate that the special power of attorney was not merely registered in his office but was duly authenticated by him. In this state of the evidence we are entitled to assume that the Sub-Registrar acted in the proper and lawful exercise of his powers under the proviso to section 33 aforesaid. I think,

therefore, there can be no doubt that the original presentation of the document in suit for registration on the 5th of February, 1912, was a proper and valid presentation under section 32 of Act XVI of 1908. The mortgagee Sahu Prasadi Lal died on the 8th of February, 1912, a few days after the presentation of the document before the Sub-Registrar. The mortgagor, the executant of the said document, failed to appear before the Sub-Registrar to admit execution of the same. As I have already suggested, I see no reason to doubt that he was purposely keeping out of the way. The Sub-Registrar had no option but to treat the non-appearance of the executant as a denial of execution and to refuse registration on that ground. We know that he did so. This refusal gave rise to a right on the part of any person claiming under such document, or the representative of any such person, to apply to the Registrar to establish his right to have the document registered. We know that such an application was in fact made to the Registrar of Moradabad. It has been made a grievance on the part of the respondents in this Court that the evidence on the record does not show with certainty by whom this application was made. We have been informed that the application was made on behalf of the mother of the two minor sons of Sahu Prasadi Lal, acting as their natural guardian. It does not seem, however, in any way incumbent upon us to call for specific evidence on this point. We know that the Registrar had before him an application on which he proceeded to take action under the appropriate section of the Registration Act. He was satisfied that he had before him a valid application by, or on behalf of, a person entitled to make the same. I do not see that we are called upon to inquire into the precise nature of that application, especially in the absence of any specific plea that it was made by the particular person not authorized to make it. The proceedings before the Registrar resulted in an order by him, under the first clause of section 75 of Act XVI of 1908, whereby he ordered the document to be registered. In the meantime the estate of the minor sons of Sahu Prasadi Lal had been taken under the management of the Court of Wards, and the Collector of Moradabad, in his official capacity as Manager of the Court of Wards, became charged with looking after the interests of the minors in this matter. The Registrar's order for the registration of the

1918

COLLECTOR OF MORADABAD v. MAQBUL-UL-RAHMAN.

document was dated the 28th of June, 1912. Within the prescribed period of 30 days, that is to say, on the 23rd of July, 1912, the Collector sent the document in suit to the Sub-Registrar with an official letter, enclosing also a certified copy of the order of the District Registrar. The Sub-Registrar on receipt of this communication, took cognizance of the same as a presentation of the document, within the meaning of section 75, clause (2), of the Registration Act, and proceeded to register the document accordingly. The present suit was instituted on the 23rd of November, 1914, the plaintiff being the Collector of Moradabad as Manager of the Court of Wards in charge of the estate of the two minor sons of Sahu Prasadi Lal. The defendants were the original mortgagor, who did not contest the suit, and a number of subsequent transferees. In the written statements filed by some of these men the plea was taken that the document sued upon had not been duly presented for registration within the requirements of the law, that its registration was consequently invalid and that it could not affect the property hypothecated. The court below fixed a number of issues, but as between the plaintiff and the subsequent transferees it has tried out only the one issue as to the validity of the registration. Having come to a finding that the registration was invalid, the learned Subordinate Judge has dismissed the plaintiff's claim altogether, holding that, as a claim for a simple money debt against the original mortgagor, the suit would be barred by limitation.

The appeal before us raises simply the question of the validity of the registration. In the earlier portion of this order I have taken occasion to dispose of two points which were incidentally argued. There remains the main substantial point in the appeal, namely, whether the Sub-Registrar of Moradabad was right in treating this document as having been duly presented to him on the 23rd of July, 1912, when he received it under cover of an official letter from the Collector of Moradabad. In dealing with this point I do not propose to refer to the numerous authorities which have been cited before us. The present case is clearly distinguishable on the facts from any of those authorities, in that it turns upon section 75, and not exclusively upon section 32, of the Registration Act. This was not a case in which the registration officers had

never been lawfully seised of the document at all. There had been, as I have held, a valid presentation of the document in the first instance on the 5th of February, 1912. Moreover, there was in existence a positive order by the District Registrar that the document be registered. The only question, therefore, is whether the procedure adopted in carrying out that order was such as wholly to invalidate the registration which followed, or was at most an irregularity of procedure on the part of the Sub-Registrar of Moradabad covered by section 87 of the Registration Act. The provisions of section 75, clause (2), of the Act are somewhat curiously worded. There is no such categorical imperative as is to be found in section 32, where it is laid down that, subject to certain exceptions, every document to be registered shall be presented by one or other of the persons described in the categories which follow. All that section 75, clause (2), does is to empower the registering officer to register the document, without such complete compliance as would otherwise be required with the provisions of sections 58, 59 and 60 of the Act, provided only it be duly presented to him within 30 days of the making of the Registrar's order. The controversy before us has turned on the expression "duly presented." The Sub-Registrar's duty when he received this document on the 23rd of July, 1912, was no doubt to satisfy himself that it was being presented to him by a person claiming under the document. If the Collector of Moradabad had presented himself in person at the office, the Sub-Registrar would presumably have taken the Collector's word for it that the estate of the minor sons of the deceased mortgagee was now in his charge as Manager of the Court of Wards and that he was entitled to prefer a claim under the document on behalf of the said minors, or he might have satisfied himself on this point by a reference to the notification in the official Gazette. What he had before him was an official letter, on the authority of the Collector of Moradabad, claiming to be in charge of the estate of the minors and to be entitled to present the document for registration. The argument that the Collector's failure to present this application in person is a fatal defect in the registration of the document seems to me open to a *reductio ad absurdum*. Whoever the messenger may have been who carried the document

1918

COLLECTOR OF MORADABAD v. MAQBUL-UL-RAHMAN.

in question along with the Collector's letter to the office of the Sub-Registrar of Moradabad, the Collector could have given him formal authority to present the document by the execution of a special power of attorney; that special power of attorney, being an instrument executed by the Collector in his official capacity, could have been registered on the strength of an official letter from the Collector, without his personal attendance at the office, under the provisions of section 88 of the Registration Act. On the principle that the greater includes the less it seems to be asking far less of the Sub-Registrar that he should take cognizance of the Collector's official signature and designation to a letter informing him of the Collector's interest in the document in suit and presenting it for registration, than to ask him to accept a similar letter as proof of the fact that a particular document, as for instance a power of attorney, had been executed by the Collector. Under the circumstances of the case I think we are not straining the law in holding that the presentation of this document made on the 23rd of July, 1912, was a sufficient compliance with the requirements of section 75, clause (2), of the Act. Even if I do not think so, I should feel justified in regarding the action of the Sub-Registrar in taking cognizance of certain facts on the strength of an official letter received from the Collector of the district, without requiring the personal attendance of that officer before him, as at most a defect of procedure, curable by provisions of section 87 of the Act. I hold therefore that the finding of the court below that the document in suit is invalid as a mortgage for want of due registration is incorrect and must be reversed. Although certain other issues have been disposed of in the judgment under appeal, this was the main issue decided as between the plaintiff and the subsequent transferees and it was certainly a preliminary issue. As we have reversed the finding of the court below on this point, I think the proper order to pass is that the decree of the court below be set aside and the case returned to that court for retrial and disposal on the merits. We leave the costs of this appeal to be costs in the cause.

WALSH, J.— I agree. I think the case of the respondents is an attempt to apply the *dicta* of the Privy Council to a

situation in respect of which they were certainly not uttered and to which, I think, they are not applicable. I propose to cite authorities only for the purpose of showing the principles which have to be borne in mind and then to attempt to construe these somewhat complicated provisions in order to make them work, if possible, naturally and easily.

Now, first, with regard to the presentation by the pleader on the 5th of February. By the endorsement that presentation purports to have been made under the authority of a special power of attorney duly authenticated in the registration office two days before. I feel a difficulty in applying the terms of section 60, sub-section (2), to that endorsement. The endorsement, it seems to me, is only evidence of the facts mentioned by it after the provisions of the section have been complied with and a certificate has been issued for registration. And, inasmuch as the very question which we have to decide is whether those provisions have been complied with, as provided by section 60, it looks to me somewhat like begging the question to apply section 60, sub-section (2), to this endorsement. There is a further difficulty strongly relied upon in argument by Dr. *Sulaiman* that it is only evidence of the facts mentioned in the endorsement and the endorsement does not, it so happens in this case, mention the fact of the execution of the power of attorney. And therefore, although I agree in the conclusion at which my brother has arrived to be drawn from that endorsement, I do so for somewhat different reasons. I think it is in any event, apart from the provisions of the Act, an instance of the sort of case to which the old maxim of *omnia praesumuntur rite et solemniter esse acta* ought to be applied, and that view seems to me to be supported by a passage in a case under this Act of a similar nature decided in the Privy Council as long ago as 1877. In that case Sir MONTAGUE E. SMITH, delivering the judgment of their Lordships, said:—"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, their Lordships think this is too broadly stated. Undoubtedly, it would be a

1918

COLLECTOR OF MORADABAD v. MAQBUL-UL-RAHMAN.

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 . . . 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. If the Registrar refuses to register there is at once a remedy by an appeal." Applying that general statement of principle to the endorsement on a deed of the alleged authentication before the Registrar of a power of attorney under which a person presenting the deed for registration purported to act, I think in the absence of either a finding or of evidence to the contrary, and there is a total absence of either in this case, we are entitled to assume that when the Registrar endorsed on the deed the due authentication in his office of the power of attorney he meant that it was a power of attorney which had been properly executed and authenticated before him in accordance with law. And I therefore agree with my brother that the case of the respondents with regard to the presentation of the 5th of February breaks down.

We, therefore, start with this, that the document in question was presented at the Sub-Registrar's office for registration in accordance with the requirements of the law which the Privy Council in a passage which I propose to cite has said "it is the duty of court of India to see carried out." The guiding principle recognized more than once by the Privy Council and reiterated by decisions in this Court is to be found in the head-note to the decision in *Mujib-un-nissa* v. *Abdur Rahim* (1):—"The power and jurisdiction of the Registrar only arises when he is invoked by a person in direct relation to the document." And the necessity of guarding against opening the door even to trivial breaches of these requirements has been recently enforced by the judgment of their Lordships delivered by Sir JOHN EDGE in *Jambu Prasad* v. *Muhammad Aftab Ali Khan* (2):—"It is

(1) (1901) I. L. R., 23 All., 283. (2) (1915) I. L. R., 37 All., 49 (56).

the duty of courts of 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." I would only add that a perusal of the judgment of the High Court in that case delivered by GRIFFIN, J., shows that there was positive evidence and a finding of fact negativing the strict compliance with the requirements of the Act.

These cases are decisions, as my brother has pointed out, under sections 32, 33 and 34 of the Act. And, as my brother has already pointed out, there is in the provision about presentation in section 75 to which I propose to refer in a moment, an absence of that imperative language which Sir JOHN EDGE refers to in the passage I have quoted. This brings me to the question of the second presentation, namely, of the 23rd of July, by the Collector through a letter, after various incidents, including the death of the mortgagee had occurred, and a proceeding had taken place before the Registrar. The receipt of that letter was carefully endorsed by the Sub-Registrar on the deed on the same day, and the second point which we have to decide, and it is really the great difficulty in the case, is whether there was a due presentation of that deed in accordance with section 75. I have come to the conclusion that there was, very largely for this reason. I think part VI and part XII of the Act deal with totally different circumstances and contemplate a totally different situation, and that the fallacy underlying the respondent's argument is an attempt to introduce into part XII considerations bearing upon interpretation which are really only applicable to part VI. The contrast between the two parts is really significant. Part VI is a collection of sections, and they are those on which the decisions of High Courts and Privy Council have been mainly given, dealing solely with "presenting documents for registration." Part XII is also self-contained and deals with a situation created by what is called "refusal to register." We have to deal with a case of refusal to register, and of another kind of presentation in consequence of the proceedings rendered necessary by such refusal. Section 71, (2), says that "no registering officer shall accept for registration

1918

COLLECTOR OF MORADABAD v. MAQBUL-UL-RAHMAN.

a document endorsed with a refusal unless and until, under the provisions hereinafter contained, the document is directed to be registered. Section 72, so far as there is anything before us in the case at present, does not apply, but I refer to it for one rather important fact. The word "presented" occurs in it, namely, an appeal may be heard from the order of the Sub-Registrar if presented to the Registrar within 30 days. It could hardly be contended that that presentation must be of the strict personal character which is obviously intended by part VI of the Act and therefore we find in the part of the Act which we have to construe that the word "presented" is used in what I may call a more elastic sense. Section 73 deals with the right of the party who desires to secure registration where the Sub-Registrar refuses on the ground of the denial of execution. That right is to apply to the Registrar to establish his right to have the document registered. Section 74 provides for an inquiry before the Registrar, as the result of such application, into (*a*) the execution, (*b*) the compliance with the requirements of the law. As regards "presenting" it clearly refers to such presentation as is dealt with by part VI "so as to entitle the document to registration." And in connection with such inquiry section 75(4) enables the Registrar to summon and enforce the attendance of witnesses, to compel them to give evidence as if he were a Civil Court, and to deal with costs which are made recoverable as if they had been awarded in a suit under the Code of Civil Procedure. In my view that proceeding is a judicial proceeding and was intended by the Legislature to be a judicial proceeding, the ordinary penalty for failure in which was visited on the unsuccessful party in the way such penalties are. And to my mind, therefore, the questions of the due execution, the due authorization of the person presenting, and the due presentation, when such an inquiry has taken place, are decided and disposed of for the purpose of the immediate question of registration or non-registration in a final order. The result of the Registrar's order, if in the affirmative, is to establish the right of the person to have the document registered and to entitle the document to registration, and the form of his order is an order that it shall be registered. To my mind, though I feel difficulty and hesitation about it, it would be to attribute

totally superfluous particularity to the Legislature if one were to hold that these provisions in section 75 superimpose upon that solemn proceeding and final decision, a duty upon the person who desires merely to carry out the order of the Registrar, of performing the strict formalities which are necessary and have been held by the Privy Council to be necessary before the registration by the Registrar has taken place. To my mind what happens after the Registrar's order is pure machinery. Any form of presentation, if it is supported by an application, which takes place on behalf of the presenter and is noted on the order in his favour, is sufficient. And even if it were not, I agree with my brother that section 87 covers the case. I, therefore, agree that this decision cannot stand.

I want to add one word with regard to the way in which the case has been dealt with. As I have often said it is in the interests of the courts themselves, and what is far more important, in the interests of the litigant, that in a case of this description where the evidence has in fact been taken and both sides have done all that they are able or likely to be able to do before the trial court, and the court, when it sits down to review the whole case and write its judgment, finds that there is some technical point which in its opinion enables it to dismiss the case, it should go on to dispose of all of the issues which have been dealt with in evidence and argued at the bar before it. It is just as easy, and there is no better time than when the hearing of the case is fresh in the recollection of the court. Nobody is infallible, and in a difficult case of this kind it is not impossible that the appellate court will take a different view of the law and therefore it is of the highest importance that the courts, with such points before them, should go on to complete the whole case and come to a conclusion upon the merits.

The real question in this case is whether there is anything to show that these two infant children whom the Court of Wards represents as plaintiffs are to be deprived of the fruits of the contract entered into by their father. And here are we, sitting in this Court, with all the evidence material to that point already given on both sides in the court below, and if findings had been arrived at by the court below, fully equipped for disposing of the

1918

COLLECTOR OF MORADABAD v. MAQBUL-UL-RAHMAN.

case upon the merits, compelled to send the case back for a re-hearing, probably before another judge, two years at least after the original hearing of the suit. It is suggested that, even after that has taken place and it has come to this Court again, there may still be an appeal to the Privy Council on the main question of registration. All these proceedings have a tendency to prolong to an unspeakable extent the decision of a comparatively trivial dispute and to accumulate the expenditure of costs out of all proportion to the issues involved. Of course where there is a real preliminary point, it is a totally different matter. No doubt it is necessary sometimes to decide as a preliminary matter whether the court is competent to hear a case at all. But when every thing has been done to enable the trial court to dispose of a case, I think it is a great misfortune, and it happens a great deal too often, that a judge gets rid of it by disposing of some technicality raised by one of the parties leaving the merits wholly untouched. I agree with my brother that this is a preliminary point and that the case must go back.

BY THE COURT.—We set aside the decree of the court below and remand the case to that court under order XII, rule 23, of the Code of Civil Procedure for re-trial and disposal on the merits. We leave the costs of this appeal to be costs in the cause.

*Appeal decreed and cause remanded.*

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*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

1918

*March, 7.*

SHANKAR LAL (PLAINTIFF) *v.* RAM BABU (DEFENDANT).*

*Partnership—Death of one partner leaving a minor son—Suit by surviving partner against minor for rendition of accounts—Procedure.*

One of two partners in a specific business, who was alleged to have been the managing partner, died, leaving him surviving a minor son. The other partner sued the minor, as his father's representative, for rendition of accounts and for payment of what might be found due to him (the plaintiff).

*Held* that the suit was maintainable; but the proper procedure was for the court to direct both sides to produce their accounts and thereafter to pass a decree for whatever sum might appear to be due from one party to the other.

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* Second Appeal No. 770 of 1916 from a decree of D. R. Lyle, District Judge of Agra, dated the 9th of February, 1916, confirming a decree of P. K. Ray, Munsif of Agra, dated the 12th of March, 1915.