

Mr. B. E. O'Connor, Pandit Baldeo Ram Dave and Munshi Damodar Das, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—A preliminary objection is taken to the hearing of this appeal. The original suit was a suit on foot of a mortgage and the value of the suit was a sum below Rs. 5,000. The usual mortgage decree was made, and the decree was afterwards made absolute, and eventually, it appears, the mortgaged property was sold, but proved insufficient to discharge the amount. Thereupon an application was made under order XXXIV, rule 6, corresponding with section 90 of the Transfer of Property Act, (since repealed) for a personal decree, which was granted by the Subordinate Judge. It is against the decree of Subordinate Judge so made that the present appeal is filed. The preliminary objection is that the appeal should have been presented to the District Judge and not to the High Court. Section 21 of Act XII of 1887, (Civil Courts Act) provides that an appeal should lie from a decree of the Subordinate Judge to the District Judge where the value of the original suit was under Rs. 5,000. The appellant seems to have thought that because a fresh decree was granted under order XXXIV, rule 6, and the amount of that decree exceeded Rs. 5,000, this Court was the proper court to which to present the appeal. We think this view was erroneous. We accordingly allow the preliminary objection and direct that the memorandum of appeal be returned to the appellant for presentation in the proper court. The respondents must have their costs of this appeal. The memorandum of appeal may be returned as soon as possible.

Memorandum of appeal returned.

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

RAM LAL (PLAINTIFF) v. TAMKIN BANO AND OTHERS (DEFENDANTS)*
Act No. XVI of 1908 (Indian Registration Act), section 28—Place of registration
—Security bond—Bond fraudulently registered in a district where none of the property in respect of which it might have been operative was situated.

In a bond hypothecating, as security for the due fulfilment of the terms of a mortgage, certain immovable property, a small piece of land was inserted

* First Appeal No. 67 of 1917, from a decree of Khirod Gopal Banerji, Subordinate Judge of Budaun, dated the 20th of July, 1916

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which did not belong to the obligor and was mentioned only for the purpose of getting the security bond registered in a particular registration sub-division.

Held that registration so effected was a fraud on the Registration law and the bond must be treated as unregistered. *Mangali Lal v. Abid Yar Khan* (1) followed. *Harendra Lal Roy Chowdhuri v. Haridasi Dabi* (2) referred to.

THE facts of this case were as follows :—

A mortgage was executed by Karam Ahmad in favour of the plaintiff on the 30th of January, 1904, and, on the same date Ali Ahmad executed in the plaintiff's favour a security bond whereby he hypothecated certain items of property for the due discharge of the mortgage money. Both the documents were registered in the office of the Sub-Registrar of Budaun. The only item of property situate within the jurisdiction of that office, out of the properties charged in the security bond, was described therein as "land of *Filkhana* bounded . . . and measuring 100 square yards." The plaintiff brought a suit on the two bonds, against Karam Ahmad and the heirs of Ali Ahmad deceased, praying that the mortgaged property might be sold first and if the proceeds were insufficient, the balance might be recovered by sale of the property hypothecated in the security bond. The heirs of Ali Ahmad pleaded, *inter alia*, that the registration of the security bond was invalid, inasmuch as the "land of *Filkhana*" never belonged to Ali Ahmad and was fictitiously entered in the security bond for the purpose of getting the bond registered at Budaun. With regard to this plea the court of first instance found that the "*Filkhana*" never existed, that the land which was described as "land of *Filkhana*" never belonged to Ali Ahmad, that its area was 29 square yards and not 100, and that it was probable that it was included in the security bond simply to get the bond registered at Budaun. The court held that the registration of the security bond was, therefore, invalid, and it passed a decree on the mortgage-deed alone and dismissed the suit as against the heirs of Ali Ahmad with costs. The plaintiff appealed to the High Court in so far as his claim on the security bond had been dismissed.

Babu *Sital Prasad Ghosh*, (with him the Hon'ble *Munshi Narain Prasad Ashthana*), for the appellant :—

(1) (1917) I. L. R., 39 All., 523.

(2) (1914) I. L. R., 41 Cal., 972.

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The provisions of section 28 of the Registration Act are quite clear. In the present case the property called the "land of *Filkhana*" is as a matter of fact situate within the jurisdiction of the Sub-Registrar of Budaun. Even if it is found that Ali Ahmad had no title to this land, the registration of the document at Budaun would not be invalid, inasmuch as the land was situate within the Budaun Sub-Division. No fraud or collusion between Ali Ahmad and the plaintiff has been alleged, much less proved. It has not been made out that the parties to the document in question were aware from the outset that Ali Ahmad had no title whatsoever to this particular land, and that the plaintiff expressly consented to its inclusion in the deed for the purpose merely of securing the registration at Budaun. That was what the defendants had to establish. I rely on the case of *Pahladi Lal v. Musammatt Laraiti* (1), which followed the case of *Brojo Gopal Mukerjee v. Abhilash Chandra Biswas* (2).

Munshi Lakshmi Narain, (with Mr. Ibn Ahmad and Dr. S. M. Sulaiman), for the respondents:—

The knowledge and motive of the parties to the security bond regarding the fictitious inclusion of the land in question can be sufficiently inferred from the facts and surrounding circumstances of the case. It has been found that the "*Filkhana*" was purely imaginary, that the area of the land was only 29 square yards, though it was entered as 100 square yards in the deed, that the boundaries were more or less fictitious and that the executant had no title to it whatsoever. The inference is irresistible that it was never really contemplated between the parties that this land was in fact to form part of the property hypothecated by the bond. Ali Ahmad owned a substantial house adjoining this piece of land; instead of that, this piece of land which did not belong to him and which was of insignificant value was added as the last item of the hypothecated properties, the other items being zamindari property of value. Considering all these circumstances, it is clear that this land was deliberately entered and allowed to be entered, merely for the purpose of facilitating the registration of the bond, and that the parties did not seriously contemplate a genuine hypothecation of this land. I rely on the

(1) (1918) I. L. R., 41 All., 22.

(2) (1909) 14 C. W. N., 532.

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following cases :—*Harendra Lal Roy Chowdhuri v. Haridasi Debi* (1) and *Mungali Lal v. Abid Yar Khan* (2). In the light of these rulings, the security bond in the present case cannot be said to *relate*, within the meaning of section 28 of the Registration Act, to the piece of land aforesaid, and the registration of the bond at Budaun was, therefore, invalid.

Babu *Sital Prasad Ghosh*, in reply, submitted that if the Court held that the entry as to the land of the *Filkhana* was a fictitious one, deliberately made with the object of getting the registration improperly effected at Budaun, in that case the heirs of the executant were not to be allowed costs in this Court or in the court below.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of a suit brought on foot of two hypothecation documents. One was a mortgage pure and simple. The other was a security bond by which the executant undertook to guarantee the due payment of the amount of the mortgage and interest, to secure which he hypothecated certain property. The deeds are of even date. The court below granted a decree for the sale of the property mortgaged, but dismissed the suit in so far as it sought the sale of the property which had been mortgaged by way of security. The defendants who are interested in this last mentioned property consist of subsequent transferees and the heirs of the deceased executant. The court below awarded three sets of costs to these defendants. The court below found that one item of property which did not belong to the executant of the security bond was intentionally entered in order to enable the document to be registered at Budaun. The court was of opinion that the executant had no interest in this property and that the mortgagee knew quite well that it was not intended that it should form any portion of the security. We see no reason to differ from the finding of the court below on this question of fact. It seems to us highly probable that the object of entering this particular item of property was to enable the document to be registered at the Budaun Sub-district Registration Office. The principal mortgage which, we have already said, was of even date had to be registered in this office because the property comprised in it was

(1) (1914) I. L. R., 41 Cal., 972. (2) (1917) I. L. R., 39 All., 523.

situate in that division. The property mortgaged by way of security was not situate in the same district. This item of property consists of a small strip of land, about twenty-nine square yards, either adjoining or near the executant's house. It is significant that the property is not mortgaged as an appurtenance to the house, because the house was not mortgaged at all, and the probabilities are that this small piece of land was miles away from the villages shares in which were being hypothecated. The court below considered under these circumstances that the security bond had not been duly registered, and for this reason dismissed the suit so far as it related to the property comprised in this bond. It is unnecessary to state that it was necessary that this document in order to affect the property should be duly registered. Section 28 of the Registration Act provides that "every document mentioned in the section shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate." No portion of the property to which the document in question related was situated in the Budaun Sub-district, except the piece of land to which we have already referred. It is contended that the inclusion of this piece of land, quite irrespective of the want of title of the mortgagor and the intention of the parties, made the deed "relate" to this 29 square yards. We think that this contention is not sound. If neither the mortgagor, nor the mortgagee, intended that the piece of land should be mortgaged or form any portion of the security, then it seems to us impossible to contend that the document "related" to this little piece of land. In the case of *Harendra Lal Roy Chowdhuri v. Harijasi Debi* (1), where the facts were very much the same as they are in the present case, their Lordships of the Privy Council say at page 989 of the report:—"But the point may be put in another way upon broader grounds. Their Lordships hold that this parcel is in fact a fictitious entry, and represents no property that the mortgagor possessed or intended to mortgage, or that the mortgagee intended to form part of his security. Such an entry intentionally made use of by the parties for the purpose

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of obtaining registration in a district where no part of the property actually charged and intended to be charged in fact exists, is a fraud on the Registration law, and no registration obtained by means thereof is valid." In our opinion in the present case this 29 square yards represents no property that the executant possessed, or intended to charge, or that the mortgagee intended should form part of the security. A decision of this Court in *Manjali Lal v. Abid Yar Khan* (1) is to the same effect. The only question which remains is the question of costs. The subsequent transferees, we think, are entitled to their costs. Under the usual practice of this Court costs follow the result. With regard to the heirs of the executant the case stands on a somewhat different basis. We are perfectly satisfied that their predecessor in title was fully aware of what was being done and deliberately allowed the 29 square yards of land to be included in the security bond. Under the circumstances we think that the heirs of the executant of the security bond should bear their own costs here and in the court below. The result is that we vary the decree of the court below by directing that the defendants 2 and 3 shall pay their own costs. In all other respects we confirm the decree of the court below and dismiss the appeal. The respondents other than defendants 2 and 3 will have costs of this appeal, each having a separate set of costs. The defendants 2 and 3 will bear their own costs of this appeal.

Decree varied.

REVISIONAL CRIMINAL.

Before Mr. Justice Tiggoll.

EMPEROR v. RAM LAL AND OTHERS.*

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Act No. XIII of 1859 (Workmen's Breach of Contract Act), sections 2 and 3—Contract between master and workman containing covenant for compensation for breach of agreement by workmen—Operation of Act not thereby excluded.

An employer of labour is not precluded from availing himself of the provisions of Act No. XIII of 1859 merely because in the contract of service

* Criminal Revision No. 345 of 1918, from an order of H. J. Bell, Sessions Judge of Jhansi, dated the 30th of September, 1918.

(1) (1917) I. L. R., 39 All., 523.