

CHHOTY LAL (DEPENDANT No. 15) v. COLLECTOR OF
MORADABAD (PLAINTIFF).

[On appeal from the High Court at Allahabad.]

P. C. *
1922
July, 11.

Registration—Mortgage—Presentation—Authentication of power of attorney—Endorsement—Order of Registrar—Registration without fresh presentation—Indian Registration Act (XVI of 1908), sections 33 (a), 75.

A sub-registrar to whom a mortgage was presented for registration under the Indian Registration Act, 1903, endorsed it with a statement that it had been presented on behalf of the mortgagor "under a power of attorney duly authenticated"; he, however, refused to register it on the ground that the execution had not been admitted as required by section 35. The Registrar having on appeal satisfied himself on that question made an order under section 75, sub-section 1, that the document be registered. Upon the mortgage being forwarded to the sub-registrar with a copy of the order, he registered it.

Held, (1) that the endorsement was *prima facie* evidence that the power of attorney was regular in all respects, and, in the absence of evidence to the contrary, established the validity of the original presentation; (2) that the document having been duly presented before the registrar's order was made, the sub-registrar could validly register it under the order, without requiring a fresh presentation in the manner provided by section 32.

Under section 75, sub-section 2, a registering officer is bound to register a document if within 30 days of an order by the Registrar it is presented in the manner required for a presentation by section 32; but, on the hypothesis that the sub-section applies to the document which has already been duly presented, it does not preclude the registering officer from acting on the order without requiring a fresh presentation.

Jambu Prasad v. Muhammad Aftab Ali Khan (1) and *In re Shaik Abdul Asif* (2) referred to.

Judgment of the High Court affirmed.

APPEAL (No. 5 of 1921) from a judgment and decree of the High Court (7th of March, 1918) reversing a decree of the Additional Subordinate Judge of Moradabad.

The question in the appeal was whether a deed of mortgage, dated the 20th of November, 1911, which the respondent sued to enforce, was properly registered under the Indian Registration Act (XVI of 1908). The material facts appear fully from the judgment of the Judicial Committee.

The trial Judge held that the mortgage had not been duly registered, and he accordingly dismissed the suit.

* *Present*:—Lord BUCKMASTER, Lord ATKINSON, Lord SUMNER, Lord CARSON, and Sir JOHN EDGE.

(1) (1914) I. L. R., 37 1, 49; L (2) (1887) I. L. R., 11 Bom., 691, R., 42 I. A., 22.

Upon appeal to the High Court the decision was reversed, and a decree made remanding the suit for the trial of other issues. The learned Judges (PIGGOTT and WALSH, JJ.) held that in the absence of evidence to the contrary, the endorsement of the sub-registrar proved that the power of attorney was duly authenticated by him. They were of opinion that the Court was entitled to assume that the sub-registrar had acted in the proper exercise of his powers under the proviso to section 33 of the Act. They held, further, that the presentation of the document in July, 1912, could be regarded as sufficient, without unduly straining the law; if there was a defect they considered that it was curable by section 87.

1922, May 22. *De Gruyther, K. C.*, and *Dube* for the appellant.

The mortgage was not validly registered under the Indian Registration Act, 1908, and was consequently ineffective under section 49. The onus was upon the respondent to prove the facts. The presentation in February, 1911, was defective; there is no proof that there was a power of attorney complying with section 33. The decision of the Board in *Jambu Prasad v. Muhammad Aftab Ali Khan* (1) is conclusive in the appellant's favour; it shows that the registering officer had no power to certify. The subsequent presentation in July, 1912, did not comply with section 32. Even if the first presentation is to be treated as duly made, the effect of section 75, sub-section 2, is that there had to be another presentation complying with section 32 after the order was made.

Dunne, K. C., and *Kenworthy Brown*, for the respondent. *Jambu Prasad's case* (1) is distinguishable. The endorsement then was merely that the document was presented by a person who purported to be the general agent under a power of attorney, and it was proved that the power of attorney in question had not been duly authenticated. As appears from the sub-registrar's second endorsement, he refused to register merely because the execution was not admitted. In these circumstances the first endorsement is *prima facie* evidence that the power of attorney was duly authenticated, and the presentation duly made in all

(1) (1914) I. L. R., 37 All., 49; L. R., 42 I. A., 22.

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respects. There is no evidence to the contrary. If section 75, sub-section 2, applies to a document which has been duly presented before the order is made, there was a sufficient re-presentation. In any case, having regard to all the circumstances, any defect in the second presentation was merely one of procedure and, by virtue of section 87, does not invalidate the certificate of registration. Reference was made also to *In re Shaik Abdul Aziz* (1) and *Bharat Indu v. Hamid Ali* (2).

De Grayther, K. C., replied.

July 11.—The judgment of their Lordships was delivered by Lord BUCKMASTER.—

On the 20th of November, 1911, Maulvi Maqbul-ur-Rahman executed a mortgage of considerable property in the district of Meerut in favour of Sahu Prasadi Lal, to secure repayment of Rs. 10,000 and interest. The mortgagor subsequently executed several transfers of the mortgaged property, some by way of mortgage and some apparently by way of absolute transfer.

The appellant claims under one of such transfers, but the extent and character of his interest is nowhere stated, nor need it be investigated as it is admittedly sufficient to support the appeal. He contends that the mortgage of the 20th of November, 1911, was not properly registered in accordance with the provisions of the Indian Registration Act (XVI of 1908), and is consequently invalid.

The respondent is the Manager of the Court of Wards, acting on behalf of the three infant children of the mortgagee, who died on the 8th of February, 1912.

That the mortgage required to be registered is plain. The only question is, was registration effected? The facts are these. The mortgage was presented for registration before the Sub-Registrar of Moradabad on the 5th of February, 1912, by Pandit Nanak Chand acting under a power-of attorney, and was received by him. The mortgagor did not attend to admit execution, and on the 28th of February, 1912, the Sub-Registrar refused registration, making an endorsement on the deed in the following terms: "Under section 35, Act XVI of 1908,

(1) (1887) I. L. R., 11 Bom., 691. (2) (1920) I. L. R., 42 All., 487; L. R.,

registration refused." Section 35 relates solely to the admission of execution of the deed, and as the mortgagor did not appear, the Sub-Registrar was bound to take the course he did, leaving the interested parties to appeal to the Registrar under section 73 (see *In re Shail Abdul Aziz* (1).

It will, therefore, be noticed that the reason why registration was refused had nothing to do with defect in presentation; but as it is now asserted that the original presentation was irregular, it is important to examine the facts and statutory provisions upon that head. The Registration Act has imposed several conditions regulating the presentation of documents for registration, and it is of great importance that those conditions, framed with a view to meet local circumstances, should not be weakened or strained on the ground that they may appear to be exacting and strict.

Section 32 is the first section dealing with the matter, and it is in the following terms :

"32. Except in the cases mentioned in sections 31 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,

- (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
- (b) by the representative or assign of such person, or,
- (c) by the agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner hereinafter mentioned."

The exceptions mentioned in sections 31 and 89 need not be considered as they have nothing to do with the present case.

Presentation here was not made in person; it was made under sub-section (c) by an agent purporting to be authorized by a power of attorney. Such power of attorney must not be general in its form, but must confer the special authority to present on behalf of the principal, and even though the Sub-Registrar accepts the presentation under a general power of attorney, it is open to any interested party to show that the power of attorney was in fact imperfect. See *Jambu Prasad v. Muhammad Aftab Ali Khan* (2). The fact that the presentation is accepted

(1) (1887) I. L. R., 11 Bom., 691. (2) (1914) I. L. R., 37 All., 49; L. R.,

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by the Sub-Registrar as in proper form is, however, *prima facie* evidence that the conditions have been satisfied; and after such acceptance, the burden of proving any alleged informality rests on the person who challenges the registration. In the present case no question arises upon the character of the power; it has not been put in evidence and, having been formally accepted by the proper official, it may be regarded as complying with the provisions as to its character imposed by section 32, sub-section (c).

By section 33, however, special conditions are established with regard to the execution of such a power of attorney. This section provides that certain powers of attorney shall alone be recognized, viz., sub-section (a):—

“(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.”

It is said that in this case that condition has not been satisfied, because the Sub-Registrar's certificate, which was endorsed on the document on the 5th of February, 1921, in the following terms,—

“Presented by Pandit Nanak Chand, son of Pandit Tara Chand, caste Brahman, professional lawyer, resident of Moradabad, mohalla Raja Gali, at the office of the Sub-Registrar, Moradabad, this 5th day of February, 1912, between the hours of 3 and 4 p.m. on behalf of Sahu Parshadi Lal under a special power of attorney duly authenticated in this office on the 3rd of February, 1912.

“(Signed) SHAM BEHARI LAL, officiating S.R.”

does not refer to the fact that the power of attorney was executed before the Sub-Registrar. The endorsement is certainly lax in this respect, but it is made under no statutory obligation, and it has no statutory effect; it is only the evidence to show that the presentation has been accepted by the Sub-Registrar and its acceptance by him, he being the officer whose business it is to see that all essential regulations are regarded, is *prima facie* evidence that the power of attorney was regular in all respects. So far as the original presentation is concerned, therefore, their Lordships think that there is nothing to displace the inference that it was duly made, arising from the fact of its acceptance

by the Sub-Registrar. His refusal to register was due to the circumstances which have already been narrated, and in due course appeal was had to the Registrar by the present respondents.

On the 28th of June, 1912, the District Registrar ordered registration, following upon which, on the 22nd of July, the Collector of the Court of Wards forwarded the mortgage and the copy of the order by post to the Sub-Registrar and asked for registration. The order of the 28th of June, 1912, removed the difficulty that prevented registration in the first instance, and accordingly, on the 23rd of July, 1912, the Sub-Registrar accepted the document for registration and made upon it the following endorsement:—

“Having seen the order of the District Registrar, Moradabad, dated 28th June, 1912, I have satisfied myself that the execution of the document was proved before the said officer, and the document is therefore accepted for registration.

“(Signed) SHAM SINGH, officiating S.R.

23rd July, 1912.”

And it was registered accordingly.

It is objected that such registration was bad because the presentation to the Sub-Registrar after the District Registrar's order ought to have been made with the same formalities as those necessary for the original presentation, and this, according to the appellant's contention, is the only meaning that can be given to sub-section (2) of section 75, which is in the following terms:—

“75.—(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

“(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

“(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.”

The weight of this argument depends upon the phrase “duly presented,” and it is pointed out that the subsequent use of the same words in sub-section (3) shows that “duly presented” means presented in accordance with all the formalities imposed by section 32.

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Their Lordships are not prepared to differ with this reasoning, but it does not conclude the case in the appellant's favour. Upon the hypothesis that section 75, sub-section (2), may be dealing with a case such as the present, in which original presentation has been properly made, and as every condition has been satisfied, there would, in their Lordships' opinion, be nothing to prevent the District Registrar, when he had determined the question of execution, from directing that the registration should then be made. The last words in sub-section (3), which provide that the registration shall date back, do not necessarily refer only to a registration effected pursuant to the provisions of sub-section (2) but to every registration consequent on the order made by the Registrar. The main point about sub-section (2) is that it is mandatory in form and compels the registering officer to effect the registration if the document be duly presented. If this procedure be followed and registration is refused, the processes of the court are open for the purpose of compelling obedience, a privilege that would not be enjoyed if the formalities were omitted. Their Lordships can find nothing in the section to prevent the Registrar or the Sub-Registrar from registering a document which had been duly presented, and the execution of which has been proved, without requiring a repetition of all the original steps, but he cannot be compelled to register unless the document be "duly presented" a second time. There are many mischiefs against which the Statute was designed to afford protection in requiring obedience to the provisions for presentation in the first instance, but when once the execution of the document has been proved, and the original conditions for presentation complied with, there is no reason why they should all be repeated.

For these reasons their Lordships think that the conclusion at which the High Court have arrived is correct, although they are not prepared to accept all the reasoning by which that conclusion is supported, and they will, therefore, humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitor for appellant : *Douglas Grant.*

Solicitor for respondent : *Solicitor, India Office.*