

1882

SURKHIDO RAI
v.
SHEO GHU-
LAM.

confess ourselves most reluctant to interfere, when we find that no steps were taken by the judgment-debtor to have the order of the Subordinate Judge of the 7th March, 1881, dismissing his objection reviewed. But the appeal before us is from an order confirming a sale, and it is impossible in deciding it, and determining whether the Subordinate Judge was or was not right in making it, to avoid looking into the validity of the sale itself, when it is directly impeached, not for irregularity in the "publishing or conducting," but upon the broad ground that it was bad in its inception, as having been held without jurisdiction in the Court that directed it to make any such order. The words of s. 320 of the Code are clear in the power they give Local Governments to frame notifications and rules thereunder, and the language of the Notification now under consideration is clear and positive. When the judgment-debtor established that he had owned the mahal sought to be brought to sale as proprietor continuously from the 1st January, 1848, the Subordinate Judge had no alternative but to transfer the decree for execution to the Collector, and it was no business of his to consider the mode in which the property had been acquired. Under these circumstances it seems to us that the judgment-debtor's property being, as is now virtually conceded, "ancestral," within the meaning of the Notification, the Subordinate Judge's jurisdiction to order a sale by his Court was ousted, and the sale that he did order cannot consequently be sustained. The appeal will accordingly prevail with costs against the decree-holder, and the sale being set aside, the Subordinate Judge is directed to forward the decree to the Collector for realization by him in accordance with law and the rules prescribed in that behalf. The auction-purchasers respondents will pay their own costs.

Appeal allowed.

1882
April 15.

Before Mr. Justice Straight and Mr. Justice Oldfield.

IKBAL BEGAM (DEFENDANT) v. SHAM SUNDAR (PLAINTIFF).*

Registration—Presentation of document by Agent—Power of attorney not executed and authenticated as required by law—Validity of registration—Act XX of 1866 (Registration Act), ss. 35 (c), 49, 68, 88.

A document bearing the certificate required by law showing that it has been registered must be treated as a registered document, notwithstanding the registration procedure may have been defective.

* First Appeal, No. 76 of 1881, from a decree of Maulvi Sami-ul-lah Khan, Subordinate Judge of Moradabad, dated the 31st March, 1881.

Held, therefore, where a document bore the certificate required by s. 68 of Act XX of 1866 showing that it had been registered, that, notwithstanding that it had been presented for registration by the agent of the person executing it under a power of attorney not recognizable under that Act for the purposes of s. 34, it must be treated as a registered document. *Sah Mukhun Lall Panday v. Sah Koondun Lall (1)* and *Muhammad Ewaz v. Birj Lal (2)* referred to.

A document was presented for registration by the agent of the person executing it authorized by a power of attorney not recognizable under the registration law, and was admitted to registration. *Held* that the person executing such document could not be allowed to object to the validity of its registration by reason of its having been registered under a power of attorney not recognizable under the registration law, such person being herself responsible for the defect in registration. *Har Sahai v. Chunn, Kuar (3)* followed.

THE plaintiff in this suit claimed to recover certain moneys due on a bond bearing dated the 15th August, 1868, claiming to recover the same from the defendants personally, and by the sale of certain villages hypothecated in the bond, situate in the Moradabad district. The principal defendant, Ikbal Begam, set up as a defence to the suit, *inter alia*, that the bond was not admissible in evidence, as it had not been duly registered, having been registered under a power-of-attorney which was not recognizable for the purposes of the Registration Act. It appeared that the bond was presented for registration to the Registrar of the Moradabad District by one Ghazanfar Ali as attorney of Ikbal Begam. Ghazanfar Ali's power-of-attorney was executed by Ikbal Begam at Rampur in the territory of the Nawab of Rampur. It was dated the 11th January, 1863, and was authenticated on the 23rd January, 1863, in the Registrar's office at Rampur. The Court of first instance held that, assuming that the power-of-attorney was not recognizable for the purposes of the Registration Act of 1866, the Act in force when the bond was registered, yet the bond having been as a matter of fact registered, its registration could not be rendered invalid by any irregularity in the registration proceedings.

The defendant appealed to the High Court, contending again that the bond had not been duly registered, and was therefore not admissible in evidence.

Mr. Conlan and Mir Zahur Husain, for the appellant.

(1) 15 B. L. R. 228; S. C., L. R. 2 (2) I. L. R. 1 All. 465.
Ind. Ap. 210; 24 W. R. 75. (3) I. L. R. 4 All. 14.

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Pandit *Bishambhar Nath* and *Lala Harkishen Das*, for the respondent.

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The judgment of the Court (STRAIGHT, J., and OLDFIELD, J.), so far as it related to this contention, was as follows :—

OLDFIELD, J.—Ikbal Begam prefers two objections in appeal. The first is that the document which was executed by ladies residing out of British India was not registered by a power-of-attorney prescribed by the Registration Act, and must be in consequence looked on as a document not properly registered and null and void and not admissible in evidence. As to the first objection, the Registration Act XX of 1866 (applicable to the registration of the document in suit) requires that, when the principal is not residing in British India, the power-of-attorney held by the agent, who presents the document for registration, shall have been executed before and authenticated by a notary public or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India. The power-of-attorney in question appears from the endorsement upon it to have been registered in the registration office of Rampur in the territories of the Nawab of Rampur. It may be that this is not a sufficient fulfilment of the requirements of the Registration Act, s. 35, and that the registering officer should not have registered the bond in suit, under such a power-of-attorney; but however this may be, the bond having been certified as duly registered must be treated as a registered document. S. 88 of Act XX of 1866 is to the effect that nothing done in good faith pursuant to the Act by any registering officer shall be deemed invalid merely by reason of any defect in his appointment or procedure. In *Sah Mukhun Lall Panday v. Sah Koondun Lall* (1) their Lordships of the Privy Council held that it was not the intention of the Legislature that every registration of a deed should be null and void by reason of a non-compliance with the provisions of ss. 19, 21, 36 or other similar provisions of Act XX of 1866, but that it was intended that such errors and defects should be classed under the general words “defect in procedure” in s. 88 of the Act, so that ignorant and innocent persons should not be deprived of their property through any error or inadvertence of a public officer on whom they would naturally place reliance; and that case was

(1) 15 B. L. R. 228; S. C., L. R. 2 Ind. Ap. 210; 24 W. R. 75.

referred to and approved in *Muhammad Ewaz v. Birj Lal* (1); and they point to a distinction which may reasonably be made between parties and strangers to a deed.

In this case an objection of the nature raised is not one which can properly come from appellant, herself a party to the bond. She admits or at any rate does not dispute execution both of the power-of-attorney and the bond, and that she authorized its registration and acted on it as binding the parties, and it is clear she was herself responsible for any defect in registration. The case of *Har Sahai v. Chumni Kuar* (2) decided by this Court is here in point.

We are therefore of opinion that we cannot go behind the certificate of registration and we disallow the first objection.

FULL BENCH.

1882
April 27.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

LAL SINGH AND OTHERS (PLAINTIFFS) v. KUNJAN AND OTHERS (DEFENDANTS)*

Ex-parte decree—Appeal—Act X of 1877 (Civil Procedure Code), ss. 108, 540.

Held by STUART, C. J., and STRAIGHT and TYRRELL, JJ., (OLDFIELD and BRODHURST JJ., dissenting) that a defendant against whom a decree has been passed *ex parte* and who has not adopted the remedy provided by s. 108 of the Civil Procedure Code cannot appeal from such decree under the general provisions of s. 540.

THE plaintiffs in this suit and defendant No. 5 were the proprietors of certain land. Defendants Nos. 1, 2, and 3, were the heirs of one Andi deceased, the occupancy-tenant of such land. Andi before his death mortgaged his holding to defendant No. 4. The plaintiffs claimed in this suit to have this mortgage set aside, on the ground that it had been made without their consent and was consequently illegal, and to recover possession of the land, by ejection of defendant No. 4, the mortgagee. Defendant No. 4, the mortgagee, alone appeared to defend the suit. He set up as a defence to it that an occupancy-tenant of land in the village in which the land in suit was situate had by village-custom the right to mortgage his holding; and that the mortgage to him by Andi had been made with the consent

* Second Appeal, No. 693 of 1881, from a decree of Maulvi Zain-ul-abdin, Subordinate Judge of Sháhjahánpur, dated the 18th April, 1881, modifying a decree of Maulvi Sayyid Muhammad, Munsif of West Badáun, dated the 25th January, 1881.

(1) I. L. R. 1 All. 465. (2) I. L. R. 4 All. 14.