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the defendant's life would be endangered were she to return to the plaintiff, and it therefore held that she could not be compelled to return to him. In accordance with its decision on these issues the Court dismissed the suit. On appeal by the plaintiff the lower appellate Court affirmed this decree.

On second appeal to the High Court it was contended that the law governing Sunnis should not have been applied in this case, but that governing Shias.

Pandit *Nand Lal* and *Munshi Kashi Prasad*, for the appellant.

Mr. *Conlan*, Pandit *Ajudhia Nath*, *Lala Lalta Prasad*, and *Shah Asad Ali*, for the respondents.

The judgment of the Court (BROD_HURST, J. and TYRRELL, J.) was delivered by

TYRRELL, J.—The pleas in appeal fail. It is found as a fact that the respondent is a Sunni, and as such she is entitled to the privileges secured to her married position by the law of her sect. No authority has been cited to us for the theory that a Sunni woman contracting marriage with a Shia becomes thereby governed by the Shia law. Apart from these legal considerations, we see no reason for disturbing the decrees of the Courts below on the merits. The respondent made out a case for protection against proved risk to her personal health and safety, and we are satisfied that the Courts below have rightly exercised their discretion in refusing the plaintiff the relief he claimed. The appeal is dismissed with costs.

Appeal dismissed.

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January 16.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

MATHURA DAS AND OTHERS (PLAINTIFFS) v. MITCHELL AND ANOTHER
(DEFENDANTS).*

Registration—Unregistered conveyance—Bond confirming conveyance—Registration of conveyance instead of bond—"Defect of procedure"—Act III of 1877 (Registration Act), ss. 58—60, 87—Claim to attached property—Suit to establish judgment-debtor's right—Burden of proof.

A decree-holder sued to establish that certain property was the property of W his judgment-debtor, such property being claimed by A as his. He proved that

* First Appeal, No. 14 of 1881, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 9th September, 1880.

for five years and more *W* had been in possession of such property as ostensible owner. *Held* that, this being so, it rested with *A* to prove his title.

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A deed of sale, which required to be registered, not having been registered, and the time for presenting it for registration having expired, the vendor, in order to avoid the effect of the deed of sale being unregistered, gave the purchaser a bond confirming such deed. The bond, with the deed of sale annexed thereto, was presented for registration. By mistake or for some other reason the particulars to be endorsed on a document admitted to registration, and the certificate showing that a document has been registered, were endorsed on the deed of sale and not on the bond.

Held that, assuming that the bond had been registered, it was doubtful whether such an obvious attempt to defeat the provisions of the Registration Law should be permitted to succeed; that, whether there had been a mistake and the certificate of registration really applied to the bond or not, the provisions of ss. 58, 59, and 60 of the Registration Act had not been complied with, and the bond was to all intents and purposes unregistered; and that the defect was not a "defect of procedure," within the meaning of s. 87, and which could be passed over.

THE plaintiffs in this suit claimed a declaration that a "screw house" situate at Cawnpore was the property of the defendant *W. Mitchell*, and liable to be sold in execution of a decree for money held by them against him. The plaintiffs had caused this property to be attached in execution of their decree against *W. Mitchell*. The defendant *A. Mitchell*, father of *W. Mitchell*, had objected to the attachment, claiming the property as his own, by virtue of a deed of sale executed in his favour by Messrs. Nicol Fleming & Co. on the 25th September, 1873. His objection was allowed, and thereupon the plaintiffs brought the present suit. They alleged that the property belonged to *W. Mitchell*, and the sale under which *A. Mitchell* claimed was fictitious and collusive, and invalid, having been made without consideration. The deed of sale dated the 25th September, 1873, was not registered. On the 31st December, 1878, Messrs. Nicol Fleming & Co. executed a bond in favour of *A. Mitchell* confirming the deed of sale. This bond recited that it was executed in consideration of the fact that the deed of sale, "was never registered in accordance with the provisions of the Indian Registration Act." On the 25th March, 1879, the bond was presented for registration, the deed of sale being annexed thereto. The particulars to be endorsed on a document admitted to registration, and the certificate showing that a docu-

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ment has been registered, were endorsed by the registering officer on the deed of sale. There was no reference in such endorsements to the bond. No endorsements were made on the bond. The District Judge of Cawnpore, by whom the suit was tried, framed the following, among other, issues for trial :—“ Who is the owner of the disputed property ? ” “ Is the conveyance to A. Mitchell a *bonâ fide* transaction for consideration paid, or was the deed relating thereto collusively and fraudulently executed, and registration effected in an illegal manner.” The District Judge decided these issues in favour of the defendant A. Mitchell, and dismissed the suit. Upon the question as to the admissibility in evidence of the deed of sale, the Judge observed as follows :—

“ Objection is taken to the registration as being informal, and hence the instrument itself is inadmissible in evidence : the question is, was the registration of both instruments necessary or not : there is no question of the first indenture being useless by itself ; the time for presentation to register it, even upon payment of fine, has long since expired ; but there is no reason why the second instrument should not be received, if the requirements of the stamp law relating thereto have been fulfilled : this instrument being in confirmation and of same import as the first one, but without the details set forth therein, the two papers form one whole, the registration of which relates to the indenture of the last date, which being within time is receivable in evidence : it is argued by plaintiff’s vakil that the certificate of registration being endorsed on the first instrument, which is proved to be inoperative, the registration has not been according to law, and the deed is therefore invalid : reference is made to the High Court’s ruling in *Sah Koondun Lall v. Makhun Lall* (1) and *Mahomed Altaf Ali Khan v. Pertab Singh* (2) as to the necessity of a document being registered in accordance with the provisions of the Registration Act ; the Privy Council’s remarks in the special appeal brought before them by *Makhun Lall*, in the first of those cases, are also adverted to, as setting forth the procedure to be observed under ss. 22, 24, 26, 49 and 88 of Act XX of 1866, the law then in force, but neither has there been a departure from the law

(1) N.-W. P. H. C. Rep. 1869, p. 168.

(2) N.-W. P. H. C. Rep. 1873, p. 91.

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in the mode of registration, inconsistent with its obligations, nor do the precedent rulings apply to the present case, because of the want of analogy in the features of their exemplars : in *Sah Koondun Lall's* case the registering officer acted irregularly in proceeding of his own authority to register in the absence of persons whose presence was necessary for the due registration of a deed ; and upon the same principle, *viz.*, that the deed had not been registered by the persons executing the document, the registration in the case of *Mahomed Altaf Ali Khan* was pronounced to be irregular and invalid.

“ In the present case now before the Court, the defect is purely one of procedure ; the certificate of registration should, it is contended, have been attached to the indenture of the 31st December, 1878, and not to its annexure, which gives the coloring of registration to the instrument of 1873, which is allowed to be inoperative : the objection is more specious than real ; a glance at the document of the 31st December, 1878, discloses the want of room for the endorsement ; and looking upon the two documents as part and parcel of one whole, there was plenty of room on the last page of the whole, and upon it therefore the required certificate was written : I fail to see in this any irregularity in writing the registration ; moreover by s. 87, Act III of 1877, the law now in force, nothing done in good faith by any registering officer invalidates the registration by reason of a defect in procedure or appointment ; the mode adopted is not a defect in procedure, if the two documents are susceptible of being treated as one.”

The plaintiffs appealed to the High Court.

Mr. *Conlan* and Pandit *Ajudhia Nath*, for the appellants.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*) and *Babu Oprokash Chandar Mukarji*, for the respondents.

The judgment of the Court (*STRAIGHT, J.* and *TYRRELL, J.*) was delivered by

STRAIGHT, J.—This is an appeal from a judgment of the Judge of Cawnpore, dated the 9th September, 1880, under the following circumstances. The plaintiffs-appellants on the 11th June, 1879, obtained a money-decree for Rs. 2,036-5-0 against the defendant

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respondent William Mitchell, upon the basis of an arbitration award. In execution a screw-house situate in Collectorganj, Cawnpore, was attached as the property of the judgment-debtor, and thereupon the defendant-respondent Alexander Mitchell filed objections on the ground that the premises in question were his property, and that William Mitchell was his tenant. The contention was successful, and on the 11th August, 1879, an order was passed in the miscellaneous department under s. 280 of the Civil Procedure Code releasing the attachment. Hence the present suit, which is for a declaration that the screw-house referred to is the property of William Mitchell and liable to execution and sale at the instance of the plaintiffs. The Judge found that the premises did not belong to William Mitchell, and that they had been acquired by purchase in September, 1873, by Alexander Mitchell. He therefore dismissed the plaintiffs' claim and they now appeal. Their pleas in substance are that the decision of the Judge was against the weight of evidence, and that he wrongly admitted certain documents in proof, which were inadmissible. The respondents have also filed objections to the order of the lower Court as to costs, and the scale upon which it directed the pleaders' fees to be assessed.

The question for us to determine is, whether the screw-house in suit was or was not the property of William Mitchell at the time of its attachment by the plaintiffs, and in considering this point it will of course become necessary to decide upon the legitimacy or otherwise of the claim set up by Alexander Mitchell. We start with this fact at least certain, that from the end of 1873 or the beginning of 1874 down to the time of the plaintiffs' attachment, William Mitchell was in occupation of and carrying on his business at the premises in question, to all external appearances as the proprietor and owner. Having established this lengthened possession on the part of their judgment-debtor, the plaintiffs reasonably enough contend that they have made out a *prima facie* case, which it lies upon the defendants to rebut. We think that this is the correct view of the position, and that it rests with Alexander Mitchell to prove his title. This he seeks to do in a fashion, which is to say the least of it extraordinary. He produces two

documents, one purporting to be a deed of conveyance of the screw house to himself, dated the 25th September, 1873, and the other a confirmation bond, executed by the same parties as the conveyance, and dated the 31st December, 1878. Now it is obvious that the true document of his title is the conveyance of 1873, but unfortunately for him it is unregistered, and therefore inadmissible in evidence. So the expedient of the confirmation bond had to be resorted to, and in March, 1879, it was presented to the Collector for registration. Now even supposing registration had been formally and properly completed, we should have been very strongly disposed to hold that such an obvious attempt to defeat the provisions of the registration law should not be permitted to succeed. Indeed to allow a transaction of such a kind to pass as legitimate would be to throw the door open to the very mischiefs at which this branch of legislation is aimed. But as a matter of fact the confirming bond of the 31st December, 1878, never has been registered, whereas that of the 25th September, 1873, contains the registration certificate. It is said on the part of the defendants that this is a mistake, and that the certificate in reality applies to the document of December, 1878. All we can say to this is that the provisions of ss. 58, 59 and 60 of Act III of 1877 have not been complied with, and that the instrument remains to all intents and purposes unregistered. We cannot regard this as such a "defect in procedure" as is contemplated by s. 87, and one which we can pass over. We therefore think that neither of the documents mentioned was admissible in evidence, and that in admitting that of December, 1878, in proof, the Judge decided erroneously. Then the question arises, whether failing the written evidence of his title, Alexander Mitchell can be permitted to prove it *aliunde*. If we were rigidly to apply the strict rules of law, we should say, "no" but in order effectually and conclusively to dispose of the suit, we think it best to consider such facts as there are in evidence, and to pass a decision upon them. (The judgment then proceeded to dispose of the case on the merits.)

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