

to see what "*locus standi*" he could have had in any Court to ask to have the deed of sale set aside. Under these circumstances we are of opinion that the decisions of the lower Courts should be maintained and that this appeal should be dismissed with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

BHAGWAN SINGH AND ANOTHER (DEFENDANTS) v. KHUDA BAKHSH AND ANOTHER (PLAINTIFFS).*

Refusal to register on ground of denial of execution—Suit for registration—Act III of 1877 (Registration Act), ss. 71, 73, 77.

A Sub-Registrar refused to register a bond as the obligor denied the execution of it. The obligee, instead of applying to the Registrar under s. 73 of the Registration Act, in order to establish his right to have such bond registered, sued the obligor claiming a decree directing the registration of such bond. *Held* that such suit was not maintainable.

Ram Ghulam v. Chotey Lal (1) observed upon.

On the 26th April, 1879, the defendants in this suit gave the plaintiffs a bond for the payment of Rs. 213-13-0, together with interest at two per cent. per mensem, within two months, in which they hypothecated certain immoveable property as collateral security for the payment of such moneys. On the 26th June, 1879, the plaintiffs presented this bond for registration, praying that the defendants, who had refused to appear at the registration office, might be required to do so, under the provisions of s. 36 of Act III of 1877. The defendants were accordingly required to appear, and did so, and denied the execution of the bond, and the Registering Officer, the Sub-Registrar, on the 25th July, 1879, refused to register it. On the 29th August, 1879, the plaintiffs brought the present suit against the defendants in which they claimed the

* Second Appeal, No. 540 of 1880, from a decree of H. A. Harrison, Esq., Judge of Farnkhabad, dated the 5th March, 1880, affirming a decree of Pandit Gopal Sahar, Munsif of Farukhabad, dated the 16th December, 1879.

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registration of the bond. The defendants set up as a defence to the suit that the plaintiffs should have applied to the Registrar, under s. 73 of Act III of 1877, to establish their right to have the bond registered, and until they had done so, and the Registrar had refused to register it, a suit for a decree directing its registration could not be maintained. The Court of first instance, relying on *Ram Ghulam v. Chotey Lal* (1), disallowed this contention, and gave the plaintiffs a decree. On appeal by the defendants the lower appellate Court also disallowed the contention. The defendants appealed to the High Court, again contending that the plaintiffs should have followed the procedure provided in Act III of 1877 in cases of refusal to register, and that, until they had done so and failed to obtain registration, the suit was not maintainable. The appeal came for hearing before PEARSON, J., and STRAIGHT, J., who referred it to the Full Bench for disposal.

The *Senior Government Pleader* (Lala Juala Prasad) and *Munshi Hanuman Prasad*, for the appellants.

Mr. *Amir-ud-din*, for the respondents.

The following judgment was delivered by the Full Bench:—

JUDGMENT.—This is a reference to the Full Bench by Pearson and Straight, JJ., the question being whether the plaintiffs' suit is barred by the provisions of the Registration Act of 1877. The relief asked in the plaint is that a decree be passed directing registration of the bond for Rs. 213-13-0 executed by the defendants in favour of the plaintiff, on the 26th April, 1879. It is admitted that the plaintiffs presented the instrument for registration to the Sub-Registrar on the 26th June, 1879, and that after some inquiry and nearly a month's delay he refused to register it on the ground of denial of execution by the obligors. Thereupon the plaintiffs, instead of taking any further steps under the Registration Act and applying to the Registrar in accordance with the provisions of s. 73, instituted the present suit on the 29th August, 1879. Both the lower Courts have decreed the claim, and the defendants now appeal to this Court. Their conduct has

(1) I. L. R., 2 All., 46.

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been disgraceful, and we regret to find ourselves constrained by the plain language of the law to admit the validity of their objections. But it appears to us that we have no other alternative. The plaintiffs' suit is not for specific performance of a contract, but distinctly contemplates and asks for the relief that would be prayed in a suit regularly brought in accordance with the terms of s. 77 of the Registration Act. But unfortunately for him he has failed to satisfy all the conditions precedent to the bringing such a suit, by omitting to make the application to the Registrar provided for by s. 73. For be it observed that the suit mentioned in s. 77 may be instituted "where the Registrar refuses to order the document to be registered," and it is also an incident not unworthy of notice that special provision is made at the end of the section, permitting the unregistered document, the admission of which in evidence could otherwise not be allowed, admissible for the purposes of such suit. In having failed to fulfil all the necessary preliminaries the plaintiff has put it out of the power of the Civil Courts to give him the relief he asks. To decree the prayer of his plaint in terms would be to direct a public officer to do that which he is specifically and plainly told not to do. For the last paragraph of s. 71 says: "No registering officer shall accept for registration a document endorsed 'registration refused' unless and until, under the provisions hereinafter contained, the document is directed to be registered." The plaintiff has not complied with the "provisions hereinafter contained" in that he made no application to the Registrar under s. 73, which, as has already been pointed out, was a condition precedent to the institution of a suit. The defendants' pleas in appeal must therefore prevail, and the appeal being decreed the plaintiffs' claim must fail. We may add that we shall make no order as to costs, as also that the case of *Ram Ghulam v. Chotry Lal* (1) referred to by the Judge is distinguishable in many ways from the present case, and has in our opinion no application to the suit now before us.

Appeal allowed.