

Sudhansu
Babu Hazra,
In re.
Jawala
Prasad, J.

A similar argument was advanced in the case of *Bebb v. Law Society* (1), and I would answer it in the words of Cozens Hardy, M. R., at page 294 of the Report :—"We have been asked to hold", says his Lordship, "what I for one quite assent to, that in point of intelligence and education and competency women—and in particular the applicant here who is a distinguished Oxford student (Calcutta University student)—are at least equal to a great many and possibly, far better than many of the candidates who will come up for examination, but that is really not for us to consider. Our duty is to consider and, so far as we can, to ascertain what the law is, and I disclaim absolutely any right to legislate in a matter of this kind. In my opinion, that is for Parliament (Legislature of this country)." The words within the brackets are mine.

Application-rejected.

1931

November, 25

APPELLATE CIVIL.

Before Das and Adami, JJ.

MIRZA MAHAMMAD ISMAIL BEG

SRICHARAN DAS. *

Registration Act, 1908 (Act XVI of 1908), sections 75 (2) and (3) and 77—Refusal to register document—decree directing registration—application for registration in accordance with decree, limitation for.

Where, in a suit under section 77 of the Registration Act 1908, the Civil Court has passed a decree directing registration of a document, the document must be presented for registration within 30 days from the date of such decree.

Gopinath Adhikary v. Gadadhar Das, opinion of Maclean, C. J., in (1), dissented from.

Udit Upadhia v. Imam Bauli Bibi (2), referred to.

The facts of the case material to this report were as follows—

The defendants instituted a suit under section 77 of the Registration Act, 1908, for a decree directing

* Circuit Court, Cuttack. Appeal from Appellate Decree No. 45 of 1920, from a decision of P. F. Madan, Esq., District Judge of Cuttack, dated the 14th September, 1920, confirming a decision of Babu Tulsi Das Mukharjee, Sub-Judge of Cuttack, dated the 20th December, 1920.

(1) (1914) 1 Ch. 286. (2) 1906) I. L. R. 33 Cal. 1020 (1022).

(3) (1902) I. L. 24 All. 402 (417).

the registration of a certain *kabala*, and obtained a decree on the 11th August, 1915. The court sent the decree to the District Registrar for registration on the 28th August. The plaintiffs appealed to the District Judge and obtained an order staying registration of the *kabala* pending the disposal of the appeal. The trial court's decree was affirmed by the District Judge on the 31st March, 1917. The plaintiffs appealed to the High Court and their appeal was dismissed on the 29th July, 1918. The date of the High Court's order was the 13th August, 1918. On the 18th December, 1918, the defendants made an application to the trial court praying that the *kabala* should be sent to the Sub-Registrar for registration. The plaintiffs objected on the ground that the document had not been presented within 30 days from the date of the High Court's decree. The court disallowed the objection and held that the defendants were entitled to registration of the document. The latter applied to the Sub-Registrar for registration on the 23rd March, 1919. The plaintiffs again objected that the application was time-barred. The objection was disallowed and registration was ordered on the 14th April, 1919. The plaintiffs appealed from the order. Pending the disposal of the appeal the plaintiffs instituted the present suit for a declaration that the order for registration was void. The trial court dismissed the suit and the plaintiffs appealed to the District Judge who affirmed the decree of the trial court.

The plaintiffs appealed to the High Court.

Sushil Madhab Mullick and *Durga Prusanna Das Gupta*, for the appellants.

S. A. Asghar (with him *Bichitranand Das*), for the respondents.

DAS, J.—I am unable to agree with the view taken by the learned Judge in the court below. The defendants instituted a suit under the provisions of section 77 of the Registration Act for a decree directing the registration of a document. The Civil Court passed a decree in favour of the respondents but did not specify the time within which the document was to be

1921

Mirza
Mahammad
Ismail Beg.
vs.
Sricharan
Das.

1921
 ———
 Mirza
 Mahammad
 Ismail Beg.
 vs.
 Sricharan
 Das.
 ———
 Das, J.

presented for registration. In point of fact the document was presented five months after the decree was pronounced by the Civil Court.

The question arises, had the registering officer any jurisdiction to register the document? Mr. *Asghar*, on behalf of the respondents, relies upon a decision of the Calcutta High Court in the case of *Gopinath Adhikary vs. Gadadhar Das* (1). Mr. *Sushil Madhab Mullick*, on the other hand, relies upon a decision of the Allahabad High Court in the case of *Udit Upadhia vs. Imam Bandi Bibi* (2). As a matter of fact the point did not arise in either of these cases. In the Calcutta case the document was as a matter of fact presented for registration within thirty days from the order of the Civil Court and in the Allahabad case the point arose only very remotely. But Sir Francis Maclean, delivering the judgment of the Calcutta High Court in the case already cited, did express an opinion that there was no positive enactment in the section, that is to say in section 77, that the document must be presented for registration within thirty days after the passing of the decree.

With all respect I am unable to agree with the construction placed upon this section by the late Chief Justice of the Calcutta High Court. It is quite true that so far as the first paragraph of section 77 is concerned, it relates to the suit and not to the decree which is to be passed by the Civil Court; but then paragraph (2) provides as follows:—

“The provisions contained in sub-sections (2) and (3) of section 75 shall *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.”

This takes us back to the provisions of sub-sections (2) and (3) of section 75. Now those sub-sections are as follows:—

“Sub-section (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.

(1) (1906) I. L. R. 33 Cal. 1020. (2) (1902) I. L. R. 24 All. 492 (417)

Sub-section (3). Such registration shall take effect as if the document had been registered when it was first duly presented for registration."

Reading sub-sections (2) and (3) of section 75 with section 77, it appears to me that the registering officer has jurisdiction to register a document if it be duly presented for registration within thirty days of the decree passed by the Civil Court. It is in my opinion impossible to escape from the very clear words that have been used by the Legislature in this connection. Obviously the Legislature thought that it was necessary to impose some limitation of time for the presentation of a document for registration, and it did think that thirty days ought to be the limit of time.

I must allow this appeal and set aside the judgments and decrees passed by the courts below. The plaintiffs are entitled to a decree in terms of prayer (1) in the plaint; they are also entitled to their costs throughout.

ADAMI, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Das and Adami, JJ.

CHOWDHURI CHINTAMONI MAHAPATRA

v.

SRIMATI MONMOHINI DEBI. *

Code of Civil Procedure, 1908 (Act V of 1908) Order XXI, rules 11(2) (g) and 17, section 151—Execution of decree, interest wrongly stated in application for—application for amendment, whether maintainable.

Order XXI, rule 17, of the Code of Civil Procedure, 1908 merely requires the court to which an application for execution is made, to ascertain that the application complies in form with the provisions of rules 11 to 14 and does not impose upon the court the duty of seeing that the amount entered in the application as being due by way of interest under rule 11 (2) (g), is correct.

Where a decree-holder has, in his application for execution, over stated the amount due on account of interest, the court is competent to direct that the application be amended so as to show the correct amount due.

*Circuit Court, Cuttack, Appeal from, Appellate Order No. 18 from an order of Mr. F. F. Madan Esq., District Judge of Cuttack, dated the 14th August, 1920, confirming an order of Babu B. K. Sarkar, Munsif 1st Court of Cuttack, dated the 26th and 27 April, 1920,

1921

Mirza
Mahammad
Ismail Beg
vs.
Sricharan
Das.
Das, J.

1921

November, 26.