

Under that law her sons, and not her daughters, would inherit, and therefore, appellant's suit was rightly dismissed.

I would accordingly dismiss the appeal with costs.

LENTAIGNE, J.—I concur.

1924
 MA SEIN
 v.
 MA PAN
 NYUN.
 HEALD,
 J.

PRIVY COUNCIL.

BAIJNATH SINGH AND OTHERS—*Appellant*.

v.

JAMAL BROTHERS & COMPANY, LIMITED,
 AND ANOTHER—*Respondents*.

P.C.^o
 1923
 Nov. 22.

(On appeal from the late Court of the Judicial Commissioner of Upper Burma.)

Upper Burma Regulation II of 1897—Presumption of due presentation of a document for registration—Rule 7 of the Registration Rules framed under the Regulation—Presumption as to the correctness of an endorsement on the document by the Registering Officer—Presence at the foot of the document of the signature of an unauthorised person cannot operate to contradict presumption of correctness—Omission on the part of the Registering Officer to note the failure or refusal of a party to the document to appear before him, a defect in procedure—Such omission cannot vitiate registration made on proper presentation.

Held, that the correctness of an official endorsement on a document as to the person presenting it for registration was to be presumed, and that the presence at the foot of the document, of the signature of a person other than one duly authorised to present it, for such signature there being no legal sanction, could not operate to contradict the correctness of the official endorsement.

Held further, that, where, a deed was admittedly executed by two persons but it was objected that execution was not admitted before the Registering Officer by one executant, it was a fair presumption in the circumstances that the officer had acted under Rule 5 when he registered the document.

Held also, that the omission on the part of a registering officer to make a note on the document as to the circumstance that one of the parties to it either was unable or had refused to appear before him, was an omission for which the person presenting the document for registration could not be held responsible and would at the most be only a defect in procedure which did not vitiate registration that was made on a proper presentation.

Jambu Parshud v. Muhammed Aflab Ali Khan, L.R., 42 I.A., 22—*referred to*

* *Present* :—LORD DUNEDIN, LORD PHILLIMORE, SIR JOHN EDGE, MR. AMEER ALI AND SIR LAWRENCE ENKINS.]

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BAIJNATH
SINGH
v.
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BROTHERS
& Co., LTD.

On the 16th July 1904 the appellant Baijnath Singh and one Mehtar, who were the owners of certain oil-wells or oil-well sites, executed a deed by which Baijnath Singh purported to lease thirty-eight oil-wells or oil-well sites belonging to him and Mehtar purported to lease eighteen oil-wells or oil-well sites belonging to him to A. S. Jamal Brothers & Company for a period of ten years at a royalty of annas twelve per one hundred viss of the oil won. Baijnath Singh received Rs. 25,000 from the said Company which was to be set-off by the royalty payable under the lease by the Company. The deed was not registered and the lease under it therefore was inoperative.

Thereafter, on the 16th August 1904 Baijnath Singh and his brother Fateh Bahadur Singh executed instrument purporting to be a mortgage for Rs. 25,000 of ten oil-well sites to the A.R.M.V. Chetty firm of Rangoon. This transaction was admittedly benami, the real mortgagees being A. S. Jamal Brothers & Company, and was registered at Yenangyaung; but Baijnath Singh alone had admitted before the Registering Officer execution of the instrument. At the foot of the instrument appeared also the signature in the Tamil language of one Ramasawmy Chetty who was a clerk of the S.R.M.V. Chetty firm. The mortgage was payable on demand and bore interest at one per cent. per mensem.

In January 1908, Baijnath Singh conveyed two of the ten mortgaged well-sites to the Burma Oil Company, Limited, and in September 1908 he conveyed the remaining eight to the Nath Singh Oil Company, Limited.

A. S. Jamal Brothers & Company were subsequently absorbed by and sold their assets to Jamal Brothers & Company, Limited, and on the 11th September 1914 in order to transfer to the new company their rights

under the mortgage of the 16th August 1904, they joined with one Annamalai Chetty, as the attorney of the partners in the S. R. M. Chetty firm, in the execution of an assignment of the mortgage.

Later, in C.R. No. 33 of 1915 of the District Court of Magwe, Jamal Brothers & Company, Limited, sued Baijnath Singh, Fateh Bahadur Singh, the Nath Singh Oil Company, Limited, and the Burma Oil Company, Limited, on the mortgage of the 16th August 1904 for a decree for principal and interest amounting to Rs. 56,870, but the District Court dismissed their suit on the grounds, *inter alia*, that there was no consideration for the mortgage deed in question as the payment of Rs. 25,000 by A. S. Jamal Brothers & Company was wholly unconnected with it and that the assignment of the 11th September 1914 to the plaintiff company was not proved.

The plaintiff company then appealed to the late Court of the Judicial Commissioner of Upper Burma with the result that the learned Judicial Commissioner (B. H. Heald, Esq., M.A., I.C.S.), set aside the District Court's judgment and gave the plaintiff company the mortgage decree prayed for. Thereupon Baijnath Singh jointly with Fateh Bahadur Singh and the Nath Singh Oil Company, Limited, appealed to His Majesty in Council making the plaintiff company and the Burma Oil Company, Limited, respondents.

De Gruyther, K.C., and *Parikh*—for the Appellants.
Dube—for the Respondent.

The judgment of their Lordships was delivered by—

SIR LAWRENCE JENKINS.—This is an appeal from a decree dated the 10th January 1921, of the Court of the Judicial Commissioner of Upper Burma, which reversed a decree dated the 31st July 1916, of the Court of the Additoo District Judge of Yenangyaung.

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BALJNATH
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The suit is to enforce a mortgage of the 16th August 1904, for Rs. 25,000 advanced by the firm of Abdul Shakoor Jamal Brothers & Company to the defendants, Baijnath Singh and Fatch Bahadur Singh. The mortgage was taken in the name of Suna Ravana Mona Vengarachellum Chetty, but as benamidar for the firm of Jamal Brothers & Company.

The present plaintiffs are Jamal Brothers & Company, Limited, who claim to be transferees from the firm of Jamal Brothers & Company and their benamidars of the mortgage debt and the security.

The suit was dismissed in the 1st Court but was decreed on appeal. From the Appeal Court's decree the present appeal is preferred.

Though numerous pleas in defence were urged in the early stages of the suit which has been needlessly and lamentably prolonged, the only pleas that now survive are by way of objection to the execution and registration of the mortgage and the transfer.

The mortgage purports to be signed by both the mortgagors and its execution is admitted by them.

But then it is contended that there has been no valid registration of the document. The law applicable is at that date to be found in Regulation II of 1897, and the rules made in exercise of the powers conferred by it. By the fourth rule "every document to be registered under the rules must be presented by some person executing or claiming under the same . . . or by the agent of such person . . . duly authorized by power of attorney."

It is urged that the mortgage was presented for registration by an agent, and to comply with the terms of the rule it was incumbent on the plaintiffs to produce a duly authenticated power of attorney authorizing the agent's presentation. In support of this contention reliance was placed on the decision

of this Board in *Jambu Parshad v. Muhammed Aftab Ali Khan*, L.R. 42 I.A., '22.

But the whole structure of this argument has no real foundation.

It rests on the supposition that the writing at the foot of the document purporting to be the Tamil signature of Ramasawmy Chetty shows that it was he who presented the document and that he was only an agent. This theory owes its origin to the belated and unfortunate discovery of one of the defendants' legal advisers, and is directly opposed to the official statement signed by the Registering Officer that the document was presented for registration by the mortgagee.

There is no provision in the Regulation or the Rules that requires the signature of the person presenting the document for registration. But under Rule 7 registration shall be affected by the Registering Officer writing on it an endorsement in the terms of that appearing at the foot of the document.

The correctness of this official endorsement is to be presumed, and the Tamil signature, for which there was no legal sanction, cannot operate to contradict it.

The presentation, therefore, was by a person claiming under the document.

It is next objected that execution of the mortgage was not admitted before the Registering Officer by Fatch Bahadur Singh. It, however, admittedly bears his signature and it is a fair presumption in the circumstances that the officer acted under Rule 5 when he registered the document. It is true that where any party to a document is unable or refuses to appear, the rule requires a note of the circumstances to be made, and that has not been done. But the omission is one for which the person presenting the document cannot be held responsible: it is at most

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a defect in procedure which did not vitiate the registration made as it was on a proper presentation.

Then the transfer of the mortgage to the limited company, the plaintiffs, is assailed.

It is dated the 11th September 1914 and the parties to it are S.R.M. Soobramaniyan Chetty S.R.M. Mayappa Chetty, S.R.M. Chinnayu Chetty *alias* Ramasawmy Chetty, and S.R.M. Arumachellam, described as carrying on business in partnership under the style of S.R.M. of the first part, Jamal Brothers and Company of the second part, and Jamal Brothers and Company, Limited, the present plaintiffs, of the third part.

The Chetty partners, by the direction of the Jamal Brothers assigned, and Jamal Brothers confirmed, the mortgage debt of Rs. 25,000 with interest and also the mortgaged property to the plaintiff Company, and the deed if executed and duly registered would unquestionably vest the debt and the security in the plaintiff Company.

It is contended, however, that there is no formal proof of execution by the Chettys. It is true that the evidence of M. A. S. Jamal, as recorded on the 11th July 1915, does not speak specifically to execution by them. But later affidavits were sworn by M. A. S. Jamal and his advocate Mr. Ormiston to the effect that the witness had deposed to execution by the attorney of the Chetty firm. A petition was accordingly presented praying that the witness might be examined further on the point of the execution by the assignors of the deed of assignment. Interrogatories directed to this point were prepared under an order of the Court, and though no answers are on the record it is apparent from what is said by the Judicial Commissioner that on further examination under the order of the Court the formal defect was remedied.

It is next urged that though Mayappa was expressed to be a party, he did not execute. But in the attestation clause it is stated that the parties (other than the plaintiff Company) had set their hands and the document is expressed to be signed by all four of the Chetty partners. The signature was in fact by their attorney and in the circumstances their Lordships are satisfied that the attorney acted for all four partners. This view gains support from the endorsement of presentation from which it is apparent that the signatory held a power of attorney authorizing him to act for the four partners. The transfer was also signed by the Jamal Brothers, and execution by them was admitted by their duly authorized attorney. The result then is that the transfer has been sufficiently executed and its registration has been effected in accordance with the law that then applied.

The appeal therefore fails and should be dismissed, and their Lordships will humbly advise His Majesty accordingly.

The appellants must pay the costs of the appeal.

Solicitor for appellants— E. Dalgado.

Solicitors for Respondents— Waterhouse & Co.

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