

LETTERS PATENT APPEAL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mya Bu.

U AUNG DIN AND ANOTHER

v.

MAUNG AUNG MYINT AND OTHERS.*

1933

Mar. 2.

Registration of documents—Endorsed certificate—Conditions for presentation—Late presentation—Registration by wrong person—Acting without jurisdiction—Defect of procedure—Registration Act (XVI of 1908), ss. 23, 25, 32, 49, 60 (1), 87.

The certificate of registration endorsed on a document is *prima facie* evidence that the document has been duly registered, but it is not conclusive.

Mahomed Ewas v. Birj Lall, 4 I.A. 166—*referred to*.

The Registration Act has imposed conditions regulating the presentation of documents for registration, and these conditions cannot be weakened or strained on the ground that they may appear to be exacting and strict.

Chhotey Lal v. Collector of Moradabad, 49 I.A. 375—*referred to*.

The registration officer has no jurisdiction to register a document required under s. 23 of the Registration Act to be registered within four months from the date of its execution if it is presented for registration after the lapse of such period, and without regard to the provisions of s. 25. The fact that he has registered the document will not take the document out of the ambit of s. 49 of the Act.

Bhagat Singh v. Ram Narain (1883) P.R. 93; *Raya Raghoba Kumat v. Anapurnabai*, 10 Bom. H.C.R. 98; *Raja Keesara Venkatappa,yya v. Raja Nayani Venkata Ranga Row*, I.L.R. 43 Mad. 288—*referred to*.

Presentation for registration by a wrong person and presentation at the wrong time stand on the same footing. Registration of a document after late presentation is not a mere defect in procedure on the part of the registering officer so as to bring into play the provisions of s. 87 of the Act.

Ma Pwa May v. S.R.M.M.A. Chettyar Firm, I.L.R. 7 Ran. 624; *Mujibunnissa v. Abdul Rahim*, 28 I.A. 15—*referred to*.

Bose for the appellant. When a document is proved to have been registered, it must be presumed that it was presented within time under s. 23 of the Registration Act, unless the contrary is proved. Rule 43 (6) of the Burma Registration Rules directs that the registering officer shall satisfy himself that a document is presented within time before registering it ;

* Letters Patent Appeal No. 7 of 1932 arising out of Civil 2nd Appeal No. 291 of 1931 of this Court, reported at I.L.R. 11 Ran. 15.

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and in the indorsement on the deed in question s. 23 is referred to. It is for the registering officer to point out that a document is out of time, and if he does so the party concerned may proceed under s. 25 or s. 72. But if the officer chooses to register a document which "ought not to be registered", the error should not vitiate registration because "innocent persons may be misled, and may not discover until it is too late to rectify it the error by which, if the registration is in consequence to be treated as a nullity, they may be deprived of their just rights." *Sah Mukhun Lall Panday v. Sah Koondun Lall* (1). A party will not know when he is safe if it is held that a registered document may be questioned at any time. *Mahomed Erwaz v. Birj Lall* (2).

A distinction has been drawn between "defects in procedure" and "want of jurisdiction in the registering officer." Absence of authority to present a deed has been held to go to the root of the matter and vitiate registration. See *Mujibumissa v. Abdul Rahim* (3), *Janbu Parshad v. Muhammad Aftab Ali Khan* (4) and *Ma Shwe Mya v. Maung Ho Hnaung* (5). On the other hand, where an insufficiently stamped deed had been registered it was held that it was merely a defect which could be cured. *Ma Pwa May v. S.R.M.A. Chettyar Firm* (6).

The registering officer exercises a discretion, under ss. 23 and 25, in registering a deed, and if he chooses to register a deed without imposing any penalty under s. 25, the deed cannot subsequently be questioned. Moreover, official acts are presumed to have been correctly performed. *Kanhaya Lal v. National Bank of India* (7).

(1) 2 I.A. 210, 216.

(2) 4 I.A. 1166, 75.

(3) 28 I.A. 15, 23.

(4) 42 I.A. 22.

(5) 49 I.A. 395.

(6) I.L.R. 7 Ran. 624.

(7) I.L.R. 4 Lah. 284, 294.

It is also highly inequitable to call upon a party to prove that a document executed in his favour was duly executed. It is for the party impugning the deed to prove that it was not duly executed.

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Chowdhury for the respondent. A distinction must be drawn between those matters which are of the essence of the registration law, and those which are only subsidiary to the object which the Legislature had in view in making the law. See *Sheo Dayal Mal v. Hari Ram* (1). Where a document is validly presented non-observance of the prescribed procedure will be a curable irregularity. But if the presentation is invalid, as for example where it is presented out of time, the registering officer does not acquire any jurisdiction at all, and the registration of the document will be a nullity. There can be no distinction between registration out of time and presentation by an unauthorised person, for both go to the root of the matter. The Legislature has advisedly used the word "shall" in s. 23.

See *S.M.A.R. Chetty Firm v. Ko Teik Ka* (2), *Raja Venkatappayya v. Raja Ranga Row* (3) and *Maung Kyaw v. Sithambaram Chetty* (4).

Sah Mukhun Lall Panday v. Sah Koondun Lall and Mahomed Ewaz v. Birj Lall, cited *ante*, must be read in the light of the circumstances disclosed in those cases.

Three Courts have held that the deed was presented out of time, and it is too late to contend that the burden of proof does not lie on the appellant.

PAGE, C.J.—This appeal must be dismissed.

The suit was brought on a mortgage executed on the 2nd October 1922. The mortgage was registered,

(1) I.L.R. 7 All. 590, 595.

(3) I.L.R. 43 Mad. 288, 306.

(2) I.L.R. 1 Ran. 22.

(4) 4 L.B.R. 88, 91.

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and the certificate of registration endorsed on the mortgage deed is *prima facie* evidence

“ that the document has been duly registered in manner provided by this Act and that the facts mentioned in the endorsements referred to in s. 59 have occurred as therein mentioned ” ;

[s. 60 (1) of the Indian Registration Act (XVI of 1908) and *Mahomed Ewaz v. Birj Lall* (1)]. The certificate of registration, however, is not conclusive evidence of valid registration, and a mere perusal of the endorsement on the mortgage deed in the present case discloses that the registration was not in accordance with law, because it is specifically set out in the endorsement that the document was presented for registration on the 5th February 1923, that is, four months and three days after the execution of the deed. Under s. 23 of the Registration Act it is provided that

“ subject to the provisions contained in ss. 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.”

In my opinion in the circumstances obtaining in the present case the registration of the mortgage deed by the registrar was *ultra vires*. No attempt was made at the hearing of the suit, pursuant to s. 25, to account for the delay in presentation on the ground of urgent necessity or unavoidable accident, and there was no evidence that U Chitty, the agent of Aung Din, the mortgagee, who presented the document for registration on the 5th of February 1923 was justified in presenting it more than four months after it was executed. U Chitty stated that “ as soon as the deed was given to me I went and presented it for registration ; I did not keep it in my hand.” Aung Din, who retained possession of the deed after

it was executed and until it was registered, did not give any reason to justify the delay in presentation. In my opinion the failure of the mortgagee to register this deed within the four months prescribed in s. 23 brings the document within the ambit of s. 49.

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In *Chhotey Lal v. Collector of Moradabad* (1) Lord Buckmaster, delivering the judgment of the Board, observed

"The Registration Act has imposed several conditions regulating the presentation of documents for registration, and it is of great importance that those conditions, framed with a view to meet local circumstances, should not be weakened or strained on the ground that they may appear to be exacting and strict."

It is well settled that where there has been a failure to comply with the provisions of s. 32, which provides that the document shall be presented for registration by the persons therein named, the breach of this section is not a mere defect in procedure on the part of the registrar so as to bring into play the provisions of s. 87. [*Mujibunnissa and others v. Abdul Rahim and Abdul Aziz* (2); *Jambu Parshad v. Muhammad Aftab Ali Khan and another* (3); *Madhu Molla v. Babonsa Karikar* (4).]

As pointed out by Lord Robertson in *Mujibunnissa and others v. Abdul Rahim and Abdul Aziz* (2), neither *Sah Mukhun Lall Panday v. Sah Koondun Lall and another* (5) nor *Mahomed Ewaz and another v. Birj Lall and another* (6)

"gives any countenance to the view that the absence of any party legally entitled to present a deed for registration is a defect in procedure falling under s. 87. In both those cases the registrar was throughout moved by a person having title, and was exercising his jurisdiction. The difference is, in their Lordships' judgment, vital."

(1) (1922) 49 I.A. 375.

(2) (1900) 28 I.A. 15.

(3) (1914) 42 I.A. 22.

(4) (1927) I.L.R. 55 Cal. 1008.

(5) (1875) 2 I.A. 210.

(6) (1877) 4 I.A. 166.

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I cannot see any difference in principle between presentation by a person who is not entitled to present the document for registration, and presentation after the period within which the presentation has to be made. Presentation by the wrong person, and presentation at the wrong time appear to me to stand on the same footing. In either event, in my opinion, the registrar has no jurisdiction to register the document, and the fact that he has registered the document will not take that document out of the ambit of s. 49 of the Registration Act. *Bhagat Singh and another v. Ram Narain* (1); *Raya Raghoba Kamat v. Anapurnabai Kom Subalbhat and others* (2); *Raja Keesara Venkatappayya and four others v. Raja Nayani Venkata Ranga Row and 14 others* (3). In *Ma Pwa May and another v. S.R.M.M.A. Chettyar Firm* (4) Lord Atkin, delivering the judgment of the Judicial Committee, observed in connection with s. 87 of the Registration Act that "in seeking to apply this section it is important to distinguish between defects in the procedure of the registrar and lack of jurisdiction. Where the registrar has no jurisdiction to register, as where a person not entitled to do so presents for registration, or where there is lack of territorial jurisdiction, or where the presentation is out of time, the section is inoperative. See *Mujibunissa v. Abdul Rahim* (5)."

These observations of the learned Lord, no doubt, were *obiter dicta*, but they are of great weight, and in my opinion they are in consonance both with principle and authority. For these reasons I am of opinion that the appeal fails, and must be dismissed with costs.

MYA BU, J.—I agree.

(1) (1883) P.R. 93, 285.

(2) (1873) 10 Bom. H.C.R. 98.

(3) (1919) I.L.R. 43 Mad. 288

(4) (1929) I.L.R. 7 Ran. 624.

(5) (1900) 28 I.A. 15.