

It is scarcely necessary to say that I regard the second appellant as culpable at least equally with the first ; for, there can be no reason to doubt that it was she who originated and instigated the plot to murder her husband.

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BAGULEY, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Brown.

MAUNG AUNG DIN AND ANOTHER v. MAUNG AUNG MYINT AND OTHERS.*

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 Sept. 14.

Registration—Document presented and registered after expiry of time limit—Defect in procedure—Lack of jurisdiction—Registration Act (XVI of 1908), ss. 23, 87.

A document that requires by law registration, if presented and accepted for registration after the expiry of the four months from the date of its execution allowed by s. 23 of the Registration Act cannot be said to be duly registered in accordance with law. This is not a mere defect in procedure curable under s. 87 of the Act; the sub-registrar in such a case has no jurisdiction to register the document.

Ma Pwa May v. S.R.M.M.A. Firm, I.L.R. 7 Ran. 624; Mohamed Ewaz v. Eiry Lall, 4 I.A. 166; Mujibunissa v. Abdul Rahim, 28 I.A. 15—referred to.

K. C. Bose for the appellants.

S. Chowdhury for the respondents.

BROWN, J.—The appellants sued the respondents on a mortgage deed. The deed is dated the 2nd of October 1922, and purports to have been registered on the 5th of February 1923. The suit has been dismissed on the ground that although the deed purports to have been registered it was not presented for registration within four months of the execution

* Civil 2nd Appeal No. 291 of 1931 from the judgment of the District Court of Pynmana in Civil Appeal No. 84 of 1930.

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thereof, and that the registration is, therefore, invalid. The endorsements on the deed show that the application to register was made only on the 5th of February 1923. The two lower Courts have found as a fact that it was presented for registration on that day, and I can see no reason for not accepting this finding now. It seems clear, therefore, that the presentation for registration was made after the expiry of the four months allowed by section 23 of the Registration Act.

It is suggested that the three days prior to the 5th of February 1923 may have been holidays or that the office of the Sub-Registrar may have been closed. There has, however, been no attempt to prove this, and I think the presumption must be against the appellants on this point. The person who presented the deed for registration on behalf of the appellants was the witness U Chitty. He makes no suggestion whatsoever that he had attempted to register the document before, and he says that he went and presented the document for registration as soon as it was given to him. It must, I think, be accepted as a fact that the document was only presented for registration on the 5th of February 1923.

The question for decision, therefore, is whether in spite of the failure to present for registration within time the fact that there is an endorsement to the effect that it is duly registered should be accepted, or whether the errors that have occurred are curable under the provisions of section 87 of the Registration Act.

It was held by their Lordships of the Privy Council in the case of *Mohamed Ewaz and another v. Birj Lall and another* (1) that it was stating the

(1) (1876) 4 I.A. 166.

case too broadly to say that unless a deed be registered in accordance with the substantial provisions of the law it must be regarded as unregistered though it may, in fact, have been improperly admitted for registration. Their Lordships, however, did not find that in all cases where the certificate required by section 60 of the Registration Act has been given the document must be held to be duly registered whatever may have happened before the registration, and it is quite clear from subsequent decisions of their Lordships that the law could not be stated in such broad terms.

In the case *Mujibunnissa and others v. Abdul Rahim and Abdul Aziz* (1), a document had been presented to the registrar for registration by a man who the registrar knew had derived his power-of-attorney from a dead man. It was held that this was not a defect in procedure falling under section 87 of the Act, but that in the case before him the registrar was acting without jurisdiction.

In the case of *Ma Pwa May and another v. S.R.M.M.A. Chettyar Firm* (2) it was held by their Lordships of the Privy Council that the registration of an instrument not duly stamped, contrary to section 35 of the Indian Stamp Act, is an error of procedure, and that if done in good faith registration in such cases is valid under section 87 of the Indian Registration Act, but at page 632 of the judgment their Lordships point out the distinction to be drawn between the two classes of cases. They remarked on the point as follows:

“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

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(1) (1900) 28 I.A. 15.

(2) (1929) I.L.R. 7 Ran. 624.

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presents for registration, or where there is lack of territorial jurisdiction, or where the presentation is out of time, the section is inoperative. On the other hand, if the registrar having jurisdiction has made a mistake in the exercise of it, the section takes effect."

So far as their direct applicability to the present case is concerned these remarks are no doubt *obiter*, but the judgment does contain a very definite statement that section 87 of the Registration Act does not apply where the presentation for registration is out of time.

A number of other cases on the point have been cited to me, but I do not think it is necessary to refer to them.

It has been contended that at the time the document was presented for registration it was open to the party presenting it to apply to the registrar for permission to register the document in accordance with the special procedure provided by section 25 of the Act. It is quite clear, however, that no such application was actually made. The document was presented to the Sub-Registrar for registration after the expiry of the four months from the date of the execution, and under section 23 of the Registration Act the Sub-Registrar had no jurisdiction to entertain the application or to register the document. According to the principles laid down in the decisions of the Privy Council that I have referred to, it seems to me clear that this is the correct view of the law. That being so, I must hold that the lower Courts were correct in their findings and that the suit by the plaintiffs was rightly dismissed.

I accordingly dismiss this appeal with costs.