

1926

AYA RAM-  
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BHAJAN RAM.

For the aforesaid reasons we are of opinion that the first condition prescribed by section 3 of the Usurious Loans Act has not been satisfied, and that the Court had no jurisdiction to interfere with the contract entered into by the parties. We accordingly allow the appeal and decree the claim with costs throughout.

N. F. E.

*Appeal accepted.*

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**APPELLATE CIVIL.**

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice  
Agha Haider.*

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*Nov. 17.*

BARKHA NATH (DEFENDANT), Appellant  
*versus*  
SHIV RAM AND ANOTHER (PLAINTIFFS) Respondents.

Civil Appeal No. 2615 of 1922.

*Indian Registration Act, XVI of 1908, section 77—Refusal to register—what amounts to—whether suit lies—where Registrar returned the document holding he could neither register nor refuse to register the same.*

On presentation by the plaintiff of a sale-deed for registration, the executant (a *Mahant* of a religious foundation), shortly after being served with notice, died; whereupon the Sub-Registrar returned the document to the plaintiff and wrote an order to the effect that he could neither register nor refuse to register the document, there being no representative of the deceased *Mahant*, nor any successor appointed. It was pleaded that the plaintiff's suit under section 77 of the Registration Act did not lie, because the order of the Sub-Registrar (as confirmed by the Registrar) did not *refuse* registration, but postponed it.

*Held*, that not merely the form, but the substance of the order, must be considered, and as neither the Sub-Registrar nor the Registrar had retained the document for further action to be taken at a future date their orders were tanta-

mount to a refusal within the meaning of the section, and the suit was rightly entertained.

*Hayat Ali v. Muhammad Sadiq* (1), *Abdul Hakim Khan v. Chandan* (2), *Gangadara Mudali v. Sambasiva Mudali* (3), and *Kirpa Ram v. Asa Singh* (4), followed.

*First appeal from the decree of Pandit Omkar Nath Zutshi, Subordinate Judge, 1st class, Lahore, dated the 15th August 1922.*

DIWAN MEHR CHAND and LAL CHAND, for Appellant.

J. G. SETHI and FAKIR SINGH, for Respondents.

The judgment of the Court was delivered by—

AGHA HAIDAR J.—This is a defendant's appeal arising out of a suit instituted by the plaintiff under the provisions of section 77 of the Indian Registration Act. The plaintiff came into Court alleging that one *Pir Prabhu Nath*, the *Mahant* of a religious foundation, executed a sale-deed in his favour on the 7th of August 1920 but afterwards refused to get it registered. The plaintiff applied to the Sub-Registrar under section 36 of the Indian Registration Act on the 4th of September 1920. In the meantime *Pir Prabhu Nath* died somewhere between the 17th October 1920 and the 28th October 1920, after service of summons to appear before the Sub-Registrar had been effected upon him. The matter came up before the Sub-Registrar on the 11th November 1920 who wrote out an order that, in view of the fact that the presenter of the document admitted that there was no representative or successor of *Prabhu Nath*, he, the Sub-Registrar, could not either register the document or refuse its registration and he according-

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(1) (1912) 16 I. O. 97.

(3) (1916) I. L. R. 40 Mad. 759.

(2) (1911) I. L. R. 34 All. 165.

(4) 41 P. R. 1917.

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ly ordered that the document be returned to the presenter. Against this order the present plaintiff filed an appeal before the Registrar on the 23rd November 1920 who, after enquiring as to who was the successor of Prabhu Nath, on the 12th January 1921 refused to interfere with the Sub-Registrar's order on the ground that the question of Prabhu Nath's successor had not been settled.

The present suit was filed by the plaintiff under the provisions of section 77 of the Indian Registration Act. The defendants pleaded that the suit under section 77 was misconceived in that there was no refusal according to the intendment of that section. There was a further plea denying the execution of the document by Prabhu Nath. The Court below overruled both these pleas and decreed the plaintiff's suit.

The defendants have come up in appeal to this Court and the contentions raised by them in the Court below were repeated in the arguments before us. It is said that the orders of the Sub-Registrar and of the Registrar in appeal did not, in so many words, *refuse* registration but that they left the matter in abeyance pending the appointment of a successor to Prabhu Nath and that the intention underlying the orders passed by the Sub-Registrar and the Registrar was that the document might be re-presented after a successor was duly appointed to Prabhu Nath. We have given the matter our very best consideration and considered the authorities on the subject. We are satisfied that the orders passed both by the Sub-Registrar and the Registrar in substance and in effect are tantamount to an order of refusal within the meaning of section 77 of the Indian Registration Act. It must be noted that the document it-

self was returned to the presenter thereof and was not retained either by the Sub-Registrar or by the Registrar in his office for further action to be taken at a future date. We think that the matter is settled by the following authorities :—

- (1) *Hayat Ali v. Muhammad Sadiq* (1).
- (2) *Abdul Hakim Khan v. Chandan* (2), and
- (3) *Gangadara Mudali v. Sambasiva Mudali* (3).

There is a case of the Chief Court of the Punjab, *Kirpa Ram and Natha Mal v. Asa Singh* (4), where the law is very succinctly laid down in consonance with the authorities quoted above. In all these matters we have to look to the substance and not to the mere form in which a particular officer chuses to express his meaning.

In the present case we have not the slightest doubt that both the officers, *i.e.*, the Sub-Registrar and the Registrar, having regard to the peculiar circumstances of the matter before them, really declined to exercise their powers of registration and stayed their hands. This is refusal and the plaintiffs were entitled, after this order, to institute the present suit under the provisions of section 77 of the Indian Registration Act.

As regards the question of the execution of the document by Prabhu Nath, we have been taken through the evidence by the parties and we are satisfied that the evidence of the marginal witnesses sufficiently establishes the fact of execution by Prabhu Nath. Other pleas were taken touching the validity and the binding effect of the document and also as to the capacity of

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Prabhu Nath to execute the same, but the Court below very properly declined to go into these matters and no argument was addressed to us on this part of the case. We think that the decision of the Court below was perfectly correct. We accordingly dismiss this appeal with costs.

*N. F. E.*

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice Agha Haidar.*

1926  
 Nov. 20.

MALLA (DEFENDANT), Appellant

*versus*

MUHAMMAD SHARIF AND OTHERS (PLAINTIFFS),  
 Respondents.

Civil Appeal No. 990 of 1922.

*Specific Performance—Contract to purchase immoveable property—entered into by the guardian of a minor—whether enforceable by the minor after attaining majority.*

*Held, following Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri (1), that a contract for the purchase of immoveable property entered into by the guardian of a minor cannot be specifically enforced at the option of the latter after attaining majority.*

*First appeal from the decree of Lala Murari Lal Khosla, Senior Subordinate Judge, Shahpur, at Sargodha, dated the 20th January 1922, granting specific performance of the contract.*

OERTEL and TEK CHAND, for appellant.

*Nemo*, for Respondents.

The judgment of the Court was delivered by—

Sir SHADI LAL, C. J.—The facts relevant to the question of law involved in this appeal may be shortly