

APPELLATE CIVIL.

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

A.S.P.S. SUBRAMANIAN CHETTIAR AND OTHERS

1935

v.

Mar. 15.

LLOYDS BANK, LTD.*

Security bond—Consent money-decree—Immovable property, security for due repayment—Enforcement of bond by sale of property—Bond not registered—Registration Act (XVI of 1908), s. 17 (1) (b).

Pursuant to a consent money-decree the appellants executed in favour of the Court a bond in which they promised to repay the decretal amount due to the respondent bank in two instalments by certain dates. They declared therein that the title deeds of the lands deposited with the bailiff of the Court should be security for the due payment of these sums and in default that the Court should be entitled to order the sale of the lands and to apply the proceeds towards the discharge of the amount due; on the other hand if they carried out the terms of the bond the title deeds were to be returned to them. There was default, and the bank applied for leave to sell the property.

Held, that the security bond fell within s. 17 (1) (b) of the Registration Act, and not being registered could not be enforced by an order for sale. In accepting a bond the Court intimates that the property tendered as security is deemed to be sufficient. The Court approves the substance not the form of the security, the bond as executed being the form in which the security is subsequently furnished. In such circumstances the execution of the bond is not an act of the Court, or a step of judicial procedure.

Bindersri Naik v. Gangaram, 25 I.A. 9; *Hemanta Kumari v. Midnapur Zamindari Co.*, I.L.R. 47 Cal. 485; *Pranal v. Lakshmi*, 26 I.A. 101—*considered and explained*.

Lahore Spinning Mills v. Utlam Chand, P.R., C.J., Vol. 54 (1919) 316; *Nagaruru v. Tangatur*, I.L.R. 31 Mad. 330—*followed*.

Jayappa v. Shivangouda, I.L.R. 52 Bom. 72; *Kasturi Lal v. Goverdhan Dass*, I.L.R. 15 Lah. 282—*dissented from*.

Kalyanwalla for the appellant. The security bond executed by the appellants in favour of the respondents is compulsorily registrable under s. 17 (1) (b) of the Registration Act, and since it has not

* Civil First Appeal No. 114 of 1934 arising out of Civil Execution Case No. 11 of 1934 of the District Court of Hanthawaddy, and other connected appeals.

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been registered it cannot be enforced in execution proceedings. *Nagaruru v. Tangatur* (1). The position might have been different if the respondents had actually attached the properties, and thereafter applied for sale. The respondents have not done so.

Aiyar, Chari and Banerjee for the co-sureties supported the appellant's case.

McDonnell for the respondent. The execution of the security bond and the application for sale of the properties secured thereby were themselves steps in aid of judicial procedure, and they come within the broad principle laid down by their Lordships of the Privy Council that proceedings in Courts do not require registration. In *Jayappa v. Shivangouda* (2) and *Kasturi Lal v. Goverdhan Dass* (3) many previous rulings on the point were considered, and the Courts expressly dissented from the view taken by the Madras High Court in *Nagaruru's* case.

PAGE, C.J.—This appeal arises out of a series of applications for leave to execute decrees passed by Das J.

For the purpose in hand all the decrees are substantially in the same form as the decree that was passed in the present suit, which runs as follows :

“ By consent it is ordered and decreed that the defendants do pay to the plaintiffs the sum of Rs. 22,827-12-0 (rupees twenty-two thousand eight hundred and twenty-seven and annas twelve only) and interest on the principal amount Rs. 22,500-0-0 (rupees twenty-two thousand five hundred only) at the contract rate, *viz.* 8½ (eight and half) per centum

(1) I.L.R. 31 Mad 330.

(2) I.L.R. 52 Bom. 72.

(3) I.L.R. 15 Lah. 282.

per annum with monthly rests from the date of institution of the suit, *viz.* 5th day of May 1932, till payment or realization together with the costs of the suit as taxed by the officer of the Court ;

By consent, it is ordered that the amount be payable half by 15th April 1933 and the other half by 15th April 1934 and that the defendants shall tender security for the amount due within one month to the satisfaction of the Bailiff of this Court and that security already given by the defendants to the Bank shall be taken into consideration in considering the value of the security."

Pursuant to the decree the defendants by way of security executed a bond the operative portion of which was to the following effect :

" Now the condition of this obligation is such that if the aforesaid S.V.K.V. Arunasalam Chettyar firm and A.S.P.S. Ramanathan Chettyar firm duly pay the half of the decretal amount including cost together with all interest to date mentioned herein above on or before the 15th April 1933 and thereafter shall pay the other half by the 15th April 1934 and the whole liability created by or under the decree is liquidated, then the above written bond shall be void and of no effect otherwise the same shall be and remain in full force and virtue if such payment or payments shall not be made within time as stipulated, the plaintiff bank shall be at liberty to take out execution for the recovery of the whole amount awarded to it under the decree and we hereby declare that the title deeds of the lands as set out in Schedules A and B have been deposited with the Bank and those in Schedules A₁ and B₁ have already been deposited with the Bailiff of this Court as and for security for payment by us, or by our heirs, legal representatives of the decretal amount as may be payable by us or by them and upon our or their failure to pay the amount or amounts the said Court may order that the same be sold and that the proceeds applied so far as they may extend towards the discharge of the said amount or amounts, provided that if we shall have not made any default of the condition, the title deeds relating to the properties described in Schedules A and B shall be returned to us."

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In each of these cases the suit was brought to recover the amount due on a promissory note, the consideration for the promissory note being a loan which was also secured by an equitable mortgage. *Prima facie*, therefore, the decree-holders could not "bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage." [Order XXXIV, rule 14—Burma Code rule 3 (6).] It was conceded, however, by the learned advocates who appeared for the appellants respectively that the equitable mortgage in each case no longer subsisted after the consent decree was passed, and that the rights of the decree-holders depended upon the terms of the decree. It was also common ground that the decree-holders could only execute their money decrees against the immovable property of the judgment-debtors by attachment and sale; and that the application for execution in each of the cases under consideration was by way of sale without attachment of immovable property set out in the security bond which the judgment-debtors had executed, and under which in case of default the decree-holders became entitled to sell the immovable property subject to the bond. In each case an order for sale of the property has been passed. The judgment-debtors now appeal upon the ground that the security bond which it is sought to enforce falls within section 17 (1) (b) of the Registration Act (XVI of 1908), and as the bond is not registered it cannot be enforced in execution proceedings or otherwise.

There is a conflict of opinion in the High Courts of India as to whether such security bonds are registrable or not; the High Court of Madras holding that they must be registered, the High Courts of Bombay and Lahore being of opinion that the

execution of such bonds is merely "a step in procedure", and therefore that the bonds do not fall within section 17 of the Act. Now, it is plain—indeed it is conceded—that each of the present applications for execution is based not on the decree but on the bond, for the decree could not be executed by sale without attachment. The application, therefore, is not to execute "any decree or order of a Court" within section 17 (2) (vi), but to enforce the security bond which is caught by section 17 (1) (b) of the Act, and cannot "affect any immovable property comprised therein" unless it has been registered. *Nagaruru v. Tangatur* (1), *Lahore Spinning and Weaving Mills Co., Limited v. Uttam Chand* (2).

I find myself in agreement with the following observations of Martineau J. in the above case :

"I cannot agree with the lower Court that the document is in any sense a petition. It contains no request for anything to be done, and is nothing but a security bond.

It also appears to stand on a different footing from a compromise, which, in so far as it is submitted to, and judicially acted upon by the Court, is a step of judicial procedure not requiring registration. A compromise submitted to the Court has to be followed by a decree, but a security bond requires no order of the Court to render it effectual. The Court's acceptance of the bond given by the judgment-debtors merely indicates, as has been pointed out by the Madras High Court in the case mentioned above, that the Court considers the security sufficient, and does not give validity to the bond.

Nor can the bond be treated as a part of the order of this Court directing execution to be stayed on the judgment-debtors furnishing security. It was executed in compliance with, or in consequence of, that order, and is something distinct from the order itself."

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The Bombay and Lahore High Courts, however, in *Jayappa Lokappa Narsinganawar v. Shivangouda Dyamangouda Patil* (1) and *Kasturi Lal and others v. Goverdhan Dass* (2)—founding upon the decisions of the Privy Council in *Bindersri Naik v. Gangasaran Sahu and others* (3); *Pranal Annee v. Lakshmi Annee and others* (4) and *Hemanta Kumari Debi v. Midnapur Zamindari Co.* (5)—have held that such a security bond is “a step of judicial procedure not requiring registration” and, therefore, not registrable; because in *Pranal Annee v. Lakshmi Annee and others* (4)

“no reference is to be found to any special exemption created by the Act itself. As in *Bindersri Naik v. Gangasaran Sahu and others* (3) the judgment rests on a broad general principle that the proceedings of Courts do not require registration. It is permissible to doubt whether the head-note in *Pranal Annee v. Lakshmi Anne and others* (4) is not too narrowly expressed.”

[*Jayappa Lokappa Narsinganawar v. Shivangouda Dyamangouda Patil* (1) *per Crump J.*]. With great respect to the learned Judges who decided these cases in the Bombay and Lahore High Courts, however, if I correctly apprehend the meaning and effect of the authorities which they purport to follow, the decisions of the Privy Council in *Bindersri Naik v. Gangasaran Sahu and others* (3) and *Pranal Annee v. Lakshmi Annee and others* (4) do not support the view which they are taken to express. Of course, if the terms of a document which otherwise would require registration are incorporated in

(1) (1927) I.L.R. 52 Bom. 72.

(3) (1897) 25 I.A. 9.

(2) (1933) I.L.R. 15 Lah. 282.

(4) (1899) 26 I.A. 101.

(5) (1919) I.L.R. 47 Cal. 485.

a decree or order of the Court, the judgment in *Pranal Annee v. Lakshmi Annee and others* (1)

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“ showed that, merely regarding the question as a question of evidence and not as to the effect of the decree on lands outside the subject of the suit, such a document as that in the present case when incorporated in a decree was clearly admissible as judicial evidence.”

[*per* Lord Buckmaster in *Hemanta Kumari Debi v. Midnapur Zamindari Co.* (2). But the case of *Hemanta Kumari Debi v. Midnapur Zamindari Co.* (2) must now be read subject to section 17 (2) (vi) of the Registration Act, as amended in 1929, which runs as follows :

“ Nothing in clauses (b) and (c) of sub-section (1) applies to—

* * * *

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding.”

In *Pranal Annee v. Lakshmi Annee and others* (1) Lord Watson observed :

“ The *razinamah*, in so far as it was submitted to and was acted upon judicially by the learned Judge, was in itself a step of judicial procedure not requiring registration ; and any order pronounced in terms of it constituted *res judicata*, binding upon both the parties to this appeal, who gave their consent to it.”

His Lordship, however, was careful to point out that :

“ The *razinamah* merely referred, by way of remark, to the lands now in dispute ; and the Judge was only asked to give effect to a compromise which related to the lands then in dispute before him. This order, accordingly, merely concerns the latter, and has no reference whatever to the lands described in Sched. D of the *razinamah*. So far as regarded these lands, the compromise

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was not submitted to the learned Judge, but was deliberately left by the parties to stand upon their unregistered agreement of union."

There is nothing in the judgment of the Privy Council in that case, as I understand it, to justify the supposition that instruments such as the security bond under consideration, which creates the rights upon which the application for execution is founded, are not registrable merely because the bonds were executed in the course of litigation. In *Bindersri Naik v. Gangasaran Sahu and others* (1), where a question arose as to the amount of interest to which certain mortgagees were entitled on the principal sum due under the mortgage, it appears that the mortgagors

"had constantly admitted and asserted that under the deeds in question they were not entitled to redeem, except upon payment of the principal sums, with interest thereon at Rs. 18 per cent per annum until paid; and that in respect of such admission and assertion they had got an extension of time with the consent of their creditors. But they contended that none of these proceedings in the Subordinate Court of Gorakhpur could be referred to or founded upon, because they had not been registered in terms of s. 17 of Act III of 1877."

Lord Watson, who delivered the judgment of the Board in that case also, observed *obiter* that their Lordships

"think it right to add that, having heard counsel fully upon the point, they are satisfied that the provisions of s. 17 of the Act do not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties, or of orders made by the Court."

That case also, in which it was held that certain petitions filed in the suit containing admissions were not rendered inadmissible for the purpose of proving the admissions merely because they had

not been registered, such documents being regarded ~~as~~ on the same footing as the pleadings in a suit, in my opinion, is not an authority for the proposition that documents of title otherwise registrable, such as the security bonds which in the present cases it is sought to enforce in execution proceedings, are not liable to registration "upon a broad general principle that the proceedings of Courts do not require registration." In *Kasturi Lal and others v. Goverdhan Dass* (1) (at page 293) Tek Chand J. observed that

"it is not the execution of the bond which effects the transfer of rights in the immovable property described therein, but it is the order of the Court accepting the bond which creates these rights."

But with all due deference I do not so appraise the legal position. As I apprehend the matter all that the Court does in such circumstances is to intimate that the property tendered as security is deemed to be sufficient; in other words, it approves the substance not the form of the security, the execution of the bond being the mode and the bond the form in which the security is subsequently furnished. I cannot persuade myself that in such circumstances the execution of the bond is an act of the Court or "a step of judicial procedure", or that the Court merely by approving the substance of the security tendered can, or purports to, convert instruments such as the security bonds under consideration,—which by law are incapable of affecting the title to immovable property,—into operative, valid and admissible documents of title.

It is to be borne in mind that the effect of holding such documents as those now in question

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to be not subject to registration would be to facilitate the commission of fraud by dishonest sureties, and further, that the Legislature when amending section 17 (2) (vi) of the Registration Act in 1929 plainly had in mind the decisions of the Privy Council to which reference has been made, and yet expressly refrained from re-enacting section 17 (2) (vi) in general terms, or in such a form as would give colour to the view held by the High Courts of Bombay and Lahore. The Court is bound to give effect to the provisions of the statute which, in my opinion, do not exempt the security bonds in question from liability to registration. It may be that the decrees in the present suits can be executed by attachment and sale of the judgment-debtor's immovable property in the normal course of execution; but on that question we express no opinion. In my opinion in each case the appeal must be allowed, the order directing the sale must be set aside, and the application for execution dismissed. We make no order for costs in any of the cases.

MYA BU, J.—I agree.