

APPELLATE CIVIL.

*Before Mr. Justice Mosely.*U TE ZEIN *v.* DAW THAUNG.*

1937

Aug. 28.

Registration of document, suit for—Proof required—Execution of the document—Validity of the document—Genuineness, the only concern of Court—Registration Act, s. 77.

In a suit under s. 77 of the Registration Act for a decree directing that a document be registered all that is required to be shown by the plaintiff is that the document was executed, and also in some cases that certain requirements of the law as to presentation for registration have been complied with. In such cases the Court is concerned not with the validity but with the genuineness of the document sought to be registered, that is, whether the document has been executed by the person by whom it is alleged to have been executed.

Abdul Gafur v. Badial Haque, 55 C.L.J. 107, followed.

A. N. Basu for the appellant.

K. C. Sanyal for the respondent.

MOSELY, J.—The plaintiff-appellant brought a suit against the defendant-respondent under section 77 of the Registration Act for a decree directing that a deed of gift executed by the defendant in his favour be registered. The Sub-Registrar had refused to register it on the ground of denial of execution, and the appeal under section 72 of the Act to the Registrar had been dismissed.

The defence set up in the written statement was that the plaintiff, who is a monk, obtained the defendant's signature to the deed of gift of the land in question when she was seriously ill, and that she made her thumb impression without knowing what she was doing.

The trial Court correctly framed the two issues in the case which were merely as to whether the defendant

* Special Civil Second Appeal No. 109 of the 1937 from the judgment of the Assistant District Court of Mandalay in Civil Appeal No. 62 of 1936.

intended to consent to the gift when she put her thumb impression on the document, and whether the plaintiff was entitled to the relief asked for.

The trial Court found that the defendant knew perfectly well what she was doing, more particularly as she executed two other deeds of gift on the same day in favour of her grand-children. In appeal to the District Court the defendant-appellant raised the question of undue influence, which was never even pleaded in the trial Court, nor in issue, and the learned Assistant District Judge, though he agreed with the trial Court on the question of execution, found that the burden of proof in this transaction that undue influence had not been exercised was on the plaintiff, and that he had failed to discharge that burden, and the suit was accordingly dismissed.

Apart from the fact that such a defence was never raised, and could not have been raised for the first time in appeal, the defence set up in the District Court as a ground of appeal was one quite irrelevant to the suit. It is settled law that in a suit under section 77 all that is required to be shown by the plaintiffs is whether the document was executed or not, (or also in some cases whether certain requirements of the law as to presentation for registration have been complied with). It has been pointed out repeatedly that in such cases the Court is concerned not with the validity but with the genuineness of the document sought to be registered, that is, whether the document has been executed by the person by whom it is alleged to have been executed. See *Abdul Gafur Bhuiya v. Badial Haque and others* (1) and the cases cited there : *W. W. Broucke v. Rajah Shaheb Mohan Bikram Shah* (2) ; *Rajlakhi v.*

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(1) 55 C.L.J. 107.

(2) 14 C.W.W. 12.

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Debendra (1); *Balamlal v. Arunachala* (2) and *Kanhaya Lal v. Sardar Singh* (3).

This appeal therefore must be allowed, and the decree of the trial Court restored with costs throughout.

CRIMINAL REVISION.

Before Mr. Justice Mosely.

TUN YA v. THE KING.*

1937
Sep. 2.

Sanction to prosecute—Offence by Sub-inspector of Police—Appointment by designated officer—Power of punishment vested by Act in the appointing authority—Police Department Notification No. 44 of 1937—Rules delegating power of punishment—Rules ultra vires—Police Act, s. 7—Criminal Procedure Code, s. 197 (1).

Where a Sub-inspector of Police who has been appointed to his office by the Deputy Inspector-General of Police in exercise of the powers conferred by s. 7 of the Police Act (1861), was prosecuted prior to 1st April 1937 for the offence of extortion whilst purporting to act in the discharge of his official duty, no previous sanction of the Government for his prosecution was required under s. 197 (1) of the Criminal Procedure Code.

The Police Act confers the powers of appointment (which connote punishment) on certain designated officers, and Government cannot by any rules framed by it *delegate* disciplinary powers to be exercised on its behalf to those officers. The rules purported to be made in exercise of the powers conferred by s. 7 of the Police Act for the appointment and punishment of police officers of and below the rank of Inspector of Police, and contained in Police Department Notification No. 44 of 1937 do not leave the power of punishment to the authority by whom the appointment is made, but purport to *delegate* to certain specified authorities the power of punishment including dismissal. Such rules are to that extent *ultra vires*.

Emperor v. Jalal-ud-din, I.L.R. 48 All. 264; *King-Emperor v. Bo Maung*, I.L.R. 13 Ran. 540; *Kyaw Htin v. Ah Yoo*, I.L.R. 12 Ran. 530; *Pichai Pillai v. Mudaly*, I.L.R. 58 Mad. 787; *In re Sheik Abdul Khader*, 17 Cr. L.J. 168, discussed.

Emperor v. Bhimaji, I.L.R. 42 Bom. 172, referred to.

Campagnac for the applicant. S. 148 of the Government of Burma Act provides that all laws in Burma in force prior to separation are to continue, and

(1) (1897) I.L.R. 24 Cal. 668.

(2) (1894) I.L.R. 18 Mad. 255.

(3) (1907) I.L.R. 29 All. 284.

* Criminal Revision No. 376B of 1937 from the order of the 1st Additional Special Power Magistrate of Myitkyina in Cr. Regular Trial No. 3 of 1937.