

## APPELLATE CIVIL.

*Before Mr. Justice Mya Bu, and Mr. Justice Mosely.*

## MAUNG MYA MAUNG

*v.*

## A.R.M.M. MEYAPPA CHETTYAR.\*

*Registration—Presentation by person not the executant or authorized agent—Executants only for admitting execution—Mortgage deed—Presentation by mortgagee's father—Mortgagor present—No authority to register—Registration Act, s. 32.*

The provisions of s. 32 of the Registration Act are imperative and must be strictly followed. A registrar or sub-registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed it, or claims under it, or by the representative of such a person. Executants of a deed who attend to admit execution cannot be treated for the purpose of this section as presenting the deed for registration. They would be assenting to the registration, but that is not sufficient to give the registering officer jurisdiction.

A mortgage deed relating to immovable property was presented for registration by the father of the mortgagee without any power of attorney from the latter. The mortgagor was present at the time of registration, but he did not join in the act of presentation, nor was it done on his behalf or at his request.

*Held* that registration by the father was ineffectual.

*Jambu Prasad v. Ali Khan*, I.L.R. 37 All. 49 (P.C.), followed.

*Amba v. Shirinivasa*, 26 C.W.N. 369 (P.C.) ; *Barkurdar v. Bharai*, I.L.R. 15 Lah. 563 ; *Bharat Indu v. Hamid Ali Khan*, I.L.R. 42 All. 487 (P.C.) ; *Chetty Firm of A.M.V. v. Subaya*, 9 B.L.T. 197 ; *Halima Bee Bee v. Khairunnissa Bee Bee*, I.L.R. 3 Ran. 398 ; *Official Receiver v. P.L.K.M.R.M. Chettyar Firm*, I.L.R. 9 Ran. 170 ; *Ma Shwe Mya v. Maung Ho Huanung*, I.L.R. 50 Cal. 166, referred to.

*Hla Min* for the appellant.

*Chari* for the respondent.

MOSELY, J.—This appeal was remanded for a finding on a cross-objection as to whether the presentation for registration was made by the mortgagee, the plaintiff-respondent, or by his father, who admittedly held no Power on his behalf. It has been found, and is now admitted, that the mortgage deed was presented for registration by the mortgagee's father.

\* Special Civil 2nd Appeal No. 255 of 1938 from the judgment of the District Court of Hanthawaddy in Civil Appeal No. 18 of 1938.

It is, however, further argued that a presentation, valid under section 32 of the Registration Act, was made because the mortgagor was present at the time of presentation.

The only evidence on the subject is at page 87 of the record, where Maung Mya Maung stated :

" A.R.M.M. Meyappa (the mortgagee's father) himself presented that mortgage deed for registration at the Sub-Registrar's Office. I was then with them (*i.e.*, Meyappa and the writer of the deed)."

The leading case on the subject is the decision of their Lordships of the Privy Council in *Jambu Prasad v. Muhammad Aftab Ali Khan and others* (1). That was an appeal from a judgment of the High Court in *Jambu Prasad v. Muhammad Aftab Ali Khan and others* (2). The judgment of the High Court (at page 339) sets out that it was not proved that the mortgagors were present when the document was presented, and that all that could be inferred from the mortgagor's endorsement was that they attended the office on the same day as the document was presented, that is, of course, for the purpose of admitting execution. It is to be noted that the judgment of their Lordships (at page 54) does not make it clear that the mortgagors were not present at the time of presentation but only says that the mortgagors had attended to admit that they had executed the deeds and that they did not present them for registration. In a subsequent judgment of their Lordships [*Bharat Indu v. Hamid Ali Khan* (3)] this previous judgment was misunderstood, and it was said that the mortgagors in *Jambu Prasad's* case (1) had been present "at the same time", *i.e.*, at the time of presentation.

In *Jambu Prasad's* case (1) it was laid down that section 32 is imperative [see also *Amba alias*

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(1) (1914) I.L.R. 37 All. 49 (P.C.).

(2) (1912) I.L.R. 34 All. 331.

(3) (1920) I.L.R. 42 All. 487, 493 (P.C.).

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*Padmazathi v. Shrinivasa Kamathi* (1), a decision of their Lordships to the same effect]. It was said that its provisions must be strictly followed, and that a Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed it, or claims under it, or by the representative of such a person. It was further stated that executants of a deed who attend to admit execution cannot be treated for the purpose of this section as presenting the deed for registration. They would no doubt be assenting to the registration, but that would not be sufficient to give the Registering Officer jurisdiction. One of the objects of the section was to make it difficult for persons to commit frauds by means of registration under the Act, and it was the duty of the Courts in India not to allow the imperative provisions of the Act to be defeated. *Bharat Indu's case* (2), which is relied on by the appellant here is a decision on a different point. It was held there by their Lordships that although the original presentation was by a person not entitled to present the document for registration, yet that defect was cured by the Registrar taking the document to the house of the executant who was ill, who thereupon admitted execution. It was found that the first presentation was inoperative, but that the executant himself was the real presenter and treated as such. These cases were discussed in *Halima Bee Bee v. Khairunnissa Bee Bee* (3).

*Jambu Prasad's case* (4) was followed in *A.M.V. Chetty Firm v. Subaya and two others* (5), a case where the person who presented the document for registration was actually present at the time of registration and acquiesced in it.

(1) 26 C.W.N. 369 (P.C.).

(3) (1925) I.L.R. 3 Ran. 398.

(2) (1920) I.L.R. 42, All. 487, 493 (P.C.). (4) (1914) I.L.R. 37 All. 49 (P.C.).

(5) 9 B.L.T. 197.

*Official Receiver v. P.L.K.M.R.M. Chettyar Firm* (1) was a case where oral evidence was allowed to be given to show that the executant, who was present when a document was presented for registration by a person not competent to do so, was the real presenter in spite of an inaccurate endorsement made by the Sub-Registrar showing an unauthorized agent to be the presenter.

No doubt it is not necessary for the physical act of presentation to be performed by the presenter [*Barkhurdar Shah v. Mst. Sat Bharai and another* (2)]. But it is necessary to show more than mere attendance for the purpose of admitting execution; it is necessary to show, as their Lordships of the Privy Council remarked in *Ma Shwe Mya v. Maung Ho Hnaung* (3), that the obligor joined in the presentation; or, as is said in *Kunwar Deo Singh and others v. Sri Maharaj Kunwar Musammat Rani Dulaiya Judeo* (4), that presentation was made at the request of the obligor; or, again, as was said in *Satrohan Singh v. Ganga Bakhsh Singh* (5), on behalf of the obligor.

All that has been shown in the present case was that the obligor was present at the time of presentation, and not that he joined in it or that it was done at his request and on his behalf. It cannot, therefore, be said that the presentation was made by him.

The cross-appeal will be dismissed with costs.

MYA BU, J.—I agree.

[29-4-40. The trial Court had given a mortgage decree to the respondent. On appeal the District Court held that the mortgage was invalid as the deed

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(1) (1930) I.L.R. 9 Ran 170. (3) (1922) I.L.R. 50 Cal. 166, 169 (P.C.).  
(2) (1931) I.L.R. 15 Lah. 563, 575. (4) 135 I.C. 232.  
(5) 49 I.C. 375.

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was not properly presented for registration, but passed a simple money decree in favour of the respondent overlooking the fact that the personal claim was time-barred. Their Lordships allowed the appeal of the defendant.]