

**APPELLATE CIVIL.**

*Before Coldstream and Jai Lal JJ.*

MUNI LAL AND ANOTHER (PLAINTIFFS) Appellants

*versus*

GHULAM HUSSAIN-NUR AHMAD AND OTHERS  
(DEFENDANTS) Respondents.

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Jan. 30.

**Civil Appeal No. 2209 of 1930.**

*Indian Registration Act, XVI of 1908, sections 34, 49, 87 : Mortgage-deed — executed by mortgagor at Kashgar — registered by Sub-Registrar at Amritsar on presentation by mortgagee — but in absence of the executant — whether admissible in evidence.*

A mortgage-deed executed by the mortgagor at Kashgar was presented for registration to the Sub-Registrar, Amritsar, by one of the mortgagees and registered in the absence of the executant. The sole question before the High Court was whether the deed was admissible in evidence in view of the provisions of sections 34 and 49 of the Indian Registration Act.

*Held*, that the deed having been presented for registration by a person duly authorised to present it, any error or defect in the procedure of the registering officer, subsequent to the presentation, was a defect in procedure within the meaning of section 87 of the Act and that therefore the lower appellate Court had rightly admitted the document in evidence.

*Sah Mukhun Lall v. Sah Koondun Lall (1), Mohammad Ewaz v. Birj Lal (2) and S. M. A. R. Chetty firm v. Ko Tika (3),* relied upon.

Other Case-law, discussed.

*Second Appeal from the decree of Mr. E. R. Anderson, District Judge, Amritsar, dated 10th November, 1930, reversing that of Lala Parshotam Das, Subordinate Judge, 2nd Class, Amritsar, dated 29th January, 1930, and dismissing the plaintiffs' suit.*

(1) (1875) 2 I. A. 210.

(2) (1877) I. L. R. 1 All. 465 (P. C.).

(3) (1923) I. L. R. 1 Rang. 22.

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BADRI DAS and AMAR NATH CHONA, for Appellants.

BARKAT ALI and MAHESH DAS BEHL, for Respondents.

COLDSTREAM J. — The only question argued before us in this second appeal is whether a mortgage deed executed by Ganpat Ram, the fourth defendant, at Kashgar, on the 9th June, 1927, in favour of Gehna Mal-Diwan Chand, the second defendant, is admissible in evidence in view of the provisions of sections 34 and 49 of the Indian Registration Act, XVI of 1908.

The deed was 'attested' on the date of its execution by the British Consul at Kashgar. Presumably Ganpat Ram was present, but this is not recorded. It was presented for registration to the Sub-Registrar, Amritsar, by one of the mortgagees and the Sub-Registrar registered it on the 7th November, 1928, in the absence of the executant and, therefore, in contravention of section 34 of the Act.

The plaintiffs' case was that the deed had not been legally registered and was, therefore, inadmissible. The trial Court decided the matter in their favour. This decision was reversed on appeal by the District Judge of Amritsar and the present appeal is by the plaintiffs who contend that the trial Court's judgment was correct.

The trial Court based its finding that the registration was illegal and invalid on the Privy Council judgment in *Mujib-un-nisa v. Abdur Rahim* (1), which in his opinion superseded their Lordships' decision in *Sah Mukhán Lall v. Sah Koondun Lall* (2) and in support of this view appellants' counsel relies upon

(1) (1901) I. L. R. 23 All. 233 (P. C.). (2) (1875) 2 I. A. 210.

*Razi-un-Nisa v. Sabir Husain* (1), *Jambu Prasad v. Muhammad Aftab Ali Khan* (2), *Bharat Indu v. Hamid Ali Khan* (3), *Chhotey Lal v. Collector of Muradabad* (4) and *Mussammam Amir Begum v. Mst. Husain Bibi* (5). In *Sah Mukhun Lall v. Sah Koondun Lall* (6), the registering officer had acted in contravention of section 36 of Act XX of 1868 (section 34 of the present Act) by registering a deed without the executant having appeared before him. Although it was not necessary for their Lordships to determine whether the deed was a nullity, they observed that "there are no words in section 33" (now 34) "declaring that the registration of a deed shall be null and void if made without the appearance of the persons who executed it; and it is very doubtful whether the words of that section are not merely directory to the registering officer for the benefit of the parties to the deed, and whether his acting without the appearance of the parties, and upon evidence, instead of the admission of the parties of the execution of the deed, was more than a defect in procedure within the meaning of section 88. Again, it is not clear that the words 'unless it shall have been registered in accordance with the provisions of this Act' in section 49, are not, especially as regards strangers to the deed, confined to the procedure on 'Admitting to registration' without reference to any matters of procedure prior to registration, or to the provisions of sections 19, 21, or 36 of the Act, or other provisions of a similar nature. In considering the effect to be given to section 49, that section must be read in conjunction with section 88, (now 87) and with the words of the heading of

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(1) (1904) I. L. R. 26 All. 57. (4) (1922) I. L. R. 44 All. 514 (P.C.).  
 (2) (1915) I. L. R. 37 All. 49 (P.C.). (5) (1921) I. L. R. 2 Lah. 5.  
 (3) (1920) I. L. R. 42 All. 487 (P.C.). (6) (1875) 2 I. A. 210.

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para. 10, 'Of the effects of Registration and Non-Registration.' Now, considering that the registration of all conveyances of immovable property of the value of Rs.100 or upwards is by the Act rendered compulsory, and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable to suppose that it was the intention of the Legislature that every registration of a deed should be null and void by reason of a non-compliance with the provisions of sections 19, 21 or 36, or other similar provisions. It is rather to be inferred that the Legislature intended that such errors or defects should be classed under the general words 'defect in procedure' in section 88 of the Act, so that innocent and ignorant persons should not be deprived of their property through any error or inadvertance of a public officer, on whom they would naturally place reliance. If the registering officer refuses to register, the mistake may be rectified upon appeal under section 83, or upon petition under section 84, as the case may be; but if he registers where he ought not to register, innocent persons may be misled, and may not discover, until it is too late to rectify it, the error by which, if the registration is in consequence of it to be treated as a nullity, they may be deprived of their just rights."

These observations appear to be directly applicable to the present case. The opinion expressed was adopted by the Board in *Mohamad Ewaz v. Birj Lal* (1). In that case a deed had been registered although only two of the executants appeared and admitted execution and execution was denied on behalf of the third. The registration was contrary to the provisions of section 35 of the Registration Act then in

force (Indian Registration Act, III of 1877) which prohibited the registration of a document if any of the executants denied its execution. The question to be decided was, therefore, not the same precisely as that in the present case or in *Sah Mukhun Lall v. Sah Koondun Lall* (1), but in coming to their decision the Board quoted the passage cited above as discussing relevant considerations in support of it. *Sah Mukhun Lal Panday's case* (1) was followed by a Division Bench of the Punjab Chief Court in *Bhagat Singh v. Gauhar* (2). There the registration of a document had taken place in the absence of the mortgagor in contravention of section 34 of the Act III of 1877. The learned Judges remarked that the Privy Council judgment was conclusive to the effect that a registering officer acting without the appearance of the parties, as provided by the Act, was only guilty of a defect of procedure within the meaning of section 88 of the Act of 1866 (section 87 of the present Act). The Madras High Court in *Veerappa Chetty v. Kadire Sen Chetty* (3) appears at one place (p.389) to have accepted *Sah Mukhun Lall v. Sah Koondun Lall* (1) as authority for the broad proposition that all "errors of the registering officer are to be regarded as errors of procedure."

In *Mujib-un-nissa v. Abdur Rahim* (4) the first judgment on which appellants' counsel relies, the question was whether a document had been legally registered which had been accepted for registration although it had been presented, not by the executant or a person claiming under it, but by a person who stood in no other relation to the deed than that before the death of the person executing it he had held his power

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(1) (1875) 2 I. A. 210. (3) (1913) 20 I. C. 335.

(2) 77 P. R. 1890.

(4) (1901) I. L. R. 23 All. 233 (P. C.).

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of attorney. Their Lordships of the Privy Council held that the error of the Registrar was not a defect in his procedure only which, by virtue of section 87, did not invalidate the act of registration, but was an error of a more radical nature. "When the terms of section 32 are considered with due regard to the nature of registration of deeds, it is clear," they remarked, "that the power and jurisdiction of the Registrar only come into play when he is invoked by some person having a direct relation to the deed." Finding that the Registrar had not been moved by a person having title to present the deed they held its registration to be invalid. The same principle was followed by their Lordships in *Jambu Prasad v. Mohamad Aftab Ali Khan* (1), *Bharat Indu v. Hamid Ali Khan* (2) and *Ma Shwe Mya v. Maung Ho Hnaung* (3). In concluding their judgment *Jambu Prasad v. Mohamad Aftab Ali Khan* (1) they remarked: "One object of sections 32, 33, 34 and 35 of Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act. It is the duty of the Courts in India not to allow the imperative provisions of the Act to be defeated when, as in this case, it is proved that an agent who presented a document for registration had not been duly authorised in the manner prescribed by the Act to present it." This judgment was followed by the Lahore Court in *Mussammam Amir Begum v. Mst. Hussain Bibi* (4). It is to be noted that it did not express dissent from the decision in *Sah Mukhun Lall v. Sah Koondun Lall* (5) and *Mohammad Ewaz v. Birj Lal* (6).

*Razi-un-Nissa v. Sabir Husain* (7) certainly supports the appellants. That was a case in which

(1) (1915) I. L. R. 37 All. 49 (P.C.). (4) (1921) I. L. R. 2 Lah. 5.

(2) (1920) I. L. R. 42 All. 487 (P.C.). (5) (1875) 2 I. A. 210.

(3) (1923) I. L. R. 50 Cal. 166 (P.C.). (6) (1877) I. L. R. 1 All. 465 (P.C.).

(7) (1904) I. L. R. 26 All. 57.

the document concerned had been properly presented but the registering officer had in contravention of section 35 of the Act registered it notwithstanding the denial of execution by the representative of the deceased executant. Stanley C. J. and Burkitt J. held that the denial of execution deprived the registering officer of jurisdiction making his act *ultra vires* and invalid. The learned Judges found support for their view in *Mujib-un-nissa v. Abdur Rahim* (1), although they noticed that the facts in that case were not on all fours with the case before them. The decision of the Privy Council having been, not that the registering officer had been deprived of his jurisdiction by his error in procedure, but that he had no jurisdiction to entertain the application, of which there had been no proper presentation entitling him to entertain it. In the judgment it was observed that section 35 of the Registration Act had been amended by Act XII of 1879 by the insertion of the words, at the end of the section, "the registering officer shall refuse to register the document as to the person so denying." and that the amendment had been made after the decision in *Mohammad Ewaz v. Birj Lal* (2). But the Act of 1866, which was in force when *Sah Mukhun Lall v. Sah Koondun Lall* (3) was decided by the Privy Council expressly forbade the registration of documents unless the executants or their agents, assigns or authorised agents appeared before the registering officer and, in spite of the registration being in direct contravention of the directions of the Act, their Lordships, as already made clear, held that the error was a defect in procedure covered by section 83 (now 87) of the Act.

In the judgment of the Calcutta Court in *Ezeikiel & Co. v. Annada Charan Sen* (4), *Razi-un-Nissa v. Sabir*

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(1) (1901) I. L. R. 23 All. 233 (P.C.).

(3) (1875) 2 I. A. 210.

(2) (1877) I. L. R. 1 All. 465 (P.C.).

(4) (1923) I. L. R. 50 Cal. 180.

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*Hussain* (1) was cited with approval. The Calcutta Court held that there can be no effective registration as regards an executant who does not appear and admit execution. In the judgment Mukerjee J. remarked "The present case does not fall within the class where-  
of *Sah Mukhun Lall v. Sah Koondun Lall* (2) and *Mohammad Ewaz v. Birj Lall* (3) may be taken as types, where the procedure adopted by the registering officer might be deemed irregular or defective. On the other hand the case is more analogous to the decisions in *Mujib-un-nissa v. Abdur Rahim* (4), *Jambu Prasad v. Aftab Ali* (5), *Chhotey Lal v. Collector of Moradabad* (6) and *Bharat Indu v. Hamid Ali Khan* (7)." I find the distinction drawn by the learned Judge not very easy to follow.

Counsel for the appellants has referred to two other judgments, both of the Bombay Court, *Bal-Krishan Rao Ji v. Parash Ram* (8) and *Sita Ram v. Dharma Sukh Ram* (9). The question for decision in both of these cases was whether a document had been properly presented for registration and these judgments are not directly to the point in the case before us.

The Privy Council rulings in *Sah Mukhun Lall v. Sah Koondun Lall* (2), *Mohammad Ewaz v. Birj Lall* (3), *Mujib-un-nissa v. Abdur Rahim* (4) and the Allahabad judgment in *Razi-un-Nissa v. Sabir Husain* (1) were considered by the Rangoon Court in *S. M. A. R. Chetty Firm v. Ko Tika* (10). In his judgment Robinson C. J. observed that these "clearly

(1) (1904) I. L. R. 26 All. 57.

(2) (1875) 2 I. A. 210.

(3) (1877) I. L. R. 1 All. 465 (P.C.).

(4) (1901) I. L. R. 23 All. 233 (P.C.).

(5) (1915) I. L. R. 37 All. 49 (P.C.).

(6) (1922) I. L. R. 44 All. 514 (P.C.).

(7) (1920) I. L. R. 42 All. 487 (P.C.).

(8) (1926) I. L. R. 50 Bom. 628.

(9) (1927) I. L. R. 51 Bom. 971 (F.B.).

(10) (1923) I. L. R. 1 Rang. 22.



bring out the distinction that must be drawn between a defect in procedure, that is the fault of the registration officer for which the persons presenting the document for registration are in no way responsible, and a mistake arising from their own act. This distinction is recognised in several later cases which are based on these two decisions of their Lordships of the Privy Council." The learned Chief Justice expressed his conclusion in the following words:—

"Having regard, therefore, to the authorities, I am of opinion that, where a document is presented by a person duly authorised to present it who thus initiates the jurisdiction of the registering officer, and who does all that he is required to do under the Act and is guilty of no shortcoming thereunder, it would be contrary to the scheme of the Act, and it could not have been the intention of the Legislature, that he should be punished for any error or defect in the procedure of the registering officer subsequent to the presentation."

The weight of all these authorities appears to me to support the decision appealed against. They certainly do not afford any justification for the contention of the appellants' counsel that the principles laid down in *Sah Mukhun Lall v. Sah Koondun Lall* (1) and *Mohammad Ewaz v. Birj Lal* (2) have been subsequently departed from by the Privy Council. These principles have, on the contrary, been expressly approved and applied *Ma-Pwa May v. S. R. M. M. A. Chettyar Firm* (3). It is true that in that case the only irregularity committed by the registering officer was that he registered a document which was not

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(1) (1875) 2 I. A. 210. (2) (1877) I. L. R. 1 All. 465 (P. C.).

(3) (1929) I. L. R. 7 Rang. 624 (P. C.).

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duly stamped. In holding that the error was one covered by section 87 of the Act, their Lordships referred to both *Sah Mukhun Lall v. Sah Koondun Lall* (1) and *Mohammad Ewaz v. Birj Lal* (2) as decisions which justified their conclusion and remarked that in seeking to apply section 87 "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 presents for registration, or where there is lack of territorial jurisdiction or where the presentation is out of time, the section is imperative, see *Mujib-un-nissa v. Abdur Rahim* (3). On the other hand if the Registrar has jurisdiction in the exercise of it the section takes effect. \* \* \* \* The prohibition against registration is included in section 35 amongst similar prohibitions as to admitting evidence and authenticating, which can only be regarded as procedure."

The decision of the lower Court was I think right and I would accordingly dismiss the appeal with costs.

JAI LAL J.

JAI LAL J.—I agree.

A. N. C.

*Appeal dismissed.*

(1) (1875) 2 I. A. 210.

(2) (1877) I. L. R. 1 All. 465 (P. C.).

(3) (1901) I. L. R. 23 All. 233 (P. C.).