

## APPELLATE CIVIL.

*Before Addison, Acting C. J. and Din Mohammad J.*

GANESH DASS AND ANOTHER (PLAINTIFFS)

Appellants,

*versus*

MOHAMMAD HUSSAIN AND OTHERS (DEFENDANTS)

Respondents.

**Regular Second Appeal No.**

*Indian Registration Act (XVI of 1908), SS. 32, 33, 73 (i) and 77 — Application for registration under S. 73 by agent not authorised as required by S. 32 and 33 — Whether competent — The words “ as aforesaid ” in the expression “ or agent authorised as aforesaid ” in S. 73 — Interpretation of.*

The Sub-Registrar refused registration of a mortgage deed as the alleged mortgagor denied execution thereof. The deed was compulsorily registered on the application of the agent of the mortgagee purporting to have been made under s. 73 of the Indian Registration Act. The power of attorney of the agent was not executed and authenticated as required by s. 33 of the Act.

*Held*, that the document was improperly registered as the application of the agent was incompetent. For the Registrar to have jurisdiction to order registration it was necessary that the application should have been presented in the manner laid down in s. 73 and as it was not so presented and made, his order was illegal and invalid.

That the words “ as aforesaid ” in the phrase “ or agent authorised as aforesaid ” in s. 73 (i) of the Act refer only to the special agent mentioned in ss. 32 and 33 of the Act.

*Madan Lal v. Ganga Bishan* (1), relied upon.

*Chittoori Chinnamma v. Immani Venkayamma* (2), dissented from.

*Second appeal from the decree of K. S. Mirza Abdul Rab, District Judge, Multan, dated 30th October, 1937, reversing that of Lala Mani Ram Khanna,*

(1) 1938 A. I. R. (Lah.) 255.

(2) 1933 A. I. R. (Mad.) 407.

*Subordinate Judge, 1st Class, Muzaffargarh, dated 18th December, 1936, and dismissing the plaintiffs' suit.*

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MEHR CHAND MAHAJAN, for Appellants.

ACHHRU RAM, for Respondent No.1.

ADDISON, ACTING C. J.—The facts relating to this second appeal are as follows:—

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On the 31st March, 1928. Karim Bakhsh mortgaged some land to Sidhu Ram for Rs.1,000, the deed being presented for registration the same day. The registration was refused as Karim Bakhsh denied execution of the document. Karim Bakhsh then sold the land to another person on the 10th April, 1928, the transfer deed being registered the same day. The original deed of mortgage was compulsorily registered on the 30th October, 1928. Thereafter the mortgagee transferred his rights under the mortgage deed in favour of the plaintiffs. On the 13th February, 1936, they brought the usual mortgage suit for sale of the land. The representative of the original vendee pleaded that the mortgage deed was invalid as it was improperly registered. The trial Court decreed the suit in part but on appeal the learned District Judge held that the mortgage deed had been improperly registered and, accepting the appeal he dismissed the suit, leaving the parties to bear their own costs throughout. Against this decision the plaintiffs have appealed.

Under section 32 of the Indian Registration Act every document to be registered shall be presented,—

(a) by some person executing or claiming under the same, or

(b) by the representative or assign of such person,  
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(c) by the agent of such person, representative or assign duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Section 33 lays down the manner in which the powers-of-attorney of such agents shall be executed and authenticated. When the document was first presented under section 32, Sidhu Ram was himself present and no question of an agent arose then.

Under section 73 of the Indian Registration Act when a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar in order to establish his right to have the document registered. The application contemplated by section 73 was not put in by Sidhu Ram but by an ordinary agent, Manohar Lal. Admittedly his power-of-attorney was not executed and authenticated as required by section 33 of the Act. It was for this reason that the District Judge held the document to have been improperly registered.

Some attempt was made to argue that the words "as aforesaid" in the phrase "or agent authorized as aforesaid" in section 73 (1) of the Act were mere surplusage, but this is obviously not so and they can only refer to the special agent, mentioned in section 32 and section 33 of the Act. As Manohar Lal was not such an agent there is no doubt that his application to the Registrar under section 73 (1) did not lie. The Registrar, therefore, had no power to order registration of the document.

Though it was admitted before us that a document, registered under section 32 of the Act, which was presented by an agent not of a class recognised by section 33, could not be said to be registered at all, it was sought to distinguish the case of an application to a Registrar under the provisions of section 73 on the ground that after his order was obtained the document was later properly presented before the Sub-Registrar, but this is a distinction without a difference. For the Registrar to have jurisdiction to order registration it was necessary that the application should have been presented in the manner laid down by section 73, and it was not so presented or made. The Registrar's order was, therefore, illegal and invalid and nothing done upon it could be valid or legal. No such distinction, therefore, can be drawn.

The same view appears to have been taken obiter by a Division Bench of this Court in *Madan Lal v. Ganga Bishan* (1), at the bottom of the first column of page 257 and top of second column, where it was said:—"Hence I have no hesitation in holding that the first presentation by Mohammad Ismail of the document was not valid and the appeal filed before the Registrar was also not a validly filed appeal." By appeal here of course is meant application under section 73. With all respect I am not inclined to agree with the view expressed by a Single Judge in *Chittoori Chinnammi v. Immani Venkayamma* (2).

I might here refer to section 77 of the Indian Registration Act which enacts that where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order

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of refusal, institute in the Civil Court, a suit for a decree directing the document to be registered..... It will be noticed that the word " agent " is here used not the words " agent authorized as aforesaid " and the reason is obvious as an ordinary agent is allowed to bring a suit in the Civil Courts.

For the reasons given I would dismiss the appeal with costs.

DIN  
 MOHAMMAD J.

DIN MOHAMMAD J.—I agree.

A. K. C.

*Appeal dismissed.*

### REVISIONAL CIVIL.

*Before Addison, Acting C. J. and Din Mohammad J.*

GOPAL DASS (DEFENDANT) Petitioner,

*versus*

KHUSHI RAM-BEHARI LAL

(PLAINTIFF)

SOHNA MAL-GOPAL DASS

(DEFENDANTS)

} Respondents.

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Civil Revision No. 292 of 1938.

*Punjab Relief of Indebtedness Act (VII of 1934), SS. 7 to 26 — Suit pending — Application by debtor to Debt Conciliation Board under S. 9 — Intimation by Board to Civil Court to suspend proceedings — Civil Court whether competent to refuse to suspend proceedings pending before it — Scheme of the Act.*

A suit for the recovery of Rs.31,000 was pending in the Court of the Senior Subordinate Judge, Lyallpur. During the pendency of the suit the defendant-firm made an application to the Debt Conciliation Board, stating *inter alia* that its debt amounted to Rs.5,000. The Board admitted this application and sent an intimation to the Senior Subordinate Judge to suspend the proceedings in his Court. The plaintiff contended that the amount owed by the defendant-firm exceeded Rs.10,000 (the maximum limit of the pecuniary jurisdiction