

APPELLATE CIVIL.

Before Addison and Ram Lall JJ.

MUL RAJ (PLAINTIFF) Appellant,

versus

RAHIM BAKHSH AND ANOTHER (DEFENDANTS)

Respondents.

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Nov. 30.

Regular Second Appeal No. 952 of 1938.

Indian Registration Act (XVI of 1908), SS. 32, 33 and 34 — Power of Attorney Act (VII of 1882), S. 2 — Person authorized by registered power of attorney to sell certain properties — Sale-deeds executed and presented by him for registration — execution admitted before Registering Officer — Sale-deeds whether validly registered.

M. was given, under a power of attorney, full power to sell certain properties on behalf of G., which document was registered on the same day. M. executed sale-deeds and presented them for registration, admitting their execution. It was contended that G. did not invest M. specifically with authority to present the sale-deeds for registration, that the power of attorney was not executed before the Sub-Registrar, and that the Sub-Registrar did not authenticate the documents in accordance with law.

Held, (repelling the contention) that a sale-deed executed in the manner adopted in the present case is by virtue of s. 2 of the Power of Attorney Act, 1882, as effectual in law as if G. himself had signed the document, and M. came within the words of s. 32 (a) and 34 (3) (a), as being the person who executed the documents and thus competent to make a valid admission of their execution.

Sitaram Laxmanrao v. Dharmasukhram Tanrukham (1), and *Puran Chand Nahatta v. Monmotho Nath Mukherji* (2), followed.

Second appeal from the decree of Sardar Kartar Singh, District Judge, Hoshiarpur, dated 7th May,

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1938, reversing that of Sheikh Maqbul Ahmad, Subordinate Judge, 1st Class, Hoshiarpur, dated 17th March, 1937, and dismissing the plaintiff's suit.

ACHERU RAM, for Appellant.

SHAMAIR CHAND and AKBAR ALI, for Respondents.

The Judgment of the Court was delivered by—

ADDISON J.—Rahim Bakhsh, defendant 1, obtained a money decree against Gujar Ram, father of Beas Dev, defendant 2, and in execution of his decree got the properties in dispute attached. One Mul Raj laid a claim to these properties under Order 21, rule 58, of the Civil Procedure Code, but his petition was dismissed in default. He then instituted this suit under Order 21, rule 63, of the Civil Procedure Code, to establish his right of ownership to the properties in question. His case was that they had been sold to him by Gujar Ram through his agent Munshi Ram under sale-deeds Exhibits P. 1 to P. 3, dated the 19th September, 1928, for Rs.6,000. Two issues were framed:—

1. Were the sales in dispute for consideration and *bonâ fide* made in the plaintiff's favour.
2. Was Munshi Ram authorised to effect the sales in the plaintiff's favour?

The trial Court found both issues in favour of the plaintiff and decreed the suit. On appeal the learned District Judge, without going into the merits, held that the sale-deeds were ineffective as they had not been validly registered. He, therefore, dismissed the suit, accepting the appeal. Against this decision the plaintiff has preferred this second appeal.

It is not disputed that Munshi Ram was given under a power of attorney, dated the 1st September, 1928, executed by Gujar Ram, full power to sell on

behalf of Gujar Ram certain properties. This power of attorney was registered on the same day. The contention raised before the lower appellate Court was that Gujar Ram did not invest Munshi Ram specifically with authority to present the sale-deeds for registration, that the power of attorney was not executed before the Sub-Registrar and that the Sub-Registrar did not authenticate the document in accordance with law. This contention seems to be unsound. Under section 32 of the Indian Registration Act, with certain exceptions, " every document to be registered shall be presented at the proper registration office (a) by some person executing or claiming under the same, * * * (b) by the representative or assign of such person, or (c) by the agent of such person, representative or assign, duly authorised by power of attorney, executed and authenticated in manner hereinafter mentioned."

Then comes section 33 which provides that the powers of attorney mentioned in section 32 (c) shall be executed in a particular way.

Section 34 (1) lays down that no document shall be registered unless the persons executing such document * * * appear before the registering officer within a particular time; while section 34 (3) is as follows :—

" The registering officer shall thereupon—

- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;
- (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
- (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear."

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It is admitted that Munshi Ram had full power to execute a sale-deed of any of the properties mentioned in the power of attorney of the 1st September. The question is whether Munshi Ram could present the documents under the provisions of section 32 (a), and admit them under the provisions of section 34 (3) (a); for it was he who presented the documents for registration and admitted execution before the registering officer. According to section 32 (a), a document has to be presented by some person executing or claiming under the same. It is undoubted that Munshi Ram executed the documents. According to section 34 (3) (a) the person executing the document has to admit its execution and Munshi Ram did so. Further, under section 2 of the Powers of Attorney Act, VII of 1882. "the donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof." This section, therefore, sets out that a sale-deed executed in the manner adopted in the present case is as effectual in law as if Gujar Ram himself had signed the document. Further, as already remarked, Munshi Ram comes within the words of sections 32 (a) and 34 (3) (a) as being the the person who executed the document.

A Full Bench of the Bombay High Court held in *Sitaram Laxmanrao v. Dharmasukhram Tansukhram* (1), that "the person executing a document on behalf of himself and on behalf of any person under a power

of attorney, which is otherwise valid, but which does not comply with the requirements of section 33 of the Indian Registration Act, is competent to appear and admit execution of the first mentioned document before the Registrar." In the present case, Munshi Ram executed documents, presented them for registration and appeared before the Registrar to admit execution.

Again, their Lordships of the Privy Council in *Puran Chand Nahatta v. Monmotho Nath Mukerji* (1), held that ' a document is executed, when those who take benefits and obligations under it have put or have caused to be put their names to it. Personal signature is not required and another person, duly authorised, may, by writing the name of the party executing (as was done in the present case), bring about his valid execution, and put him under the obligations involved. Hence the words ' person executing ' in the Act cannot be read merely as ' person signing '. They mean something more, namely, the person who by a valid execution enters into obligation under the instrument. When the appearance referred to is for the purpose of admitting the execution already accomplished, there is nothing to prevent the executing person appearing either in person or by any authorised and competent attorney in order to make valid admission.' It follows from this decision that if a document is validly executed by one attorney on behalf of his donor of the power of attorney, the donor of the power can himself appear or any other attorney of his can appear to make a valid admission under section 34 of the Act.

These authorities, therefore, cover a large part of the present case and as section 32 (a) of the Indian Registration Act is explicit and states that every document to be registered shall be presented by some person

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(1) I. L. R. (1928) 55 Cal. 532, 536.

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executing the same, it follows that the sale-deeds were also properly presented for registration by Munshi Ram who had full power under his power of attorney to transfer the properties and to execute the documents, his act being as effectual in law, under section 2 of the Powers of Attorney Act, as if the documents had been executed by the donee of the power in the name, and with the signature and seal, of the donor thereof. As Munshi Ram was the person who executed the documents, it must be held that he had power to present them for registration under section 32 (a) of the Act.

For the reasons given, we accept this appeal, set aside the decree of the lower appellate Court and remand the appeal to it for decision on the merits. The court-fee in this Court will be refunded; parties will bear their own other costs in this Court, while costs in the lower Courts will be in the discretion of the lower appellate Court.

It may be noted that the parties were directed to appear before the lower appellate Court on the 4th January, 1938.

A. K. C.

Appeal accepted.