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Their Lordships held that the appeal ought to the restored upon condition, (1) that the petitioners do deposit in the Registry of the Privy Council, within four months from the date of Her Majesty's order, £300 as security for costs; (2) that the petitioners pay the respondent his costs of opposing the petition incurred in India, his costs of the dismissal of the appeal, and his costs of opposing the petition in England.

An order in Council to the above effect was made on the 18th May, 1897.

Solicitors for the petitioners:—Messrs. *Nichol, Manisty and Co.*

Solicitors for the first respondent:—Messrs. *Hughes and Sons.*

ORIGINAL CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.

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TULLOCKCHAND HARNATH AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* GOKULBHOY MULCHAND (ORIGINAL PLAINTIFF), RESPONDENT.*

Registration—Suit to compel registration—Document referring to another document—Two documents when registrable as one—Duties of Registrar—Further period for presentation allowed by Section 34 *of Registration Act—Registration Act (III of* 1877), *Secs.* 24, 34, 77.

The defendants executed and delivered two documents A and B to the plaintiff—A being an agreement of equitable mortgage and B an agreement that they (the defendants) would register A and do all things necessary therefor, and, in case they failed to do so, to pay whatever the plaintiff could claim under A if it had been registered. The plaintiff obtained an order for the registration of A, but failed to present it for registration within thirty days after such order as required by section 75 of the Registration Act (III of 1877), and, when he did present it, registration was consequently refused. He subsequently lodged B for registration, with A as an annexure to it, and it was accepted on payment of a penalty under section 24 of the Registration Act. The Registrar, however, refused to register B on the grounds (1) that without A there would be nothing to show to what property B referred, and (2) that to register A as an annexure to B would be contrary to the provisions of section 75 which limited the time for registration to thirty days. The plaintiff then brought this suit under section 77 praying for an order for the registration of B, with its accompaniment A, within thirty days from the decree. The Division Court made the order as prayed for. On appeal by the defendants,

* Suit No. 251 of 1896. Appeal No. 933.

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Held, that the decree ordering the registration of B was correct. That document was a mere personal covenant to do a certain act with reference to a particular document. There was nothing on the face of it to show that the accompanying document referred to in it related to immoveable property. The registering officer would travel out of his functions if he were to institute an enquiry as to what was the nature of the document referred to.

When a Registrar has directed under section 24 that the document shall be accepted for registration, the Court cannot inquire under sections 77 and 74 into the propriety of that direction.

Durga Singh v. *Malhura Das*(1) approved of and followed.

The proviso to section 34 allows a further period of four months (in addition to the four months allowed by section 24) within which to appear subject to the conditions set out in the proviso.

Held, also, (varying the decree of the lower Court) that document A should not be copied as an annexure to document B. If document A were in the nature of a schedule or appendix to document B, then the two documents could be registered as one; but as they appeared to be two distinct documents separately stamped and executed for different objects, they could not be so registered. The Registrar had no power to inquire what document was referred to in the document he was asked to register. If he could not register the two documents as one, neither could the Court do so under section 77.

APPEAL from Fulton, J.(2)

Suit under section 77 of the Registration Act (III of 1877) to compel registration. The plaintiff prayed for a direction that a certain document (Exhibit B) with its accompaniment (Exhibit A), both of which were annexed to the plaint, should be registered in the office of the Sub-Registrar within thirty days of the passing of the decree.

Exhibit A was dated the 11th January, 1895, and was an agreement of equitable mortgage of certain lands for Rs. 50,000 to the plaintiff signed by the first defendant for himself and as attorney for his father (defendant No. 2), and by one Motichand Harnath.

Exhibit B, which was also signed by the first defendant for himself and as attorney for his father (defendant No. 2) and by the said Motichand Harnathji, was in the following form:—

"We, Harnathji Rupaji, of Márwár, and Tullockchand Harnathji and Motichand Harnathji, of Bombay, agree with you, Gokulbhoy Mulchand, of Bombay, that we will register the accompanying document as required by the Indian Registration Act, 1877,

(1) I. L. R., 6 All., 460.

(2) See I. L. R., 21 Bom., 69.

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and shall do all acts and things necessary or expedient therefor, and, in case we fail to do so, we shall pay whatever you can claim under the accompanying document if the same had been registered.—Dated 11th January, 1895."

Subsequently to the execution of these documents the plaintiff lodged Exhibit A alone for registration, and after some difficulty in obtaining the necessary admission of execution from the defendants and Motichand he obtained an order from the Registrar for its registration. He, however, failed to present it again to the Sub-Registrar for registration within thirty days after that order (see section 75 of the Registration Act), and the Sub-Registrar accordingly refused to register it when it was presented.

On the 9th September, 1895, plaintiff lodged document B, with A as an annexure to it, in the office of the Sub-Registrar to be registered, and the Sub-Registrar, being authorized to exercise the powers of the Registrar in that behalf (*Government Gazette*, 1887, Part I, p. 980), accepted B for registration on payment of a penalty under section 24 of the Registration Act III of 1877. After several attempts to procure the attendance of the executing parties before the Sub-Registrar the plaintiff finally got Motichand Harnath to admit execution of document B before the Sub-Registrar, and it was registered as against him on 6th January, 1896. The first defendant Tullockchand appeared on the 7th January, 1896, before the Sub-Registrar, but declined to admit execution, and registration of B was, therefore, refused as against him on the 8th January, 1896.

The plaintiff appealed on 25th January, 1896, to the Registrar under section 73 of the Registration Act III of 1877 against this refusal. The first defendant in answer to a summons issued by the Registrar appeared with his solicitor before the Registrar on 25th February, 1896, and admitted execution of document B, but raised objections to its registration, and on the 9th April, 1896, the Registrar refused to register it.

The following were the reasons entered by the Registrar for his refusal to register document B :—

"The agreement is of the same date and refers to the same property as the mortgage. Under these circumstances is the agreement sufficiently distinct from the mortgage to constitute a separate document? I find the following objections to consider the agreement a separate document :—

"1. If the mortgage is treated as a separate document, there is in the agreement no evidence to show to what property the agreement refers.

"2. If the mortgage is recorded in the registration book as an annexure to the agreement, such record will constitute a registration of the mortgage.

"3. If by this means the mortgage is registered it will make of no force the stipulation contained in section 75 of the Registration Act, that the period of presentation for registration shall be limited to 30 days."

The suit was heard as a short cause by Fulton, J., who held that B being a registrable document, and having been duly presented and accepted, ought to be registered, document A being copied as an annexure[1].

The defendants appealed.

Robertson (with *Kirkpatrick*) for appellants (defendants) :—The following authorities were referred to:—*Alexander Mitchell* v. *Mathura Das*[2]; *Durga Singh* v. *Mathura Das*[3]; *In the matter of the petition of Bish Nath*[4]; Maxwell on Statutes, pp. 171-175; Registration Act (III) of 1877), sections 23, 24, 34; *Noban Nusya* v. *Dhon Mahomed*[5].

Macpherson (with *Lang*, Advocate General) for the respondent (plaintiff) :—He cited *Shama Charan Das* v. *Joyenoolah*[6]; Williams on Executors, Vol. I, p. 86; Brown on Probate, p. 108.

FARRAN, C. J. :—This is an appeal from the decree of Mr. Justice Fulton passed under section 77 of the Registration Act (III of 1877) directing the document marked Exhibit B in the suit to be registered with the document marked Exhibit A in the suit as annexure thereto.

The first question which we deal with is whether the decree directing Exhibit B to be registered is correct. The direction that Exhibit A shall be registered as an annexure to it, stands upon different grounds.

Exhibit B, which is written on eight annas' stamp paper, is in the following terms :—"We, Harnathji Rupaji, of Márwár, and Tullockchand Harnathji and Motichand Harnathji, of Bombay, agree with you, Gokulbhy Mulchand, of Bombay, that we will

(1) See I. L. R., 21 Bom., 69.
(2) I. L. R., 8 All., 6.
(3) I. L. R., 6 All., 460.
(4) I. L. R., 1 All., 318, at p. 323.
(5) I. L. R., 5 Cal., 820.
(6) I. L. R., 11 Cal., 750.

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register the accompanying document as required by the Indian Registration Act, 1877, and shall do all acts necessary or expedient therefor, and in case we fail to do so we shall pay whatever you can claim under the accompanying document as if the same had been registered." This instrument bears date the 11th January, 1893. It is not disputed that the accompanying document referred to in Exhibit B is the document Exhibit A. The latter is an equitable mortgage by way of deposit of title-deeds of a piece of Fazendári land in Bombay. The boundaries and description of the land appear on its face.

Now with regard to the agreement (Exhibit B) it appears to us to be a personal agreement on the part of the signatories to register a certain specified document, and in default of doing so to pay a specified sum. It cannot, in our opinion, be considered to be a document "relating to immoveable property" within the meaning of section 21 of the Registration Act. It is a mere personal covenant to do a particular act in reference to a particular document. It does not either itself create, declare, assign, limit or extinguish any right, title or interest in immoveable property or purport to do so, nor does it create a right to obtain another document which will when executed have that effect. It would, we think, be going too far to hold that because the document which the signatories have covenanted to execute relates to immoveable property, therefore the agreement which contains a covenant to register it relates to immoveable property. If the covenant had been to copy or print the document, it could not have been argued that it related to land. A covenant to register it appears to us to stand upon the same footing. Therefore we come to the conclusion that the decree directing the registration of Exhibit B is not erroneous because Exhibit B does not contain the particulars prescribed by section 21. There is nothing on the face of the document (Exhibit B) which shows that the accompanying document referred to in it relates to immoveable property. The registering officer would, we think, travel out of his functions if he were to institute an inquiry as to what the nature of Exhibit A was.

It is, however, objected that the Sub-Registrar directed that on payment of a fine it (Exhibit B) should be accepted for registra-

tion after the lapse of four months from its execution without inquiring whether the non-presentation of it for registration within the four months was owing to urgent necessity (whatever that may mean in this connection) or unavoidable accident. The defendant did not prove that the document was accepted without inquiry, but he tendered evidence which he alleged would have shown it, and such evidence was not allowed to be given. We agree, however, with the ruling in *Durga Singh* v. *Mathura Dás*[1] that when a Registrar has made a direction under section 24 that a document shall be accepted for registration, the Court cannot inquire, under sections 77 and 74, into the propriety of that direction. If it finds that a direction has been given by the Registrar, it will assume that the Registrar gave the direction on grounds which seemed to him to be sufficient. When that direction has been given, and the fine has been paid, it appears to us that "the requirements of the law on the part of the applicant" have been complied with. No obligation is upon the applicant that the Registrar shall properly perform the duties of his office. If the Registrar is willing to direct the acceptance of the document without inquiry made of the applicant, it is not incumbent on the latter to assign the reasons for his delay. In this case, however, the written statement of the defendants alleges that the plaintiff did explain to the Registrar the reasons for the delay, though it goes on to allege that the reasons so assigned were false.

As to the objection that the plaintiff did not, as required by section 34, appear before the registering officer within the extended time allowed by section 24, we think that the proviso to that section (34) allows the applicant a further period of four months within which to appear, subject to the conditions set out in the proviso. The section is not a lucid one, but that is the meaning which we gather from it. The imposition of a second fine appears to provide for a further delay over and above the delay allowed under section 24. We think, therefore, that there is no ground for objection established to the decree so far as it directs the registration of Exhibit

(1) I. L. R., 6 All., 469.

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Whether the further direction that Exhibit A is to be copied into the register as an annexure to Exhibit B, gives rise to different considerations. The plaintiff owing to delay failed in getting Exhibit A, when presented alone for registration, registered. That circumstance alone would not, we think, stand in the way of the plaintiff getting the combined document made up of Exhibits A and B registered if the registration of it as a combined document is not open to objection upon other grounds. The question appears to us to be purely academical, as we do not think that it will make the slightest difference to the plaintiff's rights, or the defendant's obligation under Exhibit B, whether Exhibit A is made an annexure to it or not. Whatever rights the plaintiff can enforce under Exhibit B he can enforce whether Exhibit A is or is not copied out in the Registrar's book. If Exhibit A were in the nature of a schedule or Appendix to Exhibit B, then we think that the two documents could be registered as one; but to us they appear to be two essentially distinct documents separately stamped and executed to effect different objects. If the Registrar could not register them as one document, neither can, we think, the Court do so under section 77. Could the Registrar do so? We think not. Before the Registrar can register two documents as one, we think that they must be connected together by reference and thus incorporated into each other. We think the Registrar has no power to inquire into what is the separate document to which the document which he is asked to register refers. Thus for example if the agreement were to reprint the book or copy the picture now on the table, the Registrar could not register the book or the picture as part of the agreement, but if the agreement were to reprint the book annexed to the agreement, or to copy the picture of which a photo was annexed to the agreement, he could do so. If oral evidence has to be adduced under section 92 of the Evidence Act to show what the agreement relates to, we think that the Registrar not authorized to take it. Where the book to be reprinted is not sufficiently described, a dispute might arise as to what the book to be reprinted was. Surely the Registrar could not be called on to settle the dispute. His duty should be confined to ascertaining whether the agreement was executed or not, and should not

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be extended to ascertaining what the subject-matter of the agreement consisted in. If he can make the inquiry when there is no dispute, we cannot see why he should not be at liberty to make it when there is a dispute. Neither duty is imposed upon him by the Act. Sections 34 and 35 define and limit the extent of his duties. It does not seem to us that it makes any difference that the subject-matter of the agreement is another document, and that the agreement is to register it. The only connection between them is that the one is the subject-matter of the other. They are in no sense one document. We think, therefore, that the decree ought not to have directed that Exhibit A should be registered as an annexure to Exhibit B, and that to that extent it should be varied.

Decree varied.

Attorneys for the appellant:—Messrs. *Brown and Moir.*

Attorneys for respondents:—Messrs. *Bhaishankar and Kanga.*

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

1896.

February 18.

KASHINATH SAKHARAM KULKARNI (ORIGINAL PLAINTIFF), APPLICANT, *v.* NANA AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

Civil Procedure Code (Act XIV of 1882), *Sec.* 622—*High Court, interference by—Mámlátdár—Jurisdiction.*

The plaintiff sued in a Mámlatdár's Court for possession of certain land, alleging that the defendants held them under a lease, the time of which had expired. The Mámlatdár found the execution of the lease proved, but held it to be colourable, and that the defendants did not hold under it. He, therefore, rejected the plaintiff's claim. The plaintiff applied to the High Court in its extraordinary jurisdiction and obtained a rule to set aside the order, contending that the Mámlatdár had no jurisdiction to decide that the lease was colourable, and that he ought not to have admitted evidence upon that point.

Held (discharging the rule) that the matter was not one for the extraordinary jurisdiction of the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882). The Mámlatdár had not declined jurisdiction. He had considered the materials laid before him and had come to a conclusion. That conclusion, if erroneous, ought to be corrected in a regular suit and not by an application to the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882).

* Application No. 209 of 1895, under the Extraordinary Jurisdiction.