

## APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

GANGAVA (ORIGINAL PLAINTIFF), APPELLANT, v. SAYAVA AND OTHERS,  
(ORIGINAL DEFENDANTS), RESPONDENTS.\*

1896.

February 13.

*Registration—Suit for registration—Registration Act III of 1877, Secs. 24 and 77.*

No suit lies under section 77 of the Registration Act (III of 1877) against an order made under section 24 of that Act refusing to direct a document to be accepted for registration.

SECOND appeal from the decree of M. H. W. Hayward, Assistant Judge of Belgaum.

Rayappa, the husband of the first defendant, executed a certain document to the plaintiff on 16th November, 1890. He died on the 20th November. On the 11th April, 1891, plaintiff presented the document to the Sub-Registrar of Athni for registration (see section 23 of the Registration Act III of 1877). The Sub-Registrar refused to accept it on the ground that it was not presented within four months from the date of execution, but he forwarded it to the District Registrar of Belgaum for his directions under section 24. The District Registrar under section 24 refused to direct the document to be accepted for registration.

The plaintiff then filed this suit under section 77 of the Act, praying for a decree directing the document to be registered.

The Subordinate Judge of Athni and Gokák dismissed the suit on the ground that no suit lay on an order passed under section 24 of the Registration Act.

In appeal the Assistant Judge of Belgaum confirmed the decree of the Subordinate Judge.

Plaintiff preferred a second appeal to the High Court.

*Ghanasham Nilkanth*, for the appellant (plaintiff):—The Registrar's refusal to direct the document to be accepted for registration is equivalent to a refusal to register within the meaning of sections 76 and 77; and this suit can be maintained—*Durga Singh v. Mathura Das*<sup>(1)</sup>; *Raya v. Anapurnabai*<sup>(2)</sup>; *Abdullah Khan v. Janki*<sup>(3)</sup>.

\* Second Appeal, No. 506 of 1895.

(1) I. L. R., 6 All., 460. (2) 10 Bom. H. C. Rep., 93. (3) I. L. R., 16 All., 303.

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*Hormusji C. Coyaji* for the respondent (defendant):—The order passed by the District Registrar under section 24 was an order refusing to direct the document to be accepted for registration. Such an order is entirely different from an order refusing to register. An order under section 24 excuses or refuses to excuse delay in presenting the document for registration, and the Registrar has an absolute discretion to pass such an order. Civil Courts do not interfere with such discretion. See *Oojul Mundul v. Herasutoollah* (1).

JARDINE, J.:—The applicant brought the document to the Sub-Registrar after the period of four months from the date of execution. Section 23 of Act III of 1877 declares that in such circumstances it shall not be accepted for registration. Under section 24, the Sub-Registrar forwarded the application to the Registrar, who, under the words of that section, has a discretion to remedy the effect of delay caused by urgent necessity or unavoidable accident. The Registrar may direct that the document shall be accepted for registration. This acceptance for registration is not the same as admitting to registration. The Registrar refused to make the above direction. Mr. Ghanasham argues that such refusal is a refusal to register within the meaning of sections 76 and 77.

But the Act evidently means different things by the two phrases, *refuse to register* found in sections 19 and 35, and *refuse to accept for registration* found in sections 20 and 21. We are of opinion that the first thing to be done by the registering officer is to decide whether to accept or not accept. It is only after the acceptance for registration that he can consider the wider question which arises on admissions and denials and evidence, whether he should refuse to register.

We must hold, therefore, that what the Registrar did under section 24 was not a refusal to register. So section 76 (a) does not apply. Neither does section 76 (b), as the direction was not concerned with the matters to which sections 72 or 75 apply.

We are of opinion, then, that the right to bring the present suit is not given by section 77, as the condition with which that

(1) 7 Cal. W. R., 150.

section begins, *viz.*, "where the Registrar refuses to order the document to be registered" is not one which attaches to a refusal to give the direction for which section 24 makes provision at his discretion.

The Court confirms the decree with costs.

*Decree confirmed.*

1896.

GANGAVA  
v.  
SAYAVA.

## APPELLATE CIVIL.

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

WAMANRAO DAMODAR (ORIGINAL PLAINTIFF), APPELLANT, v. RUS-  
TOMJI EDALJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

1896.

*February 17.*

*Specific Relief Act (I of 1877), Sec. 42—Declaratory decree—Right to sue for declaration—Mortgage—Code of Civil Procedure (Act XIV of 1882), Sec. 287.*

Dinsha Edalji mortgaged certain property to plaintiff. After Dinsha's death plaintiff obtained a decree for recovery of his debt by sale of the mortgaged property. Before the property was advertised for sale, the defendants, who were Dinsha's brothers, objected under section 287 of the Code of Civil Procedure (Act XIV of 1882), alleging that Dinsha was not the sole owner of the property; that they were joint owners with him; that they had set aside the property for religious purposes, and that Dinsha had no right to mortgage it.

The Court executing the decree thereupon ordered that the applicants' (defendants') claim should be notified in the proclamation of sale. Plaintiff then filed a suit against the defendants, praying for a declaration that the property belonged to Dinsha exclusively, and that the defendants had no right or interest in it.

*Held*, that under section 42 of the Specific Relief Act (I of 1877), the plaintiff was entitled to the declaration prayed for.

Plaintiff having himself purchased the property after his claim for declaration had been allowed by the Subordinate Judge, it was contended that he was not entitled any longer to a declaratory decree.

*Held*, that the change of circumstances brought about by the plaintiff himself purchasing the property did not take away the right to sue which had already accrued to him.

*Govinda v. Perumdevi*(1) referred to.

SECOND appeal from the decision of T. Hamilton, District Judge of Surat.

\*Second Appeal, No. 300 of 1895.

(1) I. L. R., 12 Mad., 136.