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strained its powers to its utmost limits, and I do not think that we would be justified in going beyond that. Now what would be the result if we were to adopt such a course here? It would obviously be fruitless, because the review petition has already been presented to and rejected by the First Class Subordinate Judge, A. P.

I see no alternative in this case but to confirm the decree of the lower Appellate Court with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

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July 28.

ABDUL ALI ABDUL HUSEN (ORIGINAL DEFENDANT), APPELLANT, v.
MIRJA KHAN ABDUL HUSEN (ORIGINAL PLAINTIFF), RESPONDENT.*

Registration Act (III of 1877), section 77—Making of the order—Date of the order—Date of communication—Running of time for suit.

The expression "making of the order," in section 77 of the Indian Registration Act (III of 1877), means not merely recording the order of refusal in writing, but communicating it to the party concerned so as to bind him by it.

Hence, a suit brought under the provisions of section 77 of the Indian Registration Act (III of 1877) for a decree directing a document to be registered, may be filed within thirty days of the date on which the order of refusal was communicated to the party concerned.

SECOND appeal from the decision of H. L. Hervey, District Judge of Surat, confirming the decree passed by Lallubhai P. Parekh, First Class Subordinate Judge at Surat.

On the 17th June, 1901, a deed-of-gift was passed in favour of the plaintiff by Mariambu, the mother of the defendant. Mariambu died the next day. On the 8th October, 1901, plaintiff presented the document to the Sub-Registrar for registration. But the Sub-Registrar refused to register the document, as the defendant failed to appear in obedience to the summons issued to him. Against this order plaintiff preferred an appeal to the District Registrar, who rejected the appeal, on the 21st December, 1901, on the ground that there was no mark of the executant

* Second Appeal No. 173 of 1903.

on the document. This order was communicated to plaintiff on the 22nd December, 1901.

On the 21st January, 1902, plaintiff instituted a suit to obtain an order directing registration of the deed dated 17th June, 1901.

Defendant contended (*inter alia*) that the suit, not having been brought within thirty days from the date of the order, was time-barred, under the provisions of section 77 of the Indian Registration Act (III of 1877).

The Subordinate Judge held that the suit was not barred; and on appeal his decision was upheld by the District Judge who said:—

“The question is whether the suit is barred by limitation because it was not instituted within thirty days of the date of the original order. I think that the lower Court’s view that the order must be held to date from the communication of it to the plaintiff is consistent with common sense and is correct. As far as I have been able to discover, this particular point has not hitherto been raised in any reported case under the Registration Act, but the Madras High Court has held that under section 25 of Act XXVIII of 1860 (Madras Boundary Act) which contains a provision limiting the period allowed for the institution of a suit analogous to that contained in section 77 of Act III of 1877, time does not begin to run until the date on which the decision sought to be set aside is communicated to the parties (*Annamalai v. Cloete*—I. L. R. 6 Mad. 189). It is pointed out that under any other interpretation of the section, the party aggrieved might be barred of his right of appeal without any knowledge of the order having been passed. The same remark obviously applies to a suit under section 77 of the Registration Act. The facts in the present case show that a considerable interval may elapse before the Registrar’s decision is communicated to the applicant, and it can hardly be contended that if this interval should happen in any particular case to extend to thirty days, applicant would be deprived of all means of redress.”

The defendant appealed to the High Court.

M. N. Mehta, for the appellant:—The period of thirty days should be counted from the date of the order. There is nothing in the section which postpones limitation till the date of communication. The words should be given their natural construction. There is no hardship in this case. Plaintiff knew on the 22nd December, 1901, that the date on the order was the 21st December, 1901, and yet he did not bring this suit till the 21st January, 1902.

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Manubhai Nanabhai, for the respondent :—The section requires the suit to be brought within thirty days from the *making* of the order. The lower Court has not *added* any words to the section. The only question is, when could the order be said to have been *made*. The order could not be taken as made merely by writing it out and keeping it back. It must be brought to the knowledge of the party ordered. The case of *Annamalai v. Col. F. G. Cloete* ⁽¹⁾ is on a different enactment, but it lays down a sound principle of construction consistent with common sense.

CHANDAVARKAR, J.:—The lower Courts have held that the plaintiff's suit is within limitation, because in their opinion it must be taken to run from the date on which the order of the Registrar was communicated to the plaintiff. We agree with that view. An order does not become an order unless and until steps are taken by the officer passing it to bring it to the consciousness and knowledge of the party against whom it is passed. If the party affected by the order acts in such a way as to prevent the officer from communicating it to him within reasonable time after he has written it, it may be that the date of the order would be the date when it could have been brought to the knowledge of the party within a reasonable period. But in the present case, it is not contended that there was any conduct of that kind on the part of the plaintiff. It is found by both the Courts that though the order was recorded in writing on the 21st December, 1901, it was communicated to the plaintiff on the 22nd December, 1901, and section 77 of the Registration Act provides that the suit to set aside such an order must be brought within thirty days from the making of it. We think that the words "the making of an order" must mean not merely recording it in writing, but communicating it to the party concerned so as to bind him by it.

We accordingly confirm the decree of the lower Appellate Court with costs.

Decree confirmed.

(1) (1883) 6 Mad. 189.