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considered whether it would be proper to suspend his sanad for a certain time, but as he is a comparatively junior practitioner we will not, on this occasion, take that particular course. We think it will be sufficient, under all the circumstances, to direct that he be severely reprimanded, and that as he is not present in Court to-day that reprimand be conveyed to him personally in open Court by the learned District Judge. We further order that he do pay the Government Pleader's costs of this application.

Order accordingly.

B. G. R.

APPELLATE CIVIL.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Murphy.

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 March 27.

SETH MANEKLAL MANSUKHBHAI (ORIGINAL PLAINTIFF), APPELLANT v. NAGARSETH KASTURBHAI MANIBHAI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Indian Registration Act (XVI of 1908), sections 25 and 77—Refusal by Registrar to accept a document for registration—Suit to enforce registration of such document whether competent—"Refuse to register" and "Refuse to accept for registration"—No distinction between.

The defendants executed a sale deed of their property in favour of the plaintiff on January 24, 1926, but did not present it for registration before the Sub-Registrar till August 21, 1926. The Sub-Registrar, accepted a penalty and forwarded the deed to the Registrar for excuse of delay in presentation for registration under section 25 of the Registration Act. The Registrar did not excuse the delay and the Sub-Registrar thereon made an endorsement refusing to register the document. An appeal was then preferred under section 72 to the Registrar who dismissed it. The present suit was filed under section 77 of the Registration Act to have a decree directing the deed to be registered in the office of the Sub-Registrar of Ahmedabad if it be duly presented for registration within 30 days after the passing of the decree.

Held, (1) that a suit was competent under section 77 of the Registration Act to challenge the order made by the Registrar under section 25 of the Act;

(2) that there was no distinction between "refuse to register" and "refuse to accept for registration" for the purposes of sections 76 and 77 of the Registration Act.

*Appeal No. 514 of 1927 from Original Decree passed by S. P. Badami, First Class Subordinate Judge, at Ahmedabad in Civil Appeal No. 44 of 1927.

Gangava v. Sayava,⁽¹⁾ disapproved.

Hoosein Abdul Rehman & Co. v. Lakhmichand,⁽²⁾ *Fattechand Anandram v. Umaji*,⁽³⁾ *Gangadara v. Sambasiva*⁽⁴⁾ and *Kanhaya Lal v. Sardar Singh*,⁽⁵⁾ referred to.

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SUIT to obtain a decree under section 77 of the Registration Act directing the document in question, viz., a sale deed to be registered in the office of the Sub-Registrar, Ahmedabad, if it be duly presented for registration within 30 days after the passing of the decree.

The defendants sold their properties to the plaintiff under a sale deed executed on January 24, 1926. The deed was however not presented for registration before the Sub-Registrar till August 21, 1926. The Sub-Registrar accepted Rs. 915-8-0 as registration fees inclusive of a fine under section 25 of the Registration Act and forwarded the deed to the Registrar for an order excusing the delay in presenting it for registration. The Registrar refused to excuse the delay on the ground that the reasons alleged for delay did not fall within the definition of "urgent necessity or unavoidable accident." Thereupon the Sub-Registrar made an endorsement on the deed that the same was refused to be accepted for registration. Against this order there was an appeal to the Registrar who refused to reconsider his previous order. The plaintiff then filed the present suit under section 77 of the Registration Act which was dismissed by the lower Court on the ground that the Civil Court had no jurisdiction to entertain the suit.

G. N. Thakor, with *Madhavji & Co.*, for appellant.

B. G. Rao, Assistant Government Pleader, for the Government Pleader appointed by the Court.

MARTEN, C. J. :—The sole point we are concerned with is on the preliminary issues as to whether this suit will lie. The suit is brought under section 77 of the Indian

⁽¹⁾ (1896) 21 Bom. 699.

⁽²⁾ (1924) 49 Bom. 40.

⁽³⁾ (1922) 47 Bom. 290.

⁽⁴⁾ (1916) 40 Mad. 759.

⁽⁵⁾ (1907) 29 All. 284.

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Registration Act, 1908, which provides that " where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document " may institute a suit in effect to enforce registration. Then under section 76 it is provided that " Every Registrar refusing—(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar . . . shall make an order of refusal and record the reasons. . . ." Then sub-clause (b) provides for the case where the Registrar has refused to direct the registration of a document under section 72 or section 75. Section 72 relates to appeals from the order of the Sub-Registrar; and section 75 to orders by the Registrar for registration.

In the present case the document in question is a sale deed in favour of the plaintiff which was executed on January 24, 1926, but was not presented for registration till August 21, 1926, owing, it is said, to obstruction by the vendors. On that day there was a penalty accepted by the Sub-Registrar; and an acknowledgment of execution by one of the vendors. Subsequently there appears to have been a summons to another vendor to appear, which, in fact, he did not do. Later on the matter came before the District Registrar, and he refused to register the document and passed the following order on December 14, 1926: " I am bound by the words of section 25. ' Urgent necessity ' or ' unavoidable accident ' has not been proved as a reason for the delay in registration. I cannot reconsider my previous order."

Turning next to section 25, that provides that " if, owing to urgent necessity or unavoidable accident," any document is not presented for registration till after the

expiration of the proper time, the Registrar, in cases where the delay does not exceed four months, may direct that on payment of a particular fine the document is to be accepted for registration.

The argument before us is that there is a distinction in the Act between "acceptance for registration" and "registration," and that here the Registrar did not "refuse to register" the document within the meaning of section 76, but only refused to direct the document to be accepted for registration. Consequently it is said that no suit lies under section 77. In support of that argument the case of *Gangava v. Sayava*,⁽¹⁾ decided by Mr. Justice Jardine and Mr. Justice Ranade, is cited. There the judgment states (p. 700) :—

"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 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."

That case was under the Act of 1877. So the references to the sections are not the same. Section 24 under the old Act is the same as section 25 under the present Act.

That decision, however, has been far from favourably received in subsequent cases, at any rate so far as the *ratio decidendi* is concerned. In *Hoosein Abdul Rehman & Co. v. Lakhmichand*⁽²⁾ Mr. Justice Fawcett sitting on the Original Side was confirmed in appeal by Sir Lallubhai Shah and Mr. Justice Kincaid in holding that where the Sub-Registrar had refused under section 21 to

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register a certain document on the ground that it contained an insufficient description, a suit did lie under section 77. They expressly dissented from the view stated in *Gangava v. Sayava*⁽¹⁾ to the effect that as regards section 21 there was this alleged distinction between "refusal to accept for registration" and "refusal to register." But they left open the question whether the actual decision in *Gangava v. Sayava*⁽¹⁾ as regards section 25 was correct.

So, too, in *Fattechand Anandram v. Umaji*⁽²⁾ the appellate Court held that a suit lay where the Sub-Registrar had refused to register a document on the ground that the Registrar had not given the necessary sanction under section 34 of the Act. If one turns to section 34, it will be found that much the same language is used there as in section 25. The proviso to section 34 provides that "if owing to urgent necessity or unavoidable accident" the persons executing the document do not appear, the Registrar may, in certain cases, where the delay does not exceed four months, direct that on payment of a fine, the document may be registered.

In *Gangadara v. Sambasiva*⁽³⁾ a document was presented for registration on the last day of the four months allowed for presentation, but the Sub-Registrar declined to receive it, owing to pressure of other work. It was presented the next day with an application to the Registrar to excuse the delay. On the Registrar refusing to excuse the delay, the Sub-Registrar refused to register the document. It was held there that the order of the Registrar refusing to direct the Sub-Registrar to register the document was a "refusal to register." That was a case before the Madras Full Bench, and they expressly dissented from the decision in *Gangava v. Sayava*.⁽¹⁾

⁽¹⁾ (1896) 21 Bom. 699.⁽²⁾ (1922) 47 Bom. 290.⁽³⁾ (1916) 40 Mad. 759.

Similarly, there is another decision in *Kanhaya Lal v. Sardar Singh*,⁽¹⁾ which, so far as it goes, is inconsistent with the decision in *Gangava v. Sayava*.⁽²⁾

After all we have to consider what is the plain meaning of the Act. Here, in ordinary language, the Registrar has refused to register this document. The document has been presented to him for registration, and on one ground or another he has declined to do it. Whether one says he refused to accept it for registration or says instead he refused to register it, is, I think, a distinction without a difference, except that I prefer the briefer expression. The result is the same, viz., that the document is not on the register, because the Registrar has refused to allow it to be put there. That, to my mind, is a "refusal to register," using that expression in its ordinary meaning. And although we have been taken through all the relevant sections of the Act, I see no adequate reason to cut down that ordinary meaning.

Then it was said that under section 25 the Registrar has the sole discretion. In fact the words "in his discretion" which appear in section 20 do not appear in section 25. But however that may be, there is no such qualification in the right of suit given by section 77 and section 76. If any such qualifying words are desired to be introduced, that must be done, I think, by the Legislature.

Further, there appears to me to be some practical difficulty in stating when this alleged process of "accepting for registration," as distinct from refusing to register, begins and when it ends. According to counsel for the Crown, the period begins when you present a document for registration, and it ends when the parties who have to admit execution appear at the registry office under section 34. On the other hand, if I understood

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counsel's arguments correctly, as soon as the parties do appear before the Sub-Registrar, the period of acceptance for registration is at an end, and the subsequent acts of the registering officer in regard to the recording of admissions and so on, form part of a different process altogether. In that view no suit lies under section 77 up to the time when the parties appear, but it does lie after they have appeared. With all respect, these, to my mind, are fanciful distinctions which have been drawn from the Act merely because the draftsman has been unfortunate enough to use different expressions in different parts of the Act, thereby allowing an argument that he meant one thing in one place, and something different in another. In the present case I am satisfied that that argument is incorrect, and that a suit will lie under section 77.

I would, therefore, reverse the order of the learned Judge, and direct him to hear and determine the remaining issues according to law.

MURPHY, J. :—The question before us is whether a suit is competent under section 77 of the Indian Registration Act, where the Registrar has made an order under section 25, which in effect is a refusal to excuse delay in presentation for sufficient cause, called in the Indian Registration Act “urgent necessity” or “unavoidable accident.”

Actually what happened was that on its presentation some 3 months beyond the 4 months allowed by the Act, the Sub-Registrar accepted an admission of execution by one of the executants and a penalty under section 25, and reported the facts to the Registrar, and on the Registrar's instructions, refused to accept the document. There was also an appeal against the Sub-Registrar's order which was treated in a similar way by the Registrar.

The lower Court has held, on the strength of *Gangava v. Sayava*,⁽¹⁾ that there is a clear distinction between the act of "refusal to accept for registration" and "refusal to register," and that in the former case the order does not come within section 76 of the Act; and that in consequence no suit can be brought under section 77.

The ruling in this case does make the distinction in question between "accepting for registration," and "refusing to register," and the argument against the appellant's case as put before us in appeal is based on this ruling. As against it we have been referred to *Fatechand Anandram v. Umaji*⁽²⁾; *Kanhaya Lal v. Sardar Singh*⁽³⁾; *Gangadara v. Sambasiva*⁽⁴⁾ and *Hoosein Abdul Rehman & Co. v. Lakhmichand*⁽⁵⁾ where the ruling in *Gangava v. Sayava*⁽¹⁾ has been distinguished, and its authority has been doubted.

It seems to me that it is not possible, on the construction of the relevant sections of this Act, really to draw a sharp distinction between a "refusal to accept for registration" and a "refusal to register." It is not clear at what stage of the process of registration such a distinction can be drawn, and I think that in fact the expressions "refusing to accept for registration," and "refusing to register" were not really intended to distinguish the orders in such a way as to exclude the remedy being had recourse to in the one case, where it is available in the other, which would be the result if we accepted these distinctions, and to exclude the former cases from the class mentioned in section 76 (a) which refers to the original refusal to register by the Registrar as against the exercise of his appellate powers under section 76 (b).

⁽¹⁾ (1896) 21 Bom. 699.

⁽²⁾ (1922) 47 Bom. 290.

⁽³⁾ (1907) 29 All. 284.

⁽⁴⁾ (1916) 40 Mad. 759.

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I think, therefore, that the learned Subordinate Judge's view as to this point is not correct, and that a suit can be brought to challenge the order made by the Registrar under section 25. I agree, therefore, in the order proposed by the learned Chief Justice.

Per Curiam.—Appeal allowed. Decree set aside. Hold on the preliminary issues that this suit lies under section 77 of the Indian Registration Act. Remand to hear and determine the remaining issues. Defendant to pay the plaintiff's costs of the hearing of the preliminary issues and of this appeal.

Appeal allowed.

B. G. R.

APPELLATE CIVIL.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Patkar.

1929
January 9.

APPA DADA PATIL AND ANOTHER (ORIGINAL DEFENDANTS NOS. 2 AND 3),
APPELLANTS v. RAMKRISHNA VASUDEO JOSHI AND ANOTHER (ORIGINAL
PLAINTIFF AND DEFENDANT NO. 1), RESPONDENTS.*

Company—Unregistered—Illegal Association—Business in British India and Native State—Dealings with shop in Native State—Suit by creditor to recover balance of account, maintainability of—Liability of some of the members—Joint and several liability—Indian Companies Act (VII of 1913), section 4—Indian Contract Act (IX of 1872), sections 43, 245, 246—Mutual, open and current account—Indian Limitation Act (IX of 1908), Schedule I, Article 85.

An Association consisting of more than twenty persons was formed for the purpose of doing business in December 1917. The head office of the Association was at Dudhgaon in British India and a branch office at Sangli, a Native State. The Association was not registered as required by section 4 of the Indian Companies Act, 1913. In August 1918 the plaintiff, who was a trader in the Miraj State, commenced dealing with the branch shop of the Association in Sangli State. In October 1919 the plaintiff found that a certain amount was due to him from the Association and demanded an account of his dealings. Ultimately the plaintiff filed a suit on October 2, 1922, against the Association and certain members of the Association as defendants, for recovery of the balance due at the foot of the account. The defendants contended that the Association was illegal under section 4 of the Indian Companies Act, 1913, and therefore neither the Association itself nor the individual defendants were liable. They also contended that the suit was barred by limitation. The Subordinate Judge held that the Association, not being registered, was an illegal association but defendants Nos. 1, 2 and 3 being the principal persons who invited the

*First Appeal No. 8 of 1926.