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contention is good. The case of *Ram Chandra Paul* v. *Becharam Dey* (1) has been cited to us as if what is said there, laid down that the execution of a deed, once registered under the provisions of section 84 of Act XX of 1866, could not be enquired into by a Civil Court; when all that that judgment says is that, as the deed of sale in that case had been registered after enquiry by a competent Court under the provisions of section 84 of Act XX of 1866, and as the deed had been ordered to be registered, the plaintiff had no ground for asking to have that kabala declared fictitious and void, until by some wrongful act by which the plaintiff was injured, he found it necessary to come into Court and ask for relief. And therefore in that case, the Court declined to give him a declaration with regared to the deed, holding that he had not up to that time been injured. But it is clear, from the judgment *In the matter of the petition of Sankar Dobay* (2), that the order for registration does not determine the rights of the parties. The Chief Justice in that case says:—"But the object being that the Judge should merely decide whether the document should be put on the registry or not, and not to determine the rights of the parties the section directs that the Court may, if it thinks proper, order the Registrar or Registrar-General to register the document." And again:—The mere registration of a document does not affect the title of the parties." It is still only a document which has been registered; and if the party wishes to enforce the document by suit, the mere fact of registration does not preclude the Civil Court from trying whether the document was executed or not.

(1) *Before Mr. Justice Phear and Mr. Justice Hobhouse.*

The 28th August 1868.

RAM CHANDRA PAUL ONE OF THE DEFENDANTS) v. BECHARAM DEY (PLAINTIFF).*

Baboo *Rama Chandra Banerjee* for the appellants.

Baboo *Srinath Banerjee* for the respondent.

The judgment of the Court was delivered by

PHEAR, J.—We think that the plaint, as we have had it explained to us, does not disclose a good cause of action against the defendant. The plaintiff simply complains that the defendant had fabricated a certain kabala as if executed by the plaintiff, and has obtained registration of it, and on that ground he seeks to have the kabala declared fictitious and void as against him. But there has been already a decision of a competent Courtas between the plaintiff and the defendant, namely on a petition preferred, according to the provisions of section 84, Act XX of 1866; and by this decision it has been declared that the defendant was entitled to obtain registration of this deed. So that as to the wrongful act upon which the plaintiff in this suit relies, it has been already declared to be right and proper as between these parties by a competent Court. The whole foundation of the plaintiff's suit seems to us to fail him. It will be time enough for him to bring an action against the defendant or to resist an action brought by the defendant whenever he is really hurt by this document. He cannot now complain that what the defendant has done is wrongful against him. We decree the appeal, and reverse the decision of the lower Appellate Court with costs of both Courts.

* Special Appeal, No. 863 of 1863, from a decree of the Principal Sudder Ameen of Chittagong, dated the 9th January 1868, modifying a decree of the Moonsiff of that District, dated the 27th June 1867

(2) 4 B. L. R., A. C., 65.

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In the view taken by the Chief Justice, I quite concur; and it appears to me that there can be no doubt that the mere registration of a document does not prevent a party from bringing a case to contest the fact of its execution.

But it is said in this case that no cause of action has arisen; and that under the judgment just quoted,—*Ram Chandra Paul* v. *Becharam Dey* (1) the suit should be thrown out, because there is no cause of action to the plaintiff, as he has suffered no injury.

Now, no doubt, a cloud has been thrown upon the plaintiff's title. He says that these lands are held by the defendants; that they are merely ordinary tenants; that he obtained a decree for the rent of those lands at 66 rupees per annum; but that the defendants have now put forward and obtained an order for registration of an istemrari potta, which limits the rent to 33 rupees. I think this certainly injuriously affects the rights of the plaintiff.

I am of opinion, therefore, that the plaintiff is entitled to ask that the clond thrown on his title to the property may be removed; and that the lower Appellate Court should not have rejected his application on the ground that under the provisions of section 84 of Act XX of 1866, it could not enquire into the fact of the execution of the deed, and I am not aware of any single precedent of this Court in which it has been ruled that in cases of this kind, it is not open to a Civil Court to determine any question as to the execution even of a registered deed.

I think the case should go back to the lower Appellate Court, and the Judge should decide whether the document propounded by the defendant is a genuine document or not.

The costs will follow the result.

MOOKERJEE, J.—This was an action brought by the plaintiff in the Court of the Subordinate Judge of Moorshedbad to have a certain mokurrari istemrar potta alleged to have been granted by him to the defendant, bearing date the 9th Sraban 1275 (23rd July 1868), declared an invalid document on the ground that he has never executed the same. The defence was that the plaintiff had executed the potta; that he received a bonus of 25 rupees from defendant, and that he admitted the execution before the District Judge, where he however falsely alleged that the potta had been extorted from him by duress.

It appears that the defendant presented this potta to the Sub-Registrar for registry; the Sub-Registrar however refused to register it, whereupon the defendant moved the District Judge, under section 84 of Act XX of 1866, who ordered the document to be registered.

Plaintiff has now instituted this suit for a declaration to the effect that the potta is a forgery, inasmuch as he has never executed it.

The first Court dismissed the suit of the plaintiff, being of opinion that the potta had been really and actually executed by the plaintiff in defendants' favor, and that it had not been extorted from plaintiff by duress, or any sort of pressure

(1) *Ante*, p. 28.

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or force. Dissatisfied with this decision, the plaintiff appealed to the Judge, who dismissed the appeal on the ground that neither the lower Court "nor this "Court can enter into the question of the fact of the execution of the instru- "ment which plaintiff, appellant, now seeks to invalidate." He cites two decisions of this Court in support of his view. He states further on, that "these rul- "ings appear to me to be conclusive, Appellant urges that, as no evidence was "recorded by this Court, in the case under section 84 of the Registration Act, "the order passed under that section cannot bar the present suit." The Judge admits that no evidence was recorded by him in that case, but he is still of opinion that from the mere fact of the deed having been registered, a Civil Court is precluded from entertaining the suit which he holds to be "a suit to "invalidate the instrument on the ground of non-registration."

I am of opinion that the learned Judge is clearly in error in his view of the law, as well as in holding that this present suit is a suit to invalidate the potta on the ground of non-registration. The plaintiff does not seek to invalidate the mokurari potta on the ground of its not having been registered, but distinctly on the ground that it is fabricated and false, because he did not execute it. The precedents cited by the Judge are also not in point. The decision in *In the matter of the petition of Sankar Dobay* (1) merely decides that the District Judge has jurisdiction, under section 84, Act XX of 1866, to summon and examine witnesses, make an inquiry into the fact of execution, and order the Registrar to register a deed. This view of the law was upheld on appeal by a bench of three Judges (*In the matter of the petition of Sankar Dobay* (1)) But this ruling does not support the Judge at all in holding that the Civil Court cannot try the fact of the genuineness of a deed, merely because the instrument has been registered. It is difficult to make out what principle of law the Judge had applied, or had in view. It is certainly not *res judicata*; for the Judge merely holds a summary inquiry in order to decide whether a deed ought to be registered for the purpose of registry alone; his decision or order cannot, I imagine, decide the title of the parties.

The order of the Judge or of the Registrar-General simply decides whether the document should be "put on the registry" and be admissible as evidence in future cases. It has not, and cannot have, the effect of a final and conclusive decision on the fact of the execution, so as to preclude all inquiry by a Civil Court. The late Chief Justice in the decision on appeal quoted above, distinctly holds that "the mere registration of a document does not affect the title of the parties. It is still only a document which has been registered, and if the party wishes to enforce the document by suit, the mere fact, of registration does not preclude the Civil Court from trying whether the document was executed or not." To hold otherwise,—*i. e.*, to hold, as the Judge has held in this case, that the mere fact of a deed having been registered is sufficient to oust the Civil Court of its jurisdiction, would be to lay down that the order of the Registrar-General or of the Judge ordering registry by the Registrar

(1) 4 B. L. R., A. C., 65.

of a deed, an order conclusive on the fact of its genuineness, and that no Court of Justice can try the question of the authenticity of a deed registered in the Registrar's office. I entirely agree with the view expressed by the late Chief Justice, and I have no hesitation in holding that it was perfectly in the power of the Judge to inquire whether the instrument sought to be invalidated is a document executed by the plaintiff or not. The Subordinate Judge was quite right in fixing an issue as to the genuineness of the deed and giving his opinion on that issue. The pleader of the respondent was unable to show us any precedent, or point out any provision in any law in support of the view taken by the Judge. He admits he cannot support the decision on this point, but he argued that the plaintiff's suit ought to be dismissed on another ground,—namely, for the absence of any cause of action;—his contention is that, inasmuch as plaintiff has suffered no injury at all by this potta having been registered, he has no cause of action, and should not be allowed to obtain a simple declaratory decree. He cites a number of precedents of this Court, showing that a party is not entitled to a declaratory decree when no consequential relief is sought by him, or where none could be granted by the Court.

I do not, however, dissent from the principal laid down in those rulings of this Court. I hold that, where a party has suffered no injury whatever, where his rights have in no way been invaded upon, nor any serious cloud cast on his title, and where no impediment has been thrown in the way of the quiet and full possession of his rights, a plaintiff should not be allowed to rush into Court on some imaginary apprehension of future injury. It is difficult,—nay impossible to lay down a strict line, and declare that such an amount of cloud on a man's title would constitute a valid cause of action, and such would not. Each case must be decided on its peculiar merits, and the Court will have to Judge, from the particular circumstances of a case, whether the plaintiff had or had not a valid cause of action.

In the present case, I am of opinion that there was a good cause of action on which it was necessary that the plaintiff should resort to a Civil Court for a declaration of the nature sought for in this suit. It cannot be denied that a serious cloud was cast on the title of the plaintiff; a deed which he declares he has not executed has been publicly registered in the Registry office of the district, purporting to have been executed and registered by him. He has obtained a decree for enhanced rent againt this defendant fixing the rent of the tenure at Rs. 66. If he goes to sue for this rent, the mokurrari potta would be undoubtedly held up to his face as an arrangement subsequently entered into between him and the defendant. The value of his property is diminished from the fact of this deed remaining unchallenged. If he had occasion to deal with this property by mortgage or sale, no one who is aware of this mokurrari potta would give him that value for the property which he would have paid if this potta had not existed. I am therefore of opinion that, with reference to the particular circumstances of this case, the

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plaintiff had a valid cause of action, and that in seeking to set aside the potta he is removing a serious cloud to his title, and a serious impediment in the way of a full enjoyment of his property. I have already held in another case, *Fakir Chand* v. *Thakur Sing* (1), decided by me and Mr. Justice Macpherson on the 20th April 1871, that in cases where a serious cloud is cast upon the title of a party, he has a right to come to Court for the purpose of removing that cloud which is an impediment to the quiet and full enjoyment of his property. I would remand this case to the Judge for a trial on the merits.

Before Mr. Justice Kemp and Mr. Justice Ainslie.

DINABANDHU CHOWDHRY (PLAINTIFF) *v.* RAJMAHINI CHOWDRAIN (DEFENDANT).*

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Declaratory Decree—Suit for Confirmation of Possession on reversal of a Summary Order of a Civil Court—Valuation of Suit—Stamp—Act VII of 1870, cl. 3, art. 17 schd. 2.

The plaintiff, claiming under a will of the deceased, applied for a certificate under Act XXVII of 1860, but the High Court on appeal refused the same. He now brought a suit alleging that he was in possession of the property of deceased, and asked for "confirmation of right and possession by enforcement of the will, in reversal of the summary order of the High Court." *Held*, that clause 3, article 17 of schedule 2, of Act VII of 1870 (2), did not apply. This was not a suit to obtain a declaratory decree where no consequential relief was prayed.

This was a suit valued at Rs. 46,102-11-5½. The plaint was engrossed upon a stamp of Rs. 10. The plaint ran as follows:—

"Suit for confirmation of right and possession over the undermentioned moveable and immoveable properties, by enforcement of a will, in reversal of a summary order of the High Court, dated the 13th July, 1870, passed in a suit for certificate under Act XXVII of 1860, laid, as per schedule below, at Rs. 46,102-11-5½.

"Your petitioner's elder uterine brother, Audita Chandra Chowdhry, defendant's husband, was ailing with fever, spleen and diarrhœa, and as he did not recover, and having been on hostile terms with his brother-in-law (wife's brother) Harronath Chowdhry, was apprehensive lest after his death his widow should come under the influence of her brother and waste the estate; and besides, as it was the custom of your petitioner's predecessors not to give liberty to women, he in accordance with the custom of our father and uncle, in sound sense, and with the knowledge of the defendant, executed a will on

(1) 7 B. L. R., A. C., 614.

(2) *Act VII of* 1870 *Schedule II*, Art 17, cl. 3:—"For a plaint or memorandum of Appeal in each of the following suits

" To obtain a declaratory decree, where, no consequential relief is prayed, the proper fee is Rs. 10."

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*Regular Appeal, No. 99 of 1871, from a decree of the Judge of Faridpore dated the 5th April 1871