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the remaining property is stated to be of the average value of something between Rs. 5 and 6 per *bigha*; either of these sums is extremely low for the valuation of a perpetual interest in the land, and no explanation whatever is given—although all these *pattas* were granted about the same time for lands situated in the same district—why this extraordinary difference should exist. I think that, in the absence of any satisfactory explanation for this difference, credit ought to be given to the allegations made by the petitioner in his affidavit that the property is of the value of Rs. 10,000. I do not think, therefore, that it is necessary to make a further enquiry. I think upon this evidence I ought to admit the appeal.

The rule is made absolute, and a certificate should be granted that the judgment of this Court did involve indirectly a question respecting property of the value of Rs. 10,000.

Leave granted.

Attorneys for the respondent: Messrs. *Berners, Sanderson,* and *Upton.*

[PRIVY COUNCIL.]

GANGAPRASAD (ONE OF THE PLAINTIFFS) *v.* MAWJI LAL AND MUSSAMAT LAKHU (DEFENDANTS).

* P. C. 1871 *July* 5.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Bond—Evidence—Non-registration.

In an action on a bond and mortgage, which was not registered, and the *factum* of which was denied, the Principal Sudder Ameen decided in favor of the plaintiffs; but such judgment being reversed by the High Court, the Judicial Committee considering that too much weight had been given to the fact of non-registration, reversed that finding, and, after a careful analysis of the evidence, found the bond to be genuine.

THIS was an appeal from a decision of the High Court (Seton-Karr and Macpherson, JJ.), dated 11th May 1866.

* *Present*:—THE RIGHT HON'BLE SIR JAMES W. COLVILE, SIR JOSEPH NAPIER, LORD JUSTICE JAMES, LORD JUSTICE MELLISH, AND SIR LAWRENCE PEEL.

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The appellant and one Madhusudan Lal sued the respondent, Mawji Lal, to recover the amount of a mortgage and of a bond given at the same time, and to set aside as fraudulent a deed executed by him in favor of his wife.

It appeared that the plaintiffs had had dealings with a firm carried on by two sons of the defendant, Banshi Lal and Debi Prasad, and were in April 1863 found to be creditors to the extent of Rs. 30,000 in the two sums of Rs. 25,000 and Rs. 5,000. The firm failed in 1864, and the defendant alleged that he had, by selling his property to his wife, assisted his sons with money. The bond sued on was dated the 2nd May 1863, and contained no allusion to the partnership dealings, but stated that Rs. 25,000 was due to one of the plaintiffs, and Rs. 5,000 to the other. The defendant denied the signature to the bond, and alleged that the deed was forged. It was not registered.

The Principal Sudder Ameen of Monghyr found that Mawji Lal was a partner in the firm carried on by his sons, and this being so, he held that the *factum* of the bond was supported by the probabilities of the case, as well as by evidence of attesting witnesses.

The High Court, in reversing this decision, gave the following judgment:—

"This is a suit on a mortgage bond, and the sole question is whether it ever was executed by the appellant, Mawji Lal. The Lower Court has held that it was, and has given the plaintiffs a decree. On a careful consideration of all the evidence, however, we are of opinion that the judgment of the Lower Court ought to be reversed, and that the plaintiffs' suit ought to be dismissed. We are satisfied that this bond was not executed by the appellant, Mawji Lal, and that it is put forward by the plaintiffs, in order to establish his liability for the debts of a firm which did business in the name of his sons, Banshi Lal and Debi Prasad. The Lower Court has found, and perhaps correctly, that Mawji Lal was a partner in that firm. But the Court has laid too much stress on that fact, and has erred in thinking that it helps to prove that this bond is what it purports to be. If Mawji Lal was in reality, although not openly, a partner, that is no doubt a good reason why the plaintiffs should try to get from him an acknowledgment of his liability for the firm's debts: but it does not, as it seems to us, add to the probabilities of the story that, the firm being in insolvent circum-

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stances, Mawji Lal, whose connexion with the firm it would otherwise have been very difficult to prove, should voluntarily come forward and give this bond.

The signing of the bond is sworn to by three or four witnesses. The appellant, Mawji Lal, however, positively denies that he signed it, or that he ever borrowed money from, or was in any account indebted to, the plaintiffs. Although the bond is for so large a sum as Rs. 30,000, and is said to have been signed in a house in Monghyr in the immediate neighbourhood of a Register office, it has not been registered. We think that this fact operates very unfavorably to the plaintiffs' case when the circumstances under which the bond is said to have been given are borne in mind, and we cannot concur with the Lower Court in accepting as sufficient the plaintiffs' explanation of their reasons for not registering, namely, that because Mawji Lal was a relation, they, from motives of delicacy, abstained from having the deed registered. Further, we find that, subsequent to the date of this document, Mawji Lal sold to his wife the very properties which it purports to mortgage to the plaintiffs. We cannot understand what object Mawji Lal could have had in making this transfer, if he knew that he had already given this mortgage to the plaintiffs; while, on the other hand, we can very well understand why he should have assigned his property to his wife, if he believed it to be then unencumbered, and knew that the plaintiffs and others were threatening legal proceedings with a view to having him made liable for the debts of the firm of Banshi Lal and Debi Prasad. The plaintiff, Gangaprasad, was examined, and, never mentioning the firms, spoke as if all the money advanced had been advanced solely to Mawji Lal. He says—"I do not know what Mawji Lal did with the money borrowed I do not recollect on how many occasions he borrowed the money. The moneys used to be lent without the execution of documents. The way in which the moneys were borrowed is mentioned in my books." Yet it is perfectly clear that the debt due to the plaintiffs was the debt of the firm, and not of Mawji Lal alone. Mawji Lal may have been liable for it as a partner, but he was not liable otherwise. On the whole, we are of opinion that this bond was not executed by the appellant, Mawji Lal, and that it is a false document set up by the plaintiffs, in order to establish Mawji Lal's liability for the debts of the firm of Banshi Lal and Debi Prasad, and to get over the difficulty thrown in the way of creditors of that firm by the assignment made by Mawji Lal to his wife. What Mawji Lal's real liabilities in respect of that firm may be, we need not now consider.

We reverse the judgment of the Lower Court, and dismiss the plaintiffs' suit with all costs in both Courts."

The plaintiff, Gangaprasad, then appealed to England.

Sir *R. Palmer*, Q. C., and Mr. *Leith* for the appellant.

Mr. *J. D. Bell* and Mr. *Theodore Thomas* for the respondents.

Their LORDSHIPS delivered the following judgment:—

This is an action on a bond which was given, accompained by a mortgage, and it also seeks to set aside a subsequent sale by the defendant, who granted the bond of the property mortgaged to his wife: and the defence was that the bond was a forgery, and was never executed by the defendant. The Principal Sudder Ameen, the first Judge who heard it, and who also heard the witnesses, came to the conclusion that the bond was executed: the High Court came to a contrary conclusion: and their Lordships have to determine on which side the evidence really preponderated, and with which of the two judgments they agree.

Now, the signature to the bond was in the first instance proved by the plaintiff, by two of the attesting witnesses, and by the mooktear who wrote the bond and framed it. The defendant denied that it was his signature, but he did not call any evidence at all to prove that the bond was not in his handwriting: neither did he produce any of his undoubted signatures, in order that the Court might have the opportunity of comparing the disputed signature on the bond with his admitted signatures. Therefore, as far as depends on the direct evidence whether the bond was genuine or not, the evidence on the part of the plaintiff, in support of the genuineness of the bond, appears very greatly to preponderate, because there is the evidence of the attesting witnesses and of the person who drew it; and there is nothing against it but the evidence of the defendant himself.

But then the circumstances under which the bond was alleged to be executed have to be considered, for the purpose of seeing whether it is probable that such a bond should be executed or not. It appears that there were two sons of the defendant

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who carried on business; one of them appears to have been not more than fifteen years of age at the time of the trial of the suit, and therefore he must have been very considerably younger at the time when the bond was executed; and as respects the other son, it appears that he admits that he had no money of his own at all, and that all the money he had he procured from his father. There is some further evidence given as to what had happened in other suits, which may tend to prove that the defendant was a partner in the house of his sons, or rather, in fact, that he was carrying on business in his sons' names. The High Court appear to have believed that; at least, they say that they do not come to any contrary conclusion on that part of the case. Then it appears that the sons, or the house of business, were unquestionably in some difficulties at the time when this bond was given; and it appears also that one of the brothers of the plaintiff had married a daughter of one of the defendants. Then the bond is given for two separate debts; one a debt of Rs. 25,000, due to the first plaintiff, and another a debt of Rs. 5,000, due to the second plaintiff. The first strong corroboration on the part of the plaintiff's case was the entries in the books of the defendant's two sons, and these prove beyond all question that these two debts of Rs. 25,000 and Rs. 5,000 were due, and therefore there is no doubt that there was an actual debt of Rs. 30,000. They add up those two sums which are entered in the cash-book—"amount due to you Rs. 25,000, besides which there is due to Madhusudan Lal Rs. 5,000, in all Rs. 30,000;" and then it mentions the date, which is the same date as the date of the bond; then it states the interest, and then it states Rs. 100 for Gangaprasad's paper. The sums of principal are added together, and the two sums of interest and the sum for the stamp are also added together. That is very strongly relied upon—and their Lordships think properly relied upon—by the Principal Sudder Ameen, as showing that some security or another was given for the entire debt. Then one of the defendants, the elder son, who carried on this business, was called to explain this. No doubt he tries to give an explanation that a chitta was given for the Rs. 25,000, and a seperate one for the

Rs. 5,000, and that the Rs. 100 stamp was the stamp which was got for the Rs. 25,000. That, their Lordships think, is not altogether a satisfactory explanation. It was not brought forward by him in the first instance; it came out on cross-examination, and appears to be nothing more than the natural sort of explanation that a man might be driven to who saw what strong evidence this account gave against him.

Then, there is a further confirmation by the evidence of one of the defendant's witnesses, who appears to have been present at the time when the deed was executed by which the defendant professed to sell the property mortgaged to his wife; and there, on cross-examination, he certainly appears to say—"Having written the deed of sale, I made it over to Mawji Lal. Mawji Lal took it away with him to his house. Montaz Ali, in that *majlis* (assembly), and in the presence of Mawji Lal, spoke about the *tamassuk* (bond) to Gangaprasad and the pledge, on which Mawji Lal said 'he has to do with his own money, what business is it of yours?'" The great importance of that evidence rests on this, that it appears to prove, by the evidence of a witness called on the part of the defendant, that the bond was in existence prior to the time when the deed was executed by which the defendant sold his property to his wife; and if that were the case, then that gives an answer to the theory of the High Court, who are of opinion that this bond was forged for the express purpose of defeating that deed, in order that they might apparently have a mortgage which would take precedence of that deed.

Then, the other matter that is relied upon as against the genuineness of the bond is the stamps. It appears that there are two Rs. 50 stamps on it. They appear to have been purchased only a short time before, in the month of April, and they appear to have been purchased by a person who was one of the witnesses to the bond. That person was not called, and it does not appear whether he was a witness who, in fact, belonged to, and was connected with, the defendants, or whether he was a witness connected with, the plaintiff; and it appears perfectly consistent that the defendant's sons or the defendant

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in their ordinary business having purchased two Rs. 50 stamps a short time before, had inserted it on this bond, and that is the reason why it is charged in the accounts.

Then, another matter, which is strongly relied upon, is the non-registration of the bond, and it may be admitted that, *valeat quantum*, that is evidence to some extent against the genuineness; that it is to say, it seems more probable that it would have been registered, because it appears by an Act which was then in force, unless it was registered it would not be binding, at any rate as against a subseqent mortgage; that it would not bind as against a subsequent sale, appears more doubtful, but at any rate not as against a subsequent mortgage. On the other hand, it is said that it may have been understood at the time that it was not to be registered. The parties were at that time friends, and to a certain extent connexions, and registering a bond of this kind might destory the credit of the house, and bring them at once to insolvency, and, therefore, it well may be that it was understood at the time it should not be registered. There appears some reason for that, because, by the laws of registry, when a deed is registered, the Registrar requires that both parties should be present, either by themselves or by somebody appointed by them; and, therefore, if a person executes a bond of this kind, and says—"I will give you a bond, and I will put a charge on my property, but I will not consent to have it registered, it must be an understood thing that it shall not be registered:" if that is the understanding, the other side apparenty cannot get the deed registered at all, at any rate, they could not do so without a suit which there might be great difficulty under such circumstances in maintaining, and, therefore, it does not appear anything extraordinary that the defendant should have said—"I gave a bond for this debt of my sons, which I know I am in all probability liable for myself. I make it payable in two years. I get two years' credit, and I will charge my estate with it, but it must not be registered." There is nothing very extraordinary in an agreement of that sort being entered into. At any rate, their Lordships are of opinion that the mere circumstance of its not being registered is not sufficient by

itself to overbalance the evidence which appears to their Lordships to be generally satisfactory in proof of the validity of the bond.

Then, assuming the bond to be genuine, it is hardly necessary in this case to determine whether the subsequent sale would, if it were a really valid sale, prevail against the bond, for it appears very clear to their Lordships that the sale was a sham; in fact, that it was no real sale, and there is no satisfactory evidence of a farthing of money being paid under it, and it looks simply like a pretended sale made for the express purpose of defrauding the defendant's creditors. Their Lordships are of opinion that the defendant has produced no evidence at all which really is of any value in contradiction to the case of the plaintiff.

Their Lordships will recommend to Her Majesty that the judgment of the High Court should be reversed, and the judgment of the Principal Sudder Ameen should be affirmed and that the plaintiff should have the costs before the High Court, and also the costs of this appeal.

Judgment reversed.

Agent for appellant: Mr. *Wilson.*

Agent for respondents: Messrs. *Watkins* and *Lattey.*

FATI CHAND SAHU (PLAINTIFF) *v.* LILAMBER SING DAS AND OTHERS (DEFENDANTS).

P. C.* 1871 *July.* 3.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Registration of Deeds – Act XX of 1866.

Where a deed, which ought to be registered, is refused registration, the party agerieved should proceed under s. 84 of Act XX of 1866 (1); and if this course is not pursued. he cannot make use of the document as evidence in a civil suit brought by him to enforce specific performance of the terms of the deed, and to set aside a subsequent deed as fraudulent.

See also 11 B. L. R. 408. I. L. R. 2 Cal 82.

* *Present:*—THE RIGHT HON'BLE SIR JAMES W. COLVILE, LORD JUSTICE JAMES LORD JUSTICE MELLISH, AND SIR LAWRENCE PEEL.

(1) See Act VIII of 1872, s. 72.