

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No 236 of 1872.*1873.
February 14.

RAYA RAGHOBÁ KÁMAT..... *Appellant*
 ANAPURNABÁI Kom SUBÁLBHAT AND .
 OTHERS..... *Respondents*

Registration—Act XX. of 1866, Sec. 88—Registration after proper time.

The accepting of a document for registration, after the expiration of the period mentioned in part IV. of Act XX. of 1866, is not a mere defect of procedure. The registrar who registers a document so presented acts without authority.

THIS was a special Appeal from the decision of A. L. Spence Judge of the District of Kanara, affirming the decree of the Subordinate Judge of Karwar.

The facts of the case, in so far as they are material, are briefly as follows:—

On the 22nd of September 1865, the husband of the first defendant executed in favor of the plaintiff an instrument for the repayment of a sum of money lent, and mortgaging a piece of land as security. This instrument was not registered until twenty-five months after the date of its execution. It was presented for registration on the 25th October 1867, that is, long after the expiration of the period allowed by the Registration Act, and was registered in pursuance of an order of the District Registrar who excused the delay in presentation. The document was registered on the 21st of January 1868.

The plaintiff had filed a suit on this document on the 30th of December 1865; but, the document being then unregistered, the suit was, under Section 97 of Act VIII. of 1859 withdrawn, with liberty to bring a fresh suit. Steps were then taken to get the document registered, and it has been registered under the circumstances mentioned above. The present suit was filed on the 22nd of January 1870.

The Judge of the court of first instance rejected the claim, considering that the document, though actually registered, should be treated as an unregistered document, the registration having, in his opinion, been illegal. The court of appeal agreed with the court of first instance on the point of registration, but confirmed the decree on the ground of the suit being barred by the law of limitation.

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Kow Subabhat
and others.

The special appeal was argued before **SARGENT**, Acting C.J. and **KEMBALL**, J.

Skantaram Narayan for the appellant—The instrument sued on was, as a matter of fact, registered. There was no fraud or concealment of any kind either in the act of presentation to or registration by the Registrar. The circumstances under which the delay occurred were mentioned and the delay was duly accounted for and the District Registrar, excusing the delay, ordered registration. The registration having been made as a matter of fact, the defect, if there were any, was one of procedure and protected by Section 88 of Act XX. of 1866.

Shamrao Vitthal for the respondents was not called on to reply.

PER CURIAM:—We are of opinion that the act of accepting a document for registration, after the expiration of the period mentioned in Act XX. of 1866, and registering the same, is not a mere defect of procedure. In this opinion we are supported by the judgment of the Court in Regular Appeal No. 8 of 1869 (*Baba Shambhog v. Dasappa*). The Registrar acts without authority when he registers a document not presented within the period mentioned in Part IV. of the Act. The acts and formalities which accompany and constitute the act of registration are matters of procedure, defects in which are provided for by Section 88.

We must confirm the decree.

Decree confirmed.