

## Appellate Jurisdiction (a)

*In the Petition of T. VENKATASAMI NAIK under*

Section 84, Act XX of 1866.

Where an executing party to a document appears before the registering officer and admits execution, but refuses to sign on the back of the instrument as admitting the execution or do any other act towards its registration, the registering officer cannot, without the order of the District Court under Section 84 of Act XX of 1866, proceed with the registration of the instrument, as the provisions of Sections 66 and 67 could not be complied with. Denial of the receipt of part of the consideration money by the executing party is not a sufficient ground for the District Court refusing registration under Section 84 of the Act.

Where two instruments are contained in the same paper and relate to the same property and are both presented for, and in all other respects are entitled to registration, it is not a sufficient ground for refusing registration that in one of the documents the property is described only by reference to the other.

When any question arises under the Registration Act as to the nature or effect of any instrument, or the sufficiency of any description contained in it, the Court must endeavour to gather from the words used the intention of the parties and give effect to it; and not require, as a condition of registration, that the instrument be drawn up in technical language.

Though in the later of two instruments there are no words directly referring to the first, yet the frame of the documents shewing that the second document should be taken to refer to the first, the second document must be taken to contain a sufficient reference to the first.

Refusal by the executing party to initial an apparent alteration not materially affecting the instrument, unaccompanied by any suggestion that the alteration was improperly made after execution, does not render the document non-registrable.

**I**N the matter of this petition, the following Judgment, 1868.  
in which the facts fully appear, was delivered by 9th June.

**BITTLESTON, J.**—I am of opinion that the petitioner is entitled under the circumstances of this case to an order for the registration of two documents mentioned in his petition and produced by him in Court.

They are written on one sheet of paper. One is dated 29th November 1867, and is a mortgage debt bond executed by Chinnammal in favor of the petitioner whereby the certificates of a house in Peddunaik's pettah are mortgaged to the petitioner for 150 rupees. The other is dated 17th February 1868, mortgaging also a Collector's

1868.

9th June.

certificate No. 346, issued in the name of Chinnammal for a further loan of 100 rupees. This document refers to the previous loan of 150 rupees, and there can be no doubt that the certificate 346 relates to the same house in Peddunaink's ~~pettah~~, and was intended to be mortgaged by the earlier instrument, though at that time the certificate had not been issued from the Collector's Cutcherry, for in that earlier document there are the words "as also one deed No. —to be issued in my name at present at the Collector's Cutcherry."

At the Registration Office Chinnammal attended in obedience to a summons and admitted her execution of the documents; but she refused to attest an interlineation in the earlier bond, or to sign her name on the back of the documents as admitting the execution, or to do any other act towards their registration unless she were paid a sum of 100 rupees which she claimed from the petitioner. Under these circumstances, the Registrar of Madras refused registration of the earlier instrument, because Sections 66 and 67 of the Registration Act could not be complied with, and because the interlineation was not attested by the signature or initials of the executing party, and also because the description of the premises did not include the present and former occupancies. Registration of the second document was likewise refused, because Chinnammal would not sign any endorsement admitting execution, and because the description of the premises did not comply with Section 21.

Upon appeal to the Registrar General, he held that the decision of the Registrar was correct; and in his reasons for refusing registration he draws attention specially to the diversity of practice which exists under Sections 66 and 67 of the Registration Act when the executing party refuses to sign the endorsement required by Section 66 although he admits the fact of execution. It seems to me that in such a case the registering officer cannot, without the order of the District Court under Section 84, proceed with the registration of the instrument. It is not unreasonable to suppose that the Legislature intended that in

cases of dispute between the party presenting an instrument for registration and the executing party, the matter should be referred to the District Court; and this view is supported by the language of Section 84, which requires the Registrar to obey the order of the Court and to follow the procedure prescribed in Sections 66, 67, and 68, "so far as may be practicable." The use of these words in this place shows that the Legislature had in contemplation cases in which a Court might order registration, and in which it might nevertheless be impossible to comply with the directions given in those Sections; and the absence of the same or any similar words in those Sections themselves, as well as the language of Section 68 which directs the registering officer to complete the registration "after the provisions of Sections 36, 66, and 67 shall have been complied with," lead me to the conclusion that the duty of the registering officer is to refuse registration unless those provisions can be complied with.

It is, however, to be observed that Section 66, or rather the part of it in question, has no application where the execution is not admitted; and there is one case in which a registering officer is by Section 36 required to register though the execution is not admitted, viz., where the executing party is dead, and the registering officer is satisfied of the fact of execution, though the representative of the deceased refuses to admit it. There is no inconsistency in these enactments, for when in Section 68 it is said that "after the provisions of Sections 36, 66, and 67 shall have been complied with," the registering officer shall endorse the certificate of registration on the instrument, the meaning of course is such of the provisions as may be applicable to the particular case, that is to say, if any person had admitted the execution, his signature must be endorsed, if any person has been examined his signature must be endorsed, if any payment has been made in the presence of the registering officer a statement of that fact must be endorsed; but of course if none of these things have occurred, the non-endorsement of them is not a failure to comply with Section 66.

1868.

9th June.

In the present case Chinnammal did admit the execution, and the registering officer could not properly, in my opinion, proceed with the registration when she refused to sign the endorsement. She has been examined before me, and her somewhat confused statement as to part of the consideration money being unpaid which is denied by the petitioner, is not, in my judgment, a sufficient ground for this Court refusing registration under Section 84. That dispute may be hereafter settled, if the parties require it, in a suit, in which these documents will, after they have been registered, be admissible in evidence.

It remains, however, for consideration, whether in other respects than those already mentioned, the requirements of the law for the time being in force have been complied with on the part of the petitioner; and the other objections to the registration of the instruments, are three: 1st, that the later of the two documents contains no description at all of the immovable property to which it relates; 2nd, that the interlineation in the earlier of the two documents is not attested by the signature or initials of the executing party; and 3rd, that the description of the premises in that document does not include the present and former occupancies. The first of these objections raises the question whether no instrument can be registered under this Act, in which the parcels are described by reference to another instrument. As a matter of conveyancing, there is no objection to that mode of description; and indeed it is by no means unusual in the case of the assignment of a lease or of the transfer of any other instrument to endorse the assignment or transfer on the lease or other instrument creating the right transferred and to describe the property simply by reference to the description in the original instrument. In a case which arose under the English Act regulating the registration of deeds in the county of Middlesex (See 19 L. J. Q. B. 537 15 Q. B. 976), the question was as to the proper form of the memorial where the deed to be registered was the assignment of a lease endorsed on the lease itself, and the Court said—"In the case of a second deed endorsed on a former deed, and importing by reference the description of the premises from the former

deed, it appears to us necessary that the particulars of the description according to the truth should be given, and that this would not be done unless the dates and parties to both deeds are specified, together with the description from both deeds. In such a case the deed to be registered expresses the lands by reference to another deed, and the memorial should state that the imported description is taken from the source referred to." This case is not of course referred to as an authority on the question now under consideration, for the language of the Indian Registration Act 1866 and the procedure under it is quite different from that of the Stat. 7 Anne C. 20; but as an illustration only of what the Judges considered necessary by way of description in such a case for the purpose of identifying the premises under Section 21 of the Indian Registration Act. That is the important point to be ascertained by the Court—is the description sufficient to identify the property? Now the mode of registration provided by the Act is that the instruments registered shall be copied in a book to be kept by the Registrar, and therefore no description by reference to a former instrument can be sufficient unless the former instrument be also registered; but it seems to me that where two instruments are contained on the same paper, and relate to the same property, and are both presented for, and in all other respects are entitled to, registration, it is not a sufficient ground for refusing registration that in the second document the property is described only by reference to the first. The books kept in the Registration Office would give the whole of both documents, and would show, or, I think, should show that they were written on the same paper, and the Index No. 2 would refer to both documents. Assuming the description in the first instrument to be sufficient for the purpose of identification, I am of opinion that under the circumstances abovementioned, the description by reference in the second is also sufficient for identification.

In the present case, then, is the description in the first document sufficient for identification, and does the second document contain a sufficient reference to the first? That the first document does contain a description sufficient for

1868.

9th June.

1868. identification is, I think, clear. It sets out the four boun-  
9th June. daries, and it gives the name of the street and of the  
 village in which the house is situate, also the number of  
 the house and the side of the street to which it points.  
 Indeed it furnishes all the particulars mentioned in Section  
 21, excepting the existing and former occupancies, as to  
 which I have held in a former case that the omission is not  
 of itself a bar to registration.

I have felt more difficulty on the point whether in this  
 case the second contains a sufficient reference to the first  
 document. Neither document is at all of a formal or  
 technical character; and there are no words in the second  
 directly referring to the first for the description of the  
 property, but it is impossible for any one to read the two  
 documents together, as they were intended by the parties  
 to be read, without seeing that the second does refer to  
 the first, and operates only as a further charge on the  
 same property. The certificate 346 is evidently the same  
 referred to in the 1st document without number, and then  
 the words "this also was mortgaged with you," and the  
 words "received rupees 100, formerly due rupees 150, in  
 all rupees 250," clearly connect the two documents together.  
 Seeing then that this Registration Act is applicable gene-  
 rally throughout India, it cannot, I think, have been the  
 intention of the Legislature that the right to registration  
 should depend in any case upon the use of any formal or  
 technical expressions in the instruments offered for regis-  
 tration, and it seems to me that whenever any question  
 arises under this Act as to the nature or effect of any instru-  
 ment, or the sufficiency of any description contained in it,  
 the Court must endeavour to gather from the words used  
 what the parties intended by them, and give effect to that  
 intention just as if it had been expressed in the most formal  
 and technical manner. I cannot but see that if in the exercise  
 of the discretion given to the District Courts under Section  
 84, a practice should spring up of requiring, as a condition  
 of registration, any degree of technical nicety of expression  
 in the instrument offered for registration, a very beneficial  
 measure may probably be rendered an instrument of great  
 injustice; and in the present instance, though not without

some hesitation, I have come to the conclusion that the description of the house in the first instrument must be taken to be incorporated by reference into the second, on the principle that *Verba relata in esse videntur*.

1868.

9th June.

As to the two remaining objections, viz., the unattested interlineation, and the omission to state the occupancies, they are more easily disposed of. I have already held that the statement of occupancies is not a necessary condition of registration, if the description be otherwise sufficient to identify the property, as it seems to me to be in this case; and as regards the interlineation, the registering officer would not probably, in the exercise of his discretion under Section 20, have refused registration on that ground alone; for the interlineation in question does not materially affect the terms of the instrument, and the refusal by Chinnammal to attest it was not at all put upon the ground that it ought not to be there. Now although a discretion is given by Section 20 to the registering officer, the exercise of that discretion is manifestly subject to review by the District Court upon a petition under Section 84, and where there is no suggestion that there has been any improper alteration of the instrument after execution, and the only difficulty arises from the refusal of the executing party to attest an apparent interlineation, blank erasure, or alteration, I think that the Court ought not to refuse registration on that ground. The interlineation does not of itself render the document non-registrable; and though the executing party refuses to initial it, it seems to me that I cannot on that ground say that the requirements of the law have not been complied with *on the part of the petitioner* within the meaning of Section 84; and the requirements of the law having been complied with, I think that this is a proper case in which to order that the two documents be registered.