

be made parties in order to execute the decree. We, however, give no opinion on the point, and the case of *Buddu Ramaiya v. C. Venkaiya*, 3, *Madras High Court Reports* 263 (in accordance with which this appeal is entertained) certainly bears against the right of suit.

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Appeal dismissed.

Original Jurisdiction (a.)

In the matter of the Petition of NARAINASAMI PILLAI under Section 84 of the Registration Act XX of 1866.

The only two things which are absolutely required by Section 21 of Act XX of 1866 as conditions without compliance with which registration is prohibited are, first, that the instrument shall contain a description of the property sufficient to identify it, and, secondly, that if the instrument contains a map, a copy or copies of the map shall accompany the instrument when presented for registration. The other provisions of Section 21 are directory only. The circumstance, therefore, that the description of the parcels in the instrument does not specify the registration district, or sub-district, or division, or village in which the property is situate, or the former occupancy, is not alone sufficient to disentitle a party getting an instrument registered, if the description in the instrument is sufficient to identify the property.

Upon a petition under Section 84 of Act XX of 1866, the District Court is bound to ascertain whether the description is sufficient to identify the property notwithstanding the failure to supply some particular mentioned in Section 21, or the rules.

It is not necessary that the executing party should attend in Court, pursuant to notice served under Section 84, in order to authorise the Court to order the registration of the instrument. Under Section 84, the Court is not bound to direct registration of the instrument even if satisfied that the requirements of the law have been complied with, though in the exercise of this discretion the Court ought not to refuse registration unless very clearly satisfied that the registration will work injustice.

The verified statement, in the petition for registration, of the execution of the instrument is not, when the executing party fails to appear in Court, sufficient proof of the execution, in order that the Court may direct registration.

Semble, the words "the revenue officer in whose jurisdiction the person whose attendance is desired may be," in Section 40 of the Act, point to the chief revenue officer of the district, viz., the Collector, or, if in any defined sub-district the sub-Collector, such sub-Collector has all the powers of a Collector.

IN the matter of this petition, the following Judgment, in which the facts sufficiently appear, was delivered by

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(a) Present: Bittleston, J.

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BITTLESTON, J.—The first question which I have to consider is whether the requirements of the law have been complied with on the part of the petitioner, so as to entitle the document to registration.

Both the Registrar of Madras and also the Registrar General on Appeal have stated in their reasons for refusing registration that the description of parcels in the mortgage deed presented to them for registration is insufficient to satisfy the provisions of the Act and of the Rules 57 and 58 made under the Act. The Registrar General specifies the points in which the description is defective.

One of the parcels is described in the deed, thus: "As also the bungalow and garden in the Luz bearing Nos. 3 and 4, situated in the 4th Division of Police of the Madras District, formerly occupied by H. Bill, and at present occupied by Mrs. Doctor Sherman, and bounded on the west by a road, south by a house formerly belonging to Mr. R. Dasilva, and at present to Singara Mudalli, east by a ane, west by a house belonging to Mr. C. Dasilva, containing one cani, &c., as per the conveyance in my favor, dated 11th March 1865," and the objection taken to that description is that the Luz is not one of the 36 divisions or villages named in amended Rule 57. Now whether that is or is not a fatal objection, wholly disentitling the petitioner to have the document registered, depends upon the proper construction of Section 21 of the Act. That Section provides as follows: "No instrument relating to immovable property shall be accepted for registration unless it shall contain a description of such property sufficient to identify the same. Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front and by their existing and former occupancies, and by their numbers, if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their occupancies, and also, whenever it is practicable, by reference to a Government

map or survey. No document containing a map or plan of any property comprised therein shall be accepted for registration, unless it be accompanied by a true copy of the map or plan ; or, in case such property shall be situate in several sub-districts, by such number of true copies of the map or plan as shall be equal to the number of such sub-districts, and in case the property shall be also situate in several districts by such further number of true copies of the map or plan as shall be equal to the number of such districts."

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Now I agree that Rule 57, having been made by the Registrar General, approved by the Local Government and published in the Official Gazette pursuant to Section 80 of the Registration Act, has the same force as if it had been inserted in the Act, and that therefore Section 21 for the purposes of this case must be read as if in lieu of the words "in the territorial division in which they are situate," The words of the 57th Rule had been inserted, and the Section had required a description of the property as situate "in the district of Madras, and in one or other of the divisions or villages" in that rule mentioned ; of which certainly the Luz is not one. Therefore to comply strictly with Section 21, and the Rule 57, the property ought to have been described as situate in the district of Madras and in the division or village of Mylapore ; but the question is whether the omission so to describe it prevents its registration. In my opinion it does not. Upon carefully considering Section 21, it appears to me that the two things which by that Section are absolutely required as conditions, without compliance with which registration is prohibited, are, 1st, that the instrument shall contain a description of the property sufficient to identify it ; and, 2ndly, that if the instrument contains a map or plan, then a copy or copies of that map or plan shall accompany the instrument when presented for registration. The other provisions of the Section are, I think, directory only, indicating the intention of the Legislature as to the kind of description ordinarily to be required, but not importing the absolute necessity of strict compliance therewith in order to entitle an instrument to registration, if the des-

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cription which is given be sufficient to identify the property. It seems to me improbable that the Legislature should have intended so strictly to define the particular method of description when the consequences of so holding are considered. Those consequences may be illustrated by the circumstances of the present case. The executing party, who by the terms of the instrument appears to have received 12,000 rupees from the petitioner, fails to appear when summoned to the Registration Office, and his attendance not being procurable, the instrument cannot be altered however slight the variation required so as to make the description of the parcels comply with the rule. The instrument therefore cannot be registered, and by the operation of Section 49 of the Act, it becomes waste paper in the hands of the party who has advanced his money upon it. The absence of negative words in that part of Section 21, which mentions the particulars of the required description, confirms me in the view that that part of the Section is directory only; and I refer to the case of *Cole v. Green* (7 Scott's N. R. 682, 704) as an authority for the construction which I have put upon the Section.

A subordinate registering officer may consider himself bound, and perhaps may be justified, in obedience to the orders of his superiors, in not passing for registration any document which does not comply with the rules, taking such compliance as the only test which he can recognise, of a description sufficient to identify the property; but in this Court at all events upon a petition under Section 84 it seems to me that I am bound to ascertain whether the description is sufficient to identify the property, notwithstanding the failure to supply some particular point mentioned either in Section 21, or the rules.

In the present instance there can be no doubt, and it is not disputed that the description is sufficient to identify the property, and if in registering the document the registering officer should make a note in the margin against the word "Luz" "in the district of Madras and division or village of Mylapore," then the registration of the instrument will be accompanied with all the information which

either the Legislature or the Registrar General has deemed desirable. 1868.
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The observations above made seem to me also to apply to the objection taken by the Registrar General to the description of another piece of property also mortgaged by this same instrument, and described as "the house and ground situated at Little Mount Guindy, and occupied at present by Apothecary Stephenson, and bounded on the north by the river, on the south by the Little Mount Church, east by a lane and Richardson's house, west by a lane and Johannes' house, known as Crump's house, and measuring in length $241\frac{1}{4}$ ft., and in breadth 240 ft., as per the conveyance in my favor, dated 10th September 1866." The objection is that under Rule 58 this property should have been described as situated in the registration district of Chingleput and in the registration sub-district of Sydapet, so that the very form of objection shows that the description given is sufficient to inform the registering officers in which registration district and sub-district the property is situate. Further it is objected that under Section 21, the name of the former occupant should have been given; and (assuming the Little Mount Guindy to be a town) so it should, if exact compliance with the terms of that Section was absolutely essential. But the very mention of this as one of the required terms of description goes far, I think, to show that exact compliance with those terms was not intended to be a condition precedent to the right to registration, a description "by their existing and former occupancies is required as to houses in towns and as to other houses and lands a description by their occupancies," which means, I suppose, existing occupancies," so that if the Little Mount Guindy be not a town, and I don't imagine that a Madras Jury would find it to be so, the description by the existing occupant Mr. Apothecary Stephenson appears to be sufficient. But suppose the name of the former occupant could not be ascertained, or not, without great trouble? the present occupant may have been in possession for many years, and previously for many years the property may have been unoccupied. Must there be a laborious antiquarian re-

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 May 26. purpose of ascertaining the name of an old tenant in order to entitle a purchaser or mortgagee to have his deed registered? I observe that the form of petition given in the Schedule to the Act contains a statement that the petitioner has complied with the requirements of the Act *so far as it has been possible for him to do so*, which also, I think, favors the view I have taken of Section 21.

Having thus arrived at the conclusion that the description of the property in the instrument is sufficient for identification, there is not in this case anything to prevent the Court from directing that it should be registered.

In order to enable the registering officer to register the attendance of the executing party or his representative, assign or agent, is in general necessary under Section 36 of the Act; but it is not, in my opinion, necessary that the executing party should attend in Court pursuant to the notice served upon him under Section 84 in order to authorise the Court to order the registration of the instrument; for Section 36 is in express terms made subject to the provisions of Section 84. On the other hand, the Court is not bound under Section 84 to direct registration of the instrument, even if satisfied that the requirements of the law have been complied with. The words are "the Court may, if it shall think proper," but in the exercise of his discretion, the Court ought not, in my opinion, to refuse registration unless very clearly satisfied that the registration will work injustice; for, on the one hand the refusal of registration shuts out the party claiming under the instrument from all remedy, whilst on the other the registration of the instrument does not prevent the executing party, if sued upon it, from making any defence which would otherwise have been open to him.

The only remaining question is whether the verified statement in the petition of the execution of the document is sufficient when the executing party fails to appear; and I think it is not. In such cases the same course should be pursued as when a defendant in a suit does not appear, and the case is heard *ex-parte*. The execution of the

instrument must be proved on solemn affirmation by the petitioner or a witness who was present at the execution, and the deposition should be taken down and kept with the record. Upon the point so fully stated by the Registrar General in his reasons for refusing registration in this case, viz., the power to compel the attendance of the executing party before the registering officer, it is not necessary for me in this case to say anything, but I cannot doubt that under Section 40 of the Act the very same power exists of compelling the attendance of an executing party summoned before the registering officer, as that which the law gives for compelling the attendance of a witness before a Civil Court. The difficulty seems to be, who is the Revenue Officer by whom the process for enforcing attendance is to be issued and served, and I think that the words "the Revenue Officer in whose jurisdiction the person whose attendance is desired may be," mean the chief revenue officer of the district, viz., the Collector, or, if in any defined sub-district, a Sub-Collector has all the powers of the Collector, then, in that sub-district the Sub-Collector.

In my opinion the registering officer is the person who is to exercise a discretion as to the extent to which the process for compelling attendance shall be carried, viz., 1st, whether a warrant to apprehend the person should be issued, and, 2nd, if that process failed, whether an attachment of his property should take place under Section 159, and the Revenue Officer is the person to issue and serve the process.

The inability therefore to compel the attendance of Mr. Bowie alleged by the District Registrar does not, in my opinion, exist ; but I agree with the Registrar General that the practical difficulties, which in this Presidency alone appear to arise in the way of executing compulsory process, formed a very good reason why the Registrar in the exercise of his discretion should refuse to make the attempt ; and the matter is not of the same importance if it be correctly held that upon petition to this Court the non-attendance of the executing party either at the Registration Office or in the Court is not a sufficient ground for refusing registration.

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Upon proof of the execution of the document the order will go for its registration.

Appellate Jurisdiction (a)

Special Appeal No. 144 of 1868.

KRISHNA..... *Special Appellant.*

RA'YAPPA SHANBHA'GA..... *Special Respondent.*

In a suit to establish a right of water and for damages for interruption of the same the facts were:—Plaintiff and defendant by agreement between them constructed a dam across a main channel, and from thence a smaller channel was made through the land of the defendant to the plaintiff's land, by means of which it was agreed that the plaintiff should be at liberty to irrigate his fields. This agreement was acted upon for a long course of years.

Held, that the agreement was not a mere parol license revocable at the pleasure of the defendant, but an agreement which created a right of easement, unlimited in point of time, to the use of the water by the plaintiff, and imposed upon the defendant the corresponding duty of allowing the accustomed supply to flow.

A mere license differs in its effects from a license coupled with the creation of an interest. The former is revocable, but the latter is subject to the same incidents, and is as binding and irrevocable as any other contract, gift, or grant.

The law in this country does not require that any agreement between natives, whether in regard to the transfer or creation of an interest in land, or otherwise, should be in writing; nor does it distinguish between agreements under seal and by parol.

Kesava Pillai v. Peddu Reddi and others (1, Madras High Court Reports 258) distinguished.

1868.
June 8.
S. A. No. 144
of 1868.

THIS was a Special Appeal against the decree of T. Muthusami Aiyar, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 27 of 1866, reversing the decree of the Court of the District Munsif of Mangalore in Original Suit No. 200 of 1862.

Sanjiva Rau, for the Special Appellant, the plaintiff.

Rama Rau, for *Páthasaradhy Aiyangár*, for the Special Respondent, the fourth defendant.

The Court delivered the following

JUDGMENT:—In this case the admitted facts are that the plaintiff and defendant by agreement between them con-