

is to say, they have omitted to find whether the alienation was for legal necessity. The case must therefore be remanded to the lower Appellate Court in order that this point may be determined; and the District Judge will deal with it according to law, either deciding the case on the evidence on the record, or remitting it to the first Court. Should it be found that the sale by Avimani to the defendant No. 1 conveyed an absolute title in an 8-annas share, then it will be for the Court to consider whether the plaintiffs on the supplemental issue should receive a decree for a 4-annas share of the estate, which would represent the share inherited by their vendors. On the other hand, should it be found that the sale by Avimani conveyed only the life-interest of a Hindu widow, the plaintiffs will be entitled to a decree to recover the share now held by the defendant No. 1. Costs to abide the result.

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Case remanded.

J. V. W.

Before Mr. Justice Pigot and Mr. Justice Gordon.

SALIMATUL-FATIMA *alias* BIBI HOSSAINI (ONE OF THE DEFENDANTS) *v.* KOYLASHPOTI NARAIN SINGH (PLAINTIFF) AND OTHERS (REMAINING DEFENDANTS).*

1890

May 14.*Registration—Registered document, proof of.*

Mere registration of a document is not in itself sufficient proof of its execution.

Kristo Nath Koondoo v. Brown (1) dissented from.

This was a suit to recover the sum of Rs. 2,431-10 for principal and interest due upon a mortgage-bond dated 6th Sraban 1288 F. S. (17th July 1881). The bond purported to have been executed in favour of the plaintiff Koylashpoti Narain Singh by one Ahmud Hosain as general agent of the defendant Salimatul-Fatima; and from the endorsement of registration, it appeared that it had been registered by Ahmud Hosain under a general power of attorney dated 19th August 1878. Salimatul-Fatima, who was a purda-nashin lady, in her defence pleaded that

* Appeal from appellate decree No. 1666 of 1888, against the decree of J. F. Stevens, Esq., Judge of Gya, dated the 21st May 1888, affirming the decree of Baboo Kali-Prosunno Mukerjee, Subordinate Judge of Gya, dated the 13th of September 1887.

(1) I. L. R., 14 Calc., 176, at p. 180.

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Ahmud Hosain was not her general agent, and had no authority to raise any loan on her behalf; that she did not execute the power of attorney of 9th August 1878; that the mortgage bond was not executed with her knowledge or consent; and that she had received no part of the consideration money, nor was any portion of it expended on her behalf. Ahmud Hosain died during the pendency of the suit, and his heirs, who were made parties, contended that the bond was executed by Ahmud Hosain on behalf of Salimatul-Fatima, and that the money was borrowed for her benefit.

The Subordinate Judge found that Ahmud Hosain had executed the mortgage-bond and received the consideration money. He also found that Ahmud Hosain had acted for Salimatul-Fatima as her agent on various occasions; that the power of attorney of 9th August 1878 had been returned to the husband of Salimatul-Fatima at the time of the death of Ahmud Hosain; and that Ahmud Hosain had under that power of attorney executed a deed of sale on behalf of Salimatul-Fatima. Although it had not been proved that Salimatul-Fatima had executed the power of attorney, the Subordinate Judge admitted secondary evidence of its contents apparently on the grounds that it had been proved that the document was in the possession of the husband of Salimatul-Fatima and had not been produced when called for by the plaintiff after notice to produce had been given; and upon such secondary evidence he came to the conclusion that it had been satisfactorily proved that Ahmud Hosain had authority from Salimatul-Fatima to take loans and execute mortgages on her behalf. Accordingly he held that she was liable under the mortgage-bond of the 6th Sraban 1288 F. S., and gave the plaintiff a decree against her.

This decision was affirmed by the District Judge of Gya, who dismissed Salimatul-Fatima's appeal with the following remarks:—
 "The Subordinate Judge, who has gone very carefully into the matter, has found that the document was executed by the appellant's husband's elder brother, under a general power of attorney, authorizing him to do such things. The power of attorney itself is not forthcoming. It is proved to have been returned to the appellant's husband. Every effort has been made by the other side to get it before the Court, but in vain; so secondary

evidence has been adduced of its contents, and evidence has been brought to prove that the same person, who is said to have acted for the appellant in the matter in question, has acted for her on other occasions also, the transactions having resulted in the actual transfer of property, of which the appellant cannot fail to have been cognizant. The endorsement of the registering officer on the mortgage-bond shows that it was presented with a general power of attorney from the appellant, duly registered, and I agree with the lower Court in being satisfied on the evidence that the executant of the bond did hold such a power authorizing him to enter into transactions of this kind * * * * * It has been urged that the actual execution of the power of attorney has not been proved, and that the attesting witnesses ought to have been examined. It seems to me that the plaintiff has done all that he as a stranger could be expected to do. He is not supposed to know who the attesting witnesses were, and it is on the face of it improbable that if he did know, he could induce them to give evidence in his favour. There was a power of attorney duly registered which under the ruling in *Kristo Nath Koondoo v. Brown* (1) might have been received without proof. The plaintiff has done his best, as I have said, to get it produced before the Court; and having failed to do so, he has, I think, done sufficient in adducing evidence as to its contents."

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Baboo *Umbica Churn Bose* and Baboo *Jogendro Chunder Ghose* for the appellant.

The *Advocate-General* (Sir *Charles Paul*) and Baboo *Mohabir Sâhoy* for the respondents.

The judgment of the Court (PIGOT and GORDON, JJ.) was as follows:—

Upon the question raised as to the proof of the execution of the power of attorney, it is clear, and is indeed admitted, that the respondents' case rests alone upon the fact of registration. There is no proof unless that be proof. And as to the sufficiency of this, a note in the case of *Kristo Nath Koondoo v. Brown* (1), a ruling by Trevelyan, J., is relied on, as showing that registration of such a document is enough without further proof

(1) I. L. R., 14 Calc., 176, at p. 180.

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of execution. It is relied on very properly in the judgment of the District Judge, and was referred to, but without any argument or attempt to explain it, by the learned Counsel for the respondents. It is unnecessary to say that a reported decision of the learned Judge on the Original Side after argument must be treated as an authority of importance. But we do not think that the note in question is one by which we should be guided. There is no report of either argument or judgment; as the note appears, it would be to the effect that mere registration of a document is in itself sufficient proof of its execution. We think that there must have been some misapprehension as to the grounds on which the document was admitted in evidence by the learned Judge. We think we should not treat this note as an authority for the proposition above mentioned, which we think could not be accepted. We must hold that in this case there is no proof that the lady ever executed the document under which it is sought to bind her. That being so, it is impossible to support the decision of the District Court, and the appeal must be allowed with costs.

C. D. P.

Appeal allowed.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Banerjee.

1890
 June 21.

KALI KANTA SURMA AND OTHERS (DEFENDANTS) *v.* GOURI PROSAD SURMA BARDEURI AND OTHERS (PLAINTIFFS).*

Right of suit—Suit to establish right to offerings—Emoluments—Defect of parties—Code of Civil Procedure (Act XIV of 1882), ss. 11 expl., 30.

A suit claiming a right to the regular offerings made out of the funds of a temple which are of a substantial value as emoluments is a suit of a civil nature within the meaning of the explanation to s. 11 of the Code of Civil Procedure.

Krishnama v. Krishnasami (1) referred to; *Narayan Vithé Parab v. Krishnaji Saddshiv* (2) distinguished.

* Appeal from appellate decree No. 1088 of 1889, against the decree of C. J. Lyall, Esq., Judge of Assam Valley Districts, dated the 11th of March 1889, affirming the decree of Baboo Shiva Prosad Chuckerbutti, Munsiff of Gouhati, dated the 23rd of March 1888.

(1) I. L. R., 2 Mad., 62.

(2) I. L. R., 10 Bom., 233.