

It may be that the Subordinate Judge might, instead of granting the appellants' petition at all, have dismissed it and directed them to move under s. 206; but the Subordinate Judge did not adopt that course, but chose to make the amendment in the way and manner I have mentioned. Under these circumstances, the appellants are, in my opinion, entitled to have the benefit which the procedure adopted by the Subordinate Judge has given them, and to treat the order as made upon review of judgment, and therefore as the final decree in the suit.

The appeal will be allowed, the suit remanded to the lower Appellate Court with a direction to hear the appeal and decide it upon the merits.

Case remanded.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

SHEO SHUNKUR SAHOY (DEFENDANT) *v.* HIRDEY NARAIN SAHU
(PLAINTIFF).*

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Certificate of Registrar—Registration Act (VIII of 1871), ss. 49, 60.

Where a Registrar of Assurances has intentionally and deliberately issued a certificate of due registration of a document, with knowledge of certain facts relied on as affecting his power to grant the certificate, the Courts are bound to accept such certificate as due proof of registration, and cannot go behind it for the purpose of satisfying themselves that the Registering Officer has strictly conformed with all the provisions of the Act.

THIS was a suit brought to establish a right of ticcadari barna (an assignment made for the payment of interest) and for recovery of possession of certain properties by completion of a *bonâ fide* contract of ticca zur-i-peshgi (1), under a lease, dated the 30th of Sawan 1282 F.S. (17th August 1875).

The plaint *inter alia* stated that, under a contract entered into between the parties, it was agreed that, in consideration of

* Appeal from Original Decree, No. 6 of 1878, against the decree of W. DaCosta, Esq., First Subordinate Judge of Tirhoot, dated the 19th December 1877.

(1) Money lent in advance upon an usufructuary mortgage.—*Wilson's Glossary of Indian Terms.*

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a loan by the plaintiff to the defendant of a sum of Rs. 30,000, the defendant should grant the plaintiff a lease of certain lands for ten years, the rent thereof, with certain deductions, to be appropriated by the plaintiff towards the payment of interest (fixed at 12 per cent. per annum) accruing on the said loan; that the defendant duly executed a potta on the 17th August 1875; that the plaintiff paid the said sum of Rs. 30,000 to a creditor of the defendant, such moneys being so paid under the direction of the defendant, and in accordance with the terms of the agreement; that the defendant subsequently used every effort to prevent the registration of the said potta, but, that the Sub-Registrar, overruling the objections so made, duly registered the same.

The defendant, in his written statement, and in two petitions filed before the Sub-Registrar, denied that the Rs. 30,000 had ever been paid, and further stated that the plaintiff had failed to carry out some of the essential terms of the agreement; he also alleged, that, subsequent to the execution of the potta by the defendant, the mooktear of the plaintiff (the potta being drawn on a stamped paper to which additional sheets had been pasted to add to its length) had tampered with the document by removing one of these pasted sheets, and substituting another spurious sheet in its place.

The order, dated 22nd November 1875, made by the Sub-Registrar at the time of registration was as follows:—
“Although Sheo Shunker Sahoy, son of Hanuman Sahoy, by caste Sribustah, and zemindar, inhabitant of Mouza Sahdi Buzurg, &c., the executant of this deed, having appeared on the 26th of October 1875, on issue of warrant, made a declaration in solemn affirmation, refusing to cause the registration of the deed, and stated that he wrote this much on the deed which was signed by him,—*i. e.*, that ‘Sheo Shunker Sahoy, malik: this potta executed by me is correct; by my own pen,’—yet, on looking into two petitions, dated 8th September and 21st October 1875 respectively, which, on behalf of Sheo Shunker Sahoy, have been filed in person, it appears that the said Sheo Shunker Sahoy admits the execution and delivery of this potta, and also it appears, from a perusal of this paper, that the stamp paper,

valued Rs. 240, was purchased by Sheo Shunker Sahoy in person from the Collector's treasury at Monghyr; and, on an enquiry being made in the Collectorate of Monghyr, it appears that no other stamp paper except this one, valued Rs. 240, was purchased by Sheo Shunker Sahoy from the treasury of the Monghyr Collectorate. Under these circumstances, it is very clearly evident that Sheo Shunker Sahoy in all respects admits the execution and delivery of this document; therefore, according to the provisions of s. 35 of Act VIII of 1871, this document is registered."

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One of the issues raised at the trial was, whether the potta had been legally registered; and on this point the Court of first instance was of opinion, that the Sub-Registrar having satisfied himself by the evidence produced before him, and the enquiries he himself had made, that the potta had been duly executed, and delivered by the defendant, was not bound, for the purposes of mere registration, to consider the other objections raised by the defendant, and was, therefore, justified in registering the document; and on this ground held, that the registration of the potta was valid.

The defendant, thereupon, appealed to the High Court.

Mr. *Branson* and Baboo *Annoda Pershad Banerjee* for the appellant.

Mr. *Woodroffe* and Mr. *Twidale* and Munshee *Mahomed Yusoof* for the respondent.

The following are judgments of the Court (AINSLIE and BROUGHTON, JJ.), so far as they are material to this report:—

AINSLIE, J.—At the time that this suit was brought, the Registration Act, VIII of 1871, was in force. Section 49 of that Act forbids the Courts to accept or act upon documents of certain classes, unless they are registered in accordance with the provisions of the Act.

The question then arises whether, when a document purporting to have been registered is tendered in evidence, the Court is to accept it on the strength of the certificate of registration endorsed upon it, or whether it is to satisfy itself that the

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Registering Officer has strictly conformed to all the provisions of the Act. It appears to me that the Court is to accept the certificate of registration. In s. 60 it is laid down that a certificate of registration being "signed, sealed, and dated by the Registering Officer, shall then be admissible for the purpose of proving that the document has been duly registered in the manner provided by the Act." It may be that on proof that the Registrar had been deceived, and by a fraud practised on him (*e. g.*, by false personation) had been induced to make a certificate which but for that fraud he would not have made, the Court would hold the certificate void and the document bearing it inadmissible for want of registration; but where, as in this case, it is admitted that the certificate was the intentional and deliberate act of the Registrar, done with knowledge of what is alleged as rendering it void, in my opinion the Court cannot go behind it. The Registrar may have been mistaken in supposing that he ought to register the document, but nevertheless his certificate is under s. 60 sufficient to meet any objection under s. 49. Refusal by a Sub-Registrar to admit a document to registration may be questioned by an appeal to a Registrar, and refusal by a Registrar may be questioned by a petition to the District Court, but there is no provision in the law for revising orders for the admission to registration of a document. The Act makes no provision for altering such orders, and they are consequently final, and the reason for the difference is obvious. The object of the Act is to guard against fabrication of false documents of title from time to time, as the temptation to manufacture them arises, by insisting that all documents of certain classes shall be produced for registration within a limited period of time from the date of execution, and shall be entered in public registers after their execution has been ascertained, so that, their purport and condition being thus fixed, they may not afterwards be open to be tampered with. Registration does not do away with the necessity of proof, except so far, that where a person admits that he has registered a document, he cannot well deny its execution; but he may deny its validity, whether on the ground that he was deceived into executing it, or that the conditions have not been complied with by the person seeking the

benefit of it, or any other ground on which a person may claim to be relieved from the operation of an engagement; and of course he may deny both execution and registration, or he may admit the former and deny the latter. In these two last cases, he in effect asserts that a fraud has been practised not only on himself but on the Registering Officer, and if he can succeed in establishing this, the Registrar's certificate becomes of no effect. Thus the Act, which in s. 49 invalidates documents for non-registration, provides remedies for improper refusals to register, but leaves documents when once registered to be dealt with on their merits by the Courts.

The appeal must be dismissed with costs.

BROUGHTON, J.—I am entirely of the same opinion. With regard to the objection that the document which is the subject of this suit has not been properly registered, and could not be received in evidence, it appears to me that when a document is presented for registration, the Registrar has a duty to perform which involves an enquiry by him as to whether he should register it or not. Having performed that duty, and having done the act required by the Legislature, it is not possible for us, in the absence of any power for reviewing the act of the Registrar, to go behind it. When a document which purports to have been registered is tendered in evidence, the Court cannot reject it for non-compliance with the Registration Law, but can deal with all other objections against it on their merits.

Appeal dismissed.

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