

(1922) 07 AHC CK 0013
In the Allahabad High Court

Collector of Moradabad

APPELLANT

Vs

Chhotey Lal

RESPONDENT

Date of Decision : 11-07-1922

Acts Referred:

Registration Act, 1908 — Section 35

Citation : (1922) ILR (All) 514

Hon'ble Judges : Sumner, J;John Edge, J;Carson, J;Buckmaster, J;Atkinson, J

Bench : Full Bench

Judgement

Buckmaster, J.—On the 20th of November, 1911, Maulvi Maqbul-ur-Rahman executed a mortgage of considerable property in the district of Meerut in favour of Sabu Prasadi Lal, to secure repayment of Rs. 10,000 and interest. The mortgagor subsequently executed several transfers of the mortgaged property, some by way of mortgage and some apparently by way of absolute transfer.

2. The appellant claims under one of such transfers, but the extent and character of his interest is nowhere stated, nor need it be investigated as it is admittedly sufficient to support the appeal. He contends that the mortgage of the 20th of November, 1911, was not properly registered in accordance with the provisions of the Indian Registration Act (XVI of 1908), and is consequently invalid.

3. The respondent is the Manager of the Court of Wards, acting on behalf of the three infant children of the mortgagee, who died on the 8th of February, 1912.

4. That the mortgage required to be registered is plain. The only question is, was registration effected? The facts are these. The mortgage was presented for registration before the Sub-Registrar of Moradabad on the 5th of February, 1912, by Pandit Nanak Chand acting under a power of attorney, and was received by him. The mortgagor did not attend to admit execution, and on the 28th of February, 1912, the Sub-Registrar refused registration, making an endorsement on the deed in the following terms: "Under Section 35, Act XVI of 1908, registration refused." Section 35 relates solely to the admission of execution of

the deed, and as the mortgagor did not appear, the Sub-Registrar was bound to take the course he did, leaving the interested parties to appeal to the Registrar u/s 73 (see *In re Shaik Abdul Aziz* ILR (1887) Bom., 691).

5. It will, therefore, be noticed that the reason why registration was refused had nothing to do with defect in presentation; but as it is now asserted that the original presentation was irregular, it is important to examine the facts and statutory provisions upon that head, The Registration Act has imposed several conditions regulating the presentation of documents for registration, and it is of great importance that those conditions, framed with a view to meet local circumstance. should not be weakened or strained on the ground that they may appear to be exacting and strict.

6. Section 32 is the first section dealing with the matter, and it is in the following terms:

32. Except in the cases mentioned in Sections 31 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office.

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or.

(b) by the representative or assign of such person, or.

(c) by the agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner hereinafter mentioned.

7. The exceptions mentioned in Sections 31 and 89 need not be considered as they have nothing to do with the present case.

8. Presentation here was not made in person; it was made under Sub-section (c) by an agent purporting to be authorized by a power of attorney. Such power of attorney must not be general in its form, but must confer the special authority to present on behalf of the principal, and even though the Sub-Registrar accepts the presentation under a general power of attorney, it is open to any interested party to show that the power of attorney was in fact imperfect. See *Jambu Prasad v. Muhammad Aftab Ali Khan* ILR (1911) All. 49: I L.R. 42 IndAp 22. The fact that the presentation is accepted by the Sub-Registrar as in proper form is, however, prima facie evidence that the conditions have been satisfied; and after such acceptance, the burden of proving any alleged informality rests on the person who challenges the registration. In the present case no question arises upon the character of the power; it has not been put in evidence and, having been formally accepted by the proper official, it may be regarded as complying with the provisions as to its character imposed by Section 32, Sub-section (c).

9. By Section 33, however, special conditions are established with regard to the execution of such a power of attorney. This section provides that certain powers of attorney shall alone be recognized, viz., Sub-section (a):

(a) If the principal at the time of executing the power of attorney resides in any part of British India in which this Act is for the time being in force, a, power of attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides.

10. It is said that in this case that condition has not been satisfied, because the Sub-Registrar's certificate, which was endorsed on the document on the 5th of February, 1921, in the following terms:

Presented by Pandit Nanak Chand, son of Pandit Tara Chand, caste "Brahmin, professional lawyer, resident of Moradabad, mohalla Raja Gali; at the office of the Sub-Registrar, Moradabad, this 5th day of February, 1912, between the hours of 8 and 4 p.m. on behalf of Sahu Parshadi Lal under a special power of attorney duly authenticated in this office on the 3rd of February, 1912.

(Signed) Sham Behari Lal, officiating S.R.

does not refer to the fact that the power of attorney was executed before the Sub-Registrar. The endorsement is certainly lax in this respect, but it is made under no statutory obligation, and it has no statutory effect; it is only the evidence to show that the presentation has been accepted by the Sub-Registrar and its acceptance by him, he being the officer whose business it is to see that all essential regulations are regarded, is prima facie evidence that the power of attorney was regular in all respects. So far as the original presentation is concerned, therefore, their Lordships think that there is nothing to displace the inference that it was duly made, arising from the fact of its acceptance by the Sub-Registrar. His refusal to register was due to the circumstances which have already been narrated, and in due course appeal was had to the Registrar by the present respondents.

11. On the 28th of June, 1912, the District Registrar ordered registration, following upon which, on the 22nd of July, the Collector of the Court of Wards forwarded the mortgage and the copy of the order by post to the Sub-Registrar and asked for registration, The order of the 28th of June, 1912, removed the difficulty that prevented registration in the first instance, and accordingly, on the 28rd of July, 1912, the Sub-Registrar accepted the document for registration and made upon it the following endorsement:

Having Been the order of the District Registrar, Moradabad, dated 28th June, 1912, I have satisfied myself that the execution of the document was proved before the said officer, and the document is therefore accepted for registration.

(Signed) Sham Singh, officiating S.R.

23rd July, 1912.

And it was registered accordingly.

12. It is objected that such registration was bad because the presentation to the Sub-Registrar after the District Registrar's order ought to have been made with

the same formalities as those necessary for the original presentation, and this, according to the appellant's contention, is the only meaning that can be given to Sub-section (2) of Section 75, which is in the following terms:

75.--(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

13. The weight of this argument depends upon the phrase "duly presented," and it is pointed out that the subsequent use of the same words in Sub-section (3) shows that "duly presented" means presented in accordance with all the formalities imposed by Section 32.

14. Their Lordships are not prepared to differ with this reasoning, but it does not conclude the case in the appellant's favour. Upon the hypothesis that Section 75, Sub-section (2), may be dealing with a case such as the present, in which original presentation has been properly made, and as every condition has been satisfied, there would, in their Lordships' opinion, be nothing to prevent the District Registrar, when he had determined the question of execution, from directing that the registration should then be made. The last words in Sub-section (3), which provide that the registration shall date back, do not necessarily refer only to a registration effected pursuant to the provisions of Sub-section (2) but to every registration consequent on the order made by the Registrar. The main point about Sub-section (2) is that it is mandatory in form and compels the registering officer to effect the registration if the document be duly presented. If this procedure be followed and registration is refused, the processes of the court are open for the purpose of compelling obedience, a privilege that would not be enjoyed if the formalities were omitted. Their Lordships can find nothing in the section to prevent the Registrar or the Sub-Registrar from registering a document which had been duly presented, and the execution of which has been proved, without, requiring a repetition of all the original steps, but he cannot be compelled to register unless the document be "duly presented" a second time. There are many mischief's against which the Statute was designed to afford protection in requiring obedience to the provisions for presentation in the first instance, but when once the execution of the document has been proved, and the original conditions for presentation complied with, there is no reason why they should all be repeated.

15. For these reasons their Lordships think that the conclusion at which the High Court have arrived is correct, although they are not prepared to accept all the

reasoning by which that conclusion is supported, and they will, therefore, humbly advise His Majesty that this appeal should be dismissed with costs.