

**(1894) 11 MAD CK 0006**  
**In the Madras High Court**

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|--------------------------------------|------------|
| Hassan Alli Khan Bahadur and Another | APPELLANT  |
| Vs                                   |            |
| Kopparti Ekambaram                   | RESPONDENT |

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**Date of Decision :** 14-11-1894

**Acts Referred:**

Registration Act, 1908 — Section 77

**Citation :** (1895) 5 MLJ 29

**Hon'ble Judges :** Muthusami Aiyar, J; Best, J

**Bench :** Full Bench

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## Judgement

Muthusami Aiyar, J.—This was a suit to enforce the registration of an instrument of mortgage u/s 77 of the Indian Registration Act. The first

question arising for determination is whether a plea that there was no consideration for the document except to the extent of Rs. 2 is good. The

object of registration is to guarantee the execution of an instrument and I agree with the judge that the question of consideration is wholly irrelevant.

Neither Section 77 nor any other section of the Registration Act mentions it as a pre-requisite of registration.

2. The next question is whether the failure of the defendant to appear within four months from the date of execution bars u/s 34 the registration of

the instrument. That section provides subject to the provisions contained in Sections 41, 43, 45, 69, 75, 78, 88 and 89 that no document shall be

registered under this Act unless the persons executing such document or their representatives or assigns or agents as aforesaid appear before the

registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26. These sections enumerate the intervals of time within

which an instrument should be presented for registration. In the case before us the deed of mortgage was presented for registration within the four

months mentioned in Section 23. But although summonses were taken out to enforce the attendance of the executants they did not appear before the registering officer within four months.

3. It is therefore argued that u/s 34 the document cannot be registered under the Act. It is urged for the respondent that the appearance referred to is a voluntary appearance and does not include an appearance under coercive process. There is nothing in the language of Section 34 to support this explanation. On the other hand the intention disclosed by Sections 23 and 34 is that the presentation of the document for registration and the appearance of the executant within the prescribed time is a condition precedent to the Registration of the instrument by the registering officer.

4. It was observed by the Privy Council in the case of *Sint Mohun hall Panday v. Sint Koondun Lall* (1875) 2 I.A. 210 with reference to the,

Registration Act XX of 1866 that no time is fixed by the statute within which the registration of a deed presented and accepted for registration

within four months from its execution must be completed. That this principle governs Section 77 is clear from the fact that the operation of Section

34 is subjected inter alia, to the provisions of Section 77 wherein the interval of four months is not mentioned as the interval within which

registration should be ordered under that section. The institution of initial proceedings towards registration viz., presentation and acceptance for

registration within the period presented by Section 23 is sufficient to warrant the exercise of jurisdiction u/s 77. This was the view taken in

*Sutcourie Pyne v. Luckey Narain Khettry* ILR (1888) C. 538 and in *In re shaik Abdul Aziz* ILR (1885) B. 691

5. In the result the decision of the Judge is correct and I would dismiss the second appeal with costs.

Best, J.

6. It appears from the endorsement in the document that it was presented for registration within four months. The requirement of Section 23 was

therefore complied with. But the executant did not appear till after the expiration of four months. It is alleged that he appeared within eight months

and that registration might be effected under the proviso to Section 34 read with Section 24. The document was not however presented for

registration u/s 24 but u/s 23.

7. I am unable to agree with the Judge in thinking that the word "appears" in Section 34 means voluntary appearance only and that therefore the section is no bar to the registration. The language of the section does not support this interpretation. On failure of the executant to appear within the time mentioned in Section 23 the Registrar could not but pass the order he did, declining to register the document, The order appears to have been passed by the Registrar u/s 76 of the Act. Hence this suit u/s 77.
8. As to the question to be decided in such a suit, I agree with the judge in holding that it is limited to the factum of execution of the document.
9. This being found in the affirmative the order directing registration is a proper one.
10. This appeal fails therefore and must be dismissed with costs.