

(1869) 05 CAL CK 0043
In the Calcutta High Court

In Re: Indian Registration Act and Brajanath Pyne and Armala Dasi

Date of Decision : 20-05-1869

Acts Referred:

Citation : (1869) 05 CAL CK 0043

Judgement

Phear, J.—On the 23rd December 1868, Armala Dasi executed a certain Bengali kabala or sale, which purported to convey land and premises therein specified to Brajanath Pyne. This land is situated within the registration district of Calcutta; and on the 12th April 1869, Brajanath presented the document to the Registrar of that district for registration. Armala Dasi, at the same time, appeared personally before the Registrar, and admitted having executed the document, but said that she had done so on the supposition that she was thereby renewing a former mortgage on the property, and denied that she had intentionally executed a bill of sale. Thereupon, the Registrar refused to register the document, and recorded the reason for his refusal in the following words:-- Armala Dasi appeared under a summons, and declined to sign the "endorsement, on the ground that she never meant to sell but only to "renew the original mortgage which was for rupees 400 and rupees 185 "on account of interest due thereon, making together the sum of rupees "585."

Brajanath Pyne now petitions this Court, under the provisions of section 84 of Act XX of 1866, alleging that this reason is insufficient, and praying for an order directing the Registrar to register the kabala. It is objected on behalf of the Registrar that this petition is premature, because the first step ought to have been an appeal to the Registrar-General pursuant to the proviso of section 83, the words of which are:--

Whenever the Registrar shall himself as Sub-Registrar have passed the "order appealed against, the appeal shall lie to the Registrar-General.

Here then the question arises, whether or not the order complained of was passed by the Registrar as Sub-Registrar.

2. Now, as far as I understand the Act (and I have no great confidence I confess

that my best endeavours have succeeded in leading me to a right comprehension of this very difficult piece of legislative composition) there are two classes of occasions on which it may fall to a Registrar to determine whether a document should be registered or not: the one is when the document is presented directly to himself in the first instance for registration (see section 32); the other when the document having been already presented to a Sub-Registrar and registration having been refused by that officer the matter is brought before the Registrar by way of appeal (section 83). Clearly, an order made by the Registrar on any such appeal, cannot be termed an order made by him as Sub-Registrar. Also, section 84 says that, "if a Registrar shall, u/s 82, make an order "of refusal to register any document, it shall be lawful for any person "claiming thereunder, to apply by petition to the District Court in order "to establish his right to have such document registered;" and section 82 applies solely to cases where the registering officer is called upon, by an application as of the first instance (i.e., not by way of appeal) to accept a document for registration. Therefore it follows that all cases in which a Registrar makes an order of refusal on an application of first instance do not fall within the proviso of section 83. Now, looking a little closely into these cases we perceive an element of distinction, which serves to separate them again into two sets: first, the application on which the Registrar passes his order may relate, to a portion, of his district which is included in a sub-district; and if so, the application is one which might have been made to the Sub-Registrar, instead of to him, the Registrar; second, it may relate to a portion of his district which is not included in any sub-district. If then, the application for registration on which the Registrar's order is passed be of the latter sort, the Registrar is for that time in some sense doing Sub-Registrar's work for which no Sub-Registrar exists, and it is conceivable that the Legislature should in such a case consider the order made by him as made in the capacity of Sub-Registrar. To a certain limited extent only, the Legislature appears to have carried this supposed conception into effect; the latter part of section 32 enacts that "the Registrar of a district including a presidency town shall be deemed "to be a Sub-Registrar within the meaning of this Act for such portion of "his district (if any) as shall not have been formed into a sub-district." And there is no other enactment, so far as I know, which expressly gives the Registrar, under any circumstances, the character of a Sub-Registrar. On the whole, then, I arrive at the conclusion that the proviso in section 83 applies solely to the case where the Registrar for a district including a presidency town passes an order on an application which relates to such a portion of his district as is not included in a sub-district; and I further think that the consequence of this proviso is that the order so passed becomes an order of a Sub-Registrar, and is not within the words of section 84 which I have already quoted, and which give a right to a person aggrieved by a Registrar's order to apply by petition to the District Court. In this view, which I confess I have not adopted without hesitation, every order of the Calcutta District Registrar made on such applications for registration as relate to a portion of his district not within a sub-district, must be carried by appeal to the Registrar-General before a petition will lie to the High Court. This conclusion would be fatal

to the present petition in this Court, if it were made to appear to me that the premises which are the subject of this kabala are situated in a part of Calcutta not yet formed into a sun-district. But on this point I have no evidence whatever before me, and think I must assume that an order of a Registrar is made by him in the higher right of Registrar and not qua Sub-Registrar until the contrary is shown. Thus, it seems to me that the preliminary objection in this case falls to the ground.

3. Coming next to the merits of the petition, it further appears to me that Brajanath is not entitled to Have his prayer granted on the ground which he himself relies upon. When Armala Dasi refused to sign the endorsement, the Registrar had, I think, no alternative but to decline registering.

4. There are some words in the judgment of the Chief Justice, in the case of Sheikh Rahmatulla v. Sheikh Sariatulla 1 B.L.R. FB. 85 which seem not in accord with this opinion; these are:--"The defendant did not deny the execution, but he merely denied that the deal was intended be operate as a bill of sale. If the defendant admitted, as I understand he did, the execution of the deed, the Registrar ought to have registered the document and left the parties to contest their rights in a Civil Court." If taken without qualification and applied to the present case, these words would, no doubt, support the petitioner's contention that the Registrar ought to have registered his kabala. But much depends upon the sense in which the words "admitted the execution" are used. The 36th section says:--"if all the persons executing the document appear personally before the registering officer and all admit the execution of the document, the registering officer shall register the document as directed in section 68." The directions of section 68 run thus:--"After the provisions of sections 36, 66, and 67 shall have been complied with, the registering officer shall, &c.," and the first provision of section 66 is:--"On every document admitted to registration, there shall be endorsed, from time to time, the following particulars, that is to say, the signature and addition of every person admitting the execution of the document," and so on. Thus it appears that the registering officer cannot rightly register under the Act, until all the persons executing the document have not only admitted the execution thereof, but have also written their signatures on the back. In truth, to admit the execution within the meaning of these sections of the Act, is to yield such an acknowledgment of the agreement expressed in the document, as carries with it consent that the document should be registered. In my view of the proper construction to be put upon the Act, the Registrar was entirely correct in his decision. If, therefore, the remedy by petition to the District Court, which is given by section 84, is only a last step in a process of appeal, the present petition ought clearly to be dismissed. In a former case, the exact facta of which have escaped my memory, I was disposed to think that the Legislature intended the application by petition to be nothing more than an appeal. Indeed, in the last clause of section 84 itself, it is spoken of as an appeal. On more mature consideration, however, and after argument, I am now of opinion that "the right to have the document registered," which is to be

established on petition, is not merely the right which is limited by the observance of all the requirements of the Act before the Registrar. The Legislature, for reasons which are patent enough, desired to secure the public registration of all documents bearing the character which is described in section 17. With this purpose in view, it enacted section 49, which has the effect of making all such documents simply waste paper until they are registered; and the want of the document itself cannot be supplied by secondary evidence. Thus a right under an agreement of this sort and a right to registration are concurrent. One who has a right to any interest or to take any benefit under any instrument required by section 17 to be registered, must have a right to have it registered, otherwise the primary right becomes a nullity. But the ordinary machinery of Registrars and Sub-Registrars only furnish the means of obtaining registration, when all persons executing the document consent thereto. The registering officer is throughout concerned only with ascertaining this consent from the executing persons themselves. If this is withheld, an altogether different procedure is rendered necessary. The case becomes one of a person asserting a right hostilely to another who opposes it. Recourse must be had to the Civil Courts, and the ordinary rules which govern the contest of right in those Courts, come into play. Accordingly, section 84 prescribes that the petition to the District Court shall take the form of a plaint, and I apprehend that the proceedings which follow on the filing of it must be those of an ordinary suit, in which such of the persons executing the documents as refuse to consent to its registration, together with the Registrar, when necessary, should be defendants. The question to be tried will be, whether or not the petitioner has a right as against the persons executing the document to have the document registered. That right will, of course, depend upon the circumstances of each case, and cannot well be made the subject of a general definition.

5. As against the Registrar, this petition must be dismissed with costs; be undertaking to obey any order for registration, which may be eventually passed by the Court. As against Armala Dasi, the issue remains to be tried whether or not the petitioner has a right to have the kabala in question registered. And I now adjourn the case, in order to give the parties time to procure and bring before the Court such evidence bearing on this issue as they may be advised.