

(1922) 06 CAL CK 0056
In the Calcutta High Court

Kedar Nath Das

APPELLANT

Vs

Bidhu Bhushan Guha and Others

RESPONDENT

Date of Decision : 06-06-1922

Acts Referred:

Registration Act, 1908 — Section 7
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1924 Cal 348

Hon'ble Judges : Mookerjee, J

Bench : Division Bench

Judgement

Mookerjee, J.—This is an appeal by the plaintiff in a suit to enforce a mortgage. The defendants resisted the claim on the ground that as the document had not been registered in accordance with the provisions of the Indian Registration Act, there was no enforceable mortgage-security. The Court of first instance upheld this contention and dismissed the suit. Upon appeal the Subordinate Judge has affirmed the decision of the primary Court.

2. It appears that two properties were included in the mortgage bond; one of these was situated in Hathazari in the district of Chittagong, and the other was situated in the town of Chittagong. The document was registered on the 12th May, 1904 by Babu Monmohan Guha, Special Sub-Registrar at Chittagong. It has now been proved that the property which was stated to be situated in the town of Chittagong never belonged to the mortgagor, even if it be assumed that it had any real existence. Consequently the case falls within the principle recognised by the Judicial Committee in *Harendra Lal Roy v. Hari Dasi Debi* AIR 1914 P.C. 67 and *Mathura Prasad v. Chandra Narayan* AIR 1921 P.C. 8. These cases affirm the principle that if a property has been introduced in a mortgage-bond, which has either no existence or does not belong to the mortgagor, with a view to secure registration of the document in a particular office, the registration must be deemed to be futile, with the result that there is no enforceable security u/s 58 of the Transfer of Property Act.

3. It has been contended however, that even if the property which is alleged to have been situated in the town of Chittagong be excluded from the document, there is still an operative mortgage, inasmuch as the Sub-Registrar, who registered the document, had authority to register documents in respect of lands situated anywhere in the district of Chittagong. Eeference has been made on behalf of the appellant to Section 7 of the Indian Registration Act to show that when, as in this case, the office of the Sub-Registrar has been amalgamated with that of the Registrar, he must be deemed to have authority to register a document precisely in the same manner as the Registrar himself could have done. But this contention is manifestly not supported by Sub-section (2) of Section 7 which indicates that when the office of the Sub-Registrar has been amalgamated with that of the Registrar, the Sub-Registrar may be authorised to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate. It was consequently incumbent upon the plaintiff to adduce evidence to show that this Sub-Registrar had authority to register documents dealing with lands situated in any part of the district of Chittagong. No such direct evidence has been produced. But our attention has been invited to another document which was registered in 1901 by this Sub-Registrar in respect of land situated in Hathazari. We may, consequently, assume, for the purposes of this appeal, that the Sub-Registrar had in fact authority to register the document. That, however, does not necessarily justify the inference that the document was validly registered. The fact remains that the Sub-Registrar was never given the opportunity to exercise the discretion which it would be incumbent upon him to exercise u/s 30 of the Indian Registration Act, if he were called upon to register a document in respect of land not situated in the town of Chittagong. We cannot accordingly hold that the document should be deemed to have been registered in exercise of the authority vested in the Sub-Registrar u/s 30 read with Section 7. This view is supported by the judgment of Piggott and Ghose, JJ., in *Baij Nath Tewari v. Sheo Sahoy Bhagut* (1891) 18 Cal. 556 (F.B.) though a contrary view appears to have been adopted by Petheram, C.J. The decision in *Jogeshwar Narain Singh v. Rai Radha Rawan* (1905) 3 C.L.J. 165 does not assist the contention of the appellant. In that case, a Sub-Registrar was empowered u/s 30 to discharge the duties of the District-Registrar, and in exercise of the powers so conferred on him, he registered the bond which could have been registered by the Registrar, at his discretion u/s 30. In such circumstances, the bond was held to have been validly registered in accordance with the provisions of the statute. We agree with the Subordinate Judge that the document in the present case was-not properly registered and that there is no mortgage which can be enforced.

4. The decree of the Subordinate Judge is, affirmed and this appeal dismissed with, costs.