

(1888) 11 PRI CK 0008

In the Privy Council

Majid Hosain

APPELLANT

Vs

Mussamat Fazl-Un--Nissa

RESPONDENT

Date of Decision : 16-11-1888

Acts Referred:

Citation : (1889) 16 ILRPC 468 : (1888) 16 IndApp 19

Hon'ble Judges : Fitzgerald, Hobhouse, Richard Couch, Stephen Woulfe Flanagan, JJ.

Judgement

FitzGerald, J. 1. Their Lordships are of opinion that this objection ought not to prevail. 2. Kutb-un-nissa made a grant to her adopted daughter of the village of Nizampur, which required to be executed three months before her death, and to be registered within a month after the date of its execution. The objection taken to the instrument was that it was not presented at the office of the registrar, but that the registrar was sent for to Kutb-un-nissa's residence, where the deed was executed and registered. She appears to have been a purdanasheen; and the mode in which registration was effected was in this manner: She sent for the pargana registrar, whose name is given as Kali Charan, and he attended at her house. Her house appears to be near the office of the pargana registrar, and" actually within the very village which was the subject of the grant. Kali Charan having attended her, and having the deed acknowledged in his presence, word for word, by the granting party, and having examined it, it was handed to him for registration. 3. The record of registration by the registrar is as follows:

No. 131, Volume 2. On Tuesday, the 21st March, 1871, at 10 A.M., Musammat Kuth-un-nissa, aged about sixty-five years, wife of Jahangir Bakhsh, talukdar of Guaria, sent for me at her house in the village Gauria. She got this document executed in the presence of Ganesh Bakhah and of Beni Parshad, the witnesses named" on the margin, and having presented it for registration, admitted its execution on her part, and attested the contents word for word, and having seated herself on the threshold of her doorway, marked the document with her own hand in my presence. Musammat Amiran, wife of Mahbub Ali, resident of Amethi, identified the obligor; therefore having registered this deed, drawn up on

a blue impressed stamp of the value of Rs. 16, it is returned in original through Ganesh Bakhsh, a copy thereof having been kept, and Rs. 5, on account of fees having been received. (Sd.) Kali Charan, Pargana Registrar of Mohanlalganj. No. 26. 4. Their Lordships presume part of his duty was either to make a copy himself, or to examine the copy made. Having thus got the original deed into his hands, and marked it, and having had that deed duly acknowledged so, as to give the best testimony of its execution by the grantor, and having examined the copy which was either prepared by himself or prepared for him, and examined it word for word with the deed, his next step is to take those instruments to his office; to enter the registration in the book; and to file the copy in the proper pargana office of the district. 5. The sole objection to that registration upon which their Lordships are asked to invalidate that deed is, that the grantor did "not go to the office of the pargana registrar. He came to her as a matter of convenience, and received the deed and copy at her house. That is the sole objection; and upon that their Lordships are asked to declare this registration to be null and void, and consequently that the deed is worthless. 6. The registration is to be in accordance with the rules for the time being in force, and the registration is to be judged by those rules, and those alone. The first rule is this: "There must in future be only one registrar in each pargana for the registration of deeds relating to real property, who shall be especially appointed for that purpose, and styled the pargana registrar. He may, of course, register any other contracts that can be registered by ordinary registrars, but no other registrar may register any contract regarding immovable property." He certainly could not be more clearly ear-marked as the proper and only registrar to register this deed under the circumstances. But there was something more to be provided for, and accordingly their Lordships find this in Rule 2: "All deeds regarding real property, or in any way creating liens and incumbrances upon it, must be registered at the office of the registrar "-that is to say, the registrar previously named, namely the pargana registrar -" of the pargana in which the property is situated, and must be copied in full. If for any special reason parties at a place distant from the property wish to register a deed affecting it, they must go to the tahsildar or sudder registrar, who will register it, and will immediately transmit a copy to be registered at the office of the pargana in which the property is situated, charging and transmitting an extra fee for the same." That addition to or alteration of the second rule provides for a case of public convenience. These districts are no doubt very large in India, and it may be a very great inconvenience and expense for parties by reason of distance to attend at the pargana office, and then by this rule they get the facility, in place of attending at the pargana office, of going before the tahsildar or the sudder officer, who receives the deed, and makes the copy, and transmits it to the pargana registrar. It is obvious that this is not one of those exceptional cases, for the lady did not live at a distance from the pargana district. She was within it, and a very short distance from the office of the registrar. The registration, in fact, took place at the office of the pargana registrar, though the officer attended to receive the deed, to receive its acknowledgment, and to compare the deed with

the copy. He brought it all to his own office, and the registration is, in fact, the recording of that copy in the office of the pargana registrar, all the other requisites provided by the rule having been otherwise complied with. 7. Their Lordships are of opinion, without going further, that the registration was effective, complete, and full, and that the deed ought not to be disturbed on that account. 8. There is said to be a contradictory provision at the conclusion of Clause 2. Their Lordships do not find it necessary to express any opinion upon that. Their Lordships understand that rule has; been superseded; but at any rate they do not find it necessary to express any opinion on the question whether there is any contradiction between the two clauses. They are of opinion here that the registration was before the proper officer, and potentially and substantially a registration at the office of the pargana district. 9. Their Lordships will therefore humbly recommend Her Majesty that the appeal should be dismissed with costs.