
(1891) 06 CAL CK 0011
In the Calcutta High Court

Sheo Sahoy Bhagut and Others

APPELLANT

Vs

Baij Nath Tewari

RESPONDENT

Date of Decision : 08-06-1891

Acts Referred:

Registration Act, 1877 — Section 21, 22, 28, 30, 31
Transfer of Property Act, 1882 — Section 59

Citation : (1891) ILR (Cal) 556

Hon'ble Judges : W. Comer Petheram, J; Pigot, J; O'Kinealy, J; Macpherson, J; Ghose, J

Bench : Full Bench

Judgement

W. Comer Petheram, Kt., C.J.—The question referred to this Bench by the Division Bench is as follows: "Whether a document affecting Immovable property is registered in accordance with the provisions of the Indian Registration Act within the meaning of Section 49, when it bears a certificate of registration u/s 60, although u/s 28 the officer who made the certificate should not have registered the document".

2. The entire system of registration is created by the Registration Act III of 1877, and no power to register any document, except that given by the Act, exists in any one; so that, unless the Act gives a Sub-Registrar power to register documents which related to lands not situated within his sub-district, he has no such power, and if he goes through the form of registration, the Act is of no effect. The question then is, does the Act give him such power? If it does, I think that Section 28 should be read as directory only; if it does not, the question of the construction of that section does not arise. Section 5 of the Act directs that the Local Government shall form districts and sub-districts; Section 6 that it shall appoint Registrars and Sub-Registrars of such districts and sub-districts; Section 7 that it shall establish offices of the Registrars and Sub-Registrars in the districts and sub-districts; Section 28 that documents shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which the document relates is situate. Section 31

provides that in ordinary cases the registration shall be made only at the office of the officer authorized to accept the document for registration. This section has not much bearing on the present question, as it appears from the last paragraph of it that the extraordinary occasions referred to are cases in which the person desirous of presenting a document cannot attend at the office. Section 35 provides that when a document has been presented and certain proof has been given, the officer shall register it.

3. These are the whole of the sections under which the districts and sub-districts are formed, the officers appointed and the offices established, and I cannot find that they anywhere constitute the office of a Sub-Registrar a general office for the registration of documents of the kind described in the Act. I think that the meaning of Sections 5, 6 and 7 is that each sub-registry office is constituted for the registration of documents which are of the descriptions mentioned, and which relate to lands within the sub-district; that the office of a sub-district is not a registry office for the registration of any documents which do not relate to lands within the sub-district; and if any documents relating to lands wholly without the limits of a sub-registry, are registered in such sub-registry, the registration is of no effect, because the documents have not been registered in an office established under the Act for the purpose of registering documents of the class to which they belong. The first case mentioned by the referring Bench is that of *Muhammad Ewaz v. Birj Laj* ILR All 465. It is a decision of the Privy Council with reference to the provision of Act VIII of 1871. Their Lordships held that under that Act a deed is not necessarily invalid by reason of a failure on the part of the registering officer to comply with the Registration Act. The office in which the deed was registered in that case was an office constituted for the registration of deeds of the class to which it belonged, and which related to property situated as that to which the deed in question related was situated.

4. The next case is that of *Sheo Sunker Sahoy v. Hurdei Narain Sahu*, reported in 5 C.L.R. 194: ILR Cal. 25. The judgment as given by AINSLIE and BROUGHTON, JJ., on June 18th, 1879. They decided that where a document, which purports to have been registered, is tendered in evidence, the Court cannot reject it for non-compliance with the Registration Law, but it can deal with other objections brought against it on their merits. In this case also the office in which the registration in fact took place was an office constituted under the Act for the registration of documents of the class to which the document in question belonged.

5. The next case is that of *Ram Coomor Sen v. Khoda Newaz* 7 C.L.R. 223 decided on 11th August 1880, by Norris and Prinsep, JJ., in this Court. In that case, which was decided under the present Act, the property to which the deed related was situated in the sub-district of Brohumbora, and the deed was registered in the sub-district of Commilla. The learned Judges held, following, as they said, the case of *Sheo Sunker Sahoy v. Hurdei Narain Sahu* 5 C.L.R. 194 that the Court had no power to go behind the certificate, and was bound to admit

the registered deed as presented to it; they also referred to the remarks of the Privy Council in *Sah Mukhun Lall Panday v. Sah Koondan Lall* 15 B.L.R. 228 but beyond this did not give any reasons for their opinion. The next case is that of *Har Sahai v. Chunni Kuar* ILR All 14. In that case, which was decided on 21st June 1881 by STRAIGHT and DUTHOIT, JJ. an instrument of mortgage on land which required to be registered was presented for registration to a Registrar within whose district no portion of the land was situate, and was registered by such Registrar. It was held, following, as the Judges say, the case of *Sheo Sunker Sahoy v. Hurdei Narain Sahu* 5 C.L.R. 194 that the document could not be rejected for that reason. The next case is that of *Beni Madhab Mitter v. Khatir Mondul* ILR Cal. 449 decided by Mitter and Beverley, JJ., on 7th March 1887. The judgment in that case is as follows: "We think that the judgments of the lower Courts in this case are correct. u/s 60 the certificate is adducible in evidence to prove that the document was duly registered by the particular officer whose signature it bears, but it has been shown that that officer had no jurisdiction to register it. That being so, the document was not duly registered within the provisions of the Registration Act. A decision was referred to in the course of the argument, *Sam Coomar Sen v. Khoda Newaz* 7 C.L.R. 223 but we find that that decision is entirely based upon a Privy Council judgment, *Sah Mukhun Lall Panday v. Sah Koondan Lall* 15 B.L.R. 228 and the Privy Council decision does not support the contention put forward in this case. There the document which was in question was registered by an officer who had jurisdiction to register it, but in this case the document has been registered by an officer who had no jurisdiction to register it. That being so, the observations of their Lordships of the Judicial Committee, upon which the decision proceeds, are not applicable to this case. We dismiss these appeals with costs". The only other case is that of *Hardei v. Ram Lal* ILR All. 319 decided by a Pull Bench of the Allahabad Court on 19th January 1889.

6. In that case the Lower Appellate Court had rejected as inadmissible in evidence, u/s 49, a deed of gift of Immovable property, upon which was endorsed a certificate u/s 60, on the ground that the person presenting it for registration and admitting execution was not justified to do so under Sections 32 and 35, holding that the registration was consequently void and the document not registered u/s 17. The Judges of the High Court at Allahabad held that the Lower Appellate Court was wrong in so doing, and ought to have admitted and dealt with the document on the ground that the certificate u/s 60 was conclusive. It will be noticed that of these cases, three only deal with the question whether registration is of any effect, if it takes place in an office not constituted for the registration of documents relating to the property to which the deed registered relates. Of those three, two--one in this Court and one in the Allahabad Court--hold that such registration is effective, but in both cases the Judges base their decision on the case *Sheo Hunker Sahoy v. Hurdei Narain Sahu* which case on examination does not appear to be an authority for the proposition. In the third the Judges took the other view, and an examination of the Act shows, I think,

that their view is correct. I would reply to the question referred, that if the office in which the registration was effected was not an office constituted for the registration of documents relating to property in the area within which the property to which the document in question related is situated, no registration has been effected within the provisions of the Act.

7. In the present case, however, the question arises in a second appeal, and by the rules of this Court this Bench, in addition to answering the question referred, must dispose of the appeal, and for that purpose it is necessary to consider other questions. It appears that the officer who registered this document was the Registrar of the district of Bhagulpur; that the office in which it was registered was the Registry Office for the district of Bhagulpur, and that the property to which the document related was situated within that district.

8. The Office of Sub-Registrar of Bhagulpur has been amalgamated with that of Registrar of Bhagulpur u/s 7 of the Act, and the Sub-Registrar of Bhagulpur is authorized to exercise and perform the powers and duties of the Registrar of Bhagulpur, in addition to his own powers and duties as Sub-Registrar of Bhagulpur. By Section 30, Clause A, the Registrar of a district is empowered in his discretion to receive and register as Registrar any document which might be registered by any Sub-Registrar subordinate to him, and by Section 51 it is provided that one set of books only shall be kept when the two offices have been amalgamated. As far, then, as any thing the registering officer does is concerned, he acts in precisely the same way if he registers a document in his discretion as Registrar, as he would do if he registered it as Sub-Registrar. The property to which the document in question relates is situated in the sub-district of Banka, the Sub-Registrar of which sub-district is subordinate to the Registrar of the district of Bhagulpur; the person who registered it was the Sub-Registrar of Bhagulpur, who was authorized to perform the duties of the Registrar of Bhagulpur with which office his own had been amalgamated; and he received and registered the document in an office and in a set of books which had been constituted and provided for the registration of documents of this kind, and which related to property situated within the district of Bhagulpur. Unless there is some provision in the Act which provides that such a registration shall be void unless it is shown that the officer has, in the exercise of the discretion given him by Section 30, Clause A, elected to register it as Registrar, the registration shall be void, the document has, I think, been registered under the Act. I have before said that in my opinion where the registration takes place in an office constituted for the registration of documents of its class, the provisions of 28 are directory only, and if so, there is nothing in that section to affect the validity of this registration, nor can I find any provision to that effect in any other section of the Act. The only other question which arises in this appeal is whether the misdescription of the property in the deed is sufficient to disentitle the document to be registered so as to render the registration which was effected invalid. The provisions which deal with this question are Sections 21, 22 and 69 of the Act and Rule XI. Section 21, Clause A, provides that such a document shall not be

accepted for registration unless it contains a description of the property sufficient to identify it. Clause 6 provides for a particular mode of description. Section 69 gives power to make rules; declaring what territorial divisions shall be recognized u/s 21, i.e., to make rules under Clause 6 of Section 2.1, that clause being the part of the section which deals with territorial divisions. Rule XI provides that certain territorial divisions shall always be specified, and Section 22 provides that failure to comply with the provisions of Clause (b) shall not disentitle a document to be registered, if the description of the property is sufficient to identify it. In other words, Section 22 declares that Clause A of Section 21 is mandatory and Clause (b) directory only; the rule can have no greater power than the clause itself, of which it, at the most, forms a part.

9. It appears from the Munsif's judgment that the name of the mouzah and the number of the towzi are correctly given in the deed, but that the thana and the registration sub-district are incorrectly stated. There can be no doubt that if the name of the mouzah and the towzi number are known, the property can be identified in the sense that it can be found from that description; and as that is so, I think that the provisions of Section 21, Clause A, and of Section 22 are complied with, and the document not disentitled to registration.

10. I think that the description was sufficient to identify the property; that the document was effectually registered by the Registrar of the district of Bhagulpur, and that the appeal should be dismissed.

11. But as the majority of the Judges think that this appeal should be decreed, the judgment of the Court will be that the second appeal be decreed with costs.

O' Kinealy, J.

12. This was a suit for the sale of certain mortgaged property. The plaintiff said that in the year 1881 Ram Churn, the mortgagor, had mortgaged the land in question as situated within thana Kotwali in the sub-district of Bhagulpur, and that the mortgage bond was registered by the Sub-Registrar of Bhagulpur. At the trial a third party appeared and claimed to be the purchaser by a subsequent registered deed; and he raised as his defence that the land, not lying within thana Kotwali, but within thana Amarpur, was not within the sub-district of Bhagulpur, and the plaintiff's bond was not properly registered so as to give it priority.

13. Before the Munsif there was no dispute as to the position of the property, and admittedly it is situated within the jurisdiction of the Sub-Registry Office of Banka and not of Bhagulpur. He decided that the registration having taken place in the latter Sub-Registry Office, the bond was, by virtue of the provisions of Section 28 of the Act, not duly registered in the terms of Section 59 of the Transfer of Property Act.

14. On appeal the Subordinate Judge also considered that the property lay within the sub-division of Banka; but finding that the Sub-Registrar of Bhagulpur was

then in charge of the office of the District Registrar, and that the latter had, u/s 30 of the Act, power to register this document, he upheld the registration and declared that the mortgage deed had priority over the purchase.

15. The case was brought up here on second appeal, and the learned Judges constituting the Bench in charge of the group within which this appeal fell, referred to us the following question:

Whether a document affecting immoveable; property is registered in accordance with the provisions of the Indian Registration Act within the meaning of Section 49, when it bears a certificate of registration u/s 60, although u/s 28 the officer who made the certificate should not have registered the document.

16. It appears to me that the decision of such a question is not necessary to the determination of this appeal, nor, indeed, would the decision of it affect the conclusion at which I have arrived. By Section 7 of the Registration Act, the Local Government may authorize any Sub-Registrar, whose office has been amalgamated with that of a Registrar, 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. In this case the office of the Sub-Registrar of Bhagulpur was amalgamated with that of the District Registrar, and u/s 30 of the Act he was empowered to register this document.

17. u/s 21 of the Act, the duty of describing the property properly is thrown on the person applying to have a document registered, and in Bengal, where the thana is the unit of area for the purpose of description, the thana and sub-district in which the land is situated should be set out in the document. In this case the property was not described according to the rules in force. The description runs as follows:

18. A 5-anna 4-pie English share out of the 16 annas of mouzah Basidpur, main and hamlet, bearing towzi No. 10 and paying a sudder jama of Rs. 719, lying within the jurisdiction of thana Kotwali, sub-district Bhagulpur, Collectorate Bhagulpur". This description is erroneous. The property is situated in thana Amarpur, sub-district Banka, and bears a sudder jama of Rs. 919-15 annas. But by Section 22 the registration of a document in which the property is not properly described does not become invalid unless it cannot be properly identified, and I consider that identification u/s 22 means such identification as is necessary to carry out the provisions of the Registration Act. In the present case the towzi number is correct, but the sudder jama, the thana and the sub-division are wrongly given. There is nothing on the face of the deed which would enable the Registrar to carry out the provisions of Section 66 and send a memorandum of the deed to the Sub-Registrar in whoso sub-district the property is situated. On the contrary, the description is so misleading as to prevent the Registrar from doing so. I do not think that a misleading description of this kind is saved by Section 22 of the Registration Act, and so thinking, I must hold that the registration is not valid as against the subsequent purchaser.

Pigot, J.

19. I agree with Mr. Justice O'KINEALY that the question put to us is not one upon the answer to which the decision of the case depends.

20. The provisions of Section 21 were in this case not complied with. The territorial division (by which under the rules is meant the sub-district) in which the property was stated to be situated was not that in which it really was. I should not be prepared to hold that this was such an error as of itself to affect the registration. But not merely was there this error, but the property was stated to be within a thana different from that in which it really was situated. This was a false description, and one which u/s 22 disentitled the document to be registered.

21. It appears to me that a false description or an incomplete description of the property, in respect of matters which from their nature it lies upon the party registering the document to state, being especially within his knowledge, must invalidate the registration, if it be such as to render the description of the property insufficient to identify it.

22. Upon this ground I hold the document inadmissible in the present case, and think that the question put to the Full Bench does not arise.

23. But as the Chief Justice has favoured me with a perusal of his judgment, in which he deals with the question put to us, I think I ought to express such opinion as I have formed upon it, although (as I view the case) perhaps extra-judicially.

24. There would be some difficulty in point of form in answering the question as it stands from the manner in which the certificate is referred to. The certificate u/s 60 is not made by that section, as I understand it, conclusive as to due registration; it is "admissible for the purpose of proving that the document has been duly registered". The document cannot become, by virtue of the certificate, duly registered under the Act.

25. Substantially, however, the question is, whether the document on which the certificate has been endorsed is or is not to be held not to have been duly registered, if it appears that the Sub-Registrar should not have registered it, by reason, of the property being in a sub-district other than that of which he was Sub-Registrar.

26. I think the question might be answered without having resort to a construction of Section 60, making the certificate conclusive proof.

27. I think the requirements of Section 28 are directory and not mandatory. It is the duty of the Sub-Registrar not to register a document presented to him, if he be not the officer to whom it ought to be presented.

28. But, as regards the person presenting the document, I think the observations of the Judicial Committee in *Muhammad Ewaz v. Brij Lal* L.R. 4 IndAp 174 (176) may well be adopted as a guide in determining the effect of the provisions of the

section.

29. Further, the primary object of the Act is to provide a conclusive guarantee of the genuineness of the instrument, and this is attained by such a registration as the present: a second, and no doubt very important one, is to provide a record from which persons who may desire to enter into dealings with respect to the property affected by the instrument, may be able to obtain information as to the title. It is for the second object that the provisions of Section 28, as well as many others in the Act, are framed: such as have reference to the machinery from time to time to be adopted by the executive in carrying out the Act, including the formation of the districts and sub-districts, the alteration of them as may be convenient, the appointment of Registrars and Sub-Registrars, and, in short, all the machinery necessary to enable the records to be regularly and conveniently kept and easily accessible to the public.

30. It may well be that in respect of those matters exclusively within the control and knowledge of the persons registering the document, which are prescribed by the Act, the omission from it of any of the particulars required by Sections 21 and 22 of the Act might be intended by the Legislature to be fatal to the validity of the registration as in the *St. Lucia* case and *Harding v. Carrey* 10 Indiana L.R. 140; see also perhaps, *Essex v. Baugh* 1 Y. & C.C.C. 620.

31. The present case illustrates what the provisions of the Act may be thought intended to prevent by the rigid exclusion from registration of documents framed in defiance of its provisions. Here we have a document presented so incorrectly describing the property that it would be impossible for the officer to identify it so as to tell that it was not in his sub-district, and difficult at least for any one to identify it at all.

32. But I do not think an error as to the district or sub-district is one of such omissions. The Act does not declare that registration by a Sub-Registrar, who ought not to register, is void. I do not find anything to show an intention that it should be so. It is the duty of the officer to ascertain the geographical position of all the property conveyed as to sub-districts and districts—see Sections 64 and 65, The limits of the sub-districts must be known to him. They may possibly (of course this is unlikely) be unknown to the person seeking registration. In any case I think the matter is one primarily for the officer, and that if he consents to register, in place of refusing, as he ought to do, a document which ought to be registered elsewhere, it cannot be intended that his neglect should be visited on the applicant, whether grantor or grantee, or by the destruction of the instrument as a conveyance.

33. It is said that this might lead to opportunities for fraud. The answer appears to be—

First—That this could only happen through neglect in the Registration Officers, which cannot be supposed in any degree probable.

Secondly.--That even if it should give some facility for fraud, the mischief, on the other hand, of avoiding instruments on the ground suggested would be likely to be far wider.

34. I would only further observe that Section 68 seems to regard any error regarding the office in which any document shall have been registered" as one capable of rectification, which seems to me to confirm the view which I have formed upon this matter. I would, therefore, were it necessary, answer the question in the negative.

Macpherson, J.

35. I also think that the question which has been referred to the Full Bench does not arise, and that it need not therefore be answered. I agree with Mr. Justice PIGOT in holding that the document in question contained a misdescription of the property so complete as to disentitle it to be registered; that there was therefore no valid registration, and that the document was inadmissible.

Ghose, J.

36. I agree with Mr. Justice O' KINEALY in holding that the registration in question is not valid. I desire, however, to make one or two observations. The property which was mortgaged is situate within the sub-registry of Banka, but the document was registered by the Sub-Registrar at Bhagulpur. Now it seems to me, looking at Sections 28, 31 and 32, that the Sub-Registrar as such had no power to register the document, unless it be by virtue of Sections 7 and 30 of the Registration Act. He had no doubt the authority to do so in this case (the office of the Registrar of the district and that of the Sub-Registrar having been amalgamated and the Sub-Registrar having been placed in charge of the amalgamated office) if he chose to exercise the discretion vested in him by Section 30. But the Lower Appellate Court has found that the registration was" as a matter of fact" not made under that section, and, indeed, one fails to see how it could be otherwise, bearing in mind that the document describes the property as lying within the sub-district of Bhagulpur and not in the sub-district of Banka or any other sub-district, and therefore the officer to whom it was presented for registration was not called upon to exercise the discretion vested in him by that section. The description of the property, as given in the document, as has been pointed out by Mr. Justice O' KINEALY, was so misleading as to prevent the Registrar from carrying out the provisions of the Registration Act, or from exercising any discretion u/s 30. And it therefore follows that the registration is not valid in this case.