

(1929) 11 MAD CK 0058
In the Madras High Court

Swaminathan alias Chidambaram Pillai

APPELLANT

Vs

Lakshmanan Chettiar and Another

RESPONDENT

Date of Decision : 26-11-1929

Acts Referred:

Registration Act, 1908 — Section 77

Citation : AIR 1930 Mad 490 : 123 Ind. Cas. 345

Hon'ble Judges : Venkatasubba Rao, J; Madhavan Nair, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The question we have to decide is, what is the meaning of the expression "making of the order " in Sections 73 and 77 of the Indian Registration Act? The plaintiff on 28th September, 1926, presented to the Sub-Registrar for registration, Ex. A. the sale-deed executed in his favour by the 1st defendant. The latter, in spite of notices served upon him, failed to appear before the Officer in question and, on the 16th of October, the plaintiff filed a statement requesting the Sub-Registrar to make an order refusing registration. After making an order to that effect on the 18th of October, the Sub-Registrar sent a post card Ex. B, to the plaintiff, informing him of the order and it reached him on the 19th of October. The plaintiff on the 18th of November applied to the Registrar u/s T3 to establish his right to have the document registered. That section enacts that the application should be made within thirty days after the making of the order of refusal by the Sub-Registrar. If the terminus a quo is the date when the order was communicated to the plaintiff, the application is in time; but if the thirty days should be computed from the date of the order, the application is a day too late.

2. The District Registrar rejected the application on the ground that it was barred by time. He made his order on the 16th of December and forwarded it to the plaintiff on the 20th and it reached him on the 23rd. The plaintiff filed the suit from which" the present appeal arises on the 19th of January 1927. Section 77 enacts that the party desiring to impeach the order of the Registrar should file a

suit within thirty days after the making of an order of refusal. If the starting point is the date of the District Registrar's order, the suit is out of time by four days; if it is the date when the order reached the plaintiff, the suit is well within time. The District Munsif dismissed the suit holding that it is time-barred. The lower Appellate Court took the opposite view and remanded the suit for further trial.

3. I shall now notice briefly the various sections that have a bearing on the point to be considered. Section 35 provides that if any person by whom the document purports to be executed denies its execution, the Sub-Registrar shall refuse to register the document. It is conceded that failure of the executant to appear amounts to a denial of execution by him. [See *Sivarama Pattar Karikar v. Krishna Iyer* 23 Ind. Cas. 23 : 26 M.L.J. 307 : 15 M.L.T. 233 and *Chhotey Lal v. Collector of Moradabad* 69 Ind Cas. 44 : 44 A. 514 : AIR 1922 P.C. 279 : 31 M.L.T. 284 : 27 C.W.N. 437 : 21 A.L.J. 361 : 37 C.L.J. 377 : 9 O. & A.L.R. 450 : 25 Bom. L.R. 655 : 18 L.W. 124 : (1923) M.W.N. 873 : 49 I.A. 375 (P.C.).]

4. Section 71 says that when the Sub-Registrar so refuses, he shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words "Registration refused" on the document.

5. Section 73(1) enacts that when a Sub-Registrar has refused to register a document on the ground that the alleged executant denies its execution, the person against whom the order is made, may, within thirty days after the making of the order of refusal, apply to the Registrar in order to establish his right to have the document registered.

6. Section 76 says that every Registrar refusing to direct the registration of a document shall make an order of refusal.

7. Lastly, Section 77 enacts, that any person claiming under such a document may within thirty days after the making of the order of refusal, institute a suit for a decree directing the document to be registered.

8. I have now referred to the relevant sections of the Act and shall proceed to consider the points raised. Apart from authority, it seems to me that there can be no valid order unless it is made after notice to the parties affected by it, or, it is communicated to them in the absence of such notice. To take a contrary view seems opposed to reason and principle. The learned Advocate-General for the defence contends that we must have regard to the express wording of the Act and that the words "making of the order " are too distinct to admit of any liberal construction,-The answer is, no two constructions are possible, the meaning I have suggested being the only reasonable construction of the words. The very word "order" by necessary implication means in law, that the party affected has had reasonable notice of it. Not a single case in India has been brought to our notice which takes a different view. On the contrary, every decision on the point seems to recognise the principle I have stated. That any particular ruling proceeds on the special provisions of any Act makes, in my opinion, no

difference. Abdul Ali v. Mirja Khan 28 B. 8 : 5 Bom. L.R. 622 is a case u/s 77 of the Indian Registration Act and is directly in point. The same rule has been laid down without equivocation in Annamalai v. Cloete 6 M. 189, Seshamma v. Sankara 12 M. 1, Secretary of State for India v. Gopiseti Narayanaswami Naidu 8 Ind. Cas. 398 : 34 M. 151 : 8 M.L.T. 310 : (1911) 1 M.W.N. 28 and Mahipat v. Lakshman 24 B. 426 : 2 Bom.L.R. 228. The essence of the rule is, that the decision should be, passed in such circumstances that the, parties should have reasonable notice of it. If when a petition is presented or a case is heard, the order is then and there made in the presence of the parties, no further question arises; if the making of the order is postponed, the parties should be given notice of the adjourned date, so that they may be present and hear the decision when passed. If, in these two cases, the party owing to his own fault, does not become aware of the order it nevertheless takes effect at once. If an order is made without previous notice, it does, not become operative until it is communicated. These, in my opinion, are rules which are in conformity with justice and common sense.

9. In the present case, the allegation in the plaint has not been challenged, that the Sub-Registrar neither fixed a date for pronouncing his order, nor gave notice of any day having been fixed. The same remark applies to the order made by the District Registrar.

10. The learned Advocate-General for the defence relies upon certain English cases; but if properly examined, they support my view rather than establish the contrary. The first case relied on is R. v. Justices of Staffordshire (1802) 102 E.R. 554 : 3 East 151. Lord Ellenborough in that case, no doubt, says;

It is, however, a case of great grievance and hardship where the interests of parties are thus invaded by an order made behind their backs; and may be a good ground to apply to Parliament for a revision of the clause of appeal; but we cannot remedy the abuse.

11. These observations are apt to mislead if regard be not had to the facts of the case. Under the Statute, any resident of the locality aggrieved by the order had a right of appeal. The party that preferred the appeal was a member of the public and was not a person directly concerned with the proceeding. It was such a party that urged" that he had no notice of the order. In refuting his contention, Le Blanc, J., points out that if the right of appeal were to depend, in the case of a public highway, in which all the King's subjects are interested on personal notice of the order in respect of each subject, there never would be an end of the time for appealing. This case, therefore, does not support the view urged for the defence.

12. The next case relied on by the learned Advocate- General is R. v. Justice of Derbyshire (1845) 7 Q.B 193 : 115 E.R. 461 : 1 New Sess. Cas 645 : 14 L.J.M.C. 84 : 9 Jur. 551. This does not help him, as there is nothing in it to show that the Surveyor referred to in the judgment did not have an opportunity of knowing the

order, when it was made.

13. *R. v. Barnet Rural Sanitary Authority* (1876) 1 Q.B.D. 558 : 45 L.J.M.C. 105 : 35 L.T. 362 is a very instructive case on the point. Under the Act, a rate as well as an order may form subjects of appeal. In the former case, the time counts from the date when the party has notice of the rate; in the latter, from the date the order itself is made. Why is this distinction made? Blackburn, J., points out that a person may be rated behind his back, but, *prima facie*, an order is not so made. Meller, J., even more pointedly observes:

The local authority had, under the Act, an opportunity to show cause and unless they chose not to appear, the order could not have been made in their absence.

14. I may lastly refer to *Ex parte Johnson* (1863) 3 B. & S. 947 : 7122 E.R. 354 : 32 L.J.M.C. 193 : 8 L.T. 275 : 9 Jur. (N.S.) 1128 : 11 W.R. 620 : 129 R.R. 624 which recognises the anomaly involved in the position, that a party is bound by an order which he had no reasonable opportunity of knowing. It is, therefore, clear that the view contended for by the learned Advocate-General is opposed to the English and the Indian cases alike.

15. A feeble attempt has next been made to show that the order of the District Registrar rejecting the application as time-barred is not an order of refusal u/s 77. This contention is clearly opposed to Section 76, which makes no distinction between one kind of refusal and another. Whatever be the ground of his decision, the order is one of refusal. What significance can possibly attach to the fact that the ground of refusal was that the application was barred? No case has held that rejection of an application on the ground that it is barred, is not an order of refusal. Before a party can come to a Civil Court, he is bound as a condition precedent, to apply to the Registrar within a stated time. If the Registrar rightly holds that the application made to him is barred, it is obvious that the condition precedent has not been fulfilled. The Civil suit in such a case is clearly incompetent. This and no more is the effect of the cases to which we have been referred, namely, *Kunhimmu v. Viyyathamma* 7 M. 535 : 8 Ind. Jur. 499, *Edun v. Mahomed Siddik* 9 C. 150 : 11 C.L.R. 440, *Gangadara Mudali v. Sambasiva Mudali* 40 Ind. Cas. 192 : 40 M. 759 : 33 M.L.J. 51 and *Udit Upadhia v. Imam Bandi Bibi* 24 A. 402 : (1902) A.W.N. 99.

16. In the result, the appeal fails and is dismissed with the costs of the 1st respondent.

Madhavan Nair, J.

17. This Civil Miscellaneous Appeal arises out of a suit instituted by the plaintiff u/s 77 of the Indian Registration Act for getting a decree directing the sale-deed, dated 4th January, 1926 executed to him by the 1st defendant to be registered in the Sub-Registrar's Office at Sivaganga.

18. The facts are briefly these. The plaintiff presented the sale-deed for registration before the Sub-Registrar of Sivaganga on 28th September, 1926.

That officer declined to register the document on 18th October, 1926, as the executant failed to appear before him to admit execution. It is conceded that his failure to appear amounts to "denial of execution" u/s 35 of the Registration Act: see *Radhakissen Rowra Dakna v. Chooneelall Dutt* 5 C. 445 : 5 C.L.R. 172, *Sivarama Pattar Kariakar v. Krishna Iyer* 23 Ind. Cas. 23 : 26 M.L.J. 307 : 15 M.L.T. 233, *J. and D. Ezeikeil, Carrying Business under the Name and Style of Ezeikeil and Co. Vs. Annada Charan Sen, and Chhotey Lal v. Collector of Moradabad* 69 Ind Cas. 44 : 44 A. 514 at p. 517 : AIR 1922 P.C. 279 : 31 M.L.T. 284 : 27 C.W.N. 437 : 21 A.L.J. 361 : 37 C.L.J. 377 : 9 O. & A.L.R. 450 : 25 Bom. L.R. 655 : 18 L.W. 124 : (1923) M.W.N. 873 : 49 I.A. 375 (P.C.). The Sub-Registrar's order was despatched to the plaintiff and he received it on the 19th October 1926. Thereupon he made an application u/s 73 (1) of the Indian Registration Act to the District Registrar at Ramnad to establish his rights to have the document registered. Applications to the Registrar under this section should be made "within 30 days after the making of the order of refusal" by the Sub-Registrar. The plaintiff's application was presented on 18th November, 1926, i.e., after 30 days from the date of the order of refusal by the Sub-Registrar on 18th October, 1926, but within 30 days after the order was communicated to him. The District Registrar held that the application was out of time and rejected it on 16th December, 1925. This order was communicated to the plaintiff on 20th December, 1926. Thereupon the plaintiff instituted this suit u/s 77 of the Registration Act. A suit under this section should be instituted "within 30 days after the making of the order of refusal" by the District Registrar. The plaint in the present suit was filed on 19th January, 1927, i.e., after 30 days from the date of the order of the District Registrar but within 30 days after it was communicated to him.

19. It was contended by the defendants (1) that the suit, having been presented more than 30 days from the date of the order of the District Registrar rejecting the application, was barred by limitation and (2) that the plaintiff has no right to institute the suit u/s 77 of the Registration Act as it was not brought on any "order of refusal" by the Registrar, as the application to the Registrar was thrown out as time-barred. The District Munsif upheld these contentions and dismissed the suit without going into the merits. On appeal the learned Subordinate Judge overruled them and remanded the suit to the lower Court for disposal. This appeal is by the defendants against the order of remand and the above contentions urged by them before the lower Courts are again pressed before us with great force by the learned Advocate General.

20. The provisions of Sections 73 (1) and 77 (1) of the Indian Registration Act are as follows:

Section 73(1): When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, assign or agent authorised as aforesaid, may, within thirty days after

the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

21. Section 77(1): "Where the Registrar refuses to order the document to be registered, u/s 72 or Section 76 any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree."

22. The first question for consideration is whether the suit is time-barred u/s 77 of the Registration Act. As already observed a suit under this section will be within time if it is instituted "within thirty days after the making of the order of refusal by the District Registrar." It is argued on one side that the expression "making the order of refusal" in Section 77 of the Registration Act means only recording the order of refusal in writing and that the time should be calculated from the date of the "order of refusal" in which case the plaintiff's suit will be out of time; while, on the other side, it is contended that the expression means not merely the recording of the order in writing by the Registrar but communicated it to the party concerned and that in this case time should be calculated from the date when the order was communicated to the plaintiff in which case his suit will be in time. The answer to the question must depend on the special circumstances of each case. If the order of refusal is pronounced in the presence of the parties immediately after inquiry by the Registrar; so that the person concerned knows that his request has been refused, then there can be no doubt that time should be calculated from the date of the order; but if the order was not so pronounced and the person concerned does not know that his request has been refused then it would not be just to hold that time should be calculated from the date of the order. How is an aggrieved party to take any action unless he knows that an adverse order has been passed by the Registrar? If the construction contended for by the appellant is accepted, then it is clear that in cases of this kind the party aggrieved may be altogether deprived of the privilege of taking proceedings u/s 73 (1) and Section 77 of the Act. It is not contended that the Sub-Registrar and the Registrar pronounced their orders in the presence of the parties after the inquiry was over, or that those officers fixed any day for pronouncing their orders or gave notice fixing any date for pronouncing them. In these circumstances it seems to me that in this case time should be calculated only from the date when the order was communicated to the parties. An order to be valid u/s 77 of the Act should be passed in the presence of the parties; or after notice to them; if no notice has been given, then it should be communicated to them; in other words, the order to be a valid one must be brought to the knowledge of the party against whom it has been passed. It is conceded that there is no provision in the Act for communicating the orders

of the Registrar and Sub-Registrar to the parties concerned. It seems to me, therefore, that the intention of the Act is that the officers should pronounce their orders in the presence of the parties after the inquiry is over, or should do so, after giving the parties notice.

23. This very question arose for decision in the Bombay High Court in *Abdul Ali v. Mirja Khan* 28 B. 8 : 5 Bom. L.R. 622, and it was held in that case by Chandavarkar and Ashton, JJ., that the expression "making an order" in Section 77 of the Indian Registration Act (III of 1877), means not merely the recording of the order of refusal in writing but communicating it to the party concerned so as to bind him by it. The Punjab Chief Court also decided the question in the same way following *Abdul Ali v. Mirja Khan* 28 B. 8 : 5 Bom. L.R. 622. See *Kirpa Ram v. Asa Singh* 41 Ind. Cas. 76 : 41 P.R. 1917 : 55 P.W.R. 1917. In our own Court, this particular point has not been considered in any case under the Registration Act but attention may be drawn to cases under the Madras Survey and Boundaries (Act XXVIII of 1860 and Act IV of 1897) which contain an analogous provision limiting the period allowed for the institution of suits in which it has been held that time does not begin to run until the date on which the decision sought to be set aside is communicated to the parties : (see *Annamalai v. Cloete* 6 M. 189, *Seshama v. Sankara* 12 M. 1 and *Secretary of State for India v. Gopiseti Narayanasami Naidu* 8 Ind. Cas. 398 : 34 M. 151 : 8 M.L.T. 310 : (1911) 1 M.W.N. 28. See also *Mahipat v. Lakshman* 24 B. 426 : 2 Bom.L.R. 228 (a decision under the Khoti Act). The correct principle is pointedly stated in *Secretary of State for India v. Gopiseti Narayanasami Naidu* 8 Ind. Cas. 398 : 34 M. 151 : 8 M.L.T. 310 : (1911) 1 M.W.N. 28. "A decision cannot properly be said to be passed until it is in some way pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing what it contains. Till then, though it may be written out, signed and dated, it is nothing but the decision which the officer intends to pass. It is not passed so long as it is open to him to tear up what he has written and write something else."

24. In support of his contention that the time for the suit should be computed from the date of the order, the learned Advocate-General mainly relied on three English cases: *R. v. Justices of Staffordshire* (1802) 102 E.R. 554 : 3 East 151, *R.v. Justices of Derbyshire* (1845) 7 Q.B 193 : 115 E.R. 461 : 1 New Sess. Cas 645 : 14 L.J.M.C. 84 : 9 Jur. 551 and *R. v. Barnet Rural Sanitary Authority* (1876) 1 Q.B.D. 558 : 45 L.J.M.C. 105 : 35 L.T. 362. These cases appear at first sight to support his contention but when read in the light of their circumstances these will not be found to be inconsistent with the view which I have expressed above.

25. In *R. v. Justices of Staffordshire* (1802) 102 E.R. 554 : 3 East 151 an order was made under Stat. 13 Geo. 3 Ch. 78 for turning part of a highway. By Section 29 of that Statute, an appeal is given to "the party grieved by any such order or proceeding at the next Quarter Sessions after such order made or proceeding

had", etc. It was held that the appeal must be made to the Quarter Sessions next after the order made, without reference to any notice received by such appellant. The reason why the learned Judges arrived at this conclusion appears in the following observations of Le Blanc, J.:

In the case of a public highway, all the King's subjects may be said to be interested, and to have a right to appeal against an order for stopping it up; and, therefore, if the right of appeal were to depend on personal notice of the order to the appellant, there never would be an end of the time for appealing.

26. In commenting on this case, in *R. v. Justices of Derbyshire* (1845) 7 Q.B. 193 : 115 E.R. 461 : 1 New Sess. Cas 645 : 14 L.J.M.C. 84 : 9 Jur. 551 which will be referred to presently, the learned Judges refer to these remarks of Le Blanc, J. From this we may infer that the literal construction contended for, was put upon the words of the Statute as there would be no end of appealing, if such a construction was not adopted. Having regard to these observations which give the reason for this decision, I do not think the case can be understood as laying down any general rule of interpretation. In *R. v. Justices of Derbyshire* (1845) 7 Q.B. 193 : 115 E.R. 461 : 1 New Sess. Cas 645 : 14 L.J.M.C. 84 : 9 Jur. 551 an order was made under Statutes 4 and 5 Vict. Ch. 59 requiring a surveyor of highways to pay money out of the highway rates in aid of turnpike funds. By a. 3 of that Statute a right of appeal is given to the person aggrieved "within 6 days after such order shall be made or given." It was held that the time for appeal runs from the making of the order, not from the service. It may be gathered from the following remarks of Lord Denman, C.J., appearing in the judgment that in cases under the Statute the parties interested would have opportunities to know about the order at the time when it is made. The learned Judge says: "We may add that the Act provides some means for giving notoriety to the proceeding at the Petty Sessions, and even notice to the parties directly interested in opposing such an order." It would appear (see Maxwell's Interpretation of Statutes, page 11) that the order appealed against in this case must have been verbally pronounced by the Justices. If so, we may presume that it was pronounced either in their presence or after notice to them. In *R. v. Barnet Rural Sanitary Authority* (1876) 1 Q.B.D. 558 : 45 L.J.M.C. 105 : 35 L.T. 362 it is clear from the report of the arguments (see page 561 Page of (1876) 1 Q.B.D.) that the order was made in the presence of the person affected by it. It also appears from the judgment of Blackburn, J., and Meller, J., that the persons affected by the "order" or "conviction" in such cases always have opportunity of being present, at the time when the orders affecting them are made. Blackburn, J., observes thus: "Where the appeal is against a rate, the "cause of appeal" would prima facie be upon notice of the rate, but where the appeal is from any order or conviction, one would certainly, prima facie, say that as soon as the order is made the party has a right to appeal, and is not bound to wait until the order is served." The point is more explicitly stated by Meller, J., who observes thus: "Here the local authority had under the Act an Opportunity to show cause, and unless they chose not to appear, the order could not have been made in their absence. The cause of

appeal begins from the time the order is pronounced. The order is not required to be in writing, it may be a verbal and informal decision, and the party convicted either does know or ought to know the grounds on which the Justices have proceeded". In this view, this case also does not support the appellant's contention. Attention may also be drawn to the decision in *Ex parte Johnson* (1863) 3 B. & S. 947 : 7122 E.R. 354 : 32 L.J.M.C. 193 : 8 L.T. 275 : 9 Jur. (N.S.) 1128 : 11 W.R. 620 : 129 R.R. 624, where it was held that under Statutes 7 and 8 Vict. Ch. 101 Section 4 which enacts that "within 24 hours after the adjudication and making of any order" in hasty, the putative father may give notice of appeal to the Quarter Sessions, that the time must be counted from the oral adjudication of the Justices in Petty Sessions and not from the time when the formal order is signed by them. On the whole I do not think that these English cases compel us to hold that the time for instituting the suit u/s 77 of the Registration Act must always be calculated from the date of the order of the refusal made by the Registrar irrespective of the question whether the party concerned had notice of the order or not.

27. It follows from what I have said that since the plaint in this case was filed within 30 days after the order of refusal by the Registrar was communicated to him, the suit u/s 77 of the Registration Act is not time-barred. For the same reasons I must hold that the application to the Registrar u/s 73 (1) of the Act was also made in time and that the rejection of it by the Registrar as time-barred was wrong.

28. The next argument of the appellant is that the suit is not maintainable as the Registrar rejected the plaintiff's petition on the ground that it is time-barred without going into the merits. It is argued that such orders are not "orders of refusal" as contemplated by the section. I do not think that this contention is well-founded. No authority has been cited in support of it. An order dismissing a petition on the ground that it is time-barred is as much an "order of refusal" within the meaning of the section as an order dismissing the petition on the ground that it has no merits. The Act does not make any distinction between these two kinds of orders. One of the conditions that should be complied with by a person instituting a suit u/s 77 of the Registration Act is that he must show that he applied to the Registrar within the time allowed by law. If the Registrar rightly rejects the petition on the ground that it is time-barred, then it means that the plaintiff did not comply with this condition precedent to the maintenance of the suit under the section; and a suit u/s 77 of the Act will not, therefore, lie. This was all that was decided by the Allahabad High Court in *Udit Upadhia v. Imam Bandi Bibi* 24 A. 402 : (1902) A.W.N. 99, where it was held that the Registrar's order in that case rejecting the application as filed beyond time cannot be considered as a "refusal to register" within the meaning of the Act. The other decisions referred to by the appellant, *Kunhimrnu v. Viyyathamma* 7 M. 535 : 8 Ind. Jur. 499, *Edun v. Mahomed Siddik* 9 C. 150 : 11 C.L.R. 440 and *Gangadara Mudali v. Sambasiva Mudali* 40 Ind. Cas. 192 : 40 M. 759 : 33 M.L.J. 51 do not advance his case any further. In this case I have shown that the

Registrar's order rejecting the application made by the plaintiff as time-barred is wrong, i. e., that the application was made in time; in other words, that the plaintiff has complied with the condition precedent to the maintenance of the suit. It, therefore, follows that the plaintiff's suit is maintainable.

29. This Civil Miscellaneous Appeal fails and must be dismissed with costs of the 1st respondent.