
(1868) 12 CAL CK 0006
In the Calcutta High Court
Case No : Special Appeal No. 1422 of 1868

Tulsi Sahu and Others

APPELLANT

Vs

Mahadeo Das and Another

RESPONDENT

Date of Decision : 09-12-1868

Acts Referred:

Citation : (1868) 12 CAL CK 0006

Judgement

Kemp, J.—The decision of this case was postponed for the decision of Sheikh Rahmatulla v. Sheikh Sariutulla Kagchi [1 B.L.R. (F.B.), 58] referred to by this Bench. That decision has now been received, although the point for decision in this case has not been distinctly decided by the Full Bench, inasmuch as the point referred to them was a different one; still, from the remarks of some of the learned Judges who formed the Full Bench, we think it may be gathered that, although the point was not actually before them, they were of opinion that a regular suit to enforce registration, the party having neglected to pursue the steps laid down in Section 841 of Act XX of 1866, would not lie. Under the former Act, Act XVI of 1864, and u/s 15 of that Act, if a District Registrar or a Deputy Registrar refused to register an instrument, it was lawful for any person interested to institute a regular suit to establish his right to have such instrument registered; but the provisions of this section of the older law are omitted in the later law, namely, Act XX of 1866, and from the report of the Select Committee of the Council of Governor-General of India.² Upon the later law, it is clear that the Legislature intentionally abolished the regular suit which, u/s 15 of the former law, a party whose deed the Registrar had refused to register could bring to establish his right to have such instrument registered, for in paragraph 16 of the report of the said Committee the following passage occurs: "Sections 82, 83, and 84 made plainer the remedy for refusing to register; Section 83 abolishes the proposed regular suit, and substitutes an application to the Court by a petition." From this it is clear that in the first draft of Act XX of 1866 it was proposed to make it lawful for any person interested to institute a regular suit, and this privilege was, therefore, intentionally withdrawn when the bill was

passing through the Select Committee. In the present case, the plaintiff having neglected to avail himself of the remedy which the law gave him u/s 84, he has only himself to blame. We may also observe that, as remarked by the learned Chief Justice in the decision of the Full Bench above alluded to, a purchaser or lessee, as the present plaintiff is, can always protect himself, and if he does not, it is his own fault: he should take care before he pays his purchase-money, or as in this instrument, advances money on a zurpeshgi lease, to get the deed registered or to obtain an authenticated power of attorney from the vendor or lessor, authorizing some one in whom the purchaser or lessee has confidence to register the deed or lease as agent of the vendor or lessor.

2. We are, therefore, of opinion that the Judge was right in law in holding that the suit of the plaintiff would not lie.

3. We dismiss the special appeal with costs bearing interest.

E. Jackson, J.

4. In the decision [1 B.L.R. (F.B.) 60] which I recorded on the occasion of the former suit which has been referred to by my learned colleague, and which was subsequently decided by a Full Bench of this Court, I stated my opinion that the right to bring a separate suit to enforce registration had not been taken away by Act XX of 1866.

5. The Judges who decided the Full Bench suit have nearly all stated their opinion that that power to bring a suit no longer exists, and therefore I do not press that opinion any longer. In addition to that, it would appear very distinctly, from what we have since elicited on examination of the report of the Select Committee of the Legislature which passed the law, that the Legislature did intend to abolish and did abolish in fact the power to bring a separate suit. In the draft Act, which was originally published, there was a distinct section which stated that a person who had failed in obtaining registry could bring a regular suit, and it was distinctly declared in that section that for the purposes of that suit the unregistered deed might be received in evidence. The Select Committee deliberately altered that section, and substituted in its place the procedure by petition. I think it would have been better, had it been distinctly stated in the Act that the power to bring a suit was abolished. I think that many people may be misled by its not having been so distinctly stated; I think that the plaintiff in this case has certainly been misled by it. However that may be, as it is for this Court to carry out the law as it has been passed, if the plaintiff has made a mistake, the Court cannot assist him. The plaintiff's remedy was by petition to the Judge, and not by a civil suit. The civil-suit must therefore be dismissed.

1

Procedure where Registrar or Registrar-General refuses to register or direct registration of documents falling u/s 17 or Section 18, Clauses 1, 2, 3, and 4.

Sec. 84:--If a Registrar or Registrar-General shall u/s 82 make an order of

refusal to register any document referred to in Section 29, or if a refusal to register shall have been made u/s 15 of Act XVI of 1864, or if he shall u/s 83 on appeal make an order of refusal to direct the registration of such document, it shall be lawful for any person claiming thereunder, his representative, assign, or agent authorised as aforesaid, within thirty days after the making of such order or refusal, to apply by petition to the District Court, in order to establish his right to have such document registered.

Petition. To be verified and stamped.

The petition shall be in the form contained in the Schedule of this Act or as near thereto as circumstances will permit, and shall be accompanied by copies of the reasons recorded under Sections 82 and 83, and the statements in the petition shall be verified by the petitioner in manner required by law for the verification of plaints, and the petition shall, where a stamp is required by law, bear a stamp of eight annas, and may be amended by permission of the Court.

Document admissible in evidence.

The document shall be admissible in evidence on the presentation and hearing of the petition, anything hereinafter contained to the contrary notwithstanding.

Court to fix day for hearing petition and copy thereof to be served.

The Court shall fix a day for the hearing of the petition not less than two days after the service next hereinafter mentioned, and shall direct a copy of the petition, with a notice at the foot thereof of the day so fixed, to be served on the Registering Officer and on such other persons (if any) as the Court shall think fit; and the provisions of the CPC as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to copies of petitions under this section.

Court may order documents to be registered.

On the day so fixed as aforesaid, the Court may, if it shall think proper, and if the requirements of the law for the time being in force have been complied with on the part of the petitioner so as to entitle the document to registration, order such Registrar or Registrar-General to register the document, or to direct its registration in the proper manner, and he shall thereupon obey such order, and shall, so far as may be practicable, follow the procedure prescribed in Sections 66, 67, and 68, and (provided the document be duly presented for registration within thirty days after the making of such order) the registration pursuant to such order shall take effect as if the document had been registered when it was duly presented for registration to the Officer so refusing as aforesaid.

Provision of case in which the Judge is the Registering Officer.

Provided that when the Officer presiding over the District Court shall himself as Registering Officer have made any order appealed against under this section, the Petition shall within sixty days after the making of such order be presented to the High Court, and the provisions contained in the former part of this Section shall,

mutatis mutandis, apply to such petition and the order (if any) thereon.

2 See *Donegall v. Layard*, 8 H. of L. Ca., 465. In that case the question was as to the application of 12 and 13 Vict., c. 106 (Ir.). It was stated by counsel in argument, that the Master of the Rolls (in Ireland) had examined the various clauses of the private Acts and of the Statute, and also referred, in support of his opinion, to the amendments which had been introduced into them as they went through committee. The Lord Chancellor remarked: "His Honour ought to have confined himself to what appeared on the Statute Book." And in his judgment, the Lord Chancellor, again referring to this, said: "I need hardly observe, that along with the whole profession of the law in Ireland and in England, and with the public at large, I sincerely entertain the highest respect for that distinguished Judge, the present Master of the Rolls in Ireland. But I must lament that his zeal to do justice has led him into inquiries respecting this Act of Parliament which could not legitimately assist him in construing it, and which, I think, unfortunately induced him to change the sound construction which he had twice before put upon it." The other Lords concurred.