

(1913) 04 MAD CK 0031
In the Madras High Court

Veerappa Chetty alias Vellian Chetty and Others	APPELLANT
Vs	
Kadiresan Chetty	RESPONDENT

Date of Decision : 02-04-1913

Acts Referred:

Citation : 20 Ind. Cas. 385 : (1913) 24 MLJ 664

Judgement

1. The important question of law argued in this second appeal is whether the hypothecation bond on which the plaintiff instituted the suit to recover the amount due thereon is invalid in law and inadmissible in evidence on the ground that its registration by the Sub-Registrar of Devakota was illegal. The document was executed by the first defendant to one Palaniappa Chetti. The plaintiff is the assignee of the bond from Palaniappa Chetti, and the 2nd and 3rd defendants are the step brothers of the 1st defendant and members of an undivided Hindu family, of which K the 1st defendant is the manager. The mortgaged property is situated in the village of Alagapuri. The defendants' contention is that Alagapuri is a hamlet of Kallangudi attached to the Tirupattur Registration Office. It is clear, however, that it was sometimes regarded by the people of the place as a hamlet of Kandanur attached to the Devakota Registration District. The Subordinate Judge who tried the suit observes that documents relating to Alagapuri were sometimes registered at the Tirupattur Office [Exhibit III series] and at other times at the Devakota Office. He examined the documents containing the history of both the offices, Exhibit I A and FI. The latter document shows Alagapuri as a village attached to Kandanur, though the correctness of the statement is said to have been held in doubt. Exhibit I A on the other hand shows Alagapuri as attached to Kallangudi. There is apparently nothing more on the record to show whether Alagapuri is in reality a village attached to Kallangudi or to Kandanur. The Subordinate Judge observes that the parties resident in and about the locality have been sometimes treating Alagapuri as attached to Kallangudi and sometimes as attached to Kandanur. His finding is that the village is in reality attached to Kallangudi. The District Judge on appeal recorded no finding on the question, although it was raised in the memorandum of appeal by the plaintiff,

apparently because the Judge considered it unnecessary to do so, as he was of opinion that the registration of the document could not be impeached as invalid even if the village was really attached to Kallangudi. On the evidence on record we do not think that defendants on whom the onus lies have succeeded in establishing affirmatively that Alagapuri is not attached to Kandamur. The arguments before us however have proceeded on the assumption that the Subordinate Judge's finding was correct, and we consider it desirable to deal with the question whether the registration of the document is invalid on that finding.

2. The Subordinate Judge decided the question in the affirmative, and the District Judge in the negative. Mr. Anantakrishna Aiyar the learned vakil for the respondent contends, first, that the registration of a document in the wrong Sub-Registry office does not render the registration invalid; and secondly that, as it was the 1st defendant who presented the document for registration, it is not open to him and to the 2nd and 3rd defendants, who are bound by his act to set up the invalidity of the registration on that ground. Mr. T. R. Ramachandra Aiyar, the learned vakil for the appellant, contends, on the other hand, that the Sub-Registrar of Devakota has no jurisdiction to register a document relating to property not situated within the limits of the Sub-Registrar's office and the registration was therefore void. The question has not formed the subject of decision either in this Court or in the Bombay High Court. Conflicting views have been held both in the Calcutta and Allahabad High Courts. The point is one of great importance and requires careful consideration.

3. It will be desirable in the first instance to refer to the sections of the Registration Act XVI of 1908 bearing on the question. Section 49 enacts that "no document required by Section 17 to be registered" [and a mortgage of Rs. 100 and upwards is such a document] "shall

(a). affect any Immovable property comprised therein or....

(c). be received as evidence of any transaction affecting such property unless it has been registered

4. Exhibit A, the mortgage deed in question, was executed and registered in 1896. The corresponding section of the Registration Act III of 1877 which was then in force contained the additional word " in accordance with the provisions of the Act" after "registered."

5. Now, first, what is the meaning of the word "registered"? The statute refers to various stages which have to be completed before a document becomes a registered instrument. Section 35 provides that, when the registering officer has satisfied himself that a document has been executed by the persons purporting to execute it, he "shall register the document as directed in Sections 58 to 61, inclusive." Registration, therefore, consists of the Acts mentioned in Sections 58 to 61. Section 58 requires the registering officer to get endorsed on the document the signature and addition of the executant or of his representative or assign or

agent and the signature and addition of every person examined to prove the identity of the executants or the execution of the document by the party concerned. The officer is also to endorse on the document any payment of money or delivery of goods made in his presence in reference to the execution of the document and any admission of receipt of consideration made in his presence. Section 59 requires him to affix the date and his signature to the endorsements made under the previous section and to the endorsement directed to be made by Section 52 of the day, hour and place of presentation of the document for registration and the signature of the person presenting it. Section 60 provides that the officer should endorse a certificate containing the word "registered" together with the number and page of the book in which the document has been copied after the provisions of Sections 34, 35, 58 and 59 have been complied with and he is then to sign, seal and date the certificate. It may be noted that Sections 34 and 35 refer to obtaining proof of the execution of the document. Section 61 directs that the endorsements and certificate referred to in Sections 59 and 60 shall be copied into the margin of the appropriate register book and that the copy of the map or plan, if any, mentioned in Section 21 shall be filed in Book No. I. The section proceeds to say that "The registration of the document shall thereupon be deemed complete."

6. Briefly then, registration includes the getting made and the making of certain endorsements, making the certificate of registration and the copying of the documents in the register book and the filing of the map or plan if any in Book No. 1. The substantial portion is* apparently complete with the making of the certificate of registration. It is these that Section 49 prescribes should have taken place with reference to the document before it can affect any Immovable property to which it relates or be received in evidence. It will be noted that Section 60 lays down that the certificate of registration can be made only after the execution of the document has been proved. No other requisite is laid down in that section beyond the making of the endorsements referred to in Sections 58 and 59. Section 19, however, provides that, if a document presented for registration is written in a language which the registering officer does not understand and is not commonly used in the District, he shall refuse to register the document unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy. Section 34 again provides that no document can be registered unless the executants appear before the registering officer within the time allowed for presentation under the Act, after which he is. u/s 35 to satisfy himself about their identity and the fact of execution by the executant. Sections 75 and 77 further provide for the registration within thirty days of a document, the registration of which has been first refused but is afterwards directed after-" an inquiry by the Registrar. There are no other provisions in the Act which affirmatively lay down any conditions to be satisfied before the registration of a document is made or negatively restrict the registering officer's power to register. Before a document can be admitted to registration it has to be presented for the purpose and accepted for registration

by the registering officer. The Act contains provisions as to who may present a document for registration, about the time of presentation and the place where it should be presented. Sections 32 and 33 refer to the first of these matters; Sections 23 to 27 to the second; and Sections 28 and 31 to the last. The phraseology employed is not the same in each of these cases. With respect to the 1st and 3rd matters the provision is "Every document to be registered shall be presented" by the person named in the Act and "every document shall be presented for registration in the office" of a particular officer. With regard to the time of presentation, however, the language is "no document shall be accepted for registration" unless presented within the period prescribed. There are also provisions relating to the description of immovable property dealt with in an instrument presented for registration. Section 21 provides "no non-testamentary document relating to Immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same." The kind of description to be given is then set out in that section and in Section 22. It is not clear whether there is any difference in the effect to be given to the difference of the phraseology employed in these sections. Although Section 23 refers primarily to the time of presentation, it provides "no document shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution." It is therefore arguable that, notwithstanding the form of language adopted in Section 28 of an affirmative prescription instead of a prohibition in the negative form, there is no difference in meaning in consequence of presentation to the proper officer being required in Section 23. However that may be, the presentation and acceptance are matters antecedent to the registration of the document, which itself consists in doing the acts referred to in Sections 58 to 61. Section 60, which lays down the condition to be satisfied before the certificate of registration is made, does not require that the condition laid down in Sections 23 to 27, 28 to 31 and 33 should have been complied with; and this is remarkable, as it does require that the conditions mentioned in Sections 34 and 35 referring to the proper execution of the document should have been satisfied. The appellant contends that this is immaterial, because it must be taken that the registering officer has no jurisdiction to register a document which has not been properly presented and properly accepted. We do not think this is a satisfactory argument, as the legislature might well have required compliance with the sections relating to those matters of which they were considered essential conditions to make the registration valid. Cl. 2 of Section 60 says that the certificate of registration endorsed on the document shall "be admissible for the purpose of proving that the document has been duly registered in the manner provided by this Act." This makes the omission of the matter above referred to and the insertion only of the provisions of Sections 34, 35, 58 and 59 in Cl. 1 of Section 60 significant. It is a justifiable inference that, when a document has been accepted for registration, its improper acceptance on the ground of its having been presented by the wrong person or to the wrong office is not a defect of an essential character after the Registrar has satisfied himself of the due execution of the document and made

the endorsements required by Sections 58 and 59. Section 87 provides "Nothing done in good faith pursuant to this Act by any registering officer shall be deemed invalid merely by reason of any defect in his appointment or procedure." Eegistration is an act of the Registrar and being an act of an administrative character, any error committed by him may be regarded as an error of procedure. The section may not be sufficient to validate an act of registration" violating any express provision of the Act prohibiting it in certain circumstances or any conditions expressly laid down as necessary before the act can be done; but there is no reason why it should not cover any defect where there is nothing in the Act indicating that it is regarded as of a radical character making the registration ineffective. This conclusion seems to be reasonable if we have regard to the primary object of registration, which is to check forgery and provide good evidence of the genuineness of written instruments. See *Alexander Mitchell v. Mathura Doas* ILR (1885) A. 6 , and the judgment of Pigot J., in *Baij Nath Tewari v. Sheo Sahoy Bhagut* ILR (1891) C. 556 It is also in accordance with the view taken by the judicial committee of the Privy Council in *Sah Makhan Lall Ponday v. Sah Koondun Lall* (1875) L.R. 21 A. 210 In that case the document in question was presented in time for registration. The registering officer registered it, though the executant did not admit execution, the officer having satisfied himself of the genuineness of a document otherwise. The question was raised whether the registration was valid. It was not necessary to decide it, as the document was again subsequently registered after the executant had admitted his execution. Act XX of 1866 did not require that the admission of execution should be made within any particular time, as Section 34 apparently does now. The second registration was therefore valid; but the observation of Sir Barnes Peacock delivering the judgment of the committee on the Act are of the greatest importance. His Lordship observed; "There are no words in Section 36" (corresponding to the present Section 35) "declaring that the registration of a deed shall be null and void without the appearance of the persons who executed it; and it is very doubtful whether the words of that section are not merely directory to the registering officer for the benefit of the parties to the deed, and whether his acting without the appearance of the parties, and upon evidence, instead of the admission of the parties, of the execution of the deed, was more than a defect in procedure within the meaning of Section 88," [Corresponding to Section 87 in the present Act]. "Again, it is not clear that the words "unless it shall have been registered in accordance with the provisions of this Act" in Section 49, are not, especially as regards strangers to the deed, confined to the procedure on " admitting to registration" (that is Sections 58 to 61 in the present Act) without reference to any matters of procedure prior to registration, or to the provisions of Sections 19, 21, or 36 of the Act, or rather provisions of a similar nature. In considering the effect to be given to Section 49, that section must be read in conjunction with Section 88, and with the words of the heading of paragraph 10, "Of the Effects of Registration and Non-Registration". His Lordship held it "unreasonable to suppose that it was the intention of the legislature that every registration of a deed should be null and

void by reason of a non-compliance with the provisions of Sections 19 to 21 or 36 or other similar provisions; but that the legislature intended that such errors or defects should be classed under the general words "defect in procedure" in Section 88 of the Act, so that innocent and ignorant persons should not be deprived of their property through any error or inadvertence of a public officer on whom they would naturally place reliance. It appears to be clear that in the opinion of the Privy Council even the absence of the admission of execution by a party to an instrument was not a radical defect and all errors of the registering officer antecedent to registration are to be regarded as errors of procedure. The acceptance of a document for registration is an act of the registering officer, and it is unreasonable, as observed by their Lordships, that innocent and ignorant persons should be deprived of their property through his error or inadvertence. It is urged by Mr. Ramachendra Aiyar that if a document is registered in the wrong office, third parties will not be able to obtain knowledge of the transaction by inspection of the registration Books in the office to which the locus of the property is really attached, and that one of the important objects of registration would be thereby defeated. There is no doubt force in this contention. Section 57 of the Act entitles parties to inspect the registration Books 1 and 2, Book I being the register of documents relating to Immovable property; but on the other hand, it is a greater hardship that a party should find himself deprived of property by an officer wrongly receiving a document for registration when the property is not within his district, and some years, it may be, after the document was registered; after all, the primary object of registration is not to give information to third parties of transactions affecting Immovable property. In England the mere fact of registration of a deed is not equivalent to notice of the same on the part of Subsequent purchasers or mortgagees. In *Gould v. Dummett* (1886) 2 Equity Cases 609, *Ford v. De White* (1852) 16 Bevan 120, *Winton v. The Mayor etc. of Brecon* (1858) 26 Bevan 533 This Court and the Calcutta High Court have adopted the same view, *Shan Maun Mull, v. Madras Building Company* ILR (1891) M. 268, *Joshvia v. Alliance Bank of Simla* ILR (1894) C 185, *Inderdawan Pershad v. Gobind Lall Chowdhry* ILR (1896) C. 790, *Preonath Chattopadhyaya v. Ashutosh Ghose* ILR (1899) C. 358, although the Bombay and Allahabad High Courts have adopted a different view. Moreover, as pointed out by the Privy Council in (1875) L.R. 2 I.A. 210 (Privy Council) if the registering officer accepts a document and registers it innocent persons may not discover the mistake until it is too late to rectify it. It is also doubtful whether a document which has once been registered in a "Wrong registration office" can again be presented for registration in the right office. Besides, the original party to the document may have parted with his right to others, and it is unreasonable that they should be required to see whether every document of title which they obtain was registered in the proper registration office. In (1877) L.R. 4 I.A. 166 (Privy Council), the Privy Council, speaking through Sir Montague E. Smith, approved of the observation already quoted from (1877) L.R. 4 I.A. 166 (Privy Council) Their Lordships observed. "No injustice is done by admitting a deed to registration, because the effect is no more than to satisfy an onerous condition

before the deed can be given in evidence; and when in evidence, it is subject to every obligation that can be made to it precisely as if no registration had taken place; whereas when registration is refused, the effect may be to deprive the party altogether of perfectly good rights which he might have under the deed but for the Registration Act." They point out that registration is mainly required for the purpose of giving notoriety to the deed and say "undoubtedly it would be a most inconvenient rule if it were to be laid down generally, that all Courts, upon the production of a deed which has a Registrar's endorsement of due registration, should be called on to enquire, before receiving it in evidence, whether the Registrar had properly performed his duty... If it be registered, the party who has presented it for registration is then under the Act in a position which prima facie at least entitles him to give the deed in evidence. If the registration could at any time, at whatever distance of time, be opened parties would never know what to rely upon, or when they would be safe. If the Registrar refuses to register, there is at once a remedy by an appeal; but if he has registered, there is nothing more to be done. Supposing, indeed, the registration to be obtained by fraud, then the act of registration, like all other acts which have been so arrived at, "might be set aside by a proper proceeding." Dealing with the effect of the certificate of registration u/s 60 of the Act, their Lordships say: "The certificate is that which gives the document the character of a registered instrument, and the Act expressly says that that certificate shall be sufficient to allow of its admissibility in evidence." Their Lordships' view appears to be that the certificate is generally conclusive of the character of the instrument as a registered one, although the registration may be set aside by appropriate proceedings in case of fraud. Another decision of the Privy Council in *Mujib-un-Nissa v. Abdur Rahim* ILR (1900) A. 233 was referred to for the appellant. There the document was presented for registration by the executant's attorney after the principal's death and, on the admission made by him of its execution by his principal, it was registered. Their Lordships held that the registration was invalid. They observed that the Registrar disregarded not only Section 32 but acted on the admission of execution by the attorney, although Section 34 requires in the case of a deceased the admission of the representative or assignee. (1875) L.R. 2 I.A. 210 (Privy Council) and (1877) L.R. 4 I.A. 166 (Privy Council) were distinguished on the ground that "neither case gives any countenance to the view that the absence of any party legally entitled to present a deed for registration is a defect in procedure falling u/s 87". "It is clear" their Lordships say "that the power and jurisdiction of the Registrar only come into play when it is invoked by some person having a direct relation to the deed. It is for those persons to consider whether they will or will not give to the deed the efficacy conferred by registration. The Registrar could not be held to exercise the jurisdiction conferred on him if, hearing of the execution of a deed, he got possession of it and registered it; and the same objection applies to his proceeding at the instigation of a third party, who might be a busy body." Their Lordships did not express any dissent from the general view of the Registration Act expounded by them in the previous cases including *Majid Hossain v. Fazl-un-*

Nissa ILR (1889) C. 468 a case under the Oudh Registration Act I of 1869. When the executant of a document requiring compulsory execution is dead, it remains incomplete and his representative alone can complete it. Section 34 expressly prohibits registration without the admission of execution by the party. The decision possibly departs from the view in (1875) L.R. 2 I.A. 210 (Privy Council) that the prohibition addressed to the registering officer does not make the registration when made by him invalid as against the parties; but it has no application to a case where there is no such prohibition "contained in the Act. In Maxwell on the Interpretation of Statutes the following rules are extracted from the case law on the subject for deciding what should be regarded as the consequence of non-compliance with statutory requirement that something shall be done in a particular manner or form without expressly declaring what shall be the consequence of non-compliance, pages 554 to 576. (4th edition).

(1) Where the whole aim and object of the legislature will be plainly defeated if the command to do a thing in a particular manner did not imply a prohibition to do it in any other, the prohibition will be taken to be implied;

(2) Where compliance is made in terms a condition precedent to the validity or legality of what is done, its non-fulfilment will be taken to invalidate the Act. Although no hard and fast rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard or as imperative with an implied nullification for disobedience, certain canons of construction have been observed:

(1) A strong line of distinction may be drawn between the cases where the prescriptions of the Act affect the performance of a duty and where they relate to a privilege or power. In the latter case a rigorous observance of them is regarded as essential to the acquisition of the right or authority conferred. In the former case the prescriptions of the statute may well be regarded as intended to be directory only, when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential or imperative.

(3) Enactments regulating the procedure in courts seem usually to be imperative and not merely directory.

(4) Where the prescriptions of a statute relate to the performance of a public duty and to affect with invalidity acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, they seem to be directory only. In *Wright v. Horten* (1877) 12 A.C. 371, the provisions in the Companies Act of 1862 directing that a register shall be kept of all mortgages and charges on the property of the company to be open to the inspection of creditors and imposing penalties on any of the company's officers who contravene them were held to be directory only. In *Thompson v. Harvey* (1859) 4 H.& N. 254 where no nullifying words were added to the disobedience

of one provision of a statute which were appended to another provision, that fact was taken to indicate that the disobedience of the former clause should not have the effect of invalidating the act done. All these rules are in the main governed by considerations of convenience and justice.

7. Tested by this principle, we think there can be no doubt that the wrong acceptance of a document for registration by an officer should not be regarded as invalidating the registration in the absence of an express nullifying clause or at any rate a prohibition of registration except where the property to which the document relates is within the registration area of the office and of any clause making it a condition precedent to registration that the property should be within the registration area. The question may perhaps be regarded in another aspect. Where a statute gives a public officer authority to do an act under certain circumstances, the actual existence of some of them may be a condition for the exercise of his jurisdiction, while the existence of other circumstances may be left to his own decision. In other words, it is within his jurisdiction to decide whether the latter circumstances exist, while the former are collateral circumstances the existence of which it is open to a court of justice to decide or not. Thus if a registering officer decides that the document was executed by the party in question or that the person appearing before him was the executant, its registration cannot be impeached on the ground that he came to a wrong conclusion on those questions, although the genuineness - of the document may be called in question in a court of justice. Similarly if he decides that a person presenting a document on behalf of another was an attorney authorized to do so u/s 33 his decision would apparently be conclusive if the validity of the registration is impeached. Now Section 71 of the Act enacts that a Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his Sub-District, should make an order of refusal and endorse the words "registration refused" on the document. It will be observed that he is not bound to pass such an order where the ground of the refusal is that the property in question is not situate within his Sub-District. The ground for the omission of such a reason in Section 71 is apparently that his view that the property is not situate within his Sub-District is to be conclusive, while other reasons for refusal to register may be reviewed by an appeal. Where the Registering Officer accepts a document for registration there is no means provided for reviewing his decision. This must be on the ground that, so far as registration is concerned, his acceptance is to be regarded as final for the purposes of registration; and it cannot be impeached on the ground that he ought not to have accepted the document. This is apparently the reason why their Lordships of the Privy Council held that the expression "in accordance with the provisions of this Act" in Section 49 of Act III of 1877 referred only to the sections relating to procedure on admitting to registration, that is Sections 59 to 61 and not to admission to registration.

8. It is not necessary to make more than a brief reference to the decided cases on the point. In *Har Sahai v. Chunni Kuar* ILR (1881) A. 14 registration in the

wrong office was held not to vitiate the registration. The same view was held in *Sheo Shunkur Sahoy v. Hirdey Nar-ain Sahu* ILR (1879) C 25. In *Beni Madhab Mitter v. Khatri Mondul* ILR (1887) C. 449 the contrary view was held. The certificate of registration was regarded as not conclusive of its validity. Where the document was presented to the wrong officer, it was regarded as leading to a defect of jurisdiction in him to register it. (1875) L.R. 2 I.A. 210 (Privy Council) was distinguished on the ground that there the officer had jurisdiction to register the document. But, as already pointed out, the principles expounded in that case go much further. In *Baij Nath Tewari v. Sheo Sahoy Bhagut* ILR (1891) C. 556 the question was referred to a Full Bench; but in the view taken by the learned Judges it was unnecessary to decide it. The majority of them held the registration to be invalid on the ground that the property dealt with in the instrument was not properly described; while Petheram, C. J., held that the description was sufficient. The learned Chief Justice and Ghose J., expressed their concurrence in the view propounded in *Beni Mathab Mitter v. Khatri Mondul* ILR (1877) C. 449 that the registration of a document by a Sub-Registrar within whose district the property in question is not situate was invalid for want of jurisdiction in the officer. O'Kinealy and Macpherson, JJ., expressed no opinion on the question. Pijot J., on the other hand strongly expressed the view that registration in the wrong office did not invalidate the registration. He held the provisions of Section 28 to be directory and not mandatory and could find nothing in the Act to show any intention to the contrary. He points out referring to Sections 64 and 65 of the Act, that the registering officer can always find out whether the property is situate within his district, and he thinks that the matter is primarily one for that officer. He applies to the case the rule already referred to, that where the defect in the act is due to the neglect of a public officer the parties affected by his act should not be made to suffer. He agreed in considering the registration invalid in the particular case on the ground that the property was not properly described, because he held that that defect was due to the party himself, whose duty it was to give the description. It may be observed, however, that it was the party who gave the description that impeached the validity of the registration to the prejudice of the party in whose favour he executed the document. It may be noted that wrong description was expressly stated by the Privy Council in (1875) L.R. 2 I.A. 210 (Privy Council) to be not a ground for holding the registration invalid. In *Indra Bibi v. Jain Sirdar Ahiri* ILR (1907) C. 845 also insufficient description was held to invalidate the registration. The entry of the document in the wrong registration book, a matter over which the parties have really no control, was also held there to be a ground of invalidity. In *Parasharampant v. Rama* ILR (1909) B. 202, such wrong entry was held to be immaterial and in *Parsotam Das v. Patesri Partab Narain Singh* (1913) 11 A.I.J. 241 and *Beni Madho Singh v. Jagat Singh* (1912) 10 A.L.J. 33 erroneous description of the property was held not to be sufficient to invalidate the registration. In *Joginee Mohun Chatterjee v. Bhoot Nath Ghosal* ILR (1902) C. 654, Amir Ali J., as a single judge followed the opinion of Petheram C. J., and Ghose J., in *Baij Nath Tewari v. Sheo Sahoy Bhagut* ILR (1891) C. 566. In

Narasamma v. Subbarayudu ILR (1895) M. 364 Best and Subra-manian Aiyar, J J., were of opinion that" the act of Registration by the registering officer was sufficient to make a document valid and admissible in evidence between the parties to it, but the absence of sufficient description of the property combined with its entry in Book IV not relating to Immovable property would entitle a third party bona, fide purchaser to treat the registration as invalid.

9. It has been contended by Mr. Anantakrishna Aiyar that, as the question has arisen in this case between the parties to the instrument, the defect with regard to the office of registration is immaterial, whatever might be its effect if the rights of a bona-fide purchaser were in question. His argument finds support in certain observations to be found in Sheo Sunker Sahai v. Hari Narain Sahai ILR (1879) C. 25, Sheo Dayal Mai v. Hari Ram ILR (1885) A. 590 and Narasamma v. Subbarayadu ILR (1895) M. 364 We may also observe that, while in Section 49 the language is that an unregistered document shall not affect Immovable property in question or be received as evidence of a transaction affecting any such property unless it has been registered, Sections 48 and 50 dealing with the question of priority of registered documents use the expression duly, registered" with regard to them. The difference in language is noteworthy, although we do not wish to decide that it is intended to convey a difference in language is noteworthy, although we do not wish to decide that it is intended to convey a difference in the meaning. Nor is it necessary to consider in this case whether any importance should be attached to the omission of the words " in accordance with the provisions of this Act " in Section 49 of the present Act. Probably the object of the omission was only to avoid a misapprehension that a document executed before the present Act should to be receivable in evidence have been registered in accordance with the provisions of the Act.

10. In our view of the case it is not necessary to deal with the argument of estoppel. It derives support from the observations of the Allahabad High Court in Har Sahai v. Chunni Kuar ILR (1881) A. 14 and of the Calcutta High Court in Gopal Chandra Chu-kraburtt v. Surendra Kumar Boy Choudhry (16) C.W.N. 585. It would be inequitable if a person who gets a document registered by the wrong registering officer and delivers it as a valid instrument to one who may have nothing to do with the registration should afterwards be entitled to impeach its validity. It is urged for, the appellant that there can be no estoppel where a statutory requirement is violated. This argument would have much force where both parties are aware that the locality of the property is not within the jurisdiction of the registering officer to whom the document is presented. Where the jurisdiction of an officer depends on certain facts and the ascertainment of those facts is primarily the duty of one of the parties, there seems to be no reason why he should not be held to be estopped from denying these facts as against one who derives his title from him. No principle of public policy is violated by applying the rule of estoppel in such a case. The party setting up the plea does not contend in such a case that his opponent is estopped from setting up the rule of public policy but only from setting up facts which are necessary to

bring the case within the rule. See *Bryan v. Child* (1850) 5 Ex. 368, *Oowan v. Wright* (1886) Q.B.D. 201, *Crashoiv v. Harrison* (1894) 5 Ex. 368. In *Herman on Estoppel* page 1188, the author observes, "Where a party causes a writ of attachment to issue, he cannot set up as a defence to the suit on the bond, that the process which he had sued out was not in accordance with law. And so, where one has procured a disqualified official to perform an official act, he cannot thereafter repudiate such act on account of the incompetency of the official. So a grantee, who has contracted for property, made a partial payment and executed a mortgage for the balance with the usual covenant, and delivers it to the party who holds the deed, and then takes and holds possession of the property purchased, is estopped to deny the delivery and acceptance of the deed." The objection with regard to the registration has been raised in the present case after the personal remedy of the plaintiff became barred. It is, however, unnecessary to rest our judgment on the ground of estoppel.

11. In the result we dismiss the second appeal with costs.