

Jambu Prasad Vs. Muhammad Aftab Ali Khan and ors.

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Court : Allahabad

Decided On : Nov-25-1914

Reported in : (1915)ILR37All49; AIR1914PC16(B)

Judge : Dunedin, ;Shaw, ;John Edge and ;Ameer Ali, JJ.

Appellant : Jambu Prasad

Respondent : Muhammad Aftab Ali Khan

Judgement :

John Edge, J.

1. These are consolidated appeals from two decrees, dated the 13th of February, 1912, of the High Court of Judicature at Allahabad, one of which affirmed a decree of the Subordinate Judge of Saharanpur of the 26th of September, 1910, and the other of which partly affirmed and partly reversed a decree of the same Subordinate Judge of the 26th of September, 1910. The suits in which the decrees were made were brought in the court of the Subordinate Judge of Saharanpur, one on the 20th of May, 1909, and the other on the 16th of March, 1910. They were suits for sale of immovable property. The suit of 1909 was based on a mortgage-deed of the 10th of August, 1886, the consideration for the mortgage having been Rs. 7,000. The suit of 1910 was based on a mortgage-deed of the 2nd of July, 1882, the consideration for that mortgage-deed having been Rs. 59,000, and upon a mortgage-deed of the 25th of October, 1892. There was in each suit a claim for a money decree. The Subordinate Judge dismissed the suits on the grounds that the mortgage-deeds had not been validly registered, and consequently could not affect the immovable property which was comprised in the mortgages, and that claims for money decrees were time-barred. On appeal to the High Court at Allahabad, the High Court dismissed the appeal in the suit of 1909, which was based on the mortgage of 1886, dismissed the appeal in the suit of 1910 so far as it related to the mortgage of 1882, and allowed the appeal in that suit so far as it related to the mortgage of 1892. These consolidated appeals are from the decrees of dismissal. The plaintiff in the suits is the appellant here. The respondents have been defendants in these suits, and one of them is the representative of a deceased defendant.

2. The only questions which have to be considered in these consolidated appeals are, whether I the mortgage-deed, dated the 2nd of July, 1882, and the mortgage-deed, dated the 10th of August, 1886, were validly registered under Act III of 1877. They were documents which were required by Section 17 of Act III of 1877 to be registered. If they were not validly registered they could not, by reason of Section 49 of that Act, affect any immovable property comprised in them, or be received as evidence of any transaction affecting such property. Further, if the documents of 1882

and 1886 were not validly registered instruments, no mortgage could, by reason of the first paragraph of Section 59 of Act IV of 1882, be effected by them. They were in fact registered, but the question is - was the registration a valid registration? The Subordinate Judge and the High Court found that there was no valid registration in either case.

3. In Section 32 of Act III of 1877 it is enacted that:

Except in the cases mentioned in Section 31 and Section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,

by some person executing or claiming under the same, or, in the case of copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner hereinafter mentioned.

4. So far as is material to the decision of these appeals, it is in Section 33 of Act III of 1877 enacted:

For the purposes of Section 82 the powers of attorney next hereinafter mentioned shall alone be recognized (that is to say):

(a) If the principal at the time of executing the power of attorney resides in any part of British India in which this Act is for the time being in force, a power of attorney executed before and authenticated by the registrar or sub-registrar within whose district or sub-district the principal resides.

5. The mortgage-deed of the 2nd of July, 1882, was presented for registration on the 11th of July, 1882, at Saharanpur, at the proper registration office on behalf of Lala Mitter Sen, the mortgagee, by one Natthu Mal, who held a power of attorney, of the 19th of June, 1882, from Lala Mitter Sen, which, however, did not empower Natthu Mal to present documents for registration. Lala Mitter Sen lived at Saharanpur, and the power of attorney had been duly authenticated by the then Sub-Registrar of Saharanpur on the 19th of June, 1882, but apparently it had not been executed before the Registrar or the Sub-Registrar. The Sub-Registrar's note to the copy of the power of attorney in the Register merely states that Lala Mitter Sen was known to him, and admitted the execution and completion of the document. It has not been proved that Natthu Mal held any other power of attorney from Lala Mitter Sen. The mortgagors admitted before the Sub-Registrar of Saharanpur, on the 11th of July, 1882, the execution and completion of the mortgage-deed, and received in his presence the mortgage money, Rs. 59,000, and thereupon the Sub-Registrar registered the mortgage-deed.

6. The mortgage-deed of the 10th of August, 1886, was presented for registration on the 9th of September, 1886, at Saharanpur, at the proper registration office, on behalf of Lala Mitter Sen, the mortgagee, by one Ilahi Bakhsh, who held a power of attorney of the 17th of February, 1885, from Lala Mitter Sen, which, however, did not empower Ilahi Bakhsh to present documents for registration. This power of attorney had not

been authenticated by the Registrar or the Sub-Registrar of Saharanpur, and it does not appear that it had been executed by Lala Mitter Sen before either of those officials. It has not been proved that Ilahi Bakhsh held, any other power of attorney from Lala Mitter Sen. The mortgagors admitted before the Sub-Registrar of Saharanpur, on the 9th of September, 1886, the execution and completion of the mortgage-deed of the 10th of August, 1886, and acknowledged the receipt by them of the mortgage money, Rs. 7,000, and thereupon the Sub-Registrar registered the mortgage-deed.

7. It was contended on behalf of the appellant here that it might be presumed the mortgage-deed had been presented for registration by the mortgagors who had executed the deeds, and who attended before the Sub-Registrar. It is, however, obvious that the mortgagors had attended at the office of the Sub-Registrar to admit that they had executed the deeds and not to present them for registration, and that they did not present them for registration. The mortgagors attended to enable the Sub-Registrar to comply with Sections 34 and 35 of Act III of 1877 by satisfying himself that they had executed the deeds. In the one case the deed was presented for registration by Natthu Mal, an agent of the mortgagee, and in the other case the deed was presented for registration by Ilahi Bakhsh, another agent of the mortgagee, and in neither case did the agent hold such a power of attorney as was necessary to enable a valid registration to be made.

8. It was decided, and as their Lordships considered correctly, by Sir John Stanley, C.J., and Sir George Knox, J., in 1906 in *Ishri Prasad v. Baijnath* (1906) I.L.R. 28 All. 707 that the terms of Sections 32 and 33 of Act III of 1877 are imperative, and that a presentation of a document for registration by an agent, in that case the agent of a vendee of immovable property, who has not been duly authorized in accordance with those sections, does not give to the Registering Officer the indispensable foundation of his authority to register the document. As those learned Judges said:

His (the Sub-Registrar's) jurisdiction only comes into force if and when a document is presented to him in accordance with law.

9. These learned Judges also rightly decided in the same case that the fact that the Sub-Registrar had summoned before him the executant of the deed, who was the vendor, and had obtained his consent to the registration of the deed, did not give the Sub-Registrar jurisdiction to register it, and that the omission of the Registering Officer to notice that the power of attorney under which the agent had presented the sale-deed for registration had not been executed or authenticated in accordance with Section 33 of Act III of 1877 could not be regarded as a defect in procedure within the meaning of Section 87 of that Act.

10. Although the facts in these consolidated appeals are not the same as were the facts in *Mujib-un-nissa v. Abdur Rahim* (1900) I.L.R. 23 All. : L.R. 28 I.A. 15 their Lordships consider that the principle which this Board applied in that case is applicable here. That principle, in their Lordships' opinion, is that a Registrar or Sub-Registrar under Act III of 1877 has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it, or by the representative or assign of such person, or by an agent of such person, representative or assign, duly authorized by a power of attorney executed and authenticated in manner prescribed in Section 33 of that Act. It is obvious that executants of a deed who attend a Registrar or Sub-Registrar merely to admit that they have executed it

cannot be treated, for the purposes of Section 32 of Act III of 1877, as presenting the deed for registration. They, no doubt, would be assenting to the registration, but that would not be sufficient to give the Registrar jurisdiction.

11. One object of Sections 32, 33, 34 and 35 of Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act.

12. It is the duty of courts in India not to allow the imperative provisions of the Act to be defeated when, as in this case, it is proved that an agent who presented a document for registration had not been duly authorized in the manner prescribed by the Act to present it.

13. These appeals fail, and their Lordships will humbly advise His Majesty that the appeals should be dismissed. The appellant must pay the costs of these appeals.

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