

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Futtch Chund Sahoo v. Leclumber Sing Doss and others, from the High Court of Judicature at Fort William, Bengal; delivered Monday, July 3rd, 1871.*

---

Present:

SIR JAMES W. COLVILLE.

LORD JUSTICE JAMES.

LORD JUSTICE MELLISH.

---

SIR LAWRENCE PEEL.

IN this case the Appellant brought his suit, which was in the nature of a Bill for specific performance, claiming to have the contract entered into by the instrument in question carried out, and, on the footing of that, a deed of absolute sale executed; and he added that the suit was also for issuing "an order for its registration." Their Lordships understand those words to import a prayer that the deed of absolute sale when executed might be ordered to be registered; and not to point to the registration of the instrument upon which the suit was brought. This prayer was probably inserted with a view to meet the difficulties which it was apprehended might be occasioned by the prior registration of the Defendant's document of a date subsequent to that of the instrument on which the Appellant sued. The Court of First Instance found that this instrument was not one which the Registration Act now in force required to be registered, admitted it accordingly in evidence, and upon the merits made a decree in favour of the Plaintiff. The case then went by appeal to the High Court, and the objection was there taken that the instrument being one which the Act requires to be registered and which had not been registered, it was not receivable in evidence, and that therefore there was no foundation for the Plaintiff's suit. The

decision of the Court below was accordingly reversed, and the suit dismissed with costs. The Appeal before us is against that decision.

It appears to their Lordships that although this case is undoubtedly an extremely hard one, they are bound to affirm the decree of the High Court. The Registration Act recently passed in India is extremely stringent. Their Lordships have, in the first place, no doubt whatever that the instrument in question is one which, by the second section of the Act, is required to be registered; that it is an instrument acknowledging the payment of the consideration money for what was to be ultimately an absolute sale of the property in question, for what in equity did presently operate as a sale of the property. The thirty-ninth section of the Act says that no document that has not been registered under the Act, supposing it is one which ought to be registered, is receivable in evidence. The procedure which the Act prescribes is of this kind: The party seeking to register a deed is, under the thirty-sixth section, to go first before the Registrar or, as in this case, a Sub-Registrar. If the Sub-Registrar refuses to register the deed, there is then an appeal from his refusal, upon whatever reasons it is founded, to the Registrar, the next higher officer, and if that person confirms the order refusing the registration, the eighty-fourth section gives to the party aggrieved the power of going by petition to the Zillah Judge. In the present case the Sub-Registrar and afterwards the Registrar refused to register the instrument, because the parties, the Respondents, by whom it purported to have been executed, denied that they had executed it. It has been argued that the Act affords no means for trying such an issue as was thus raised; and consequently that unless the unregistered instrument be admitted in evidence in a regular suit wherein the fact of its execution can be tried, the right of the party claiming under it would be defeated by the false and dishonest denial of his own signature by the opposite party. Their Lordships, however, looking to the words of the eighty-fourth section, and the form of the petition given in the schedule, and in particular to the fourth paragraph of that form, which contains the words "the said C. D. appeared personally before the Registrar and

"falsely denied the execution of such instrument," think that the Zillah Judge would have jurisdiction to determine such a question. Power is expressly given to him to summon the parties, and their Lordships imagine that there must also be power to summon witnesses, if witnesses should be necessary. How the Zillah Judges may deal with this statutory jurisdiction, their Lordships are unable to say. It seems, however, reasonable to suppose that if they saw that a *prima facie* case of execution of the deed was made out, they would direct the document to be registered, and refer the parties to try the question of forgery or non-forgery in a regular suit. Such a decision would not finally bind the rights of the party denying the execution of the document; and, on the other hand, it would not preclude the opposite party from proving in a less summary proceeding that the denial was false. Their Lordships must assume, in the absence of any proof to the contrary, that the Judges exercise this jurisdiction in a reasonable and proper manner.

Well, then, how do the facts stand upon this case? The Appellant went before the Sub-Registrar, and he appealed to the Registrar. He then, unfortunately for himself, through bad advice or some other cause, omitted to proceed as the Act directs under the eighty-fourth section, in which case he might have obtained the registration of the deed in the way I have suggested, and brought this suit relying on a non-registered deed. He failed to pursue the remedies given him by the Act, or at least to exhaust those remedies. It seems impossible to their Lordships, under these circumstances, to say that, acting under the provisions of a very useful though stringent statute, the Judges of the High Court have miscarried in ruling that the document, not having been registered, was inadmissible in evidence, and that the Plaintiff's suit had wholly failed. Their Lordships feel that this may be a very hard case; they would willingly have relieved the party if they could, but to make any special order, such as that suggested by Mr. Bell, seems to their Lordships to be beyond the functions and province of an Appellate Court. It may be that the Appellant may be able partially to obtain relief, since part of the consideration money seems to be

still in his hands. Their Lordships, however, dealing with this Appeal, have but one course before them, which is humbly to recommend Her Majesty to dismiss the Appeal with costs.