Privy Council Appeal No. 73 *of* 1935.
Bengal Appeals Nos. 54, 82 *and* 83 *of* 1932

Sarat Chandra Basu - - - - -		*Appellant*
	v.	
Sir Bijoy Chand Mahatab Maharajadhiraj Bahadur of Burdwan - - - - - - -		*Respondent*
Same - - - - - - -		*Appellant*
	v.	
Same - - - - - - -		*Respondent*
Same - - - - - - -		*Appellant*
	v.	
Same - - - - - - -		*Respondent*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND JANUARY 1937

Present at the Hearing:

LORD MAUGHAM.
SIR LANCELOT SANDERSON.
SIR SHADI LAL.

[*Delivered by* SIR SHADI LAL.]

This consolidated appeal raises the question of the validity of the execution and the registration of a kabuliyat, under which the appellant, Sarat Chandra Basu, with other persons, obtained a lease of the coalmines in certain villages belonging to the respondent, the Maharaja of Burdwan. The suits, which have led to the appeal, were originally instituted by the lessor against the appellant and his co-lessees, but they were subsequently withdrawn as against the co-lessees, and proceeded to trial as against the appellant only. The claim was resisted by him on various pleas, mainly of a technical character; but he was defeated in both the Courts in India. He has now appealed to His Majesty in Council, and their Lordships have, after examining the arguments presented on behalf of the parties, reached the conclusion that there is no valid ground for dissenting from the view taken by the Courts below.

The kabuliyat, upon which the claim was founded, was executed on the 30th August, 1916, in favour of the plaintiff on behalf of four persons including Sarat Chandra Basu. It contained various stipulations for the payment of royalties and commission on the coal extracted from the mines, and the suits were brought for the recovery of the money due to the plaintiff on the contract. The defendant pleaded that the kabuliyat was neither executed nor registered by him or by any person authorised by him to act on his behalf; and that he was not, therefore, bound by the covenants contained therein.

The document purports to have been executed by one Natobar Mukerjee, who had a power of attorney from the defendant. His power to execute the kabuliyat is, however, challenged on two grounds :—(1) That the power of attorney was not authenticated as required by law. (2) That it did not authorise him to execute the kabuliyat.

There can be no doubt that, if Natobar Mukerjee had no authority in law to act on behalf of the defendant, the latter cannot be held liable for the breach of the contract embodied in the kabuliyat. It is, therefore, necessary to determine whether these objections are well-founded. With reference to the first objection, reliance is placed upon section 32 of the Indian Registration Act, XVI of 1908, which enacts the law relating to the presentation of a document for registration. It provides that the presentation may be made by the person executing the document, or by the person in whose favour it is executed, or " by the agent of such person duly authorised by power of attorney executed and authenticated in manner hereinafter mentioned." The manner, in which a power of attorney is to be executed and authenticated, is prescribed by section 33 of the statute. It is enacted by clause (*a*) of subsection (1) of that section that if the principal, at the time of executing the power of attorney, resides in British India, the power of attorney shall be executed before, and authenticated by, the Registrar or sub-Registrar within whose district or sub-district the principal resides. Does the power of attorney in question satisfy this requirement? The defendant contends that it does not comply with the law, because it was executed before, and authenticated by, the sub-Registrar of Hazaribagh, while the principal was a resident of Burdwan. It is true that he ordinarily resided at Burdwan, but the endorsement of the sub-Registrar on the document expressly states that he was living, at that time, at Hazaribagh. The endorsement also shows that he was personally known to the sub-Registrar, and it is not likely that a mistake would be made about his place of residence. Indeed, no attempt has been made to prove that he was not then residing at Hazaribagh, and that the statement in the endorsement is incorrect.

The expression " resides," as used in section 33, is not defined in the statute; but there is no reason for assuming that it contemplates only permanent residence and excludes

temporary residence. The Courts in India are agreed that at the time in question Sarat Chandra Basu was residing at Hazaribagh, and their Lordships concur in the conclusion that the power of attorney was duly executed and authenticated.

Nor do they think that the power of attorney authorised Natobar Mukerjee to execute and register another document, and not the kabuliyat. It is common ground that four persons had agreed to work coal mines in certain villages by taking a lease of them from the plaintiff; and they had to execute a document called kabuliyat in his favour containing the terms of the contract entered into between the lessees and the lessor. The plaintiff maintains that it was in connection with the execution of the kabuliyat in question that Sarat Chandra Basu gave the power of attorney to Natobar Mukerjee in order to authorise the latter to act on his behalf. The defendant, on the other hand, argues that the power was given to the attorney for the purpose of executing and registering another document, namely, the agreement between the lessees defining their rights and liabilities *inter se* arising out of the projected lease.

The determination of the dispute depends upon the meaning of the relevant passage of the power of attorney. The document is written in the Bengali language, and it is only its translation in English which is before their Lordships. The parties are, however, at variance as to the correctness of the translation printed in the record. It is urged by the learned counsel for the plaintiff that this translation is incorrect, and he invites their Lordships' attention to another translation, which appears to have been acted upon by the Court of Appeal in India.

The history of these two rival translations may be shortly stated. The suits were tried on the original side of the High Court at Calcutta, and in compliance with the rules of that Court an English translation of the power of attorney made by the official translator was filed by the plaintiff in the Trial Court. This translation may hereinafter be described as " official " translation. Before the commencement of the trial, he applied to the Court for leave to administer interrogatories to the defendant and produced with the affidavit in support of his application an English translation of the power of attorney which was made or obtained by his attorneys. This second translation may be called " unofficial " translation.

There is a divergence between the two translations, and it appears that both of them were placed on the record of the Trial Court. When the claim was allowed against the defendant in that Court, he preferred appeals to a Division Bench of the High Court; and it is clear that it was the unofficial translation which was included in the paper-book printed for the appeals. The paper-book was prepared on behalf of the defendant, who was the appellant, and he was responsible for the inclusion of the documents in that book. He, however, attributes the inclusion of the unofficial translation to inadvertence. Be that as it may, there can be

little doubt that the unofficial translation was the only translation which was referred to by the Court that heard and determined the appeals. But in the book printed for the hearing of the present appeal it was the official translation which was included.

The plaintiff thereupon made an application to the High Court on the 20th February, 1936, praying that it should be recorded that the official translation, which had been printed in the paper-book for the Privy Council, was not the correct translation of the original document, but that the translation which he had annexed to his application was the correct translation. He also suggested that the Registrar of the High Court should transmit to the Registrar of the Privy Council the record dealing with the correction and the order to be made by the Court in the matter. This application was dismissed by the High Court on the ground that it should have been made to His Majesty in Council.

There is admittedly a material difference between the two translations of the passage describing the document which Natobar Mukerjee was empowered to execute on behalf of his principal. Both the translations contain a recital of the fact that four persons, including Sarat Chandra Basu, had arranged to take a lease for 999 years of certain villages with " underground right " from the Burdwan Raj estate on specified terms. There is no dispute about this recital. It is the passage following the recital which has caused controversy between the parties. According to the official translation the passage in question is in these words :—

> " In this connection an agreement has been executed amongst us four persons. Now, in order to execute and register the said agreement on my behalf, I appoint Sri Natobar Mukerjee, caste Brahman, occupation service, at present of Raneegunge town in the District of Burdwan, as my special attorney."

The unofficial translation of that passage is as follows :—

> " And whereas an Agreement Deed has been written up between the parties for the purpose, now I appoint Natobar Mukerjee of Burdwan at present of Ranigunj, son of Ambica Charan Mukhopadhya, deceased, by caste Brahmin, by profession service-holder, my constituted attorney to execute the said agreement deed and register the same on my behalf."

It will be observed that, if the official translation is correct, Natobar Mukerjee was empowered to execute and register the agreement entered into " amongst us four persons," and it is suggested by the appellant that the four persons alluded to were the four lessees. It is, therefore, argued that the attorney had no authority to execute and register the kabuliyat which embodied the contract, not between the four lessees, but between the lessees on the one side and the Burdwan Raj on the other side.

The respondent, on the other hand, maintains that the original power of attorney mentions, not " four persons ", but " the parties "; and that the phrase " the parties " means the parties to the lease, namely, the lessees and the Burdwan Raj. It is said that this description of the document applies to the kabuliyat which alone was the agreement " written up " between the parties.

The difference between the two translations is vital, as it affects the validity of the instrument which is the foundation of the respondent's claim. When the accuracy of an English translation of a document written in the vernacular language is challenged, the rule ordinarily followed by this Board is to accept the translation as correct, if it was made by a translator appointed by a Court in India and not challenged before the Judges who had dealt with the case. It is obvious that their Lordships are not in a position to say that such translation should be held to be incorrect. If they are, however, satisfied that there is a genuine doubt about its correctness, they would remit the matter to the High Court in India, from which the appeal has been brought, for an inquiry into it, and direct it, if necessary, to have another translation made under the direction of the Court and to transmit it to the Registrar of the Privy Council.

The question is whether a reference should be made to the High Court at Calcutta in order to settle the dispute between the parties. Now, it is true that the translation relied upon by the respondent was not made by a translator appointed by the Court, but it was not only placed on the record of the Trial Court, but also was included in the record printed for the Court of Appeal in India and apparently acted upon by that Court. These circumstances, which create a reasonable doubt about the accuracy of the official translation, would justify an inquiry by the High Court as to which of the two translations should be accepted as correct. Their Lordships, however, consider it unnecessary to delay the decision of the appeal by making a reference to India, because it is admitted by the learned counsel for the appellant that there is no word in the original power of attorney which is equivalent to the word " four " as used in the phrase " amongst us four persons " to be found in the official translation. The original expression can be correctly translated as " between us both parties." It is also admitted that the Bengali word, which has been translated in the official translation as " executed," might properly be translated as " written and read."

There are also other considerations which militate against the official translation. According to this translation, the document embodying the agreement " amongst us four persons " had already been " executed "; and it would obviously be absurd to empower the attorney to " execute " the same document again. But the rival translation does not lead to any such incongruity. After reciting that the " Agreement Deed " between the parties had been " written up," it authorises the attorney to execute and register it. Indeed, it is conceded that there was no document to which the lessees alone were parties, which, at that time, required execution and registration; and the power of attorney, if it related to a document of that description, would be wholly infructuous. But a document containing the terms of the contract between the lessor and the lessees was yet to be executed and registered.

Moreover, the lessees obtained possession of the villages leased to them by the plaintiff several years ago and have

since been working the coal mines; and there is no document except the kabuliyat which defines their rights and duties *vis-à-vis* the lessor. It is impossible to assume that they had obtained the right of working the mines, and had been allowed to take away coal therefrom, without any contract in writing. Indeed, they had been paying the rents and royalties as set out in the kabuliyat until the commencement of the dispute, which led to this litigation.

It is unnecessary to dilate upon the subject, as their Lordships are convinced that it was the kabuliyat, and no other document, which Natobar Mukerjee was authorised by the power of attorney to execute and register on behalf of the appellant. They accordingly hold that the grounds, upon which the validity of the execution of the kabuliyat was sought to be impeached, cannot be sustained. It must, therefore, operate as an instrument duly executed by the appellant.

It is then argued that the document was not validly registered as it was not presented for registration as required by the Indian Registration Act. It is undeniable that, if a document is executed by two or more persons, it is not necessary that all of them should present it for registration; and that the presentation thereof by one of them is a sufficient compliance with the law.

Now, the endorsement by the sub-Registrar on the instrument shows that it was presented for registration by one Fakir Chandra Sarkar, "agent for the executant Devendra Nath Mitra Mazumdar under a general Power of Attorney No. 41 for 1904, authenticated by the special sub-Registrar of Burdwan." It is beyond dispute that Mazumdar was one of the executants of the kabuliyat, but it is argued that, while Sarkar was authorised to act on behalf of Mazumdar in respect of the documents executed by the latter alone, he had no authority to represent him in connection with a document executed by his principal jointly with any other person or persons. There is no foundation for this contention. The power of attorney in favour of Sarkar is a general power of attorney, and authorises him to represent his principal in various matters, including the registration of documents. It contains no such restriction as is suggested by the appellant.

There was, in their Lordships' view, a proper presentation of the kabuliyat for registration; and it is not argued that its registration was invalid on any other ground.

The Courts in India have rightly held that the appellant's liability on the kabuliyat has been established, and the appeal preferred by him should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council.

SARAT CHANDRA BASU

v.

SIR BIJOY CHAND MAHATAB
MAHARAJADHIRAJ BAHADUR
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SAME

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DELIVERED BY SIR SHADI LAL

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