

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sah Mukhun Lall Panday v. Sah Koondun Lall and another, from the High Court of Judicature for the North West Provinces of Bengal; delivered 13th May, 1875.*

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Present:

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THE Respondents in this Appeal were Plaintiffs in the suit. They sued to set aside the auction sale of one-half of Mouzah Naila, which the Defendant, the now Appellant, on the 20th March, 1871, caused to be sold in execution of a Decree which he had obtained on the 24th of August, 1868, against Gungha Singh and others, and which half of the Mouzah he himself purchased at that sale for 11,025 rupees.

The claim was founded upon a deed of sale executed by the said Gungha Singh and others, by which they conveyed the property in dispute to the Plaintiffs. It was at one time contended that the property was under attachment at the time of the execution of the deed of sale; that the deed was not proved to have been executed on the 10th of July, 1868, the day of its date, and that it was collusive. But those objections have been abandoned, and it must now be taken that the deed was executed *bonâ fide* and for a valuable consideration on the said 10th of July, 1868, before the property was under attachment.

The principal question to be determined is whether

the Plaintiffs are entitled to avail themselves of the deed. It was contended on the part of the present Defendant that the deed was not admissible in evidence, and that it could not be acted upon or held to have conveyed to the Plaintiffs the property comprised therein, and the ground upon which he relied was that the deed had not been registered in accordance with the provisions of Act 20 of 1866. It is not disputed that the deed was presented for registration to the proper officer in due time, viz., on the 22nd October, 1868, within the period of four months from the date of its execution; but the vendors did not appear before him. They were consequently summoned under the provisions of section 37, but did not appear on the day fixed for their attendance, whereupon the registering officer having satisfied himself by the depositions of witnesses, and otherwise, that the deed had been executed by the vendors, registered it.

After the execution of the deed, viz., on the 12th of November, 1868, the property was attached in execution by the present Defendant, under his Decree against the vendors, whereupon the present Plaintiffs intervened and objected, under section 246 of the Code of Civil Procedure (Act 8 of 1859) that the property had, before attachment, been conveyed to them by the deed of the 10th of July. It was at that time admitted by all parties, including the present Defendant, that the Plaintiffs were in possession of the property and that the deed of sale had been registered; and under those circumstances the property was, on the 15th December, 1868, ordered by the Subordinate Judge to be released. (Record 36.)

Subsequently a suit was brought by the Appellant, the present Defendant, against the Respondents, the present Plaintiffs, to set aside the deed of sale as collusive, and as having been executed whilst the Mouzah was under attachment and been illegally registered. The subordinate Judge, on the 29th May, 1869, held that the Mouzah was not under attachment at the time of the execution of the deed, but that inasmuch as the deed had been registered in the absence of the vendors it must be considered as an unregistered document and was not admissible in evidence, and consequently that it could not take effect in opposition to the rights of the decree-

holder so as to preclude him from selling the property in execution of the decree. The case was appealed to the High Court, who on the 10th November, 1869, affirmed the decree. They said (page 41) :—

“The law directs (section 36) that no document shall be registered under the Act unless the persons executing such document, or their representatives, assigns, or duly authorized agents, appear before the Registering Officer. The Registrar was not authorized, therefore, to register this deed in the absence of the vendors and of their agents, merely because he was satisfied that there had been a sale pursuant to a previous agreement for purchase, and further, a power given to the vendors' agents authorising them to procure registration. The 40th section of the Act contains powers for compelling the attendance before the Registrar of persons whose presence is necessary for the due registration of deeds, but there is no provision enabling registering officers to proceed of their own authority to register in the absence of such persons.

We are of opinion that the opinion of the subordinate Judge is correct. It has been argued that the deed, having been, in fact, registered, is entitled to the privileges of a registered deed, notwithstanding any error on the part of the Registrar, but it is clear (section 49) that unless a deed has been registered in accordance with the provisions of this Act, it must be regarded as unregistered, notwithstanding that it may, in fact, have been improperly admitted to registration.”

On the 29th August, 1870, the Plaintiffs again applied to the Registering Officer to have their deed registered, but the application was refused by the Registrar. (Record p. 43.) His grounds for refusal were thus stated :—

“This deed has been declared to have been illegally registered and was to be treated as not having been registered. Application is now made for registration, but is refused as being presented beyond the proper period.”

The refusal to register was not endorsed on the deed.

On appeal to the Registrar-General he refused to order the deed to be registered upon the ground that it must be deemed to have been duly registered on the 10th of November, 1868 (p. 42); whereupon the Plaintiffs petitioned the High Court, who on the 24th February, 1871, held that the Plaintiffs were entitled to have the deed registered and directed its registration in the proper manner after the usual inquiries. They said (p. 45) :—

“The deed was duly presented for registration within four months from the date of execution, but it was not then duly registered in accordance with the provisions of the Act, as we have already determined. Having considered the reasons given by the Registrar and the Registrar-General for subsequently refusing registration, we think them insufficient. The deed is entitled to registration, no legal impediment appearing, and we direct its registration in the proper manner, after the usual inquiries.”

On the 18th March, 1871, the Plaintiffs petitioned the Judge of Cawnpore, stating that the sale of the property under the Defendant's execution had been fixed for the 20th of that month, and relying upon the order of the High Court prayed that the sale of the property under the execution might be postponed; but the application was refused upon the ground that the deed had not then been registered. The sale accordingly took place on the 20th of March, 1871, when the property now in question was purchased by the Defendant for 11,015 rupees, of which 10,081 rupees were retained in satisfaction of Decrees which he had obtained against the vendors and their representatives, including the Decree of the 24th of August, 1868, and the remainder was paid by him in cash (p. 93).

On the 20th April, 1871, more than thirty days after the order of the High Court, the Plaintiffs petitioned the Registrar that the vendors and the heirs of the deceased vendors might be summoned, and the deed registered according to the requirements of the law (90, 91). Thereupon compulsory process was issued, and the deed was registered on the 16th and 25th of May, and 5th of June, 1871.

On the 20th April, 1872, the present suit was commenced. The case was heard by the Subordinate Judge, who held that the deed had then been legally registered, but that the sale to the Plaintiffs was collusive, and that the claim to set aside the auction sale could not be maintained, inasmuch as in the former suit between the same parties it had been held that the Defendant, the present Respondent, was entitled as against the Plaintiffs, the present Appellants, to bring the property to sale under the execution; and he dismissed the Plaintiffs' suit.

Upon appeal the High Court held that the deed was not collusive; that it was executed *bond fide* for a valuable consideration; that it had then been regis-

tered, and that the rights created by it must be held to have come into existence at the time the deed would have commenced to operate had no registration been required ; and they reversed the Decree of the Subordinate Judge, and decreed the claim of the Plaintiffs for the establishment of their rights. They also held that the present suit was not barred by the decision in the former suit, as the point therein decided was not whether the Appellants would have been entitled to resist the sale in execution if their deed had been duly registered, but whether or not the deed had at that time been duly registered.

The only questions now to be determined are—

1. Whether the subsequent registration of the deed was valid and effectual to render the deed admissible in evidence and operative ; and—

2. Whether the suit is barred by limitation under section 246, Act 8, of 1859, in consequence of its not having been commenced within one year from the date of the order of the Subordinate Judge of the 18th March, 1871, refusing to postpone the sale.

There can be no doubt that the Registering Officer acted in contravention of section 36 in registering the deed without the vendors having appeared before him ; but it is not necessary for their Lordships to determine whether the registration was a nullity, or whether the error was one of which a stranger to the deed could take advantage. It may, however, be observed that there are no words in section 36 declaring that the registration of a deed shall be null and void if made 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 deed was more than a defect in procedure within the meaning of section 88. 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 ” without reference to any matters of procedure prior to registration, or to the provisions of

sections 19, 21, or 36 of the Act, or other 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 part 10, "Of the effects of Registration and Non-Registration." Now, considering that the registration of all conveyances of immoveable property of the value of 100 rupees or upwards is, by the Act, rendered compulsory, and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable 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, 21, or 36, or other similar provisions. It is rather to be inferred 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. If the Registering Officer refuses to register, the mistake may be rectified upon appeal under section 83, or upon petition under section 84, as the case may be; but if he registers where he ought not to register, innocent persons may be misled and may not discover, until it is too late to rectify it, the error by which, if the registration is in consequence of it to be treated as a nullity, they may be deprived of their just rights. It is unnecessary, however, to express any opinion upon this point, as it has been decided between these parties that, notwithstanding the first registration, the deed must be considered as unregistered. Neither of the parties appealed from the decision, and, therefore, whether right or wrong, in point of law, they are both bound by it in this suit, and it must be assumed as against them in this Appeal that the first registration was a nullity.

The Plaintiffs do not rely upon the registration of the 10th November, 1868, but on the registration of the 16th and 25th of May, and the 20th of June, 1871.

The Defendant contends that those acts of registration were inoperative.

" 1. Because in ordering the subsequent registration the High Court acted without jurisdiction, and their order and all proceedings had thereunder are nullities, and the Respondents' alleged deed is inadmissible in evidence.

" 2. Because, irrespective of the question of jurisdiction, the High Court, in so ordering registration after the lapse of more than eight months from the alleged date of the deed, impugned the express provisions of the Registration Act; and their order is not binding upon this Appellant, who was not a party before the High Court at that time.

" 3. Because, assuming that the High Court had jurisdiction and that their order was in accordance with the provisions of the Registration Act, the Respondent did not present his alleged deed within thirty days after the making of the said order."

As to the first of those reasons, their Lordships are of opinion that the High Court in ordering the registration of the deed acted without jurisdiction under section 84. That section authorizes a petition to the "District Court," which is defined to mean the "Principal Court of original jurisdiction in a district, and includes the High Court in its ordinary original civil jurisdiction." The High Court of the North-West Provinces, however, has no ordinary original civil jurisdiction, either in Cawnpore, or in any other district.

It was not, however, necessary to have an order from the District or other Court to authorize the re-registration. The deed had been presented for registration within the period required by section 22, it had been accepted for registration, and it had been registered in fact. The vendors having neglected to appear before the registering officer on the 10th of November, 1868, that officer might have proceeded, under section 40, to compel their attendance; but instead of doing that, he, by mistake, registered the deed, after satisfying himself that it had been executed. When it was declared by a competent Court that the registration was invalid, the registering officer might still have proceeded to compel the appearance of the vendors, and, upon their appearance and admission of the execution of the deed, to register it. Though the Statute makes it imperative to present an instrument for registration within four months from the date of its execution, no time is fixed within which a deed presented and accepted for registration must be registered; and, indeed, from the nature of the requirements of the Act, the period within which

the registration must be completed could not have been fixed.

It does not appear to their Lordships that the orders of the Registrar-General and of the Registrar of the 11th October and 20th September, 1870 respectively, imposed upon the Plaintiffs the necessity of petitioning the District Court, under section 84, to order the registration of the deed, or precluded the registering officer from voluntarily registering it, after the appearance of the vendors and their admission of its execution. Those orders, made whilst there was a *de facto* registration in existence, do not appear to amount to a refusal to register or to order registration within the meaning of the 82nd section. The latter of those orders assumes that there was a registration. Indeed, it was not even stated as one of the reasons for this Appeal that the registrations made on the 16th and 20th May, and 5th June, 1871, were invalid because they were made after those orders. If the registering officer was influenced by the order of the High Court to do that which he might have done without it, the fact that the High Court acted without jurisdiction did not invalidate the registration.

The High Court having acted without jurisdiction, the second and third objections to the registration fall to the ground.

As to the objection on the ground of limitation, their Lordships are of opinion that the refusal of the Subordinate Judge of the 20th of March, 1871, to postpone the sale under the execution was not an order under section 246, but was a mere refusal to order a postponement of the sale under section 247.

Their Lordships will humbly advise Her Majesty to affirm the Judgment of the High Court and to dismiss this Appeal.