

Privy Council Appeal No. 104 of 1925.

Puran Chand Nahatta - - - - - *Appellant*

v.

Monmotho Nath Mukherjee, since deceased, and others - - *Respondents*

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 5TH DECEMBER, 1927.

Present at the Hearing :

VISCOUNT SUMNER.

LORD ATKINSON.

LORD SINHA.

SIR JOHN WALLIS.

[*Delivered by* VISCOUNT SUMNER.]

This appeal arises in a vendor's suit for specific performance of a contract, dated the 20th February, 1920, for the sale of a house, No. 13, Marsden Street, Calcutta. The appellant defended the suit on the ground that he could not be required to accept the title offered to him, because (a) the house was included in an outstanding and enforceable mortgage, dated the 27th March, 1886, which constituted a blot on the title, and (b) because, partly by reason of the vendors' failure to produce a certain power of attorney, which ought to have been produced, and partly because the person, who appeared before the Registrar to acknowledge the execution of the conveyance with which the vendors' title began, did not satisfy the requirements of the Registration Act, the title offered was incomplete. Ghose, J., upheld his objection, but his judgment was reversed by the High Court of Calcutta on appeal.

The facts are these. On the 29th April, 1853, Hari Mohon Sircar executed a family deed of trust of sundry properties, which included the house in question. In 1879 his grandson, Brojo

Nath Sircar, was a trustee. On the 19th May, 1879, a suit was brought against the trustees for the construction of this deed, for the ascertainment of the respective rights of the parties interested thereunder, and for directions as to the administration of the trust.

By a decree dated the 31st August, 1885, it was declared *inter alia* that Radha Nath Sircar, another grandson and one of the beneficiaries, was entitled to a one-sixth share of the surplus income of properties which included No. 13, Marsden Street, and after other declarations and directions it was ordered that the trustees should retain their costs of suit out of the trust properties. Thereupon, and while further proceedings in the suit were still pending, Radha Nath Sircar mortgaged his one-sixth share on the 27th March, 1886. This is the outstanding mortgage in question. On 10th March, 1887, a further order was made in the suit for sale of No. 13, Marsden Street and other properties, in order to raise the money for payment of the trustees' costs payable under the decree of 31st August, 1885. The sale was duly held and the house was bought by the father of the present respondents, the vendors to the appellant. Pursuant to the order of the Court the trustees, Upendra Nath Bose and Brojo Nath Sircar, executed a conveyance accordingly on the 2nd September, 1890, which was registered on the 2nd May, 1891. For some reason the conveyance was signed on behalf of Brojo Nath Sircar by Joy Krishna Bose, purporting to act under a power of attorney dated 30th June, 1889. This is the document which is not forthcoming. When the conveyance came to be registered, Brojo Nath Sircar again acted by an attorney, not Joy Krishna Bose, but another person. The objection taken is that only Joy Krishna Bose, the person whose hand signed the conveyance, could appear as one of the persons executing it so as to make the registration valid, and that the appearance and admission by the second attorney, or, indeed, of Brojo Nath Sircar himself, would not suffice for a valid admission of execution of the conveyance before the Registrar. Accordingly, under the Indian Registration Act, 1877, sections 34 and 35 and other sections, the conveyance was not validly registered. It is evident that, if the execution of the conveyance on the part of Brojo Nath Sircar was validly acknowledged before the Registrar, the non-production of the power of attorney held by Joy Krishna Bose is immaterial, since the admission of Brojo Nath Sircar that he was bound by the deed, as executed, would cover both the signature and the power of attorney to sign.

In their Lordships' opinion these objections fail. Radha Nath Sircar could only mortgage such interest as he took under the deed as declared by a competent Court and the interest declared in the interim decree of 1885 was subject to further orders and directions to be given by the Court in further proceedings in the same suit to provide for payment of the costs of the suit itself. The mortgagee therefore took subject to the sale, which was subsequently ordered, and the mortgage cannot prevail against

the conveyance of 1890 or encumber the title to the house conveyed. The principle laid down in *Chatterput Singh v. Maharaj Bahadur* (L.R. 32 Ind. App., p. 1) applies equally to the suit now in question as to the case of a suit for administration of the estate of a deceased person, which was the matter then before their Lordships. No reasonable ground for distinguishing it has been pointed out.

By section 35 of the Registration Act registration is directed when certain persons have appeared, have been duly identified, and have admitted the execution of the document propounded, and the necessary persons are "the persons executing the document." The appellant contends that in these words executing means and means only "actually signing." Their Lordships cannot accept this. A document is executed, when those who take benefits and obligations under it have put or have caused to be put their names to it. Personal signature is not required, and another person, duly authorised, may, by writing the name of the party executing, bring about his valid execution, and put him under the obligations involved. Hence the words "person executing" in the Act cannot be read merely as "person signing." They mean something more, namely the person, who by a valid execution enters into obligation under the instrument. When the appearance referred to is for the purpose of admitting the execution already accomplished, there is nothing to prevent the executing person appearing either in person or by any authorised and competent attorney in order to make a valid admission. Their Lordships have failed to find in the scheme of the Act anything repugnant to this construction. Any other would involve risk of confusion and might even defeat the statutory procedure by multiplying the persons, who have to be traced and induced to attend, either by themselves or by some representative.

Their Lordships will accordingly humbly advise His Majesty that the decree appealed from should be affirmed and that this appeal ought to be dismissed with costs.

In the Privy Council.

PURAN CHAND NAHATTA

MONMOTHO NATH MUKHERJEE, SINCE
DECEASED, AND OTHERS.

DELIVERED BY VISCOUNT SUMNER.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.
1927.