

1867.

VALLABHRA'M
SHIVNA'RA'
YAN
v.
BA'I HARI-
GANGA'.

District Court and the decree of the Munsif, and remand the case to the court of first instance, in order that the widow may be made a party (for she is not, like an idiot or lunatic, incapable of asserting her rights), and the following issues determined :—

1. Has the widow been dumb from birth. If this is found in the negative, she is capable of inheritance, and must recover before her daughter ; but if it be found in the affirmative, then—

2. What portion of the property in dispute should be awarded the widow, as being her *stridhan*.

3. What amount of maintenance should be awarded to the widow, and on what property should it be secured.

And let the court raise any other issues which it may deem necessary for the proper disposal of the suit, and let fresh evidence, if needed, be received on the new issues.

Costs hitherto to be borne by the special appellant, who has failed entirely in his defence. Future costs to be determined in the new decree.

Decrees of both the lower courts reversed, and the suit remanded for re-trial.

Nov. 22.

Special Appeal No. 528 of 1867.

BHAGVA'N JAYARA'M..... *Appellant.*

VITHOBA' GOVIND..... *Respondent.*

Registration—Act XVI. of 1864, Secs. 15 and 29.

Held in a suit to compel registration under Act XVI. of 1864, Sec. 15, that where Courts found that the requirements of Sec. 29 of the Act had not been complied with before the Registrar of Assurances, he was justified in refusing to register the deed.

THIS was a Special Appeal from the decision of the Honorable G. A. Hobart, District Judge of Khândesh, in Appeal Suit No. 178 of 1866.

The plaintiff sued to obtain an order that the Deputy Registrar of Assurances at Jámner should register an instrument purporting to be a deed of sale of a field, dated the 11th of December 1865, which the Deputy Registrar refused

to register, on the ground of the defendant's non-appearance before him to admit its execution.

The defendant pleaded that the full amount of the consideration had not been paid to him.

Both the lower courts were of opinion that, under Act XVI. of 1864, no registration of an instrument could take place without the admission of the executing party or his representative before the Deputy Registrar of its execution by him. No proof of the execution of the instrument, if given otherwise than by such admission before the Registrar, would be an equivalent. Such admission made in such a manner was, under the Act (a), *a sine quâ non*.

The Special Appeal was argued before WARDEN and GIBBS, JJ.

Pándurang Balibhadrá for the appellant.

Nánabhái Harilás for the respondent.

PER CURIAM:—We agree in thinking that the ruling in

(a) Act XVI. of 1864, Sec. 15:—"If a District Registrar or Deputy Registrar shall refuse to register an instrument falling within the provisions of Sec. 13, it shall be lawful for any person interested to institute a regular suit in order to establish his right to have such instrument registered, and the instrument shall be admissible in evidence for the purpose of such suit. The District Registrar or Deputy Registrar who refused to register such instrument shall not be made a party to any such suit, but the Court may, if it shall think proper, order such District Registrar or Deputy Registrar to register the instrument, and he shall be bound to comply with the order. The petition of plaint in any suit instituted under this section shall be written on paper bearing a stamp of the value of eight annas."

Sec. 29:—"On the parties to any instrument, their heirs, administrators, or assigns, or the agents of such parties authorised as hereinbefore provided, appearing before the District Registrar or Deputy Registrar for the purpose of obtaining the registration of such instrument, he shall proceed to inquire whether such instrument was executed or not by all the parties thereto by whom it purports to have been executed, and to satisfy himself of the right of any person to appear as the heir, administrator, or assign of any party whom he shall claim to represent, or, if any party shall appear by agent, of the authority of such agent. If all the parties executing the instrument appear personally before the District Registrar or Deputy Registrar and are personally known to him, or, in case they are not personally known to him, if they satisfy him that they are the parties they represent themselves to be, and if they all admit the execution of the instrument, or in the case of any party appearing by authorised agent, if such agent shall admit the execution of the instrument, the District Registrar or Deputy Registrar shall register the same."

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BHAGVA'N
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GÓVIND.

1807.

BHAGVA'N
JAYARA'M
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Sajanji valad Godaji v. Anaji valad Lakshman and others (R. A. No. 3 of 1866) (b) must be followed in this case. The Registrar could only register a document of this nature, under Act XVI. of 1864, when all the requirements of Sec. 29 had been carried out. And as these have not been complied with in this case, we hold the view taken by the lower courts to be correct.

Decree affirmed.

(b) The following decision in the above case was given by TUCKER and GIBBS, JJ., 31st August 1866 :—

“ This is a suit instituted by plaintiff in the Court of the District Judge of Ahmednagar to try his right to register an instrument which purported to have been executed by the three defendants on 13th March 1860, and to have conveyed an eighth-share in the Pátílki watan of Datoli and the lands appurtenant thereto. The deed was presented to the Deputy Registrar of Sinar within one year of the passing of Act XVI. of 1864, under Sec. 17 of that Act, and registration was refused on the ground that the grantors did not acknowledge execution, and that execution had not been satisfactorily proved. It is not shown whether any appeal from this order was made to the District Registrar or not. Two of the defendants, before the District Judge, denied execution, and the District Judge held that it was not established that on the 13th March 1860, or on any subsequent date, all the defendants had executed the deed, and that therefore the refusal to register the deed was proper.

“ The points taken in appeal are : that the decree is contrary to evidence ; and that plaintiff has additional evidence to show that the third defendant, Yeshu, executed the deed.

“ We are of opinion that the only point which the Judge had to decide was whether the plaintiff, under the circumstances described, was entitled to register under Act XVI. of 1864 ; and we consider that as none of the parties who were alleged to have executed the deed admitted execution before the Deputy Registrar, as required by Sec. 29 of the said Act, the refusal of that officer was correct.

“ We abstain from giving any opinion whether a person in the position of this plaintiff, on whom registration was not compulsory, and who, as the deed was executed before Act XVI. of 1864 came into operation, was not prevented from producing it in evidence in a court of justice, under the provision of Sec. 13 of the said Act, was competent to bring an action under Sec. 15 without entering upon this point ; and for the reasons above given we affirm the lower court's decree. All costs on appellant.”

NOTE.—The result of this case seems to be that in a suit to compel registration under Sec. 15, the Court will only inquire whether the Register is justified in refusing to register a deed under Sec. 29.

Sed quære, Ought not the Court also, under Sec. 15, to adjudicate on the right of the plaintiff as against the defendant to have the document registered ? and in that view should not the fact of execution, and circumstances of the case, as well as the occurrences before the Registrar, be considered ?—Ed.