

1955

INCOME-TAX
APPELLATE
TRIBUNAL,
BOMBAY
v.
S. C.
CAMBATTA
& Co., LTD.,
BOMBAY

Chagla C. J.

which question never arose out of the first order, then there is no reason why the assessee or the Commissioner should not have the right of coming to the High Court under s. 66 (1) or s. 66 (2).

In our opinion, the learned Judge below was right in the view that he took. The result is that the appeal fails and must be dismissed with costs.

Attorneys for Applicant: *N. K. Petigara.*

Attorneys for Respondents: *Gagarat & Co.*

Appeal dismissed.

P. M. P.

APPELLATE CIVIL

Before Mr. Justice Chainani and Mr. Justice Gokhale.

GANGARAM RANABA MALATWADI (ORIGINAL DEFENDANT NO. 2)
APPELLANT *v.* DATTO APPAJI POWAR AND OTHERS (ORIGINAL PLAINTIFF
AND DEFENDANTS NOS. 1 TO 6), RESPONDENTS.*

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Oct. 14

Indian Registration Act (XVI of 1908), s. 75 (1), (2), and (3)—Registration of Sale-Deed more than 30 days after the order of the Registrar—Whether valid.

Once the Registrar passes an order under s. 75 (1) of the Indian Registration Act that a document be registered, it may be registered even if it is presented after the expiry of the period of 30 days prescribed under s. 75 (2). If the document is presented within the period prescribed under s. 75 (2), the Sub-registrar is bound to register it. S. 75 (2) does not, however, bar the Sub-registrar from registering the document presented after the period, although he cannot be compelled to do so.

Held, therefore, that a document registered after the expiry of the period under s. 75 (2) was validly registered.

Chhotey Lal v. Collector of Moradabad,⁽¹⁾ followed.

Mafizur Rahman v. Jamila Khatun,⁽²⁾ dissented from.

SECOND Appeal against the decision of M. S. Hegde, Esquire, Assistant Judge at Belgaum affirming the decree passed by S. R. Joshi, Esquire, Civil Judge (Junior Division) at Shahapur.

Suit for possession or in the alternative for damages and mesne profits.

The material facts are fully set forth in the Judgment of Chainani J.

A. A. Adarkar, for the Appellant.

V. H. Gumaste, for Respondent No. 1.

Chainani J.—The facts which are material for decision of

*Second Appeal No. 41 of 1955.

1. (1922) L. R. 49, I. A. 375.

2. (1939) 42 C. W. N. 1174.

this appeal are briefly these: The suit house originally belonged to defendants Nos. 1 and 2. On July 5, 1946, they agreed to sell this house to the plaintiff for Rs. 2,000. Rs. 125 were paid by the plaintiff as earnest money. The balance was to be paid on September 17, 1946 when the document was to be executed and registered. On September 17, 1946, defendants Nos. 1 and 2 executed a sale-deed in favour of the plaintiff. The plaintiff then presented it for registration, but as defendants Nos. 1 and 2 objected to its registration, the Sub-Registrar refused to register it. The plaintiff then applied to the Registrar, Kurundwad Senior, under s. 73 of the Indian Registration Act. On July 25, 1947, the Registrar directed that the document should be registered. On March 8, 1948, the State merged with the Indian Union. Thereafter, the plaintiff applied to the Inspector General of Registration, complaining that he had not been informed about the result of his application to the Registrar. This officer made inquiries and on August 26, 1948 he wrote to the District Registrar that the orders passed by the District Registrar, Kurundwad Senior on July 25, 1947 should be given effect to and that the plaintiff should be asked to present the document for registration within 30 days from the date of the receipt of the order before the Sub-Registrar, Angol, See Exhibit 41. The District Registrar, accordingly wrote to the plaintiff on September 13, 1948, asking him to present the document for registration within 30 days before the Sub-Registrar, Angol. The plaintiff then presented the document for registration on September 16, 1948, and it was registered. Before then, on March 24, 1947, defendants Nos. 1 and 2 sold the suit house to defendant No. 3, who also obtained possession of it. The sale deed in favour of defendant No. 3 was duly registered. On November 4, 1949, the plaintiff filed the present suit for obtaining possession of the suit property.

The defendants contended that the registration of the sale-deed in favour of the plaintiff was not valid, that the signatures of defendants Nos. 1 and 2 on this sale-deed had been obtained by fraud and that the plaintiff had not paid the consideration for the sale-deed, except Rs. 125. Various other contentions were also raised, but we are not concerned with these in this appeal.

The trial Court held that the registration of the document was valid, but that Rs. 1,800 were due from the plaintiff. Accordingly the trial Court passed a decree in favour of the plaintiff entitling him to recover possession of the suit house on his paying Rs. 1,800 to defendant No. 3.

Defendant No. 3 appealed to the District Court. The appeal was heard by the Assistant Judge, who dismissed it with costs.

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Against this order, the present Second Appeal has been filed by defendant No. 3.

The appeal first came up for hearing before Mr. Justice Bavdekar. He called for findings on the following two issues:

"1. Whether the judgment of the Registrar was delivered upon a date of which notice had been given to both the parties in the appeal before him; and

2. Whether the Registrar's decision was as a matter of fact communicated to the plaintiff."

The lower appellate Court has answered both these issues in the affirmative. When the appeal came up for hearing again before Mr. Justice Bavdekar, he decided to refer it to a Division Bench, as a question of law was raised before him, on which there does not appear to be any previous decision of this Court.

The question is, whether the registration of the sale-deed executed in favour of the plaintiff, which was presented before the Sub-Registrar on September 16, 1948, i. e., more than thirty days after the order of the Registrar passed on July 25, 1947, is valid. The answer to it depends upon the construction of the provisions of s. 75 of the Indian Registration Act. Sub-sections (1), (2) and (3) of s. 75 of the Act, which are material are in these terms:

"(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in ss. 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration."

Two arguments have been advanced before us. Mr. Adarkar, who appears on behalf of the appellant-defendant No. 3, has urged that sub-s. (2) prescribes a period of limitation of thirty days from the date on which the Registrar has made his order, and that if the document is not presented within this period, the Sub-Registrar has no jurisdiction to register it. He has relied on *Mafizur Rahman v. Jamila Khatun*,⁽³⁾ in which it was held that the registration of a document, which is presented for registration after more than thirty days of the passing of an order for its registration by the Registrar under s. 75 of the Registration Act, is invalid. Mr. Gumaste, who appears for the plaintiff, has on the other hand contended that sub-s. (2) does not prevent the Sub-Registrar from registering a document, which is not presented within the prescribed period. If it is presented within this period, there is an obligation on the Sub-Registrar to register it; otherwise, it is left to his choice whether he should or should not register it. He has relied on

the decision of the Privy Council in *Chhotey Lal v. Collector of Moradabad*.⁽⁴⁾ This case is not referred to in the judgment of the Calcutta High Court in *Mafizur Rahman v. Jamila Khatun*.

It seems to us that the question is really concluded by the decision of the Privy Council in *Chhotey Lal v. Collector of Moradabad*. I may, however, say with respect that if the question had been open, I would in all probability have taken the same view. Under sub-s. (1), the Registrar is given the power to direct a document to be registered. Sub-section (2) states that the registering officer shall obey the order of the Registrar, if two conditions are satisfied. These are that the document must be presented for registration within thirty days after the making of the Registrar's order and that it must be duly presented. The words 'duly presented' evidently mean presented in accordance with all the formalities required by s. 32 of the Act. The sub-section does not say that the document should be registered only if these two requirements are satisfied. It does not impose a bar on the Sub-Registrar's carrying out the Registrar's order in other cases. It only specifies the circumstances in which there will be an obligation on the Sub-Registrar to obey the Registrar's order. In other cases there will be no such obligation, but there being no bar, he may, if he so deems fit and proper, comply with the order.

The facts in *Chhotey Lal v. Collector of Moradabad* were that on behalf of the mortgagee a mortgage was presented for registration before the Sub-Registrar. The Sub-Registrar endorsed upon the document that it had been presented 'under a power of attorney duly authenticated', but he refused to register the document, since its execution had not been admitted as required by s. 35 of the Act. The Registrar, on appeal, being satisfied on that point, ordered under s. 75 sub-s. (1), that the document should be registered. This order of the Registrar was passed on June 28, 1912. On July 22, the Collector acting as Court of Wards forwarded the mortgage and the copy of the Registrar's order by post to the Sub-Registrar and asked for registration. The document was then registered. It was urged before the Privy Council that sub-s. (2) of s. 75 required that the document should be duly presented and that as this had not been done, the registration was invalid. This argument was not accepted by the Privy Council.

Their Lordships observed:

"Upon the hypothesis that s. 75, sub-s. 2, may be dealing with a case such as the present, in which original presentation has been properly made, and every condition satisfied, there would, in their Lordships' opinion, be nothing to prevent the district registrar, when he had determined the question of execution. The last words in sub-s. 3, which pro-

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vide that the registration shall date back, do not necessarily refer only to a registration effected pursuant to the provisions of sub-s. 2, but to every registration consequent on the order made by the registrar. The main point about sub-s. 2 is that it is mandatory in form and compels the registering officer to effect the registration if the document be duly presented. If this procedure be followed and registration is refused, the processes of the Court are open for the purpose of compelling obedience, a privilege that would not be enjoyed if the formalities were omitted. Their Lordships can find nothing in the section to prevent the registrar or the sub-registrar from registering a document which had been duly presented, and the execution of which has been proved, without requiring a repetition of all the original steps, but he cannot be compelled to register unless the document be "duly presented" a second time."

The view taken by the Privy Council in this case, therefore, is that after the Registrar has passed an order under s. 75 (1) that a document be registered, the registration may be made apart from the provisions of sub-s. (2) of s. 75, i. e., even if the provisions of this sub-section are not complied with. The effect of sub-s. (2) only is that if the document is presented as provided in this sub-section, the Registrar shall be bound to register it. But there is nothing in the section, which prevents the Sub-Registrar from obeying the Registrar's order and registering the document, even when it has not been presented in the manner or within the time mentioned in sub-s. (2).

As I have stated, before the Sub-Registrar can be compelled under sub-s. (2) of s. 75 to obey the Registrar's order directing registration, two conditions must be satisfied. These are (1) the document must be presented for registration within thirty days after the making of the Registrar's order, and (2) it should be duly presented. In *Chhotey Lal v. Collector of Moradabad*, the first condition was satisfied; for, the document was sent to the Sub-Registrar on July 22, 1912, i. e., within thirty days of the Registrar's order passed on June 28, 1912. The second condition was, however, not satisfied; for, the document was not duly presented. In the present case, the second condition has been satisfied but the first has not been. Mr. Adarkar has urged that the present case is, therefore, distinguishable from that which the Privy Council had to decide. That no doubt is true. But the reasoning of the Privy Council will apply in the present case also. The construction placed by the Privy Council on s. 75 is that a document may be registered under the authority of the order made by the Registrar under sub-s. (1), even in cases not covered by sub-s. (2). The Sub-Registrar can, therefore, in pursuance of the Registrar's order, register the document, even if the first requirement of sub-s. (2) referred to above has not been satisfied.

The position, therefore, is that if a document is duly presented for registration within thirty days after the making

of the Registrar's order under sub-s. (1) of s. 75, the Sub-Registrar cannot refuse registration, but he is bound to register the document. If, however, the document is not duly presented or is not presented within thirty days after the making of the Registrar's order, the Sub-Registrar cannot be compelled to register the document, but he may in his discretion register the document, in pursuance of the order of the Registrar made under sub-s. (1) of s. 75. If he decides to register the document, the provisions of sub-s. (3), which as held by the Privy Council refer "to every registration consequent on the order made by the Registrar", will apply to such registration also, i. e., the registration shall take effect as if the document had been registered when it was first duly presented for registration.

The sale-deed executed in favour of the plaintiff was registered on September 16, 1948, in pursuance of the instructions issued by the Inspector General of Registration that the order passed by the District Registrar, Kurundwad, on July 25, 1947 should be given effect to. The registration was therefore made under the authority of the Registrar's order passed in July 1947. It must consequently be held to be valid. Under sub-s. (3) of s. 75, this registration takes effect from the date when the document was originally presented for registration on January 14, 1947. This document must, therefore, prevail over the sale-deed executed in favour of defendant No. 3 on March 24, 1947.

The appeal, therefore, fails and is dismissed. As the respondent succeeds on a point, which does not appear to have been argued in the lower Courts, we make no order as to costs of the appeal.

Gokhale J.—The short point which arises in this Second Appeal is as regards the construction of s. 75 of the Indian Registration Act. The title of the plaintiff to the property in suit is based upon a sale deed which was executed by defendants Nos. 1 and 2 on September 17, 1946, but which came to be registered on September 16, 1948. That sale deed is Exhibit 39. It was originally presented for registration on January 14, 1947, but objections having been raised by defendants Nos. 1 and 2, the Sub-Registrar, Angol, refused to register the document and the plaintiff had to appeal against that refusal to the District Registrar, Kurundwad Senior, under s. 73 of the Indian Registration Act. That appeal was allowed by the District Registrar on July 25, 1947 and he ordered the sale deed to be registered. But the plaintiff did not present the deed for registration under s. 75 (2) of the Act within thirty days of the District Registrar's order. After the merger of the State of Kurundwad in the Indian Union, an application was made to the Inspector General of Registration, Poona, by

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the plaintiff, and it appears that on August 26, 1948 the District Registrar of Belgaum was directed to ask the plaintiff to produce the sale deed for registration. The District Registrar, in his turn, having written to the plaintiff to present the sale deed to the Sub-Registrar, Angol, the document ultimately came to be duly registered on September 16, 1948. But, in the meanwhile, defendant No. 3 had already obtained a duly registered sale deed in his favour from defendants Nos. 1 and 2 on March 24, 1947 in respect of the suit property.

The principal point that was urged against the plaintiff's title by defendant No. 3 was that the registration of the plaintiff's sale deed was invalid because it was in contravention of the provisions of sub-s. (2) of s. 75 of the Registration Act, and therefore he could not get a better title than that of defendant No. 3. Mr. Adarkar, who appears for the appellant-defendant No. 3, has contended that the plaintiff cannot get the benefit of sub-s. (3) of s. 75 of the Act, unless his sale-deed was duly registered in accordance with the provisions of sub-s. (2) of s. 75. He argues that in effect what has been done in this case is to extend the time in favour of the plaintiff, and this, says Mr. Adarkar, the Registrar has no power to do. In support of his argument Mr. Adarkar has relied on the case reported in *Mafizur Rahman v. Jamila Khatun*.⁽⁵⁾ On the other hand, Mr. Gumaste, who appears for the plaintiff-respondent, has relied on the ruling of the Privy Council in *Chhotey Lal v. Collector of Moradabad*⁽⁶⁾ and he points out that the attention of the learned Judge who decided *Mafizur Rahman v. Jamila Khatun*⁽⁵⁾ does not seem to have been drawn to this ruling of the Privy Council.

Now, sub-ss. (1), (2) and (3) of s. 75 of the Registration Act are in these terms:

"(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in ss. 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration."

It would appear from sub-s. (2) of s. 75 that two conditions have to be satisfied; firstly, the document must be presented for registration within thirty days after the making of the order contemplated under sub-s. (1) of s. 75, and secondly, the presentation of the document must be a presentation duly made that is to say, in accordance with the formalities prescribed

5. (1938) 42 Cal. W. N. 1172.

6. (1922) L. R. 49 I. A. 375.

for the presentation of documents. If these conditions are fulfilled, it would be obligatory on the registering officer to obey the order of the Registrar made under sub-s. (1).

The argument that was addressed to Their Lordships of the Privy Council in *Chhotey Lal v. Collector of Moradabad* was that since the presentation of the document for registration in that case was defective, the document could not be said to have been validly registered. It appears from the facts of that case that the District Registrar's order for registration was made on June 28, 1912, and the Collector acting as Court of Wards forwarded by post the document, along with the copy of the Registrar's order, to the Sub-Registrar on July 22, 1912. The document was then registered and that registration was held to be valid by the Privy Council. Mr. Adarkar urges that the Privy Council case is distinguishable because the presentation of the document there was within thirty days of the Registrar's order. The defect in the presentation in that case was that it was not made in accordance with the provisions of s. 32 of the Registration Act. That is undoubtedly so. But it would appear from the decision of the Privy Council that their Lordships took the view that the Sub-Registrar has the power to register a document in pursuance of the Registrar's order, apart from the provisions of sub-s. (2) of s. 75. That would follow from the observation of the Privy Council that "the last words in sub-s. (3), which provide that the registration shall date back, do not necessarily refer only to a registration effected pursuant to the provisions of sub-s. (2), but to every registration consequent on the order made by the registrar." If the procedure laid down in sub-s. (2) was followed, namely that there was a due presentation for registration and that presentation was within thirty days after the making of the Registrar's order, then it would be the duty of the registering officer to obey the Registrar's order. The provisions of sub-s. (2) of s. 75 are mandatory and require the registering officer to effect the registration if the document is presented in accordance with the conditions laid down in sub-s. (2) of s. 75. If the procedure under sub-s. (2) of s. 75 is followed but registration is refused, then as their Lordships observe, "the processes of the Court are open for the purpose of compelling obedience, a privilege that would not be enjoyed if the formalities were omitted." That is an advantage which flows from the provisions of sub-s. (2) of s. 75. That does not mean, however, that the Sub-Registrar is not competent to register the document in pursuance of the order made by the Registrar under sub-s. (1) of s. 75, if the document is not presented in accordance with the provisions of sub-s. (2). In that case, of course, the registering officer cannot be compelled to register the document. But, in my view, there is nothing in sub-s. (2) of s. 75, which

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precludes the registering authority from registering a document in accordance with the order of the Registrar, even if the document is not duly presented for registration within thirty days after the making of the Registrar's order. It is not alleged in the present case that there was any defect in the first presentation of the document on January 14, 1947. The only bar to the registration of the document was the refusal of the Sub-Registrar to register it owing to the objections raised by defendants Nos. 1 and 2. In appeal, that order was reversed and the Registrar ordered that the document should be registered. As the document subsequently came to be presented beyond thirty days of the Registrar's order of July 25, 1947, the plaintiff could not have compelled the Sub-Registrar to register the document, relying on the provisions of sub-s. (2) of s. 75. But that did not take away the Sub-Registrar's power to register the document in pursuance of the directions given by the Inspector General of Registration and the District Registrar, and in conformity with the original order of the Registrar dated July 25, 1947 and he having exercised the power and registered the document, I do not think that the validity of that registration can be successfully challenged by reason of the provisions of sub-s. (2) of s. 75 of the Act.

In my opinion, therefore, the sale deed in favour of the plaintiff (Exhibit 39) is validly registered, and under the provisions of sub-s. (3) of s. 75 of the Registration Act that registration must take effect from the date when it was first duly presented for registration, viz., January 14, 1947. The plaintiff's title would, therefore, prevail over that of defendant No. 3.

I, therefore, agree with the order proposed by my learned brother.

Appeal dismissed.

G. N. V.

APPELLATE CIVIL

Before Mr. Justice Vyas.

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Sept. 1

ANNA SAKHARAM PATIL (ORIGINAL PLAINTIFF) APPELLANT v.
BASGOUDA ANNA PATIL (ORIGINAL DEFENDANT) RESPONDENT.*

Hindu law—Surrender—Widow executing deed of gift in favour of the next reversioner—Deed reciting that the transferee should be the absolute owner after widow's death—Whether transaction amounts to surrender.