

they have been able to establish that the debts forming the basis of the decree against the father were non-existent and that the suit of the plaintiffs was rightly decreed by the Court below and there is no force in this appeal and the same must be dismissed with costs, and we order accordingly.

Bhagat Ram
v.
Ajudhia
Parkash
and others

Harbans Singh,
J.

B.R.T.

APPELLATE CIVIL

Before G. L. Chopra, J.

RAM SINGH,—Appellant.

versus

JASMER SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No. 282 of 1954.

The Indian Registration Act (XVI of 1908)—Section 77—Suit under—Pre-requisites of—Application made under section 36 for summoning the document and the executant returned to be refiled with the document—Whether amounts to an order refusing to register the document—Appeal under section 72 and suit under section 77—Whether competent—Decree obtained in a suit under section 77—Whether can be challenged subsequently by persons not parties to the suit—If so, on what grounds.

1959

Feb. 11th

Held, that to confer jurisdiction on the Court to entertain a suit under section 77 of the Indian Registration Act, 1908, it is necessary that there should have been a refusal by the Registrar to register the document under section 72 or section 76 and the suit must be instituted within thirty days of the order of refusal. So long as there is no such order, no suit under the section would be competent.

Held, that where an application was made under section 36 of the Act to the Sub-Registrar for summoning the document and the executant and the same was returned to be refiled accompanied by the document, it cannot be said

that it amounted to an order of the Sub-Registrar refusing to admit the document for registration and consequently there was no proper appeal before the Registrar under section 72. There was also no order of the Registrar, nor could there be any, refusing to register the document or to direct its registration by the Sub-Registrar, as provided by section 76. In the so-called appeal the order of the Sub-Registrar refusing to summon the executant and the document was sought to be reversed and that alone was refused. Evidently, the case did not fall within the provisions of section 77 and its requirements having not been satisfied, a suit for compulsory registration did not lie.

Held, that the persons, who are not parties to the suit under section 77 of the Registration Act, are not bound by the decree and are entitled to show that the decree was collusive or was passed by the Court without jurisdiction. The Act provides a special remedy by way of a suit which can be availed of only under the specified circumstances and no other. The Court can have jurisdiction to entertain the suit only if the requirements of section 77 are satisfied and it is open to the respondents to show that they were not and, therefore, the decree passed was without jurisdiction and a nullity.

Second Appeal from the decree of the Court of Shri Harbans Singh, District Judge, Ludhiana, dated the 30th day of November, 1953, reversing that of Shri Brij Lal Mago, Additional Sub-Judge, 4th Class, Ludhiana, dated the 6th August, 1952, and dismissing the plaintiff's suit and leaving the parties to bear their own costs throughout.

N. N. GOSWAMI, for Appellant.

K. L. KAPUR, for Respondent.

JUDGMENT

Chopra, J.

CHOPRA, J.—The case giving rise to these two regular second appeals Nos. 282 and 283 of 1954 has had a chequered history. A small piece of agricultural land measuring about 7 bighas and 18 biswas, situate in village Raipur, District

Ludhiana, has been the bone of contention and subject-matter of several suits and other proceedings between the parties for the last so many years. On 11th February, 1943, Ajaib Singh, the original owner of the land, sold it to Sant Ram, father of Ram Singh appellant, for a consideration of Rs. 4,000 and executed a deed in his favour. The same day the parties to the document appeared before the Sub-Registrar to get it registered. Since it was after the time fixed for the purpose, the Sub-Registrar asked the parties to come on the following day. Thereafter, the parties never appeared and the document was not registered.

Ram Singh
v.
Jasmer Singh
and another
Chopra, J.

On the 18th March, 1943, Ajaib Singh exchanged 3 bighas and 5 biswas out of that land with Baldev Singh (respondent in Appeal No. 283). The exchange-deed was duly registered on 27th March, 1943. The remaining land was sold by Ajaib Singh to Jasmer Singh (respondent in appeal No. 282) by a registered deed dated 11th October, 1943.

On 4th May, 1943, Sant Ram submitted an application to the Sub-Registrar purporting to be one under section 36 of the Registration Act (hereinafter to be referred as the Act) praying that the sale-deed in his favour, which Ajaib Singh had in the meantime presented to the Registrar (Collector) for refund of the stamp duty, be sent for from that office and that Ajaib Singh be also summoned and the deed registered. The same day, the Sub-Registrar returned the application with the order that it should be re-presented along with the document. On the very day Sant Ram filed an appeal against this order, treating it as one refusing to register the document, under section 72 of the Act. The Registrar dismissed the appeal on 25th November, 1943.

On 8th May, 1943, Sant Ram had already instituted a suit against Ajaib Singh for possession

Ram Singh
 v.
 Jasmer Singh
 and another
 —————
 Chopra, J.

of the land by specific performance of the sale-deed in his favour. On an application presented by Baldev Singh and Jasmer Singh respondents they were impleaded as defendants to the suit. The suit ended in a compromise between Sant Ram and Ajaib Singh, but as against the respondents it was withdrawn with liberty to institute a fresh suit. This happened on 7th March, 1944. For facility of reference this would be called as suit No. 1.

On 23rd December, 1943, Sant Ram had brought yet another suit against Ajaib Singh under section 77 of the Act for a decree directing the document to be registered. On 4th January, 1944, the Court passed a consent decree in favour of Sant Ram directing that the sale-deed be presented for registration within 30 days of the decree. In pursuance of this decree the sale-deed was registered on 11th February, 1944. This shall hereinafter be referred to as suit No. 2.

Within a week of the above decision, viz., on 10th January, 1944, Jasmer Singh and Baldev Singh respondents instituted a suit for a declaration that the decree obtained under section 77 of the Act was void and the registration which took place in pursuance of that decree would be ineffective so far as their rights were concerned. This suit, to which a bit more detailed reference as suit No. 3 shall presently be made, was decreed by the trial Court, but it was dismissed in appeal by the Additional District Judge. Further appeal of the respondents was dismissed by this Court, *vide* its order dated 6th August, 1951.

Now, Sant Ram having died, his son Ram Singh instituted the present suits, one against Jasmer Singh and the other against Baldev Singh, on 24th August, 1944, for possession of the land on the basis of the sale-deed in his favour dated 11th

February, 1943, and registered on 11th February, 1944. As suit No. 3 was then pending in the High Court proceedings in these two suits were stayed. On their revival, the trial proceeded on the following issues:—

Ram Singh
v.
Jasmer Singh
and another
Chopra, J.

- (1) Whether the plaintiff is the valid owner of the land in suit?
- (2) Whether the plaintiff was granted leave to withdraw the previous suit with permission to file a fresh suit?
- (3) If issue No. 2 is proved, whether the suit in the present form is not maintainable?

On issue No. 1 it was held that the plaintiff was a valid owner of the land, that his sale-deed, though registered on a later date, was to take effect from 11th February, 1943, and that the alienations in favour of the defendants having been subsequently made did not create any title. Issue No. 2 was decided in favour of the plaintiff and issue No. 3 was not pressed. The suits were, therefore, decreed. The only point urged in the two appeals filed by the defendants was that the sale-deed in favour of Sant Ram was inadmissible in evidence, because it was not properly registered. The objection found favour with the learned District Judge. It was held that the various steps necessary to give authority and jurisdiction to the Court to entertain a suit under section 77 of the Act were lacking and, therefore, the decree in suit No. 2 would be ineffective as against the defendants and the registration which took place in pursuance of that decree would not take precedence over the registered deeds in favour of the defendants. The appeals were, consequently, allowed and the suits dismissed. These two separate appeals have now

Ram Singh
v.
Jasmer Singh
and another

Chopra, J.

been filed by the plaintiff which are proposed to be disposed of by this order.

Mr. N. N. Goswami, learned counsel for the appellant, contends that the objection to the validity of the registration was no longer open to the respondents, firstly because the registration was effected in pursuance of a decree and secondly, because the respondents had failed in their suits to get the registration and the decree declared void and ineffective. So far as the first ground is concerned, it shall be remembered that the respondents were not, and could not be, parties to the suit No. 2 under section 77 of the Act. They would, therefore, be not bound by the decree and would be entitled to show that the decree was collusive or was passed by the Court without jurisdiction. The Act provides a special remedy by way of a suit, the remedy could be availed of only under the specified circumstances and no other. The Court could have jurisdiction to entertain the suit only if the requirements of section 77 were satisfied and it would be open to the respondents to show that they were not and, therefore, the decree was without jurisdiction and a nullity. In *Bhagat Singh and another v. Ram Narain*, (1), plaintiff sued to complete his title as a mortgagee under a registered deed of mortgage, dated 22nd June, 1880, by obtaining possession of the mortgage property from the defendants, who held possession of the same under a prior, but at the date of the suit, unregistered deed of mortgage, dated 7th October, 1879 for Rs. 260. The suit was filed on the 23rd November, 1880, and on the 24th December, 1880, issues were drawn; but before any evidence was adduced, the defendant-mortgagees sued for and obtained a decree directing the mortgagor to cause their deed to be registered,

(1) 93 Punjab Record 1883

which was accordingly effected on the 13th January, 1881. The defendant-mortgagees then appeared in Court and claimed to be treated as prior mortgagees in possession under a registered title. On behalf of the prior mortgagees it was contended that their deed having been registered by order of a competent Court it was not open to the plaintiff to challenge the validity of registration effected in pursuance of that order. Refuting the argument Rattigan, J., at page 288 observed:—

Ram Singh
v.
Jasmer Singh
and another

Chopra, J.

“As to the first argument I am quite clear that it is open to the plaintiff, who was not a party to the suit in which the decree for compulsory registration was passed, and whose rights as a mortgagee under a registered deed were then in existence, to dispute the validity of registration which was effected under that decree so far at least as it affects his interests. Apart from the suspicious manner in which that suit was terminated on the very date on which it was filed, and before a summons had been issued, the judgment then passed is not admissible against the plaintiff, who was no party to the suit in which it was passed, on the principle *res inter alios acta alteri nocere non debet*. It is therefore in my opinion quite competent to the plaintiff to challenge the validity of the registration notwithstanding the decree of the 10th January, 1881.”

The learned Judge then proceeded to consider the objection on merits and held as follows:—

“As under the provisions of sections 23—26 of the Act a document, like the deed of the 7th October, 1879, which was

Ram Singh
 v.
 Jasmer Singh
 and another

 Chopra, J.

executed in British India and presented at the registry office fifteen months after execution, was no longer on that date capable of registration: and as it was open to the plaintiff, who was not a party to the suit in which the decree for compulsory registration was passed, to challenge the validity of the registration notwithstanding such decree; and as the registration of a document, which has been presented for the purpose beyond the period allowed by law, is not a defect of such a character as to be cured by the provisions of section 87 of the Act, but it is one which affects the authority of the registering officer to register at all, and must, where it exists, be patent on the face of the document, the defendants' deed could not be regarded, in competition with the deed propounded by the plaintiff, as having been duly registered within the meaning of section 49 of the Act."

Mr. Goswami relies upon certain observations made by Addison, J. in *Labhu Ram v. Charnu Fauju and others* (1). In that case objections to the validity of registration and applicability of section 77 were considered on their merits and rejected. After that was done, the learned Judge proceeded to notice 'briefly' the objection that the plaintiff was not entitled to go behind the decree ordering compulsory registration of the document. The decision of Rattigan, J. referred to above was not brought to his notice and all that the learned Judge observed on the point is as follows:—

"The Registrar had to register the deed in accordance with the decree of the Court

(1) A.I.R. 1929 Lah. 409

and we doubt whether it can be contended in this suit that the decree of the Court was wrong."

Ram Singh
v.
Jasmer Singh
and another

Chopra, J.

It is thus clear that the observation was not only obiter but did not amount to a final decision on the point.

It is correct that the respondents had impugned the registration and the decree in pursuance of which it was made in their suit (No. 3) and failed. The decision being *inter partes* it would be *res judicata* for the points actually and finally decided. The two relevant issues which arose in that case were:—

- (1) Whether the decree dated the 4th January, 1944 is illegal, void and inoperative as against the plaintiffs and was passed without jurisdiction?
- (2) If so, whether the registration done in pursuance of the decree is illegal, ineffective and void and not binding upon the plaintiffs?

The trial Court decided these issues in favour of the respondents and held that both the registration and decree were ineffectual and void as the procedure laid down in section 77 had not been followed. The suit was consequently decreed. The District Judge on the other hand held that the provisions were complied with and it was a good decree and therefore dismissed the respondent's suit. In the appeal filed by the respondents the point was reargued, but Kapur, J. (as he then was), did not deem it necessary to pronounce any decision on the point and left it open. This is clear from the following passage in the judgment:—

"In appeal Mr. Mukand Lal Puri has urged that the provisions of section 77 of the

Ram Singh
v.
Jasmer Singh
and another

Chopra, J.

Registration Act have not been complied with and as a suit to get compulsory registration can only be brought under section 77 therefore the decree passed by the Court ordering registration is not binding on him. In the view that I am taking it is not necessary to decide this question."

The learned Judge was of the opinion that the respondents could attack the decree in the case before him only if they could show that their rights had been affected and that the decree was obtained by fraud or collusion and since they failed to establish the same, their suit ought to be dismissed. The concluding portion of the judgment reads:—

"I am therefore of the opinion, though for reasons other than those given by the learned District Judge, that the suit of the plaintiffs must fail because even though the provisions of section 77 of the registration Act may not have been strictly complied with it is not open to the present plaintiffs to attack that decree and the registration effected thereunder in this suit unless they show (a) that their rights have been affected and (b) that the decree was obtained by fraud or collusion, which they have not done."

In the circumstances, the failure of the respondents in suit No. 3 would not debar them from taking up the same objection as defendants in the present suits, whereby the sale-deed is sought to be enforced and their rights are going to be affected.

It is next submitted that the requirements of section 77 were complied with and therefore there

was nothing wrong in the decree and the registration effected in pursuance of that decree. Sub-section (1) of section 77 reads:—

Ram Singh
v.
Jasmer Singh
and another

Chopra, J.

“Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document; or his representative; assign or agent; may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.”

To confer jurisdiction on the Court to entertain a suit under this section it is necessary that there should have been a refusal by the Registrar to register the document under section 72 or section 76 and the suit must be instituted within thirty days of the order of refusal. So long there is no such order, no suit under the section would be competent. In order to determine whether any such order was ever made we have to read the relevant provisions of the Act and take into consideration the proceedings instituted by the plaintiff. By section 23 of the Act, no document other than a will can be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. Under section 25, a further period of four months is allowed for registration subject to the payment of a certain penalty, where the delay in presentation was owing to urgent necessity or unavoidable accident.

Ram Singh
v.
Jasmer Singh
and another
Chopra, J.

It is thus clear that to get a document registered it has to be presented before the proper officer and that too within the extreme limit of eight months. The present sale-deed executed on 11th February, 1943 was admittedly presented before the Sub-Registrar for registration for the first time on 10th February, 1944; when it was no longer capable of registration.

The document was not before the Sub-Registrar nor was it presented to him, when the plaintiff submitted his application under section 36 of the Act on 4th May, 1943. Section 36 says:—

“If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the State Government directs in this behalf to issue a summons requiring him to appear at the registration office; either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein.”

The section lays down the procedure to be followed where appearance of the executant or witnesses is desired. It pre-supposes the proper presentation of the document or that it is capable of being so presented. The section does not provide for summoning of the document itself, nor does it impose an obligation on the person in possession of a document to produce it before the registering officer for registration. Nor is there any other provision in the Act authorising such production.

If the document is already presented or is capable of being presented, the Sub-Registrar may require any person whose presence or testimony is necessary for the registration of such document to be summoned. The plaintiff in his application to the Sub-Registrar presented on 4th May, 1943 required *inter alia* that the document be summoned from the office of Registrar (Collector) to whom it was said to have been presented for refund of the stamp duty. The prayer fell beyond the provisions of section 36 and therefore there was nothing wrong in the Sub-Registrar's refusal to accept it. He returned the application to be re-presented along with the document. The order at the most can be regarded as one refusing to summon the executant or the document and not one refusing to register the document; as such the order was not appealable under section 72. Under section 71(1) every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded. Section 72 provides for an appeal to the Registrar only from an order of Sub-Registrar refusing to admit a document for registration on grounds other than denial of execution. On such appeal having been preferred, the Registrar may reverse or alter the order and direct the document to be registered. When as Sub-Registrar has refused to register a document on the ground of denial of execution any person claiming under such document may, within thirty days after making of the order of refusal, apply to the Registrar in order to establish his right to have the

Ram Singh
v.
Jasmer Singh
and another

Chopra, J.

Ram Singh
v.
Jasmer Singh
and another

Chopra, J.

document registered (section 73). If the Registrar, after making the necessary enquiry as provided by section 74, finds that the document has been executed and that the requirements of the law have been complied with he shall order the document to be registered, as laid down by section 73. The Registrar refusing to register a document or to direct the registration of a document under section 72 or section 75 shall make an order of refusal and record the reasons for such an order in his Book No. 2, as provided by section 76.

In the present case, as already noticed, there was no order of the Sub-Registrar refusing to admit the document for registration and consequently there was no proper appeal before the Registrar under section 72. There was also no order of the Registrar, nor could there be any, refusing to register the document or to direct its registration by the Sub-Registrar, as provided by section 76. In the so-called appeal the order of the Sub-Registrar refusing to summon the executant and the document was sought to be reversed and that alone was refused. Evidently, the case did not fall within the provisions of section 77; its requirements having not been satisfied a suit for compulsory registration did not lie. In that view of the matter the decree obtained in suit No. 2 and the registration of the sale-deed in pursuance of that decree cannot be regarded as valid and binding so far as the rights of the defendants are concerned.

In the result, both the appeals fail and are dismissed, but in view of the facts of the case the parties are left to bear their own costs.

B.R.T.