

**(1986) 08 MAD CK 0014**

**Madras High Court**

**Case No:** None

Sekar Mudaliar

APPELLANT

Vs

Shajathi Bi

RESPONDENT

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**Date of Decision:** Aug. 4, 1986

**Citation:** (1986) 99 LW 1001 : (1987) 1 MLJ 248

**Hon'ble Judges:** Ratnam, J

**Bench:** Division Bench

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### **Judgement**

Ratnam, J.

These two appeals have been preferred by the 16th defendant and defendants 10 to 13 in O.S. 49 of 1973, Sub-Court,

Tirupattur.

North Arcot District, questionings the correctness of the judgment and the decree of the courts below holding that the porperties settled by late

Kuttamalangu Moosa Sahib under a settlement deed, dated 5th March, 1948 in favour of defendants 8, 14 and 18 and the husband of the 10th

defendant and father of defendants 11 to 13 in the suit, are also available for partition. There is no dispute that the properties dealt with by late

Kuttamalangu Moosa Sahib under the settlement deed, Ex. B.3 dated 5th March, 1948 belonged to him. The 1st respondent in Second Appeal

No. 1418 of 1979 and the only respondent in Second Appeal No. 618 of 1979. Who figured as the plaintiff in suit, challenged the validity of the

settlement under Ex. B3 on the ground that it was obtained by the settlees fradulently and collusively and that it was in any event a death bed gift

and as such, invalid, it was also her further case that the settlor died on 6th March, 1948, the settlement deed was presented for registration by one

K.M. Azizullah Sahib as the power of Attorney agent of the settlor and as on the date of presentation of the documents for registration, K.M.

Azizullah Sahib did not have the authority to present the document for registration, its registration was invalid and would not affect the properties

dealt with thereunder. The trial court as well as the appellate court formed that though the settlement deed under Ex.B.3 was executed, it was

invalid in law as its presentation for registration was done by a person, who had no authority to do so. On this conclusion, the courts below

pronounced against the validity of the settlement deed as well as the title to the properties dealt with thereunder in favour of the several settlees and

granted a preliminary decree in favour of the plaintiff in the suit. It is the correctness of this that is challenged in these second appeals and the

counsel on both sides agreed that the decision in Second Appeal No. 1418 of 1979 would govern the other second appeal as well.

2. The Learned Counsel for the appellants first contended that Ex. B.3 was no doubt presented for registration on 16th March, 1948 by K.M.

Azizullah Sahib, who held a power of attorney from the settlor, after the death of settlor on 6th March, 1948; but that would not in any manner

invalidate the registration of the document by the concerned Sub Registrar in view of Section 208 of the Contract Act. Reliance in this connection

was also placed by the Learned Counsel upon the decision in Maung Lu Gale v. U Po Hlaing AIR 1935 Rangoon 104. On the other hand, the

Learned Counsel for the contesting respondents in these appeals submitted that having regard to the admitted presentation of the settlement deed

for registration by a person not competent to do so under the provisions of the Indian Registration Act, the registering officer did not have the

indispensable foundation of authority to register the document and therefore, the registration was invalid and the document did not operate to

convey title with reference to the immovable properties dealt with thereunder in favour of the settlees.

3. Before proceeding to examine this contention, it would be necessary to set out a few undisputed facts. Ex. B.3 dated 5th March 1948,

according to the findings of the courts below, was executed by Kuttamalangu Moosa Sahib on 5th March, 1948, a day prior to his death on 6th

March, 1948. That there was a power of attorney executed by the settlor under Ex. B.3 in favour of K.M. Azizullah, examined as D.W. 9 is also

not disputed, though the power as such had not been produced in evidence. There is no controversy that D.W. 9. presented Ex. B.3. for

registration on 16th March. 1948 and had also known at that time that his authority as the power of attorney agent of the settlor under Ex. B.3 had

come to an end. In these circumstances, the question that arises is whether the presentation of Ex. B.3 by D.W. 9, the erstwhile power of attorney

of the settlor under Ex. B3 for its registration on 16th March, 1948 after the death of the principal on 6th March, 1948, is valid and whether its

registration would operate to convey title to the properties in favour of the settless under that document.

4. It would be necessary TO notice some of the relevant provisions of the Indian Registration Act. Section 32 enumerates the persons, who are

entitled to present documents for registration. By Clause (a), the person who executes the document or claims under the same or a person who

claims under a decree or order, are enabled to present those documents for registration. The representative or assign of such person is enabled u/s

32(b) to present the document. However, Section 32(c) provides for the presentation of the documents by the agent of such person,

representative or assign duly authorised by a power of attorney executed and authenticated. Section 33 provides for the recognition of powers of

attorney for purposes of Section 32. Section 34 provides for an enquiry before registration by the registering officer and u/s (3)(c) the registering

officer can satisfy himself about the right of the representative of a person appearing to so appear and present the document. That section also

prohibits the registration of documents unless the persons executing such documents or their representatives, assigns or agents appear before the

registering officer within, the time allowed for presentation under Sections 23, 24, 25, and 26 of the Registration Act. Section 35(1)(a) provides

for the registration for a document, if all the persons executing a document, appear personally before the registering Officer and personally known

to him or if he is otherwise satisfied that they are the persons they represent themselves to be and if they all admit the execution.

Provision is also made u/s 35(1)(c) for a case when the executant of a document is dead and his representative or assign appears before the

registering Officer and admits the execution of the document by the deceased. Section 35(2) empowers the registering Officer to examine any

person in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be or for any other purpose

contemplated by the Act. The question of the validity of presentation for registration after the death of the executant by the power of attorney

agent, whose power had also come to an end by the death of the principal, has to be decided with reference to the aforesaid provisions. If the

presentation for registration was ab initio defective, in that it did not conform to the requirements of the provisions of the Indian Registration Act in

that regard, then, such initial defect in presentation for registration affected the jurisdiction of the registering officer" to effect the registration of the

document. For, in a case where the document is presented for registration by a power of attorney agent not empowered to do so under the terms

of the power or a document is presented by a person, who has no authority whatever to do so, or when it is so presented by a person who is |

incompetent to present the document for registration in terms of Section 32(c) of the Indian Registration Act, there is an initial defect in the

presentation, as the requirements of Section 32(c) of the Indian Registration Act are not complied with. Only in the event of a proper presentation

of a document for registration, the registering Officer is enjoined to further proceed with the subsequent steps for the purposes of registration of the

document so presented. In other words, if there is an initial want of jurisdiction in the registering authority by the presentation of a document by a

person not authorised to so present it for registration, the circumstance that the registration has been done by the registering authority, would not

validate the document presented for registration by a person not authorised by the provisions of the Indian Registration Act. Indeed, that it is so,

has been clearly laid down by several decisions. In *Mujibunnissa v. Abdul Rahim and Abdul Aziz* (1901) 28 I.A. 15 : 11 M.L.J. 58 : ILR 23 All

233, the Privy Council considered the scope of Sections 32 and 34 of the Indian Registration Act III of 1877 with reference to a situation similar

to the one in the present case. In that case, "the presentation for registration of a deed of endowment executed by a Munshi was done by his

power of attorney agent, after his death. Considering the question of the validity of the registration of the deed, the Privy Council pointed out that it

is perfectly plain not merely from the general law, but from the terms of Section 32 itself, that after the man's death, the only attorney who would

have any locus standi would have been the attorney of the representative or assign of the deceased and that the power and jurisdiction of the

Registrar. comes into play only when it is presented by a person having direct relation to the deed and as the deed was presented by a volunteer,

the registration was invalid and inoperative and that the presentation by a person not legally entitled to present a deed for registration cannot also

be countenanced as a defect in procedure falling u/s 87 of the Indian Registration Act. In *Khalil-Ud-Din-Ahmed v. Bansi Bibi* (1913) ILR 35 A11.

34 (F.B.), a Full bench of the Allahabad High Court has laid down that where a document is presented for registration by a person not duly

authorised to present it according to law applicable to the registration made upon the admission of the executant before an officer, who had no

jurisdiction to accept the document for registration, is likewise invalid. In that case, a mortgage deed executed by the wife was presented for

registration by the husband and in considering the question whether the document was properly presented for registration in accordance with the

provisions of the Indian Registration Act the Full Bench pointed out at page 40 as follows:

It seems to me that the presentation by Muiz-Ud-Din-Ahmed was a complete nullity. He had no authority whatever to present the document for

registration and in my opinion that question is completely covered by the ruling of their Lordships of the Privy Council in the case of *Mujib Unnissa*

*v. Abdul Rahim* (1901) ILR 23 All. 233 (P.C.) : 280 I.A. 15.

Banerji, J., in the course of his judgment observed as follows:

...The document was not presented for registration by a person having a direct relation to the deed and the subsequent was before an Officer, who

had no jurisdiction to accept the document for registration. Therefore, there was no presentation to a Sub Registrar having jurisdiction and. the

registration of the document must, according to the" ruling of the Privy Council, be held to be invalid.

Again in *Jambu Prasad v. Muhammad Aftab Ali Khan* (1915) AIR 1914 P.C. 16 : 42 I.A. 22 : 28 M.L.J. 577 : ILR 37 All. 49 : (1915) 2 L.W.

277 (P.C.) the Privy Council was concerned with the validity of the registration of two mortgage deeds dated 2nd July, 1882 and 10th August,

1886. The mortgage deed of 2nd July, 1882 was presented for registration on 11th July, 1882 on behalf of the executor by one Natthu Mal, who

held a power of attorney, but which did not empower him to present the document for registration. The mortgagors admitted before the Sub

Registrar the execution and received in his presence the mortgage amount and thereafter the Sub Registrar registered the mortgage deed. The other

morgage deed dated 10th August, 1886 was presented for registration by one Ilahi Baksh on behalf of the mortgagee, who held a power of

attorney, which however c d not empower him to present the document for registration There was also defect in the authentication of the power in

his favour. The mortgagors admitted before the Sub Registrar the execution and the emption of the mortgage deed and also acknowleged the

receipt of the mortgage money and thereupon, the mortgage deed was registered. Based on these documents, two suits were instituted, one on

20th May, 1909 on the mortgage deed, dated 10th August, 1886 and the other on 16th March, 1910 on the mortgage deed, dated 2nd July,

1882 and another mortgage deed of 25th October, 1892 which were dismissed on the ground that the mortgage deeds had not been validity

registered and could not affect the immovable properties and that they were also barred by time. On appeal, the High Court dismissed the appeal

arising from the suit instituted on 20th May, 1909 on the mortgage of the year 1886 and also dismissed the appeal arising out of the suit of the year

1910, in so far as it related to the mortgage deed, dated 25th October, 1882. Before the Privy Council, a contention was raised that it can be

presumed that the mortgage deed had been presented for registration by the mortgagors, who had executed the document and who attended

before the Sub Registrar. The Privy Council held that the mortgagors attended the office of the Sub Registrar to admit the execution and not for presenting them for registration and that the documents had been presented by the agents, who did not have the power to present the documents for registration and consequently, the registering officer did have the indispensable foundation of authority to register the documents. Referring to *Mujibunnissa v. Abdul Rahim* I.L.R.(1901) A11. 233 : 288415 the Privy Council pointed out that the principle in that decision would apply to that case as well and that the principle is that a Registrar or a Sub Registrar has no jurisdiction to register a document, unless he is moved to do so by a person who has executed or claims under it or by the representative or assign duly authorised by a power of attorney executed and authenticated in manner prescribed in Section 33 of that Act. It was also further pointed out that the executants of a deed attending the Registrar or a Sub Registrar merely for the purpose of admitting the execution, cannot be treated for the purposes of Section 32 of Act III of 1877, as presenting the deed for registration and their assent to the registration will not be sufficient to give the Registrar jurisdiction. The object of Sections 32, 33, 34 and 35 of Act III of 1877 was pointed out to be to make it difficult for persons to commit frauds by means of registration under the Act. The Privy Council further pointed out the duty of the courts in this connection and stated that Courts ought not to allow the imperative provisions of the Act to be defeated when as in that case, it was proved that an agent who presented a document for registration had not been duly authorised in a manner prescribed by the Act to present it. In AIR 1931 52 (Privy Council) , the validity for presentation of a document for registration by a power of attorney agent, the power in whose favour contained an alteration in the date, came to be considered. The Privy Council pointed out that the date in the power of attorney was altered and the registration of the mortgage was not effected in accordance with the provisions of the Registration Act and that the deed was not properly registered, not being presented for registration by an authorised agent. It was also further laid down that such a defect was not one merely of procedure, but one of jurisdiction in the registering officer. *Abdus Samad Vs. Majitan Bibi* and

Another, . considered the validity of the presentation of a document for registration by a power agent, the power in whose favour was defective, as it was not executed and authenticated as provided for by Section 33(1)(c) of the Registration Act (sic) arose for consideration. It was laid down that the presentation of the document for registration was made by a person who could not do so under law and the registration of the document upon such presentation, is invalid and does not pass title.

5. As against the principle enunciated in the aforesaid decisions, reliance was placed by the Learned Counsel for the appellant upon *Maunglu Gale*

*v. U Po Hlaing* AIR 1934 Rang. 104. In that case, the question raised related to the validity of a deed of gift and sale executed by an agent. The

transactions were challenged on the ground that prior to the presentation of the documents for registration, the authority of the agent had been

cancelled by the principal. Applying Section 208 of the Indian Contract Act, it was held that there was no communication of the revocation of the

authority and that the Sub Registrar had also no knowledge of the revocation of the authority and therefore, the transactions would be valid. In my

view, the principle of this decision is inapplicable on the facts of the present case. For, it is clearly admitted by D.W. 9, the erstwhile power of

attorney agent of the principal that his authority had come to an end even at the time when the document Ex. B3 was presented for registration. In

other words, by suppressing the death of the settlor and the consequent termination of his authority as agent, D.W. 9 had made it appear that he

was a person competent to present the document for registration as per the power of attorney of the principal, despite his death and had thereby

fraudulently procured the registration in violation of Section 32(c) of the Registration Act. Further, the decision has not taken into consideration the

provisions of the Indian Registration Act, already referred to and the jurisdiction of the Sub Registrar to proceed with the registration of the

document only in the event of a proper presentation thereof according to the provisions of the Indian Registration Act. Section 208 of the Contract

Act relied upon in that decision is applicable only with reference to the acts, which are ordinarily done by the agent in the course of his authority as



such, but when the statute u/s 32(c) enjoins that even at the time of presentation of document, a person must fulfil a particular character as an agent and he does not fulfil that character, then the very presentation for registration is defective and cannot be cured by the subsequent registration and this would be so irrespective of Section 208 of the Contract Act. Under these circumstances, the decision relied on by the Learned Counsel for the appellants cannot at all be applied to the facts of this case.

6. u/s 87 of the Indian Registration Act nothing done in good faith pursuant to this Act, by any registering officer shall be invalid merely by reason

of any defect in his appointment or procedure. It has earlier been pointed out how in this case the defect is one, which pertains to the jurisdiction of

the Registrar to effect the registration of the documents. In *Ma Pwa May v. S.R.M.M.A. Chettiar Firm* (1929) : AIR 1929 P.C. 279 : 58 M.L.J.

5956 I.A. 379 : 30 L.W. 481 ; the Privy Council dealt with the scope of S.87 of the Registration Act and held that it is important to distinguish

between defects in procedure of the registration and lack of jurisdiction. Illustrating a case of lack of jurisdiction, the Privy Council pointed out that

such a case would include persons not entitled to present documents for registration presenting them, and stated that Section 87 will be inoperative

in such a case. As seen earlier, the presentation for registration of the settlement deed under Ex.B3 by a person, who was no better than an utter

stranger, cannot be considered to be a case of mere defect in procedure, but would affect the jurisdiction of the registering authority to register the

document, as the provisions of the Indian Registration Act do not permit registration of documents presented by all and sundry, who are not

empowered to present the documents according to its provisions. In this view, the defect in this case regarding registration cannot be merely

treated or brushed aside as an error in procedure, but it would be substantial defect affecting jurisdiction of the registering authority. Under those

circumstances, the conclusion of the courts below that the registration of Ex. B3 would be invalid cannot be taken exception to. The first contention

of the Learned Counsel for the appellants has therefore to be rejected.

7. The Learned Counsel for the appellants next contended that persons competent to ratify the action of D.W.9 in having presented Ex. B3 for

registration, have accepted the settlement of the properties thereunder and that therefore, no objection could be taken to the registration of the settlement deed or the manner of disposal of the properties thereunder. There is no factual support for this contention. No doubt, Rahamadullah husband of the plaintiff had figured as the identifying witness at the time of the registration of Ex. B3. It can even be assumed that by so figuring as an identifying witness at the time of registration, the husband of the plaintiff, Rahamadullah had accepted all that had been done under Ex. B3. Four of the sons of the settlor, viz., Obaidulla (8th defendant), Esamulla (husband of the 10th defendant and father of defendants 11 to 13), Shafulla (14th defendant), and Ziaduddin Sahib (15th defendant), in whose favour Ex. B3 had been executed, appear to have dealt with the properties obtained under Ex. B4 dated 27th January, 1961. By reason of such dealing with the properties obtained under Ex. B3, they can also be taken to have ratified the action of D.W. 9 in having presented the document for registration. But the settlor had two other sons and a daughter, besides the persons aforementioned. Usman Sahib, one of the sons, who was alive till 1963 had not in any manner indicated his acceptance of the presentation of Ex. B3 by D.W. 9. Similarly, the 9th defendant also had not signified in any manner his acceptance of Ex. B3. Likewise, the daughter, Aisha Bi had not either expressly or impliedly ratified the presentation of the document Ex. B3 by D.W. 9 and its registration at any time. There is no dispute that they, as the heirs of the settlor, would be entitled to the properties dealt with under Ex. B3 and in the absence of their having signified their acceptance of the presentation of the document for registration, its registration and disposal of the properties under Ex. B3 it cannot be said that the presentation for registration of Ex. B3 by D.W. 9, and its registration, had been ratified by the other heirs of the settlor. The reliance placed upon the decision in *The Management of Sri Sivasakthi Bus Service Vs. P. Gopal and Another*, , does not assist the appellants, for in that case there was, a factual ratification, which is totally absent here. Consequently, the second contention of the Learned Counsel for the appellants also cannot be accepted.

8. The Learned Counsel for the appellants next contended that the plaintiff in the suit would be estopped from claiming any share in the properties

comprised in Ex. B3, as her husband had attested that document. It is seen from Ex. B3 that the husband of the plaintiff Rahamathullah Sahib

figured as the first attestor. He has also participated in the registration of that document as the identifying witness. The attestation of the document

by the husband of the plaintiff purports to have been done on 5th March, 1948, when the settlor under Ex. B3 was alive. Thus, at the time of the

attestation by him in Ex. B3, he had no subsisting interest, for, if at all he acquired any interest in the properties dealt with thereunder, it was only on

the death of his father, the settlor under Ex. B3, on 6th March, 1948 and not before. Thus, the attestation by the husband of the plaintiff cannot" in

any manner prevent the plaintiff from claiming a share in the properties dealt with under Ex. B3.

9. Lastly, the Learned Counsel for the appellants contended that the appellants have prescribed title by adverse possession to the items dealt with

under Ex. B3. There is no dispute that these items have earlier been usufructuarly mortgaged by the settlor as far back as 29th October, 1942

under Ex. B29. The evidence of D.W. 1 is to the effect that there was a leaseback by the mortgagee in favour of the mortgagors and the lessees

were in possession. Thus, the properties were in the possession of the usufructuary mortgagee, though the mortgagee had leased them out to the

mortgagors themselves, the appellants cannot claim that they were in possession of the properties mortgaged adversely to the interest of the

persons entitled to the properties even on the assumption that the appellants can project a claim of acquisition of rights superior to that of the

mortgagee. Apart from this the mortgage itself had been redeemed on 23rd July, 1963 and if at all, the appellants could claim to have been in

adverse possession only from that date and not earlier. However, the suit had been instituted within 12 years from the date of redemption of the

mortgage and therefore, the plaintiff cannot be stated to have lost her rights by adverse possession in respect of those items of properties

mortgaged under Ex. B29 and comprised in Ex.B33 as well. Thus, the last contention of the Learned Counsel for the appellants also deserves to

be rejected.

10. Thus, on a careful consideration of the facts and the evidence, the conclusion of the Courts below that the registration of Ex. B3 was invalid

and it did not operate to convey title in favour of the settlees with reference to the properties mentioned thereunder, and therefore, the plaintiff

would be entitled to a share in those items as well, cannot be taken exception to. Consequently, the second appeals fail and are dismissed. There

will be no order as to costs.