

(1919) 08 CAL CK 0003

Calcutta High Court

Case No: None

Umesh Chandra Ghosh

APPELLANT

Vs

Srimati Nistarini Besu

RESPONDENT

Date of Decision: Aug. 6, 1919

Acts Referred:

- Registration Act, 1908 - Section 72, 76, 77

Citation: 54 Ind. Cas. 562

Hon'ble Judges: Lancelot Sanderson, C.J; John Woodroffe, J

Bench: Division Bench

Judgement

Ernest Sanderson, C.J.

This is an appeal by the plaintiff against the judgment of the learned Subordinate Judge of Dacca, who held that the suit which was brought by the plaintiff u/s 77 of the Indian Registration Act for the registration of a Muktipatra was not maintainable. The facts stated to us to-day by the learned Vakil are as follows:

The deed is alleged to have been executed on the 30th of January 1914; it was tendered to the Sub Registrar for registration on the 29th of June 1914 which was more than four months from the date of execution, the period prescribed by Section 23 of the Registration Act. But it was alleged that the document had been kept in the possession of the Criminal Court for the best part of a month, and for that and other reasons the present plaintiff alleged that the delay ought not to be allowed to prevent the registration. On the 1st of July the Sub-Registrar sent the matter to the Registrar. More than two months and a half elapsed, and then on the 21st of September 1914, the Registrar held that the deed might be accepted for registration, on the payment of a penalty. No time was mentioned in the order as to when the penalty of Rs. 25 was to be paid. The plaintiff alleged that no notice of this order was given to him, but that on an enquiry by the plaintiff himself at the office he ascertained that the order had been made, and, therefore, on the 25th of January 1915, he applied to the Sub Registrar to accept the fee and the penalty and to have

the document registered. The Sub-Registrar made an order to this effect: "Bight months have passed; the deed cannot be accepted for registration." I think that this order shows some misconception of the sections of the Statute. A period of four months is allowed by Section 23 for presentation for the purpose of registration, and Section 25 empowers the Registrar to direct that the document shall be accepted for registration in certain circumstances and on certain conditions in cases where the delay in presenting does not exceed four months. The words in Section 25 are these: "If owing to urgent necessity or unavoidable accident, any document executed...in British India is not presented for registration, till after the expiration of the time hereinbefore prescribed in that behalf" (that is to say, four months mentioned in Section 23) "the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration." In this case there was delay in presentation but such delay did not exceed four months; the document was executed on the 30th January 1914, the four months specified by Section 23 would expire on or about the 30th May 1914. The document was tendered on the 29th June 1914, so that there was about a month's delay only in presentation of the document, and the Registrar on the 21st September 1914 exercised the powers vested in him by Section 25 and directed that the document should be accepted for registration. The next material date is the 23rd of February 1915, when the plaintiff made an application to the Registrar. On the 1st of June 1915 the Registrar made the following order : No case has been made out for registration. The appeal is rejected." Then the suit was brought on the 3rd of June 1915.

2. The learned Judge has held that the aforesaid facts go to show that the registration was not refused under Sections 72 and 76 of the Registration Act, but that the document was refused to be accepted for registration as the plaintiff failed to pay the penalty in due time.

3. The first matter, to which it is necessary to refer, is that Section 72 applies to an order of the Sub-Registrar refusing to admit a document to registration, and provides for an appeal to the Registrar, if presented to him within thirty days from the date of the order and the Registrar may reverse or alter such order. In this case there was a refusal by the Sub Registrar to admit the document to registration within the meaning of Section 72; and, consequently there was an appeal to the Registrar, and the order which the Registrar in fact made was, that he refused to register the document. Therefore, in my judgment, this case comes within the words of Section 77 because the Registrar did refuse to order the document to be registered u/s 72 or Section 76 of the Registration Act. Consequently, the suit was maintainable.

4. This matter must go back to the Court of first instance, because other defences were raised, as for instance, the defendant denied that he executed the deed. That

and any other matters which are open to the defendant will have to be decided before the Court can give a direction to the Registrar to register the document.

5. Therefore, this appeal is allowed and the matter remanded to the Court of first instance for determination on the other issues.

6. The appellant will have his costs in this Court and in the lower Appellate Court, and also the costs of the hearing in the first Court which was limited to the question whether the suit could be maintained. These costs must be distinguished from the general costs of the suit.

Woodroffe, J.

7. I agree.