(1950) 02 CAL CK 0004

Calcutta High Court

Case No: Appeal from appellant Decree No. 5 ot 1946

Manindra Nath Sanfui alias Manilal Sanfui		APPELLANT
	Vs	
Lalit Mohan Sadhu-Khan and Others		RESPONDENT

Date of Decision: Feb. 10, 1950

Acts Referred:

- Registration Act, 1908 - Section 35, 77

Citation: 55 CWN 166

Hon'ble Judges: Mookerjee, J; Lahiri, J

Bench: Division Bench

Advocate: Sanat Kumar Chatterjee and Monmohan Mukherjee, for the Appellant; Bhabes Chandra Mitter, for the Respondent

Final Decision: Dismissed

Judgement

Mookerjee, J.

This is an appeal on behalf of one of the Defendants in a suit brought by the Plaintiffs under sec. 77 of the Indian Registration Act. The Plaintiffs" case was that one Kiron Sakhi Dasi along with nine other persons executed an ijara potta in favour of the Plaintiffs on October 4, 1940. All the executants with the exception of Kiron Sakhi had duly registered the document. The latter refused to effect registration. An application was tiled for compulsory registration but the registering officer, as also the District Sub-Registrar, refused to effect registration. The present suit was then instituted within the period fixed by the statute. Kiron Sakhi was impleaded as one of the party Defendants, and she filed a written statement stating inter alia that the document in question had not been fully explained to her and that at the time of the execution she had been told that the document which was being executed by her was of a different character. It was, on such misrepresentation, she alleged, that she had fixed her thumb impression upon the

document and without fully appreciating the real nature of the transaction. Kiron Sakhi died before the suit had come up for hearing. She left three sons, Defendants Nos. 10 to 12. Defendants Nos. 10 and 11 did not contest the suit. Defendant No. 12, who is the Appellant before us, filed a written statement reiterating that his mother had not executed the document in question. The learned Subordinate Judge had on a consideration of the evidence come to the conclusion that the document had been executed by Kiron Sakhi after the terms thereof had been explained to her. He also found that the plea of fraud or undue influence had not been made out. The Plaintiffs'' suit was accordingly decreed.

2. On appeal by Defendant No. 12, the learned Additional District Judge did not see any reason to differ from the conclusions reached by the trial Court. It was pointed out that in a suit under sec. 77 of the Indian Registration Act, the Court was not concerned with the validity of the transaction, and it was not necessary for the Court to enter upon a discussion whether the executants of the document had any legal right as sebaits of a Deity.

3. On behalf of Defendant No. 12, Appellant in this Court, it is contended that the learned Judge had not properly considered the necessary ingredients for coming to the conclusion as to whether Kiron Sakhi being an old lady above eighty years of age and not having the proper mental capacity at the time when she was purporting to execute the document, it was for the Plaintiffs to prove that the terms of the document had been fully explained to her and that she fully comprehended the terms thereof. It is further contended that in a suit under sec. 77 of the Registration Act, the Court is to be satisfied that the document had been "executed" by the person concerned; the Court has to come to a definite finding as to whether all the ingredients of execution had been duly proved; the learned Judge, as it appears from the judgment, did not himself consider all the evidence adduced in the case or come to any definite finding on the various relevant points.

4. To appreciate whether it is open to the Appellant to agitate the point, as stated by him, it is necessary to consider the real nature of a suit under sec. 77 of the Registration Act. Under sec. 77, all that the Court is required to see is whether the party has come within the period fixed, and also whether the document had been executed by the party. It is now well settled that the scope of a suit under sec. 77 is a very limited one; if the formalities required are proved about presentation and certain other items, all that the Court is required to be satisfied is whether it had been executed. The interpretation of the term "executed", for the purpose of the Registration Act, is to be examined with reference to sec. 35 of the Act. Under sec. 35, the registering authority may refuse to register a document only if the signature or mark on the document is not proved to be that of the person said to have made it. If the person signing admits that the mark or the signature had been put by him, it is not for the registering authority to consider whether such a signature was obtained by coercion [vide Prosunna Coomar v. Mothoora Nath ((1875) 15 W. E. 487)], or that he signed his name on a blank sheet of paper which was subsequently filled in differently from what had originally been agreed upon [vide David

Yule v. Ram Khelwan ((1902) 6 C. W. N. 822, 331) J. A different view no doubt has been expressed by some of the other High Courts, but so far as this Court is concerned, this Court has held that the scope of the enquiry by the Registrar is a very limited one. This is for an obvious reason. In such a proceeding the Court is to decide what the registering authority Ought to have done. On a refusal by a party to register a document purported to have been already executed, it is neither necessary nor possible for the registering authority to go into various intricate questions of fact and law which may affect the legality or effect of the deed in question.

5. In a suit brought under sec. 77 of the Indian Registration Act, the scope of enquiry before the Court is of the same nature as an enquiry before the registering authority. It is for a limited purpose that such a suit is framed. It is only the genuineness of the document which is sought to be registered that is the subject-matter of enquiry. It is not a matter for consideration by the Court as to the validity or the effect of the document after such a document is registered. Such questions must be determined in a suit which is properly constituted and is brought before a competent Court. Even such allegation that document is void for want of consideration [vide Hassan Ali v. Ekambaram ((1995) 5 M. L. J. 29)] or that a document had not been explained to the donor, [vide Kanhaya Lal v. Sardar Singh (I. L. R. 29 All 284)] or even that a document was obtained by exercise of undue influence [vide Prosonno Coomar v. Mothoora Nath ((1875) 15 W. E. 487)] or whether it had been executed under circumstances which would not make it a document duly executed by and operative as against an illiterate purdanashin lady [vide Abdul Gafur v. Badial Huq ((1982) 55 C.L.J. 107)] are all matters altogether foreign for consideration when the Court is hearing a suit under sec. 77 of the Registration Act. Reference may also in this connection be made to W.W. Broucke v. Raja Saheb Mohan Bikram Shah ((909) 14 CWN 12), Raj Luxmi v. Devendra (I. L. R. 24 cal 688) and Balambal Ammal v. Arunachala Chetti (I. L. R. 18 Mad. 255).

6. Reliance has been placed on behalf of the Appellant on a decision of this Court in Chandra Kishore Munshi v. Dinendra Nath Sanyal (I O. L. J. 128). Various particulars were referred to by the learned Judges that the signature which appeared on the document was not signature which had been willingly given, but had been obtained by duress and intimidation. It was observed:

It could not possibly be contended that if Mr. X had forced a pen into the Defendant''s hand, held it there, and by force guided the hand to write the signature, such a signing was an execution; in law, there is no difference between the two cases.'' The learned Judges further proceeded to observe:

.....when execution of the document tendered for registration is proved or admitted, the registering officer has no authority to consider any extraneous matter, such as, non-receipt of the full consideration, the possible operation of the document as regards third parties or the existence of a collateral agreement which would render the document of no legal force; they leave entirely untouched the question of what amounts to

execution.

7. In the present case, the Courts below have come to the conclusion, on admission by the executant herself, that the thumb impression which appeared on the document was her thumb impression. Her case was that she had put her thumb impression on a blank piece of paper or without understanding the contents of the document. The trial Court had gone into the question whether she fully understood the contents thereof or not, but it is not necessary for us in the present proceedings to go into a detailed consideration of this aspect of the case at all, as a decision in the present suit does not finally decide anything except that the mark or signature appearing on the document is a mark or signature of the lady herself. What is the legal effect thereof, and whether she had signed a piece of blank paper or not,--those are matters which may arise for consideration in future properly constituted proceedings. The order given in the case that the document ought to be registered was a proper order, and this appeal must accordingly be dismissed with costs.

Lahiri, J.

I agree.