
(1873) 05 CAL CK 0006

Calcutta High Court

Case No: None

In Re: Buttobehary
Banerjee

APPELLANT

Vs

RESPONDENT

Date of Decision: May 26, 1873

Final Decision: Dismissed

Judgement

Macpherson, J.

I think this application must be refused as being out of time. It is an application, under s. 73 of the Registration Act, 1871, to establish the petitioner's right to have a certain document registered. The document was executed on the 6th of October 1871; it was presented for registration on the 18th of January 1872; upon the 7th of April 1873, the Registrar recorded his reasons for refusing to register it; upon the 19th of April, the petitioner applied to the Registrar for a copy of his reasons, which was granted on the 21st; and the petition now before me was filed upon the 7th of May. Under the Registration Act, it is ordinarily necessary that a deed should be presented for registration within four months from the date of its execution, and no document can be registered unless the persons executing it, or the representatives, assigns, or agents of such persons, appear before the registering officer within the time allowed for presentation. If the registering officer refuses to register, it is his duty at once to make an order of refusal, and to record his reasons for such refusal: and any person who is aggrieved by the order so made may, within thirty days from the date of the order, make such an application as the petitioner has now made to me. S. 23 directs that in ordinary cases presentation for registration shall be within four months. S. 34 directs that no document shall be registered unless the parties executing it shall appear before the Registrar within the time allowed for presentation. S. 71 enacts that the registering officer who refuses to register a document shall make an order of refusal, and record his reasons for such order and s. 73 provides that an application to the Civil Court, in order to establish the right to have the documents registered, must be made within thirty days from the order of refusal. Under certain special circumstances the time for presentation, or for the appearance of the

executing parties, may be extended: but there are no such special circumstances in this case. S. 34 does not expressly say that, in the event of the parties not appearing before the Registrar within the time allowed, he is to "refuse to register" the document. It merely says that the document shall not be registered. I think it clear, however, that in such a case, when the document has been presented in due time, the registering officer must "refuse to register" just as in cases falling under the latter clauses of s. 35, and must record the reasons for his refusal. The order of refusal should be made at once, as soon as it is apparent that the prescribed time has gone by, and the executing parties have not appeared. That delay in making the order of refusal might lead to most dangerous consequences is shown by the circumstances of this very case, where the petitioner comes in May 1873, and attempts to enforce the registration of a document executed on the 6th of October 1871, and the registration of which ought to have been completed (if at all) in February 1872. It is said the petitioner could not move till the Registrar made his order of refusal. But he must be taken to have known the time within which registration ought to have been completed, and should have applied to the Registrar at once, either to register, or to refuse to register, so as to enable him within thirty days to take further proceedings. The application must be dismissed with costs.