

(1879) 08 CAL CK 0005

Calcutta High Court

Case No: None

Radhakissen Rowra
Dakna

APPELLANT

Vs

Chooneeloll Dutt

RESPONDENT

Date of Decision: Aug. 16, 1879

Acts Referred:

- Registration Act, 1877 - Section 77

Citation: (1880) ILR (Cal) 445

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

This case raises a point upon the construction of the Registration Act of 1877. The suit is brought u/s 77 of the Act; and the plaintiff asks for a decree against the defendant, ordering the registration of a deed of mortgage executed by the defendant in favor of the plaintiff. The due execution of the deed by the defendant on the 27th of September 1878, was clearly proved. It was presented for registration to the Registrar for Calcutta on the 12th of October following. The defendant not appearing to admit execution, a summons was issued against him on the same day. The summons was served personally, and that he perfectly understood its object is clear, because it is in evidence that, when served, he said, "why have you taken out this summons, I will go personally and register." He, however, disobeyed the summons, and did not at any time attend to admit execution, but kept out of the way to avoid any further process. I am satisfied that the defendant disobeyed the summons and took the course he did take, expressly to avoid admitting execution, and so prevent the registration of the deed. The Registrar heard the statements of the witnesses to the execution. A long delay intervened, and ultimately, on the 28th of March 1879, the Registrar refused to register. The question is, whether under these circumstances the present suit will lie. This depends on several sections of the

Registration Act of 1877. Sections 34 and 35 give the rules ordinarily to be observed on the presentation of a document for registration, and the cases in which it is and is not to be registered. Among the cases excepted in Section 34 are those under Sections 75 and 77. To understand these latter sections it is necessary first to read those that immediately precede,--namely, Sections 73 and 74 as well as Section 76. These various sections deal in terms only with two cases,--that in which execution is admitted, and that in which it is denied: they say nothing of any intermediate case. I think, therefore, it is reasonable to say that a refusal to admit is a denial within the meaning of the Act. Again Section 34 excepts cases under Sections 75 and 77 from its provisions, which in other cases rigidly require the attendance before the Registrar of the person by whom the documents purport to have been executed. It, therefore, implies, I think, that there may be a denial other than an actual denial in the presence of the Registrar. Section 73 dealing with proceedings before a Sub-Registrar, merely speaks of his refusing to register a document on the ground that the person in question "denies its execution." Section 74 says--". That in such case, and also where such denial is made before a Registrar in respect of a document presented for registration to him," he may inquire into the fact of execution. This section speaks of a denial before the Registrar. But this means, in my judgment, only a denial in a proceeding before the Registrar. I have already stated that I think a refusal to admit execution is a denial within the meaning of the Act. I further think that a wilful refusal or neglect to attend and admit execution, in obedience to a summons for that purpose, is a refusal to admit, and, therefore, a denial. It follows that in this case there was a denial within the meaning of Section 74, and, that the refusal to register was a refusal u/s 76, and therefore, this suit is properly brought u/s 77. I do not think the Registrar is a necessary party to the suit. Had there been anything in the circumstances of the case that led me to think he ought to be made a party, I should have adjourned the hearing to allow of this being done.

2. The decree will be for the plaintiff in terms of the first prayer in the plaint, with costs on scale No. 1.