

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hari Ram and Raja Ram v. Sheodial Mal and Hardial Mal, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered November 3rd, 1888.*

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Present:

LORD FITZGERALD.

LORD HOBHOUSE.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

THE suit which is the subject of this appeal was brought by the Plaintiffs, who are bankers, against the present Respondents, who are also bankers, and against a Mr. Brooke. The Plaintiffs, the Appellants, sought to recover a sum of Rs. 79,655 as principal and interest which they alleged to be due to them in respect of a mortgage executed by Brooke on the 20th May 1873, the Plaintiffs alleging that at that date Brooke adjusted his account and executed a mortgage for securing Rs. 3,49,504-4. There is no question that this mortgage was executed by Brooke. The mortgage stated that there had been an adjustment of accounts between Brooke and the Plaintiffs, and it was given to secure the money which was then due on the account, together with a sum of Rs. 90,000 to be advanced by the Plaintiffs to Brooke for defraying necessary expenses of an indigo concern from May 1873 to October of the said year. The defence of the present Respondents, with whom alone their Lordships have now to deal, was twofold. Having become the purchasers of part of the mortgage property, another part of it having been

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previously sold, they objected that this mortgage of May 1873 was not duly registered; and they have also objected that the whole of the sum of Rs. 90,000 was not advanced before the 1st October 1873, but a portion only was advanced, leaving a sum of about Rs. 30,000, which they say was subsequently advanced and is therefore not covered by the mortgage.

With reference to the objection as to the non-registration of the mortgage deed, it appears from the Schedule to the deed that it was a mortgage of a considerable property, only a portion of which, stated to be 500 yards of land built upon, was situate in the district of Patna; the other part, and of course much the largest part of the property, was situate in other districts. Act 8 of 1871, with regard to registration, contains this provision in section 28, "Save as in this part otherwise provided, every document mentioned in section 17, clauses 1, 2, 3, and 4, and section 18, clauses 1, 2, 3, and 4, shall be presented for registration in the office of a sub-registrar, within whose sub-district the whole or some portion of the property to which such document relates is situate." And this was an instrument which came within the provisions of this section. The registration was made in the district of Patna, where the 500 yards of land were situate. The Subordinate Judge held that this was a sufficient registration. On appeal to the High Court, the learned judges of that Court, the Chief Justice and another judge, held that it was not; and the ground upon which they came to that decision is stated by the Chief Justice to be this:—"In a case like the present, in which there is a large and valuable property in one sub-district, and another small piece of land situate at a distance, it seems to me that to allow registration of a document affecting both properties in the place where the smaller

“ and less valuable is situate would be inconsistent with the implied intention of the Legislature that registration should be made with reference to the locality of the property,” —that a literal interpretation of the terms of the section ought not to be adopted; and it was the intention of the Legislature that the registration should take place where some substantial portion of the property was situate.

It appears to their Lordships that this judgment puts a construction upon section 28 which cannot be supported, and in fact imputes to the Legislature an intention which does not appear from the provisions of the Registration Act to have been their intention. The words, if we take them in their ordinary sense, “ within whose district the whole or some portion of the property to which such document relates is situate,” certainly do not show an intention that there should be any inquiry as to whether the place where the document was registered was the place where what may be called some substantial portion of the property is situate; and an inquiry of that kind might very frequently lead to considerable difficulty. But the intention of the Act is apparent from the subsequent provisions. In section 64 it is provided that “ every Sub-Registrar on registering a document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof, and of the endorsement and certificate thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate”; and then, “ such Sub-Registrar shall file the memorandum in his book No. 1.” Section 65 and section 66 contain similar provisions where the property is situate in more districts than one. Thus the information is conveyed to the Registrars or

Sub - Registrars of every place where the document ought to be registered, and thus all the information which it is the object of a Register to afford is to be found in those different places. It appears to have been the intention of the Legislature in making these provisions that it should be sufficient that the registration be made by the parties, as is stated in section 28, in the place where some portion of the property—not a substantial portion, but where any portion of the property is situate, leaving it to the office to do the rest. These provisions are calculated to effect that, and are in accordance with what might reasonably be supposed to be the intention of the Legislature.

Their Lordships, therefore, are of opinion that the decision of the High Court with regard to the want of registration of this mortgage cannot be supported. The consequence ordinarily would be that the decree of the High Court reversing the decree of the Judge of Gorakhpur, which was given in favour of the Plaintiffs, would be reversed, and the decision of the Judge of Gorakhpur would stand. But their Lordships allowed the learned Counsel for the Respondents to submit to them, and argue, that the decision of the Judge of Gorakhpur was wrong, and consequently that, although the High Court had reversed it on a ground which cannot be supported, still, it ought to be reversed, and the decree reversing it ought to stand.

Now, it is to be observed that the Judge of Gorakhpur had very carefully considered the whole of the case, and had come to the conclusion that the balance which he found due to the Plaintiffs, and which they were entitled to recover as mortgagees, was really due to them. The objection taken to his finding appears to be of a twofold character. It is said that only monies which had actually been advanced by

the Plaintiffs before the 1st of October 1873 can be recovered by the mortgagees, and that the advances out of the Rs. 90,000 subsequent to that day did not become the subject of the mortgage. That depends upon the construction of the mortgage deed. Their Lordships think that the mortgage was intended to cover the whole advance of the Rs. 90,000; and whether it was advanced before the 1st of October 1873 or not, if the parties, that is Mr. Brooke and the mortgagees, thought fit between themselves to allow a portion of that Rs. 90,000 not to be immediately advanced, but to remain in the hands of the Plaintiffs in a deposit account in such a way that he could draw upon them and obtain the money at any time, that it was really covered by the mortgage, and it is not an answer to the claim of the mortgagees in respect of the Rs. 90,000, that the whole of it was not advanced before the 1st October 1873. The way in which the Defendants seek to avail themselves of this objection is that they say that if they are right in that contention, and the mortgage only covered what was actually advanced before the 1st of October 1873, the accounts show that the whole of the mortgage was satisfied, and consequently that the Plaintiffs are not entitled to recover upon it as they claim. Their Lordships think that this cannot be allowed.

Then it is also contended that this money was not advanced. Mr. Mayne has argued that there is no evidence of it, but one of the Defendants when examined said he did not deny that the money was advanced; and there cannot be any doubt that the money was actually advanced.

Another answer to this contention on the part of the Defendants appears to be this: On the 17th of September 1874 Mr. Brooke, the mortgagor, settled an account with the Plaintiffs,

and the whole of the matters between them was gone into, and a balance was then agreed upon as due from him to the Plaintiffs, including all these different items which would be the subject of the mortgage. The Defendants acquired no interest in the estate till January 1875, when they took a conveyance from Brooke. Their Lordships are of opinion that the Defendants are bound by the account which Mr. Brooke so settled, and that what he, when he settled that account, agreed to be due in respect of the mortgage, and the way in which the different payments appear to be appropriated, cannot be now disputed. They do not think it necessary to go into the evidence which Mr. Cowie, and Mr. Mayne more especially, have referred to on this subject; but they think that if that evidence was gone into it would support the contention of the Plaintiffs that the amount which the Judge of Gorakhpur has found to be due is really due to the Plaintiffs, and is the subject of the mortgage, and the Plaintiffs are entitled to recover it as mortgagees in the way in which they claim.

The case appears to have been very carefully investigated by the Subordinate Judge, and unless their Lordships could see that he was wrong in the way in which he has dealt with the accounts, and the various facts in the case, they would not come to the conclusion that his decree ought to have been reversed by the High Court. The result is that their Lordships will humbly advise Her Majesty that the decree of the High Court should be reversed, and the appeal there-to dismissed with costs and the decree of the Judge of Gorakhpur varied by omitting that part of it which directs the deed of sale to be cancelled. The costs of this appeal will be paid by the Respondents.