

*Privy Council Appeal No. 40 of 1922.*

**Bajnath Singh and others** - - - - - *Appellants*

*v.*

**Jamal Brothers and Company, Limited, and another** - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, UPPER BURMA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 22ND NOVEMBER, 1923.

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*Present at the Hearing :*

LORD DUNEDIN.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALL.

SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

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This is an appeal from a decree dated the 10th January, 1921, of the Court of the Judicial Commissioner of Upper Burma, which reversed a decree dated the 31st July, 1916, of the Court of the Additional District Judge of Yenangyaung.

The suit is to enforce a mortgage of the 16th August, 1904, for Rs. 25000 advanced by the firm of Abdul Shakoor Jamal Brothers and Company to the defendants Bajnath Singh and Fateh Bahadur Singh. The mortgage was taken in the name of Suna Ravana Mona Vengarachellum Chetty, but as benamidar for the firm of Jamal Brothers and Company.

The present plaintiffs are Jamal Brothers and Company, Limited, who claim to be transferees from the firm of Jamal Brothers and Company and their benamidars of the mortgage debt and the security.

The suit was dismissed in the 1st Court but was decreed on appeal. From the Appeal Court's decree the present appeal is preferred.

Though numerous pleas in defence were urged in the early stages of the suit which has been needlessly and lamentably prolonged, the only pleas that now survive are by way of objection to the execution and registration of the mortgage and the transfer.

The mortgage purports to be signed by both the mortgagors and its execution is admitted by them.

But then it is contended that there has been no valid registration of the document. The law applicable is at that date to be found in Regulation II of 1897, and the rules made in exercise of the powers conferred by it. By the 4th rule "every document to be registered under the rules must be presented by some person executing or claiming under the same . . . or by the agent of such person . . . duly authorized by power of attorney."

It is urged that the mortgage was presented for registration by an agent, and to comply with the terms of the rule it was incumbent on the plaintiffs to produce a duly authenticated power of attorney authorizing the agent's presentation. In support of this contention reliance was placed on the decision of this Board in *Jambu Parshad v. Muhammad Aftab Ali Khan*, L.R. 42, I.A. 22.

But the whole structure of this argument has no real foundation.

It rests on the supposition that the writing at the foot of the document purporting to be the Tamil signature of Ramasawmy Chetty shows that it was he who presented the document and that he was only an agent. This theory owes its origin to the belated and unfortunate discovery of one of the defendants' legal advisers, and is directly opposed to the official statement signed by the Registering Officer that the document was presented for registration by the mortgagee.

There is no provision in the Regulation or the Rules that requires the signature of the person presenting the document for registration. But under Rule 7 registration shall be affected by the Registering Officer writing on it an endorsement in the terms of that appearing at the foot of the document.

The correctness of this official endorsement is to be presumed, and the Tamil signature, for which there was no legal sanction, cannot operate to contradict it.

The presentation, therefore, was by a person claiming under the document.

It is next objected that execution of the mortgage was not admitted before the Registering Officer by Fateh Bahadur Singh. It, however, admittedly bears his signature and it is a fair presumption in the circumstances that the officer acted under Rule 5 when he registered the document. It is true that where any party to a document is unable or refuses to appear the rule requires a note of the circumstances to be made, and that has not been done. But the omission is one for which the person presenting the document cannot be held responsible: it is at

most a defect in procedure which did not vitiate the registration made as it was on a proper presentation.

Then the transfer of the mortgage to the limited company, the plaintiffs, is assailed.

It is dated the 11th September 1914 and the parties to it are S. R. M. Soobramaniyan Chetty, S. R. M. Mayappa Chetty, S. R. M. Chinnayu Chetty alias Ramasawmy Chetty, and S. R. M. Arunachellam, described as carrying on business in partnership under the style of S. R. M. of the 1st part, Jamal Brothers and Company of the 2nd part, and Jamal Brothers and Company, Limited, the present plaintiffs, of the 3rd part.

The Chetty partners, by the direction of the Jamal Brothers assigned, and Jamal Brothers confirmed, the mortgage debt of Rs. 25000 with interest and also the mortgaged property to the plaintiff Company, and the deed if executed and duly registered would unquestionably vest the debt and the security in the plaintiff Company.

It is contended, however, that there is no formal proof of execution by the Chettys. It is true that the evidence of M. A. S. Jamal, as recorded on the 11th July, 1915, does not speak specifically to execution by them. But later affidavits were sworn by M. A. S. Jamal and his advocate Mr. Ormiston to the effect that the witness had deposed to execution by the attorney of the Chetty firm. A petition was accordingly presented praying that the witness might be examined further on the point of the execution by the assignors of the deed of assignment. Interrogatories directed to this point were prepared under an order of the Court, and though no answers are on the record it is apparent from what is said by the Judicial Commissioner that on further examination under the order of the Court the formal defect was remedied.

It is next urged that though Mayappa was expressed to be a party, he did not execute. But in the attestation clause it is stated that the parties (other than the plaintiff Company) had set their hands and the document is expressed to be signed by all four of the Chetty partners. The signature was in fact by their attorney and in the circumstances their Lordships are satisfied that the attorney acted for all four partners. This view gains support from the endorsement of presentation from which it is apparent that the signatory held a power of attorney authorizing him to act for the four partners. The transfer was also signed by the Jamal Brothers, and execution by them was admitted by their duly authorized attorney. The result then is that the transfer has been sufficiently executed and its registration has been effected in accordance with the law that then applied.

The appeal therefore fails and should be dismissed, and their Lordships will humbly advise His Majesty accordingly.

The appellants must pay the costs of the appeal.

In the Privy Council.

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BAIJNATH SINGH AND OTHERS

v.

JAMAL BROTHERS AND COMPANY, LIMITED,  
AND ANOTHER.

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DELIVERED BY SIR LAWRENCE JENKINS,

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