Privy Council Appeal No. 14 *of* 1934.
Bengal Appeal No. 10 *of* 1933.

Rai Satindra Nath Choudhury - - - - *Appellant*

v.

Rai Jatindra Nath Choudhury and Another - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH JULY, 1935.

Present at the hearing:
LORD MACMILLAN.
SIR JOHN WALLIS.
SIR SHADI LAL.
[*Delivered by* SIR SHADI LAL.]

On the 17th February, 1915, one Rai Hari Charan Choudhury, a rich land-owner of Nakipur in the Presidency of Bengal, died leaving him surviving a widow Katyayani Debi, and two sons Rai Satindra Nath Choudhury and Rai Jatindra Nath Choudhury. For about six years the sons with their mother lived together amicably, and jointly managed and owned the estate left by the deceased. In March, 1921, they effected a partition of the joint estate; and, while the immoveable property was divided equally between the sons, the mother agreed to receive, in lieu of her share in the inheritance, an annuity of Rs. 12,000 from each of her sons during her life-time. The deed of partition, which was executed and registered on the 18th March, 1921, contained, *inter alia*, a promise by the sons to pay the annuity in two instalments, and interest thereon at 1 per cent. per mensem, in the event of failure to pay the money on the due date. As a security for the regular payment of the money, each son created in favour of the mother a charge for the annuity on one of the properties allotted to him on partition and specified in the deed; and authorised her to realise the amount due to her from that property, if he committed a default in payment.

It appears that the elder son did not make any payment to the lady, with the result that in July, 1922, he owed to her a large sum of money in respect of three instalments and interest thereon. On the 22nd July, 1922, she transferred to the younger son her claim to recover the money, which amounted to Rs. 19,288, with " all the right, title, and interest " in respect of that debt, and with the right to recover interest thereon. The deed of transfer was registered on the 26th July, 1922; and it was on the strength of that document that the transferee commenced, on the 13th June, 1927, the action which has given rise to the present appeal. He claimed to recover from his elder brother the aforesaid sum and interest at 12 per cent. per annum amounting to Rs. 10,596. He sought to enforce the claim against the property which was specifically charged with the payment of the annuity, and to realise the deficiency, if any, from the other properties of the defendant.

The trial Judge granted a preliminary decree for the entire sum, and awarded interest at the stipulated rate from the date of the institution of the suit to the 27th July, 1929, which was the date fixed by him for the payment of the amount found due on that date. Against this decree, the defendant appealed to the High Court, who concurred with the trial Judge on all the points raised by the appellant except that they set aside the clause in the decree allowing the plaintiff to apply for a personal decree against the defendant for the balance, " if the net proceeds of the sale of the property charged " are found to be insufficient for the payment of the amount due. The learned Judges, however, allowed the decree holder to realise the balance, if any, from the other moveable and immoveable properties of the judgment debtor. The time fixed by the trial Court for the payment of the money had already expired, and the High Court, when asked by the appellant to extend the period, granted further time up to the 31st March, 1933. The decree, which followed upon their judgment, directed him to pay the amount claimed in the plaint, with interest thereon at 12 per cent. per annum from the date of the suit up to 31st March, 1933. It was only after that date that interest was to run at 6 per cent. per annum.

The defendant has now brought this appeal to His Majesty in Council, and their Lordships after examining the arguments presented to them are not prepared to hold that any valid ground has been established which would justify their dissent from the conclusion reached by the High Court. The right of the lady to recover the arrears of her annuity from the appellant was a debt, which, though charged upon immoveable property, was not secured by a mortgage; and her claim amounted to an " actionable claim " as defined by s. 3 of the Transfer of Property Act, IV of 1882. That claim was undoubtedly transferred by her to the respondent

by a registered deed of gift, which complied with the requirements of s. 130 of the statute. It is to be observed that in the deed the donor expressly refers to the instrument of partition which was the source of her claim, and prominently mentions her right to recover the debt from the immoveable property of the appellant which was charged with its payment. There can be little doubt that she not only divested herself of all the rights to which she was entitled in respect of the recovery of the money, but also transferred them to the respondent. The learned Judges of the High Court, who were conversant with the language used by the donor, have held, in concurrence with the trial Judge, that not only was the debt transferred but also the security for the debt. They repelled the contention that the security was not transferred, and expressed the opinion that "on the facts of this case it is impossible to resist the conclusion that the security had passed to the plaintiff".

This finding can not be seriously contested; but it is urged that, as the deed of gift was entered, not in Book 1 which as prescribed by s. 51 of the Indian Registration Act, XVI of 1908, is a register of non-testamentary documents relating to immoveable property, but in Book 4 which is a miscellaneous register for entering documents which do not relate to immoveable property, its registration is invalid in so far as the transfer of the security is concerned. In support of his contention the learned counsel for the appellant has referred to the judgment of the Calcutta High Court in *Indra Bibi* v. *Jain Sirdar Ahiri* I.L.R. 35 Cal. 845; but the contrary view has been expressed by the Bombay High Court in *Parasharampant* v. *Rama* in I.L.R. 34 Bomb. 202, and by the Madras High Court in *Subbalakshmi Ammal* v. *Narasimiah*, 52 *Madras* L.J. 482.

The person presenting a document for registration has no control over the procedure of the officer registering it, and it is the latter who, subject to the control of his superior officer, selects the book in which it should be entered. As held by the High Court, the document should have been entered in Book 1, and the mistake, which was made by the registering officer in good faith, has not injured any innocent person. It is provided by s. 87 of the statute that nothing done in good faith by any registering officer shall be deemed invalid merely by reason of any defect in his procedure. With reference to the phrase "defect in procedure", which was used in s. 88 of the Indian Registration Act XX of 1866, which section corresponds to s. 87 of the present Act, Sir Barnes Peacock, in delivering the judgment of the Privy Council in *Sah Mukhun Lall Panday* v. *Sah Koondun Lall* L.R. 2 I.A. 210, made the following observations which are pertinent here :—

> In considering the effect to be given to sect. 49, that section must be read in conjunction with sect. 88, and with the words of the heading of part 10, "Of the Effects of Registration and Non-

> Registration ". Now, considering that the registration of all conveyances of immoveable property of the value of Rs. 100 or upwards is by the Act rendered compulsory, and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable to suppose that it was the intention of the Legislature that every registration of a deed should be null and void by reason of a non-compliance with the provisions of sects. 19, 21, or 36, or other similar provisions. It is rather to be inferred that the Legislature intended that such errors or defects should be classed under the general words " defect in procedure " in sect. 88 of the Act, so that innocent and ignorant persons should not be deprived of their property through any error or inadvertence of a public officer, on whom they would naturally place reliance. If the registering officer refuses to register, the mistake may be rectified upon appeal under sect. 83, or upon petition under sect. 84, as the case may be; but if he registers where he ought not to register, innocent persons may be misled, and may not discover, until it is too late to rectify it, the error by which, if the registration is in consequence of it to be treated as a nullity, they may be deprived of their just rights.

In the circumstances of the present case their Lordships do not think that the error of the registering officer in entering the document in Book 4, instead of Book 1, should affect the validity of the registration. The High Court, therefore, rightly held that the security was duly transferred to the plaintiff, and that he is entitled to realise the money from the immoveable property charged with the payment thereof.

The preliminary decree, which was made by the Subordinate Judge, declared that the amount due to the plaintiff including interest calculated at the rate of 12 per cent. per annum up to the 27th July, 1929, was Rs. 36,796.13.0; and directed the defendant to pay into Court the said amount on, or before, that date. He further directed that, in the event of default in payment, " the charged property or a sufficient part thereof " was to be sold to satisfy the plaintiff's claim, and awarded interest, after the date fixed for payment, at the rate of 6 per cent. per annum. The defendant did not, however, comply with the direction as to payment; but preferred an appeal to the High Court. His appeal failed on the merits, but the learned Judges granted his prayer for an extension of the time fixed by the Court of first instance for payment and allowed him to make the payment on, or before, the 31st March, 1933. The decree thus framed required the appellant to pay interest at the stipulated rate up to that date; with the result that in order to save the property from sale he would have to pay a larger sum than the amount calculated on the basis of the decree against which he had appealed to the High Court. It is, therefore, argued for the appellant that, in the absence of an appeal by his adversary, the High Court had no jurisdiction to enhance the rate of interest payable after the date fixed by the trial Court for payment. This contention, though seemingly plausible, cannot be sustained. It is beyond dispute that the stipulated rate of interest can be

awarded up to the date of realisation or actual payment, and that a debtor should not be allowed to keep the money of his creditor at a low rate of interest by merely bringing an unsuccessful appeal. As stated above, the appellant had failed to make the payment within the period fixed by the Subordinate Judge, and his property was liable to be sold for satisfying the respondent's claim. To avoid the sale, he asked the High Court to extend the period, but the learned Judges were not bound to grant his prayer. They, however, acceded to his request; and he can have no legitimate grievance, if, while granting the concession, they made him liable for the payment of interest at the contract rate during the period of extension. Otherwise, a debtor has only to prefer an appeal in order to withhold the payment of money to his creditor for a long period without incurring liability for interest at the rate which he himself had agreed to pay and which he could not challenge on any valid ground. Such a device, if permitted, would lead to manifest injustice.

Their Lordships do not think that the appellant has succeeded in substantiating any of the objections raised by him to the judgment of the High Court. They will, therefore, humbly advise His Majesty that his appeal be dismissed with costs.

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In the Privy Council.

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