

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:34676

A.F.R.

RESERVED

Judgment reserved on 27.04.2024
Judgment delivered on 06.05.2024

Court No. - 19

Case :- WRIT - C No. - 1001137 of 1993

Petitioner :- Dharam Raj

Respondent :- Distt. Registrar Gonda

Counsel for Petitioner :- Mohd. Arif Khan, Mohammad Aslam Khan

Counsel for Respondent :- S.P. Shukla, Dharendra Kr. Dubey, Hemant Kumar Mishra, Kapil Muni Dubey, R.P. Shukla, S.C. Kashish, Udai Bhan Pandey

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Mohammad Arif Khan Senior Advocate assisted by Sri Mohammad Aslam Khan Advocate, the learned counsel for the petitioner, Sri S. K. Khare, the learned Standing Counsel appearing for the State and Sri Kapil Muni Dubey, the learned counsel for the contesting private opposite parties.

2. By means of the instant writ petition filed under Article 226 of the Constitution of India the petitioner has sought issuance of a writ in the nature of certiorari quashing the order dated 03.05.1993, passed by the District Registrar, whereby an order dated 15.03.1989, passed by the Sub-Registrar, Gonda has been set aside and the Sub-Registrar has been directed to register an agreement dated 15.11.1988 executed by the opposite party no.2-Radha Mohan, in favour of deceased opposite party no.3-Ladla agreeing to sell a piece of land bearing Gata No.107/1-78 and 2-00 acre out of Gata No.195/3-00 which was presented for registration on 15.11.1988.

3. Briefly stated, facts of the case are that the opposite party no.2 was the Bhumidhar of Plot No.195 area 2.16 acres, Plot No.107 area 1.78 acres, Plot No.195 area 3.00 acres and Plot No.47-Dha area 0.40 acres, situated in Village Amdohwa, Pargana, Tehsil and District Gonda. On 07.03.1989 he executed a sale deed in respect of Plot No.107 in favour of the petitioner no.1 and on 31.03.1989 he executed another sale deed in respect of 0.40 acre land out of Plot No.195 in favour of the petitioner no.2. On 13.11.1990 he executed yet another sale deed in respect of Plot No. 195 and 47-Dha in favour of the petitioner nos.3 to 5. Meanwhile, on 09.03.1989, the opposite party no.3 and 4 presented an agreement dated 15.11.1988 executed by the opposite party no.2 in their favour agreeing to sell Plot Nos.107 and 195, for being registered under Section 36 of the Registration Act. The Sub-Registrar issued notice to the opposite party no.2.

4. On 15.03.1989, the Sub-Registrar passed an order stating that as there was a strike going on, summon was sent through registered post, fixing 14.03.1989 as the date of appearance. However, the acknowledgment of service of summon had not been received back. The Sub-Registrar held that as the limitation for registration of the deed had expired and no time was left for issuing fresh summons, registration was refused under Section 35 (3) read with Section 71 (1) of Registration Act.

5. Aggrieved by the aforesaid order, the opposite party no.3 filed Case No.7/89, under Section 73 of Registration Act before the District Registrar, Gonda, which was allowed by means of the impugned order dated 03.05.1993. The Registrar has recorded in the aforesaid order that on 09.03.1989 the deceased opposite party no.2 - Ladla Prasad had produced before the Sub-Registrar, Gonda an agreement executed on 15.11.1988 by Radha Mohan (the opposite party no.2) to sell the land bearing Gata No.107/1.78 acres and 2 acres land out of Gata No.195/3-00 in favour of Ladla Prasad and Girwar Dayal (opposite parties no.3 and 4), for being registered under Section 36 of Registration Act. The executant of the agreement Radha Mohan had not presented himself for registration of the document before the Sub-Registrar Gonda. Upon production of document by the applicant, the Sub-Registrar, Gonda had issued notice to

the executant Radha Mohan through registered post, which was not received back and the Sub-Registrar refused to register the agreement on 15.03.1989. It has been stated in the application under Section 73 of the Registration Act that they had entered into an agreement to purchase the land in dispute from Radha Mohan for a sale consideration of Rs.52,000/-, out of which Rs.43,000/- had been paid by him and the remaining amount was agreed to be paid at the time of execution of the sale deed. The agreement had been prepared, the seller had put his thumb impression on it and the marginal witnesses had also put their respective signatures. The seller had got prepared his two photographs and had attached the same with the document, but thereafter he abstained from appearing for registration of the agreement. It was contended before the Registrar that the Sub-Registrar has erred in refusing registration of the documents by means of the order dated 15.03.1989 and it was prayed that the order dated 15.03.1989 be set aside and the Sub-Registrar, Gonda be directed to register the agreement for sale of the property.

6. The opposite party no.2 Radha Mohan filed his objections *inter alia* stating that all the narrations made in the agreement to sell the property, including the payment of advance money, were false. The signatures were obtained on the agreement deceitfully and, therefore, he did not appear for its registration and he had given complaints to the District Magistrate and to the Superintendent of Police through registered post. He has further stated that he had already executed a sale deed dated 07.03.1989 in favour of Dharam Raj (the petitioner no.1) in respect of the land bearing Gata No.107/1.78 acre. He further stated that he has executed another sale deed in respect of four bigha land forming a part of Gata No.195 in favour of Choutkau (the petitioner no.2). Another objection raised was that instead of filing an application under Section 73 of the Registration Act, an appeal under Section 72 of the aforesaid Act ought to have been filed. Dharam Raj and Choutkau also filed their objections. However, later on the deceased opposite party no.2-Radha Mohan and opposite party no.3-Ladla Prasad filed a compromise was on 01.11.1991, wherein Radha Mohan admitted to have executed the agreement to sell and he agreed for registration of the agreement.

7. The Registrar found that when the executant Radha Mohan did not appear for registration of the document, it cannot be said that the executant had denied execution of the sale deed and the Sub-Registrar has erred in mentioning denial under Section 35 (3) (a) of the Act in the impugned order; that the mention of wrong provision by the Sub-Registrar created a confusion in the mind of the concerned parties whether he should file an appeal under Section 72 of the Act or an application under Section 73 of the Act. The Registrar found that an appeal under Section 72 of the Act ought to have been filed, yet as the application had been filed under Section 73 of the Act, it would not be proper to leave the dispute undecided on this ground and he rejected the objection raised in this regard.

8. The Registrar found that although Radha Mohan had initially stated that the agreement to sell had been obtained deceitfully but later on he admitted that he had executed the agreement and in these circumstances, no question can be put against legality of execution of the agreement at this stage. While proceeding under Section 74 of the Registration Act, the District Registrar has to enquire whether the deeds were executed or not and whether the applicant has complied with the requirements of law, making out a case for registration of the documents. As the executant of the agreement Radha Mohan has admitted that he has executed the agreement and had requested for registration of the agreement, there was no option except for registering the deed. Accordingly, the Registrar allowed the application and set aside the order dated 15.07.1989 passed by the Sub-Registrar, Gonda and directed the Sub-Registrar to register the agreement in case the same was presented before him within time.

9. While assailing the validity of the aforesaid order, the learned Counsel for the petitioner, Sri Mohammad Arif Khan Senior Advocate submitted that when the seller had already executed three sale deeds in respect of the property in question, he had no authority to enter into an agreement to sell the same land and, therefore, the agreement executed by him could not have been registered. He has further submitted that as the Sub-Registrar/Registrar has no power to cancel the sale deeds, he could

not have registered the agreement to sell in spite of existence of the sale deeds in respect of the same property in favour of the petitioner.

10. Sri Mohd. Arif Khan, the learned counsel for the petitioner has further submitted that Rule 300 of Rules under the Registration Act, 1908 (as applicable in the Uttar Pradesh) makes it obligatory for the Sub-Registrar to satisfy himself about the competence of the executor to execute the deed.

11. In support of his submissions, the learned counsel for the petitioner has relied upon the judgment of High Court of Bombay in the case of **Hussein Abdul Rehman and company Vs. Lakmichand Khetsey**: AIR 1925 Bombay 34, **Savitri Devi and others Vs. Surendra Mohan Mohana**: 1987 Vol 5 LCD 137, **Mt. Gulab Devi Vs. Monji Ram**: AIR 1919 Lahore 156.

12. The enquiry required to be conducted by the registering officer before registration of a document is provided under Section 34 of the Registration Act, which provides as follows:

“34. Enquiry before registration by registering officers:-(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a SubRegistrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.”

13. A bare perusal of Section 34 of Registration Act would indicate that Registrar is merely required to satisfy himself that the persons executing the document or their representatives, assignees or authorized agents have appeared before him within the time allowed for presentation. He has to enquire whether the executant is admitting execution of the document and whether the person appearing before him is the same person, who is executant of the document. If the executant of the document admits execution thereof and the Sub-registrar is satisfied about the identity of the executant, he will register the document as directed in Section 58 to 61 of the Act.

14. Section 58 of the Registration Act contains particulars to be endorsed on documents admitted to registration, which include the signatures of every person admitting the execution of document, signatures of persons examined in reference to the document and any admission of receipt of consideration. Section 59 mandates that the Registrar shall authorize the date and his signature to all the endorsements made by him. Section 60 contains provision for issuance of certificate of registration. There is no statutory provision contained in the Registration Act which requires the Sub-Registrar/Registrar to ascertain the capacity of the executant to execute the document by satisfying himself that the executant holds a valid title in respect of the property in question.

15. Rule 300 of Rules framed under the Registration Act, 1908, reliance on which has been placed by the learned Counsel for the petition, reads as follows: -

“300. Parties entitled to present documents for registration. If the document be not open to any of the objections set forth above, the registering officer, before finally accepting it for registration, should satisfy himself that the person presenting it has legal authority to do so. The persons who may present a document for registration are the following :

(a) in the case of a will, the testator, and after his death any person claiming under it as executor otherwise ;

(b) in the case of an authority to adopt, the donor, and after his death, the donee or the adopted son ;

(c) in the case of a copy of a decree or order, any person claiming under the decree or order ; (d) in any other case, any person executing or claiming under the document ;

(e) the representative or assign of any of the foregoing ;

(f) the agent of any of the foregoing.

Note. Where the Indian Registration Act, 1908 or any rule made thereunder, requires or permits any act to be done with reference to a document by a person executing or claiming under the same and the document has been executed on behalf of Municipal or District Board or is a document under which a Municipal or District Board claims, the act may, notwithstanding anything to the contrary contained in the aforesaid enactment or in any rule thereunder, be done (1) in the case of Municipal Board, by the Chairman, the Executive Officer or a Secretary of the Board, or by other officer of the Board empowered by regulation in this behalf, and (2) in the case of District Board, by the Chairman, or by any other officer of the Board empowered by regulation in this behalf."

16. A bare perusal of the aforesaid Rule indicates that it requires the Registrar to satisfy himself that the person presenting it has legal authority to do so i.e. to present the document. The legal authority to present a document can by no stretch of imagination be read as legal authority to execute the document as the execution of a document and presentation of a document for its registration are two different and distinct things. Therefore, Rule 300 also does not require the Sub-Registrar to satisfy himself regarding title of the executant of an agreement to sale by examining as to whether he holds title of the property in question.

17. In support of his submissions, the learned counsel for the petitioner has relied upon the judgment of High Court of Bombay in the case of **Hoosein Abdul Rehman v. Lakelmichand Khetsey**: AIR 1925 Bombay 34, **Savitri Devi and others Vs. Surendra Mohan Mohana**: 1987 Vol 5 LCD 137, **Mt. Gulab Devi Vs. Monji Ram**: AIR 1919 Lahore 156.

18. In the case of **Savitri Devi** (Supra) this issue was neither involved nor was decided as to whether the Sub-Registrar is required to satisfy

himself regarding title of the executant of a deed before registering the same and, therefore, this judgment is not relevant for decision of the present case.

19. The law down in the judgment in the case of **Mt. Gulab Devi** (Supra) was that a person who sets up a title to property by purchase, must prove that his vendor has a title in the property sold. In this case also the question involved was not as to whether the Sub-Registrar or the Registrar is obliged to verify the title of the presentor of an agreement to sell a property before registering it. Therefore, the contention of the learned counsel for the petitioner that the Sub-Registrar was required to record a satisfaction regarding title of the executant to execute the sale deed and that he ought to have declined registration of the document in view of the fact that the petitioner had obtained sale deed in respect of the land in question in his favour is without any force of law and same is turned down.

20. The learned counsel for the petitioner has next submitted that the seller already having sold the property in question in his favour, the agreement to sale executed in favour of the opposite party no.3 is void. This question is not required to be decided in this writ petition, which has been filed challenging the validity of the order for registration of agreement to sell. The learned counsel for the contesting respondents has submitted that a suit regarding title of the parties is pending and these questions are left open for being decided by the Civil Court, in case the same are involved therein.

21. The learned Counsel for the petitioner has next submitted that the Registrar himself has held that the the registration of the agreement was refused on the ground that the executant had not appeared for registration of the document and in these circumstances an appeal ought to have been filed under Section 72 of the Registration Act and Application under Section 73 of the Act was not maintainable, more particularly when the Registrar has himself in the order that an appeal under Section 72 of the Act ought to have been filed.

22. Section 72 and 73 of the Registration Act, 1908 provide as follows:

-

“72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.—(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against and order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) ...

73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.—(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.”

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under Section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of complaints.”

(Emphasis added)

23. The learned Counsel for the petitioner has placed reliance on Rule 364 of Rules under the Registration Act, 1908 (as applicable in the Uttar Pradesh), which reads as follows: -

“364. Appeals and applications to the District Registrar under Sections 72 and 73 of the Registration Act.

When application is made to a District Register to reverse the order of a Sub-Registrar refusing to admit a document of the District Registrar should examine it to See registration, I was made within time i.e. 50 days after the date of the order and secondly, whether it was of the nature of application under Section 72. or of an application under Section 73, if the application be brought within time, and be of the nature of an appeal under Section 72, the District Register shall pass such orders thereon as seem to him proper under the circumstances. If it be made within time, and be of the nature of an application under Section 73, i.e. an application to establish a

right to have a document registered on account of denial of execution, the District Registrar must make the enquiries prescribed in Section-74, and pass an order accordingly. This is an obligation imposed upon him by law, which he is not at liberty to avoid by referring the applicant to a Civil Court.”

24. The learned Counsel for the petitioner has submitted that the District Registrar ought to have examined whether the application was of the nature of application under Section 72 or of an application under Section 73.

25. The registrar has examined this aspect of the matter and held that the Sub-Registrar has erred in mentioning denial under Section 35 (3) (a) of the Act in the impugned order and the mention of wrong provision by the Sub-Registrar created a confusion in the mind of the concerned parties whether he should file an appeal under Section 72 of the Act or an application under Section 73 of the Act. The Registrar found that an appeal under Section 72 of the Act ought to have been filed, yet as the application had been filed under Section 73 of the Act, it would not be proper to leave the dispute undecided on this ground and he rejected the objection raised in this regard.

26. There appears to be no illegality in the approach of the Registrar in deciding the dispute on merits in spite of mention of a wrong provision when under both the provisions, the jurisdiction vested with the registrar and no prejudice has been caused to any party by the mere mention of a wrong provision under which the appeal / application was filed.

27. The learned Counsel for the petitioner has relied upon the judgment in the case of **Hoosein Abdul Rehman v. Lakelmichand Khetsey** (Supra), in which the following questions were involved: -

“The second issue in this suit is whether the document should be ordered to be registered. It was rejected for insufficient description under section 21 of the Registration Act. The reasons for this rejection are given in the Sub-Registrar's orders of June 7, and August 13, 1923, Exhibit F, and they are summarised in the Registrar's order of September 25, 1923, Exhibit H. He there says:

—
* * *

The main question is whether this view is correct, that is, whether the property is not sufficiently described in accordance with

sections 21 and 22 of the Indian Registration Act so that registration of it was properly refused under section 21. Before I proceed to discuss that point, I may mention that Mr. Binning for the defendant also seeks to support the Sub-Registrars refusal to register under section 20 of the Act, on the ground that the blank in the document regarding the Port Trust number has not been initialled by the executant.....”

28. None of the aforesaid questions are involved in the present case and, therefore, **Hoosein Abdul Rehman v. Lakelmichand Khetsey** (Supra), is no relevant for decision of the present case.

29. In view of the aforesaid discussions, I am of the opinion that the impugned order does not suffer from any illegality, warranting interference by this court in exercise of its writ jurisdiction. The writ petition lacks merit and the same is hereby **dismissed**.

30. The parties to bear their own costs of litigation.

(Subhash Vidyarthi, J.)

Order Date :- 06.05.2024

Ram