

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.382 of 1990

=====

Harinar Prasad, son of Bhagirath Sah died, resident of village-Dayalpur, P.S. Baniyapur, presently resident of Masrakh, P.S. and P.O. Mashrakh, District-Saran.
..... Defendant/Appellant.

Versus

Prem Chandra Prasad, son of Prabhunath Prasad, resident of village-Attauli, P.S. Ishwapur, presently resident of village-Mashrakh, P.S. and P.O. Mashrakh, District-Saran.
..... Plaintiff/Respondent.

=====

Appearance :

For the Appellant : M/s. S.S. Dwivdei, Senior Advocate, Rakesh Chandra, R.K. Dubey and Mrs. Sangeeta Sharma, Advocates.
For the Respondent : M/s. Kaushlendra Kumar Sinha, Rajendra Prasad, Anjani Kumar Singh and Sunil Kumar Singh, Advocates.

=====

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
CAV JUDGMENT

Date: 16-10-2015:

The defendant has filed this appeal against the Judgment and Decree dated 17.07.1990 passed in Title Suit No.108 of 1984 by the Sub Judge-II, Saran, Chapra, declaring the two sale deeds, Exts.A and A/1 illegal, null and void with a direction to put the plaintiff in possession over the suit land.

2. The plaintiff/respondent filed the aforesaid title suit for declaring the two sale deeds alleged to have been executed by the plaintiff in favour of the defendant forged, fabricated, null and void and not binding upon the plaintiff and also for delivery of the possession of the suit land in favour of the plaintiff alongwith the arrears of rent.

3. In brief the case of the plaintiff-respondent is that Prabhunath Prasad, the father of the plaintiff died in 1970 leaving behind

his wife, Chhatia Devi, his four sons and three daughters, namely, Premchand Prasad (plaintiff), Mahashay Prasad, Ram Ashray Prasad, Harihar Prasad, Rukmani Devi, Lal Muni Devi and Ramva Devi. After the death of Prabhunath Prasad, the plaintiff and his brothers came in the association of bad people. Due to that reason, the plaintiff and his brothers used to take liquor and they became habitual drunker. The defendant-appellant, got executed the sale deed from Mahashay Prasad, the brother of the plaintiff, under the wilderness of wine. The value of the suit land, as detailed in Schedule-I of the plaint, was of Rs.75000/- in the year 1980 in which the house is also situated. Rukmina Devi, the sister of the plaintiff, seeing the condition of her brothers, filed the Partition Suit No.102 of 1975 against the plaintiff, his brothers, defendant, his two wives and Baliram Prasad. The defendant and his two wives appeared and filed the written statement with the contention that the sale deed has been executed by brother of the plaintiff. While the suit was contested but, ultimately, decreed in favour of Rukmina Devi, the sister of the plaintiff. When the plaintiff came to know about filing of the two compulsory registration case before the District Sub Registrar, Chapra, by the defendant then he enquired and came to know that the defendant got prepared two sale deeds in respect to suit land alleged to be executed by the plaintiff in his favour on 29.06.1980 and has filed Compulsory Registration Case Nos.6 and 7 of 1981. In fact, there was no talk of the plaintiff with defendant to sell the



suit land nor the plaintiff purchased the stamp to execute both sale deeds. The plaintiff did not put his signature nor witnesses put their signatures on his instruction on both sale deeds. The plaintiff appeared in both the compulsory registration cases and filed his objection but the District Sub Registrar without considering the objection raised by the plaintiff passed the order for registration of both the sale deeds dated 29.06.1980. In Partition Suit No.102 of 1975 filed by the Rukmina Devi, while the defendant and his two wives filed their written statement but they did not disclose about talk of the plaintiff with defendant to sell the suit land on consideration of Rs. 18000/- and about purchasing the stamp on 21.02.1975 to execute the sale deed. While in both the Compulsory Registration Cases, defendant had stated that both sale deeds executed by the defendant could not be presented before the Sub Registrar on the date of execution, i.e., on 29.06.1980 due to delay in drafting and execution of both sale deeds by the plaintiff. On 29.06.1980, the day was Sunday, as such, no question arises of non presentation of both sale deeds for registration before the Sub Registrar for registration due to delay in drafting and execution of sale deeds but the District Registrar, Chapra, illegally passed the order for registration of both the sale deeds alleged to be executed by the plaintiff. There was no talk of the plaintiff with the defendant to sell the suit land for Rs.18000/- and the plaintiff did not purchase the stamp from the Treasury on 21.02.1975 to execute the sale



deed. The defendant taking the advantage of be wilderness of wine of the plaintiff on purchasing the stamp got prepared both the sale deeds in collusion with his own men. The further case of the plaintiff is that the house situated over the suit land was let out to the defendant and his brothers in which they were running grocery shop. In the year 1971 partition took place in between the defendant and his brothers in which grocery shop was allotted in the share of the defendant and since then the defendant is tenant but he is not paying rent. Due to compulsory registration of both the sale deeds alleged to be executed by the plaintiff, the title of the plaintiff in respect to the suit land became clouded. As such, the cause of action arose on 07.04.1984, on the date when the District Sub Registrar passed the order for compulsory registration of both sale deeds in Compulsory Registration Case Nos.6 and 7 of 1981.

4. The defendant-appellant appeared in the suit and filed his written statement raising several usual defence to the effect that the suit is barred by law of limitation, principle of estoppels, acquiescence and waiver. The case of the defendant is that the plaintiff and his brothers never fell in the company of evil elements nor was there any occasion for any one to make them addicts to any intoxication. The defendant is a businessman and is living a posh life and he never prevailed upon the plaintiff or his brother Mahasay Prasad to execute any sale deed. Prabhunath Prasad, the father of the plaintiff, died in the year 1970 and the

family continued to remain joint for some time but later on due to difference and rancor amongst the members of the family, there was a disruption in the status of the family and that joint tenancy was converted into a tenancy in common. The plaintiff executed the sale deed dated 07.01.1975 in favour of Ram Piyari Devi, wife of Baliram Prasad which resulted into a sharp reaction and bitterness amongst the members of the plaintiff's family. Due to tense and bitterness prevailing in the plaintiff's family the plaintiff being pressed with his own need entered into negotiation for sale of suit land in value of Rs.18000/- and purchased stamp from Saran Treasury on 21.02.1975 and kept the same with him. In the meantime, Mahasay Prasad, the brother of the plaintiff, executed the registered sale deed dated 09.04.1975 of R.S. Plot No.6803 and 6810 with 7035 over which house is situated in favour of two wives of the answering defendant for consideration of Rs.50000/- and put the defendant in possession. The said sale deed was also confirmed by the plaintiff by executing the deed of Ekrarnama on 15.04.1975. Due to rancor and disruption in the family of the plaintiff and making claim by one brother or the other over each and every item of the property in spite of purchase of stamp by the plaintiff, the defendant felt difficulty to finalize the deal of the suit land. In the meantime, Rukmina Devi, the sister of the plaintiff, filed Partition Suit No.102 of 1975 on 28.07.1975 regarding partition of her share in the entire family property impleading all the family members

and the purchaser including the defendant and his two wives. While the Partition Suit No.102 of 1975 was decreed in favour of Rukmina Devi on 24.05.1980 but the sale deed dated 09.04.1975 executed by Mahasay Prasad in favour of defendant and the sale deed of other purchaser were declared valid. Thereafter, negotiation for sale was finalized with the plaintiff on 22.06.1980 for which stamp was already purchased by him. The plaintiff took a sum of Rs.5100/- by executing the hand-note dated 22.06.1980 to the defendant. Thereafter, plaintiff executed the two sale deeds for a consideration of Rs.9000/- each on 29.06.1980. Both the sale deeds were scribed by Diwarkar Prasad, a Professional Deed Writer, on supplying the details of the property by the plaintiff. The execution of the sale deeds stood completed and concluded near about 11 A.M. in the day. The witnesses Suraj singh and Ram Ayodhya Singh, both resident of village-Mashrak and one Ramagaya Singh of village-usuri, attested the both deeds at the instance of the plaintiff. Both the sale deeds could not be presented for registration due to Sunday and not due to late in execution of two sale deeds and both sale deeds were handed over to the defendant by the plaintiff. The consideration amount of Rs.5100/-, which was taken by the plaintiff earlier, was set off in one of the deeds while the balance amounts forming consideration money of the two deeds were taken by the plaintiff before putting his signature on the two sale deeds. The purpose for execution of two sale deeds by the plaintiff was to construct a new



residential house and to invest a portion in the trade and business. After execution of the two sale deeds, the defendant was put in possession of the house property as detailed in the sale deeds. The plaintiff fell in hands of his brothers besides some of the enemies of the defendant including Bishwanath Prasad, one of the brothers of the defendant, and conspired to defeat the defendant's title over the property detailed in two sale deeds. Therefore, the defendant had no course open except to institute a proceeding under Section 36 read with Section 73 of the Indian Registration Act and file two separate petitions for registration of two sale deeds before the Sub Registrar, Mashrak, on 10.07.1980. While summon was issued and served upon the plaintiff but the plaintiff did not appear before the Sub Registrar, due to that reason, Sub Registrar refused the registration of both the sale deeds on 02.03.1981. Thereafter, the defendant filed two compulsory Registration Case before the District Sub Registrar bearing No.6 of 1981 and 7 of 1981 in which plaintiff appeared and filed detail rejoinder on 28.06.1982. After leading the evidence by the parties, the District Sub Registrar passed the order on 07.04.1984 for compulsory registration and, accordingly, the Sub Registrar registered both the sale deed on 12.04.1984. The District Sub Registrar has rightly observed that the plaintiff's controversy and criticism of being late in the day versus Sunday a holiday is of no consequence in the case. The further case of the defendant is that the valuation of the suit land in the year 1975

was not more than Rs.18000/-. In fact, the price of the similar land situated in the same locality started rising since the financial year 1981-82 and the price of the land in question was fixed in June, 1980 as Rs.18000/- was quite adequate and proper.

5. On the basis of the pleadings of the parties, the learned trial court framed altogether following seven issues:

- (i). Is the suit as framed maintainable?
- (ii). Is plaintiff got any cause of action for the suit?
- (iii). Is the court-fee paid on the plaint sufficient?
- (iv). Are the two sale deed dated 19.06.1980 executed by the plaintiff in favour of defendant genuine, valid and for consideration?
- (v). Is the suit barred by law of limitation, estoppels, acquiescence and waiver?
- (vi). Is the plaintiff entitled to a decree as claimed for?
- (vii). To what other relief or reliefs, if any, is the plaintiff entitled to?

6. In course of trial, the plaintiff has examined altogether 29 witnesses and also got exhibited several documents. On the other hand, the defendant has also examined altogether 26 witnesses and got exhibited several documents.

7. On hearing the learned counsel for the parties, taking into consideration the pleadings and the evidence available on the record, the learned trial court decided all the issues in favour of the plaintiff and

decreed the plaintiff suit through impugned Judgment declaring both the sale deeds in question illegal, null and void, declaring the plaintiff's title over the suit land with order for delivery of the possession to the plaintiff.

8. Learned counsel for the defendant-appellant made submission that the plaintiff-respondent has filed the suit for declaration of two sale deeds dated 29.06.1980 (Exts.A and A/1) executed in favour of the defendant-appellant on 29.06.1980 which were registered on 14.04.1984 on the basis of the order dated 07.04.1984 passed by the District Sub Registrar in Compulsory Registration Case Nos.6 of 1981 and 7 of 1981 under Section 75 of the Registration Act. As such, both the sale deeds (Exts.A and A/1) as executed on 29.06.1980 and registered on 12.07.1984 in compliance of the order of the District Sub Registrar based under Section 75 of the Registration Act would be operative from the date of its execution on 29.06.1980, not to the date of presentation for registration as held in the case of **Jamuna Prasad Vs. Bhuneshwar Thakur and others (AIR 1988 Patna 113)** by a Division Bench of this Court. Therefore, the suit filed by the plaintiff in the year 1984 after three years to the date of execution of sale deed on 29.06.1980 is barred by law of limitation as under Article 59 of the Limitation Act, the period of limitation for filing the suit for declaring the deed null and void is only three years. Learned counsel for the defendant-appellant further made submission that in Compulsory Registration Case Nos.6 of 1981 and 7 of



1981, the District Sub Registrar, Saran at Chapra, passed the order on 07.07.1984 under Section 75 of the Registration Act for registration of both the sale deeds dated 29.06.1980 executed by the plaintiff in favour of the defendant arriving at finding of the genuineness of the execution of the two sale deeds. As such, the finding of the trial court in deciding the issue nos.4 and 6 to the effect that both the sale deeds Exts.A and A/1 were not executed by the plaintiff on 29.06.1980 is barred by principle of *res judiceta* under explanation 8 of Section 11 of the Code of Civil Procedure as the District Sub Registrar in allowing the Compulsory Registration Case Nos.6 of 1981 and 7 of 1981 for registration of both the sale deeds has considered the genuineness of the execution of both sale deeds by the plaintiff in favour of the defendant, who has limited jurisdiction in deciding such issue.

9. On the other hand, learned counsel for the plaintiff-respondent made submission that the cause of action arose to file the present suit to the plaintiff on 07.04.1984 when the District Sub Registrar passed the order in Compulsory Registration Case Nos.6 of 1981 and 7 of 1981 for registration of two sale deeds dated 29.06.1980 (Exts.A and A/1) alleged to be executed by the plaintiff and the plaintiff has filed the suit on 31.08.1984 within three years of the passing of the said order. Moreover, there is specific case of the plaintiff-respondent that when the plaintiff-respondent came to know about the filing of the two compulsory

Registration Case Nos.6 of 1981 and 7 of 1981 before the District Sub Registrar by the defendant-appellant then he appeared and filed his objection petitions (Exts.E and E/1) in both the cases separately on 28.06.1982. As such, the plaintiff-respondent's suit is also within three years from the date of knowledge of the execution of the alleged two sale deeds by the plaintiff in favour of the defendant. Learned counsel for the plaintiff-respondent further made submission that the District Sub Registrar in exercising the power of compulsory registration of document under Sections 73 to 75 of the Registration Act will not come within the purview of the court of limited jurisdiction as detailed in Explanation 9 of Section 11 of the Code of Civil Procedure. As such, the finding of the District Sub Registrar, Saran at Chapra, in passing the order dated 07.04.1984 in Registration Case Nos.6 of 1981 and 7 of 1981 will not be operative as *res judiceta* in deciding the present suit in respect of the genuineness of both the sale deeds.

10. In view of the submission of the learned counsel for the parties, the following two points are required to be considered in this appeal:

- (i). Is the suit is barred by law of limitation?
- (ii). Is both the sale deeds dated 29.06.1980 (Exts.A and A/1) alleged to be executed by the plaintiff in favour of the defendant genuine, valid and for consideration or got prepared by the defendant fraudulently?

11. Point No.1:

There is specific case of the plaintiff that when he came to know that the defendant has filed two Compulsory Registration Case Nos.6 of 1981 and 7 of 1981 in respect to two sale deeds alleged to be executed by him before the District Sub Registrar, Chapra, he appeared in both the cases and filed his objection petition on 28.06.1982 (Exts.E and E/1). The District Sub Registrar after hearing the parties passed the order on 07.07.1984 for compulsory registration of two sale deeds. As such, cause of action to the plaintiff arose on 07.04.1984 to file the suit when the order was passed by the District Sub Registrar for registration of two sale deeds. Moreover, for cancellation, setting aside the instrument, the period of limitation is three years as provided under Article 59 of the Limitation Act from the date when the facts entitling the plaintiff to have instrument or decree cancelled or set aside or the contract assigned has become known to him. The case of the plaintiff is that he came to know about filing of the compulsory registration case by the defendant against him in respect to two sale deeds alleged to be executed by him. Thereafter, the plaintiff enquired the matter and filed his objection petition (Ext. E and E/1) on 28.06.1982 in both Registration Case No. 6 and 7 of 1981 filed by the defendant. As such, the present suit, filed by the plaintiff, is also within three years from the date of knowledge of the execution of the two sale deeds alleged to be

executed by the plaintiff.

In case of **Jamuna Prasad (supra)**, a Division Bench of this Court considering the provision of Sections 47 and 75(3) of the Registration Act held that the document compulsorily registered takes effect from the date of its execution and not from the date of presentation for the registration. The said decision would not be applicable in the present case for the purpose of period of limitation to file the suit for declaring deed null and void or cancel the deed under Article 59 of the Limitation Act.

12. Point No.2:

The case of the plaintiff is that when he came to know about filing of compulsory registration case by the defendant against him, then he enquired the matter and came to know that defendant has filed two compulsory registration Case Nos.6 and 7 of 1981 (Exts.A and A/1) in respect to two sale deeds said to be executed by the plaintiff in favour of defendant on 29.06.1980 in respect to suit land. In both cases, the defendant contended that both sale deeds was scribed by deed writer Diwakar Prasad on the instruction of plaintiff and plaintiff put his signature as executant and witnesses also put their signature on his instruction but due to delay in drafting of both sale deeds and execution the same could not be presented before the Sub Registrar for registration. In fact, there was no talk of plaintiff with the defendant to execute the sale deed in



respect to suit land nor he purchased the stamp. No question arises for non presentation of both sale deeds on 29.06.1980 in time before the Sub Registrar for registration due to delay in drafting and execution of sale deed as on 29.06.1980 there was holiday due to day of Sunday. The District Sub Registrar, Chapra, did not consider the objection of the plaintiff as raised in the both the cases and ordered for registration of both sale deeds dated 29.06.1980 said to be executed by the plaintiff in favour of the defendant vide order dated 07.04.1984.

The case of the defendant is that plaintiff executed the sale deed dated 07.01.1975 in favour of wife of Bali Ram Prasad due to that reason tense and bitterness arose in the family of the plaintiff. The plaintiff being pressed upon his own need to construct the house talked to sale the suit land in consideration of Rs.18000/- with the defendant and also purchased the stamp from Treasury, Saran, on 21.02.1975. Mahasay Prasad, brother of the plaintiff, executed the sale deed on 09.04.1975 on consideration of Rs.50,000/- in respect to R.S. Plot No.6803 and 6810 with 7035 over which house was situated in favour of two wives of defendant and defendant was put in possession. The plaintiff also affirmed the said sale deed by executing Ekrarnama on 15.04.1975. Due to rancor and disruption in the family and making claim by one brother or the other over each and every item of the property, the plaintiff in spite of purchase of stamps felt the difficulty to execute the sale deeds. In the mean time,

Rukmina Devi, sister of the plaintiff, filed Partition Suit no.102 of 1975 on 28.07.1975 regarding partition of her share making the party to her brothers, the defendant, his both wives and other purchaser. While the partition suit was decreed in favour of Rukmina Devi but sale deed dated 09.04.1975 executed by Mahasay Prasad was affirmed. Thereafter, negotiation of sale again renewed in between plaintiff and defendant on 22.06.1980. The plaintiff took Rs.5100/- supported by hand note and executed two sale deeds on 29.06.1980 which was scribed by deed writer Diwakar Prasad but both sale deeds could not be presented for registration due to Sunday. The plaintiff handed over both the sale deeds to defendant. While after execution of both sale deeds defendant was put in possession over suit land but the plaintiff conspired to defeat the title and interest over the suit land. On refusal by the Sub Registrar to register the both sale deeds due to non appearance of plaintiff, the defendant filed compulsory Registration Case Nos.6 and 7 of 1981 before the District Sub Registrar, Chapra, which was allowed on hearing the plaintiff on 07.04.1984 for registration of both sale deeds.

13. The defendant, Harihar Prasad (D.W.16) has stated in his evidence that the plaintiff, Prem Chand, talked to him to sale the land of two places. In negotiation, the consideration amount was fixed Rs.18000/- and plaintiff purchased the stamp. Mahasay Prasad, brother of the plaintiff, also talked to sale the land to fulfill his need and he executed



the sale deed in respect to land of two places in respect to plot nos.6803, 6810 and 7035 in favour of his both wives, Sudama Devi and Parvati Devi. The plaintiff also acknowledged the said sale deed by executing the deed. His shop is over plot no.6803. After execution of said sale deed by Mahashay Prasad, Rukmina Devi, sister of the plaintiff, filed the partition suit making both the wives of defendant as party. Both sale deeds executed by Mahasay Prasad, were declared valid in decreeing the partition suit on 25.04.1980. Due to said suit, he did not think proper to pursue the plaintiff to execute the sale deed. After decision of the partition suit plaintiff talked to him to execute the sale deed in respect of part of plot nos.6803, 6810 and 7035 on 22.06.1980 and he took Rs.5100/- by executing the hand note and, accordingly, he executed the two sale deeds on 29.06.1980 which was scribed by deed writer, Diwakar Prasad.

According to the written statement of the defendant and his evidence, plaintiff negotiated with defendant to sale the suit land, i.e., part of plot nos.6803, 6810 and 7035, on consideration of Rs.18000/- and also purchased the stamp to execute the sale deed on 21.02.1975 but due to rancor and disruption in the plaintiff's family it was difficult to enter into transaction with any family members because one member or other was making claim over each and every item of property and Rukmina Devi, sister of the plaintiff, filed the partition suit No.102 of 1975 on 28.07.1975 for partition of her share making also both the wives of the defendant as

party after execution sale deeds dated 09.04.1975 by Mahasay Prasad, brother of the plaintiff, in respect to plot nos.6803, 6810 and 7035 and putting the defendant in possession. There is no logical reason to defer the execution of sale deed by the plaintiff after negotiation to sale the suit land, i.e., part of plot nos.6803, 6810 and 7035, after purchase the stamp by the plaintiff on 21.02.1975 till filing of Partition Suit No.102 of 1975 on 28.07.1975 as the defendant got executed two sale deeds by Mahasay Prasad, brother of the plaintiff, on 21.02.1975 regarding the part of same plots in the period of purchase of stamp by plaintiff on 21.02.1975 and filing of partition suit on 28.07.1975. It is also pertinent to mention here that there is no case of the plaintiff that he had given the earnest money to plaintiff at the time of negotiation to sell the suit property out of consideration amount of Rs.18000/-. In such circumstances, on negotiation of plaintiff with defendant to sale the suit land, the purchase of stamp by the plaintiff on 21.2.1975 from Treasury, Chapra, to execute the sale deed without receiving the earnest money also appears to be not logical. The defendant has stated in his written statement and his evidence that after the decision in Partition Suit No.102 of 1975 on 25.04.1980 filed by Rukmina Devi, the plaintiff again renewed the negotiation on 22.06.1980 to sale the suit land, took the advance Rs.5100/- and executed two sale deeds on 29.06.1980. Ext.K and Ext.L the certified copies of the Judgment dated 24.05.1980 and Preliminary Decree dated 15.07.1980 of

Partition Suit No. 102 of 1975 show that only share of the parties was decided. Therefore, the reason as assigned by the defendant to defer the execution of sale deed of suit land in spite of purchase of stamp by the plaintiff on 21.02.1975 till disposal of Partition Suit No.102 of 1975 with respect to suit land without preparation of final decree and demarcating the land in the share of the plaintiff also does not appear to be reasonable and logical.

14. Exts.1/A and A are the applications filed by the defendant before the District Sub Registrar, Chapra, on which basis Compulsory Registration Case Nos.6 and 7 of 1981 were registered for compulsory registration of two sale deeds dated 29.06.1980 alleged to be executed by the plaintiff in favour of defendant. In paragraph-4 of both applications it is stated by the defendant that after receiving the consideration amount Rs.9000/ for each sale deeds, the plaintiff put his signature on both deeds and handed over the same to defendant, as by that time, the deeds were ready for presentation for registration, the court's time came to an end and deed remained in the custody of the applicant/defendant.

Exts.8 and 8/B are the deposition of defendant Harihar Sah and Diwakar Prasad, scribe of both sale deeds dated 29.06.1980 (Exts.A and A/1) in Compulsory Registration Case Nos.6 and 7 of 1981. The defendant Harihar Prasad has stated in his deposition that both sale deeds

were scribed by Diwakar Prasad deed writer at the instruction of Prem Chand (Plaintiff) and he put his signature and witnesses also made their signatures on the sale deeds but both the sale deeds could not be presented for registration due to delay in preparation of both sale deeds. Diwakar Prasad has also stated in his deposition that stamps can be purchased by any person in the name of any person from Treasury. He has no proof that stamp of sale deed was purchased by Prem Chand (plaintiff). Both sale deeds were scribed at his table in Kutchery. On that date, there was rush and due to delay in preparation of sale deeds and its execution same could not be registered.

Ext.9 is the order dated 07.04.1984 passed in Compulsory Registration Case Nos.6 and 7 of 1981 in which the District Sub Registrar while admitted the objection of the plaintiff that 29.06.1980 was Sunday holiday but treating the same minor contradiction allowed both cases of the defendant for registration of both sale deeds under Section 75 of the Registration Act. The defendant in his written statement has stated about execution of both sale deeds on 29.06.1980 but his case is that due to Sunday on 29.06.1980 both sale deeds could not be presented for registration and the plaintiff handed over the same to him on that date.

As such, I find that story of the execution of two sale deeds (Exts.A and A/1) and cause of non presentation of sale deed for registration as narrated by the plaintiff appears to be false and both sale

deeds alleged to be executed by the plaintiff appears to be obtained by the defendant fraudulently.

15. Section 73 of the Registration Act provides that if the Sub Registrar refuses to register the document on the ground that the person by whom the same purports to have been executed denies its execution then an application may be filed to the Registrar by the person in whose favour document purports to have been executed to establish his right to have the document registered. Under Section 73(2) of the Act, the application is required to be in writing and to be verified in the manner required by law for verification of plaint. On filing the said application, after making inquiry under Section 74 of the Act in the matter if Registrar finds that the document has been executed as alleged in the application he shall order the document to be registered under Section 35 of the Act. If the Registrar refuses to order the document to be registered under Section 76 of the Act then aggrieved party has remedy to file suit in Civil Court under Section 77 of the Act. No doubt, the Registrar before directing the registration of document makes an enquiry but he has no power to enter into the probability and surrounding circumstances. The enquiry before the Registrar is for limited purpose of the registration of the document. The nature of enquiry of Registrar cannot be said to be similar to that of a Court with regard to the genuineness of documents. As such, proceeding of the Registrar cannot be said to be one before the competent court.

Besides Section 31 of the Specific Relief Act provides for suit to be filed by a person against whom a document is void or voidable to adjudge the document void or voidable. As such, I find no substance in the submission of the learned counsel for the defendant-appellant that the order dated 07.04.1989(Ext.9) passed by the District Sub Registrar, Saran, for registering both sale deeds (Exts.A and A/1) finding the genuineness of execution of both sale deeds will operate as *res judicata* in the present suit.

16. On the basis of the facts and circumstances of the case and discussions as made above, I find no infirmity in the impugned Judgment and Decree. Accordingly, this appeal is dismissed but no order as to cost.

(Rajendra Kumar Mishra, J)

P.S./-N.A.F.R.

U			
---	--	--	--