

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1076 of 2013

IN

Civil Writ Jurisdiction Case No. 15743 of 2011

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Dr. Madhu Sinha, Wife of Dr. Girish Kumar Sharan, Resident of D.N. Lane,
Salempur Ahra, P.O. Kadam Kuan, P.S. Gandhi Maidan, District- Patna

.... Petitioner/Appellant

Versus

1. The State of Bihar through Secretary Cum Inspector General, Department of Registration, Bihar Patna
2. The Inspector General, Department of Registration, Bihar Patna
3. The District Registrar, Registration Office, Patna
4. The District Sub-Registrar, Registration Office, Patna
5. The Collector, Patna
6. The Additional Collector, Patna

.... Respondents 1st Party

7. Dr. Sadanand Kumar, Son of Late Rama Kant Mishra, Resident of D-Block, Nala Road, Mohalla- Kadam Kuan, P.O. And P.S. Kadam Kuan, District- Patna
8. Mr. Sachchidanand Mishra, Son of Late Rama Kant Mishra, Resident of D-Block, Nala Road, Mohalla- Kadam Kuan, P.O. And P.S. Kadam Kuan, District- Patna

.... Respondents

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Appearance :

For the Appellant : Mr. Shashi Shekhar Dwivedi, Sr. Adv.
Mr. Sanjeet Kumar, Adv.
Mr. Jitendra Kumar Verma, Adv.
For the Respondents : Mr. Sunil Kumar Mandal, S.C. 24
Mr. Arjun Prasad, A.C. to S.C. 24

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-01-2015

Way back on 23.2.1936, the Collector of Patna executed a sale deed in favour of one Mr. Pandey Bindeshwari Prasad in respect of two Katthas of land in Plot No.21, Circle 13 and Ward 10, Patna. The lease was almost for unlimited period and it was even inheritable. It is



stated that the property covered by the lease deed was sold by the successors of the lessee in the year 1999 through a sale deed dated 26th of February, 1999 in favour of Dr. Sadanand Kumar and Shri Sachchidanand Mishra. The two persons named above have executed a sale deed in favour of the petitioner herein, on 12th December, 2008. The document was presented before the District Sub Registrar, Patna, the 4th respondent herein. He is alleged to have refused to register the document on the ground that the Government continues to be the owner of the land and a lessee has no right to alienate the property.

Feeling aggrieved by the refusal, the petitioner filed C.W.J.C. No.15743/2011. The learned single Judge dismissed the writ petition through order dated 23.7.2013. Hence, this Letters Patent Appeal.

Shri Shashi Shekhar Dwivedi, learned Sr. Advocate for the petitioner, submits that the Sub Registrar has no jurisdiction to address the question of title in respect of a land which is subject matter of a document presented for registration. He submits that the lease granted in the year 1936 conferred right upon the lessees to transfer the land and, obviously for that reason, no objection was raised when a sale deed was executed in

respect of that land in the year 1999. He placed reliance on a judgment rendered by a Division Bench of this Court in Bihar Deed Writers Association and Others vs. State of Bihar and others.¹

Shri Sunil Kumar Mandal, learned standing counsel appearing for the Government, on the other hand, submits that a lessee under a lease deed does not acquire a right to alienate the property and that the Sub Registrar has taken the correct view of the matter. He contends that the facility of 'transfer' mentioned in the document is in relation to transfer of lease, but not transfer of absolute title in the property. He has placed certain clauses of the lease deed.

The question is as to whether the 4th respondent was under obligation to register the document. The Registration Act and the Rules made thereunder stipulate the conditions, that are required to be complied with, for presentation of a document by the parties, and the steps that are required to be taken by the registering authority, for registration thereof, or for that matter, the refusal. The Act also provides for an Appeal and further remedies in this behalf.

1. AIR 1989 Patna 145.



It is fairly well settled that the concept of registration is more in the form of providing an unimpeachable evidence of execution of the document. The process of registration does not involve the adjudication of any question of title. It is equally well settled that the transaction of transfer does not bind the persons who are not parties to it.

In the instant case, it is, no doubt, true that the Government leased its property in the year 1936. However, in the year 1999, the legal representatives of the original lessee effected sale of the property and the sale deed was also admitted for registration. The question as to whether a transferee under the document derives any title, can be decided if only the Government asserts its rights in the capacity of a lessor. That eventuality has not taken place. When there was no objection for registration of a document in the year 1999, there could not have been any plausible objection for a subsequent transaction of a similar nature. In a way, the subsequent transaction stands on a higher footing. The reason is that the first transaction was the one between lessee through legal representatives, and a transferee, whereas the second transaction is between a vendor, who is a non-lessee, and another person.



More than all, a Sub Registrar can refuse registration only on the grounds that are mentioned under the Act and the Rules, for such refusal. He must refer to the relevant provisions so that the concerned party can take steps to ensure compliance. He cannot just sit over the matter or orally state that he does not want to accept the document. In a way, such a step amounts to abdication of powers conferred upon him.

In certain States, the relevant provisions of the Registration Act or made Rules are amended, to prohibit the registration of the documents in relation to the properties that are owned by the Central Government or the State Governments. On our putting queries as to whether there exist such provisions in the State of Bihar, the answer is in the negative. Therefore, the Sub Registrar was not at all justified in refusing registration, on the ground that the vender in the document does not have title.

In Bihar Deed Writer's Association (1 supra), this Court held that a Sub Registrar does not have the power to verify and examine the adequacy or otherwise of the title of the vendor, in a transaction which is subject matter of a document presented before him, for registration. Viewed from any angle, we do not find any basis for refusal on the

part of the 4th respondent, to register the document.

We, therefore, allow the writ appeal and set aside the order passed by the learned single Judge in the writ petition. Consequently, the writ petition is allowed and the 4th respondent is directed to take appropriate steps for registration of the document, on being satisfied about the compliance of other requirements under the law. To be specific, we direct that he shall not be entitled to refuse registration, on the ground of absence of title. It is also made clear that the sale deed, if registered, would bind, only the parties to it and not those who were not parties to it.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

K.C.jha/-
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