

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.545 of 1994

Smt.Kamala Devi, wife of Lalan Singh, resident of Paraiyan Khurd, P.O. & P.S.- Paraiya, District- Gaya.

.... Petitioner/s

Versus

1. State of Bihar.
2. Collector, Gaya at Gaya.
3. Sub Registrar, Registration Office, Gaya at Gaya.
4. Smt. Lalmuni Devi, wife of Mani Singh, resident of Baraiya Khurd, P.O. & P.S.- Paraiya, District- Gaya.
5. (i) Pradeep Singh.
(ii) Mahendra Singh,
Both sons of Late Pandit Singh, village- Paraiya Khurd, P.O & P.S.- Paraiya, District- Gaya.

.... Respondent/s

with

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5. (i) Pradeep Singh.
(ii) Mahendra Singh,
Both sons of Late Pandit Singh, village- Paraiya Khurd, P.O & P.S.- Paraiya, District- Gaya.
(iii) Reeta, Daughter of Late Pandit Singh and wife of Awadhesh Singh, resident of Village- Alampur, P.S.-Shakaura Bad, District- Jehanabad.

.... Respondent/s

Appearance :

(In both the writ petition)

For the Petitioner/s : Mr. Dhrub Narayan, Sr. Advocate.
Mr. Rajnikant Singh, Advocate.

For the Resp. No. 4 : Mr. S.S.Dwivedi, Sr. Advocate.
Mr. Rakesh Chandra, Advocate.
Mr. R.K.Dubey, Advocate.
Mrs. Sangeeta Sharma, Advocate.

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

10 29-01-2015

Heard learned counsel for the parties.

2. The prayers of the petitioner in both the writ applications bereft of all the niceties reads as follows:

C.W.J.C. No. 545 of 1994:

"1. That this writ application is directed against the judgment and order dated 16-12-1993 passed by the learned Collector of Gaya in Misc. case no. 1 of 1990 reversing the order of the Registration Officer dated 20-12-1989 who had rejected the prayer for registration of a sale deed alleged to have been executed by the respondent no. 5, Pandit Singh in favour of Lalmuni Devi, respondent no. 4 dated 31-07-1989 in respect of 50½ decimals of land situated in village Paraiya Khurd, P.O. & P.S.- Paraiya, District- Gaya bearing Thana No. 122, Tauzi No. 1599, Sadar Registration office Collectorate Gaya for a consideration of Rs. 10,900/-."

C.W.J.C. No. 544 of 1994:

"1. That this writ application is directed against the judgment and order dated 16-12-1993 passed by the learned Collector of Gaya in Misc. case no. 2 of 1990 reversing the order of the Registration Officer dated 20-12-1989 who had rejected the prayer for registration of a sale deed alleged to have been executed by the respondent no. 5, Pandit Singh in favour of Lalmuni Devi, respondent no. 4 dated 2-08-1989 in respect of 50½ decimals of land situated in village Paraiya Khurd, P.O. & P.S.- Paraiya, District- Gaya bearing Thana No. 122, Tauzi No. 1599, Sadar Registration office Collectorate Gaya for a consideration of Rs. 10,900/-."

3. Before learned counsel for the petitioner could begin his submission, Mr. Shashi Shekhar Dwivedi, learned senior counsel appearing on behalf of the respondent no. 4, has raised a preliminary objection with regard to maintainability of the writ applications at the instance of the writ petitioner. In this regard, he submits that the petitioner is neither the vendee nor the vendor of the document sought to be registered in question and, therefore, any order passed by the Registrar in exercise of power under



Section 75 of the Registration Act, 1908 (hereinafter referred to as 'the Act') cannot be assailed by him. He would further explain that as a matter of fact, it was the respondent no. 5, who had sought to convey a piece of land to respondent no. 4 and the registration of such document was refused by Sub-Registrar, whereafter the respondent no. 4 had carried away an appeal in terms of Section 73 of the Act and that appeal has been allowed by the Registrar. According to him, the matter, therefore, remained exclusively in between the respondent nos. 4 and 5 and no third person, therefore had a right to assail the order of the Registrar.

4. Mr. Dhruv Narayan, learned senior counsel appearing on behalf of the petitioner, while seeking answer to the aforementioned preliminary objection, has sought to explain that the petitioner is the first purchaser of the land in question from the respondent no. 5 and, therefore, as he was affected by the impugned order of the Registrar, there would be some sort of dispute prejudicing his right, title and possession, and therefore had to assail the order of Registrar so that the respondent no. 4 is not able to get a second registered sale deed.

5. In the considered opinion of this Court, such plea of learned counsel for the petitioner is not in keeping with the purpose and scope of Sections 73, 74 and 75 of the Act. As would

be evident from the Act, the document initially has to be produced before the Sub-Registrar for its registration. In the event, the Sub-Registrar would refuse its registration, he has to record reasons, as would be found from the reading of Section 71 of the Act, which reads as follows:

71. Reason for refusal to register to be recorded.- (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered."

6. From such order of Sub-Registrar refusing to register a document, there is a provision of law under Section 72 of the Act and the wordings of Section 72 of the Act also makes it clear that only the person, in whose favour the registration of the document is refused, can carry the appeal. Section 72 in this regard reads 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 an order of 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) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and there-

upon shall, so far as may be practicable, follow the procedure prescribed in Secs. 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration."

7. Then Section 73, which is a special provision with regard to exercise of power by the Registrar, in the event of such refusal of registration of document, is on the ground of denial of execution. In such event, the Registrar has been ordained by law to first hold enquiry and thereafter pass an order under Section 75 of the Act. Sections 73, 74 & 75 in this regard, read as follows:

73. Application of Registrar where Sub-Registrar refused 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 executive, 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 Sec. 71 and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints."

74. Procedure of Registrar on such application.- *In such case, and also where such denial as aforesaid is made before Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire-*

(a) whether the document has been executed;
(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. Order by Registrar to register and procedure thereon.-
(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in Secs. 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under Section 74, summon and enforce the attendance of witnesses and compel them to give evidence, as if he were a civil court, and he may also direct by whom the sole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908 (5 of 1908)."

8. Having regard to the aforementioned provisions of the Act, this Court would find difficult to accept the submission of Mr. Dhruv Narayan learned Senior Counsel that any objector including a person, having right, title and interest in the land in question, would come into picture for the purposes of assailing the order of Registrar. If respondent no. 5 was aggrieved by the order directing for compulsory registration, he could definitely maintain this writ application. The petitioner, being a busy body, so far it relates to the scope of Sections 73 and 75 of the Act, cannot maintain this writ application.

9. Before parting with, this Court, however, must make it clear that even if the petitioner has been held to have no *locus standi* to challenge the order of the Registrar, nothing will come in the way of the petitioner either bringing the matter before the competent Civil Court or taking a defence in the Civil Court that the execution of the documents itself was denied by the respondent no. 5 and apart from the fact that the petitioner was, having the first registered sale deed of the same plot, the very

genuineness of the sale deed could be called in question.

10. Subject to the aforementioned observation, this writ application fails and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

Sujit/-

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