

CWP No.16452 of 2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.16452 of 2015
Date of decision: 19.08.2015

Hira Lal

....Petitioner

Versus

Registrar, Panipat and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ? **Yes**
- 2) To be referred to the Reporters or not ? **Yes**
- 3) Whether the judgment should be reported in the Digest ? **Yes**

Present: - Mr. Anurag Jain, Advocate, for the petitioner.

PARAMJEET SINGH, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of *certiorari* for quashing the order dated 01.02.2012 (Annexure P-6) passed by respondent No.2 – Sub Registrar, Panipat, whereby registration of sale deed No.8369 dated 01.02.2012 has been refused and order dated 27.08.2014 (Annexure P-7) passed by respondent No.1 – Registrar, Panipat, whereby appeal filed by petitioner and respondent No.7 against the order of the Sub Registrar, Panipat, has been dismissed.

Brief facts of the case are that one Ganesh Dass was allotted house No.429-L, Model Town, Panipat by the Rehabilitation Department by virtue of conveyance deed dated 23.04.1958. Ganesh Dass died on

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17.06.1969 and the property devolved upon his three sons, namely, Ram Parkash, Ram Dayal and Nand Lal. On 09.09.1986, Nand Lal also expired. It is averred in the petition that on 19.01.1990 private partition took place amongst the LRs of Ganesh Dass and Nand Lal, as a result of which respondents No.3 to 6 got part of house No.429-L (Part), Model Town, Panipat, measuring 179 square yards as owners in possession of the same. Vide Annexure P-1 record of the Municipal Council, Panipat, was updated whereby some tax was paid by respondents No.3 to 6. It is the case of the petitioner that respondents No.3 to 6 entered into an oral agreement to sell their house No.429-L (Part), Model Town, Panipat, with petitioner and respondent No.7 for a total sale consideration of ₹ 22,50,000/-. After verification from the municipal authorities, property was sold in favour of petitioner and respondent No.7 and as per oral agreement entire sale consideration was paid. Even Patwari affirmed those facts. In pursuance of oral agreement, sale deed was executed and presented before respondent No.2 – Sub Registrar, Panipat, for registration. Sub Registrar accepted the aforesaid sale deed for registration. Vendors and vendees had affixed their thumb impressions on the sale deed at the time of execution and appeared before the Sub Registrar and their photographs were also taken in view of Section 32-A of the Registration Act. All the documentation was completed in the presence of Sub Registrar. However, under Section 71(1) of the Registration Act, Sub Registrar refused to register the sale deed, recorded reasons in his Book No.2 and endorsed the words “registration

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refused” on the sale deed vide order dated 01.02.2012 (Annexure P-6). Against the order of Sub Registrar, petitioner and respondent No.7 preferred an appeal before the Registrar, Panipat, under Section 72 of the Registration Act, which has been dismissed vide order dated 27.08.2014 (Annexure P-7). Hence, this writ petition.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner vehemently contended that writ petition is maintainable against the impugned order dated 27.08.2014 (Annexure P-7). It is not necessary for the petitioner to file a civil suit as required under Section 77 of the Registration Act. In support of his contention learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in ***Union of India and others v. Tania Construction Pvt. Ltd., 2011(3) RCR(Civil) 821*** and ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, 1999(1) RCR(Civil) 220*** and contended that even if alternative remedy is available, writ under Article 226 read with Article 227 of the Constitution of India is maintainable. Alternative remedy does not bar the writ jurisdiction. Learned counsel for the petitioner further argued that it is not within the power of the Sub Registrar to enquire into the matter whether the title vests in the vendors or not, once the document is presented, same is required to be registered. Learned counsel relied upon the judgment of this Court in ***Smt. Sham Bai widow of Damodar Lal Dahiya son of Mani Devi and others v. Registrar, Rohtak, and others, 2012(2) RCR***

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(Civil) 106, judgment of Bombay High Court in ***Chairman/Secretary, Deep Apartment CHS Ltd. v. State of Maharashtra and others***, 2013(1) Civil Court Cases 11 and the judgment of Andhra Pradesh High Court in ***Pasupuleti Bala Gangadhar v. State of A.P., repled., by its Principal Secretary, Revenue (Stamps and Registration) Department, Hyderabad and two others***, 2013(3) ALT 610 : 2013(4) Andh LD 426.

I have considered the contentions raised by learned counsel for the petitioner.

Before I proceed to deal with the contentions raised by learned counsel for the petitioner, it would be appropriate to reproduce the relevant provisions, which read as under: -

“17. Documents of which registration is compulsory.-(I) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,-

(a) Instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

I-A The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said section 53-A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to---

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except

insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document other than the documents specified in sub-section (I-A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists' Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890, vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the

payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

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PART VI **OF PRESENTING DOCUMENTS FOR REGISTRATION**

32. Persons to present documents for registration.-Except in the cases mentioned in sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign duly authorized 'by power-of-attorney executed and authenticated in manner hereinafter mentioned.

32-A. Compulsory affixing of photograph, etc.-Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and finger-prints to the document: Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and the finger-prints each buyer and seller of such property mentioned in the document shall also be affixed to the document.

33. Power-of-attorney recognizable for purposes of section 32.-(1) For purposes of section 32, the following powers-of-attorney shall alone recognized, namely,-

(a) if the principal at the time of executing the power-of-attorney resides in any part of India in which this Act is for the time being in force, power-of-attorney executed before and authenticated by the Registrar or Sub Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power-of-attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government:

Provided that the following persons shall not be required to attend at any registration office or Court for the purpose of executing any such power-of attorney as is mentioned in clauses (a) and (b) of this section, namely,-

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in Court.

Explanation.-In this sub-section "India" means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897.

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court herein before mentioned in that behalf.

34. Enquiry before registration by registering officer.-(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 authorized 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 Sub-Registrar, 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.

35. Procedure on admission and denial of execution respectively.-

(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine anyone present in his office.

(3)(a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

Provided further that the State Government may, by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.

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48. Registered documents relating to property when to take effect against oral agreements.-All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force: *Provided that a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.*

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PART XII
OF REFUSAL TO REGISTER

71. Reasons 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.

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 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) 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 thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 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.

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 plaints.

74. Procedure of Registrar on such application.-*In such case, and also where such denial as aforesaid is made before a 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 sections 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 whole 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.

76. Order of refusal by Registrar.-(1) *Every Registrar refusing-*

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No.2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. Suit in case of order of refusal by Registrar.-(1) *Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the*

passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.”

Although, relevant provisions have been reproduced, however, it would be appropriate to give gist of various provisions of the Registration Act.

The Registration Act, 1908 came into existence to consolidate the enactments relating to the registration of documents. It has come into force w.e.f. 01.01.1909. Originally, its name was Indian Registration Act, 1908, however, the word “Indian” was omitted w.e.f. 26.12.1969. The Registration Act is divided into 15 parts. Part I contains “definition clauses”, Part II deals with the “registration establishment”, Part II deals with the “registrable documents”, Part IV deals with the “time of presentation”, Part V deals with the “place of registration”, Part VI deals with the “presentation of documents for registration”, Part VII deals with the “enforcement of appearance of executants and witnesses”, Part VIII deals with “presentation of Wills and authorities to adopt”, Part IX deals with “deposit of Wills”, Part X deals with the “effects of registration and non-registration”, Part XI deals with the “duties and powers of registering officers”, Part XII deals with “refusal to register”, Part XIII deals with the “fees for registration, searches and copies”, Part XIV deals with “penalties” and Part XV deals

with “miscellaneous functions”.

After going through the entire statute of registration, the following aspects of the provisions may come up for consideration:

“(1) The Registering Authority may refuse to register a document if the language of the document is not understood by the authority. (Section 19).

(2) A document containing interlineations, blanks, erasures or alterations which are not signed or initialed may be refused to be registered by the authority (section 20).

(3) A document relating to the transfer of immovable property not containing description of the property so as to identify it sufficiently may be refused to be registered {Section 21(1)}.

(4) If the numbering of the houses in a town in the document to be registered is not shown, it may be refused registration (Section 21(2)).

(5) The description of houses and land by their territorial division, roads, occupancies etc. if not made in the document by reference of a map or survey it may also be refused registration {Section 21(3)}.

(6) Though houses in town would be required to be described by way of maps or survey numbers it could yet not be refused if the property is otherwise so described as to sufficiently identify it {Section 22(2)}.

(7) A document presented four months after the date of its execution shall not be accepted for registration except for specified documents (Section 23).

(8) If the document is executed by several persons at different times it is required to be registered again within the time specified for each execution (Section 24).

(9) A document presented outside the time limit for the reason of urgent necessity or unavoidable accident may be accepted

upon payment of fine if the delay does not exceed four months (Section 25).

(10) The executants, their representatives or agents authorized under the power-of-attorney would require to attend before the Registrar (Section 32).

(11) The photographing and finger printing of the executant is compulsory (Section 32A).

(12) A person may be represented by an authorised constituted attorney under a power-of-attorney (Section 33).

(13) The executant may appear simultaneously or at different times {Section 34(2)}.

(14) The Registering Authority would be entitled to inquire as to who executed the document and satisfy itself about the identity of the executant or his agent {Section 34(3)}.

(15) The persons attending or their agents would be required to admit execution {Section 35(1) & (2)}.

(16) Only if the person attending denies execution, seems to be a minor, idiot or a lunatic or is dead and the representative denies its execution, the Registering Authority is empowered to refuse registration of the document of the persons so denying, appearing or dead. {Section 35(3)}.”

The Sub Registrar refused to register the document on the ground that house in question was allotted to Ganesh Dass and after his death property had gone to various LRs. Vendors/respondents No.3 to 6 have not been able to show that they have absolute right to sell the house in question. The stamp certificate affixed on the sale deed had been issued by State Bank of India, which appears to be tampered with at three places, which creates suspicion that the papers used were meant for some other deal.

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Contention of the learned counsel for the petitioner is that under Section 34 of the Registration Act, Registrar has no power to go into the title of the parties and reliance has been placed on the judgment of this Court in ***Smt. Sham Bai*** (supra) and ***Chairman/Secretary, Deep Apartment CHS Ltd.*** (supra).

Under Section 20 of the Registration Act, registration of documents containing interlineations, blanks, erasures or alterations, which are not signed or without initials, can be refused by the registering authorities. The house in question is in town and covered under Section 21(2) of the Registration Act. The order of the Sub Registrar refusing to register the sale deed is basically based on two grounds i.e. erases, alterations in the stamp papers and share of the vendors in the property. Admittedly, the order of the Sub Registrar passed under Section 71 of the Registration Act is appealable before the Registrar under Section 72 of the Registration Act. Petitioner has availed the remedy of appeal. Section 76(2) of the Registration Act provides that if the order of refusal is passed by the Registrar under Section 72 or 76 of the Registration Act then no appeal lies against the order of Registrar. In the present case, the order of refusal was passed by the Sub Registrar under Section 71 of the Registration Act and thereafter petitioner preferred an appeal under Section 72 of the Registration Act before the Registrar. Under Section 73 of the Registration Act, if Sub Registrar refuses to register a document on the ground of denial of execution, application can be made to the Registrar for the registration of the document. Under Section 74 of the

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Registration Act, after verification with respect to the execution of the document, Registrar can order registration of the document. Under Section 76 of the Registration Act, Registrar can refuse to register the document. If the order of refusal is passed by Registrar, no appeal lies against that order. Under Section 77 of the Registration Act, where the order of refusal is passed by the Registrar in appeal then suit is maintainable. Since in this case appeal has been dismissed by the Registrar thereby refusing to register the document, efficacious remedy was available to the petitioner. He should have approached the civil Court within the local limits of whose jurisdiction document was sought to be registered and a decree directing the document to be registered in such office can be passed. There is limitation provided for filing the suit.

So far as judgments referred by learned counsel for the petitioner are concerned, there is no dispute regarding the proposition of law that alternative remedy is not an absolute bar to invocation of the writ jurisdiction of the High Court and without exhausting such alternative remedy writ would be maintainable. Alternative remedy would not be a bar in the contingencies, where the writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. So has been laid down by the Hon'ble Supreme Court in ***Whirlpool Corporation v. Registrar of Trade Marks, (1998)8 SCC 1.***

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As such this Court is not inclined to exercise the writ jurisdiction specifically when the appeal was decided by the Registrar under Section 72 of the Registration Act and suit should have been filed under Section 77 of the Registration Act within 30 days after passing of the order of refusal. By way of present writ petition, petitioner has sought direction for registration of the document and no other relief has been sought. As such only remedy available to the petitioner was under Section 77 of the Registration Act. It appears that the petitioner with a purpose to avoid the limitation, stipulated under Section 77 of the Registration Act, has approached this Court. The order in appeal was passed on 27.08.2014 by the Registrar and this writ petition has been filed on 06.08.2015 i.e. about one year of passing of the order even in appeal. It appears to be a clever device to get the relief under writ jurisdiction. Since remedy under Section 77 of the Registration Act was available to the petitioner, which he has not availed, no direction can be given to the registering authorities to register the document in respect of the land in question. Thus, judgments referred to by the learned counsel for the petitioner are of no help to the petitioner. Specifically judgment in the case of **Smt. Sham Bai** (supra) is not applicable to the facts of the present case as in the said judgment implication of Section 77 of the Registration has not been discussed.

It needs to be emphasised that many a times unscrupulous elements taking advantage of loopholes in the Registration Act try to cheat the innocent persons by selling the land more than their shares.

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Registration of the document is a public notice and purpose is to prevent fraud. Under Section 48 of the Registration Act all non-testamentary documents duly registered under the Registration Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force. Section 49 refers to the effect of non-registration of documents required to be registered under Section 17 of the Registration Act or under the provisions of the Transfer of Property Act; meaning thereby the entire scheme of the Registration Act is intended to create legal rights and obligations which are of legal importance in future and to prevent fraud and forgery. Once the parties get the documents registered under the Registration Act by paying registration fee and stamp duty, they feel assured that they have acquired title to the property purchased by them and nobody can interfere in their possession and enjoyment.

Recently, it has come to the notice of this Court that multiple registrations of the same properties are executed by impersonation. Once the document is registered in common parlance it creates title and no one can interfere in the possession and enjoyment by way of registered document. Registered document creates legal rights and obligations in favour of the party. Any unregistered document, of which registration is compulsory, cannot be read in evidence. If a person

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having only 1/4th share in the property but sells entire property beyond his share and thereafter the party whose share has been sold, although not party to the transaction, will have to approach the Court of law leading to unnecessary multiplicity of litigation. There is no mechanism provided under the Registration Act for curbing the multiple registration of the same property by same person or registration of document by way of impersonation or fraud. Even there is no provision for cancellation of such sale deeds in the Registration Act except to get it set aside through competent Court of law. Loopholes and salient provisions of law result in fraudulent transactions which are otherwise not permissible under the law. State Governments collect registration and stamp duty as it is the boundened duty of the Government to ensure that interests of the owners and purchasers are protected equally. Object of Sections 32, 33, 34 and 35 is to make it difficult for persons to commit frauds by means of registration under the Registration Act. It is the duty of the Courts not to allow the imperative provisions of the Registration Act to be defeated.

Hon'ble Supreme Court in ***Kalavakurti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy***, (1999) 7 Supreme Court Cases 114 has held as under: -

“9. We may advert to [Section 77](#) of the Act. Several steps have to be taken before a suit under [Section 77](#) of the Act could be filed and they are :

- a) document has to be presented for registration within the time prescribed by [Sections 23-26](#) of the Act;*
- b) document has to be presented by a person authorised to do*

so under [Section 32](#) of the Act;

c) the Sub-Registrar has refused to register the document presented to him for registration;

d) appeal or application against such refusal has been made under [Sections 72](#) or [73](#) of the Act within 30 days of the order of the Sub-Registrar;

e) the Sub-Registrar has refused to register under [Section 76](#) of the Act; and

f) suit is filed within 30 days of the order of the Sub-Registrar.

10. The difference of opinion amongst the various High Courts on this aspect of the matter is that [Section 77](#) of the Act is a complete code in itself providing for the enforcement of a right to get a document registered by filing a civil suit which but for the special provision of that Section could not be maintained. Several difficulties have been considered in these decisions, such as, when the time has expired since the date of the execution of the document whether there could be a decree to direct the Sub-Registrar to register the document. On the other hand, it has also been noticed that an agreement for transfer of property implies a contract not only to execute the deed of transfer but also to appear before the registering officer and to admit execution thereby facilitating the registration of the document wherever it is compulsory. The provisions of the [Specific Relief Act](#) and the [Registration Act](#) may to a certain extent cover the same field but so that one will not supersede the other. Where the stage indicated in [Section 77](#) of the Act has reached and no other relief except a direction for registration of the document is really asked for, [Section 77](#) of the Act may be an exclusive remedy. However, in other cases it has no application, inasmuch as a suit for

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specific performance is of wider amplitude and is primarily one for enforcement of a contract and other consequential or further relief. If a party is seeking not merely the registration of a sale deed, but also recovery of possession and mesne profits or damages, a suit under [Section 77](#) of the Act is not adequate remedy.”

In the present case, petitioner is only seeking registration of sale deed. No other relief is sought, so suit under Section 77 of the Registration Act was the remedy available to him.

In view of above, present writ petition is dismissed.

No order as to costs.

August 19, 2015
R.S.

(Paramjeet Singh)
Judge