

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14800 of 2013

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Birendra Singh, aged about 52 years, S/o Late Jaggi Singh R/o Village Bari Eghu,
P.S- Mufasil, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector- cum- District Registrar, Begusarai.
2. The Collector- cum- District Registrar, Begusarai.
3. The Sub- Registrar, Registration Office, Begusarai.
4. Assistant Registrar, Registration Office, Begusarai.
5. Smt. Mira Devi W/o Sri Ram Lagan Singh R/o Village Bari Eghu, P.S- Mufasil,
District- Begusarai.
6. Inspector General of Registration, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Sinha, Mr. Arvind Kumar Sharma, Mr. Chetan Kumar and Mr. Sanjeev Kumar, Advocates
For the State	:	G.P. 6
For the Respondent No. 5:	:	Mr. Jitendra Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 12-09-2017

Heard learned counsel for the petitioner, State and the
respondent no. 5.

2. The petitioner has moved the Court for the following
reliefs:

*“That this writ application is being filed for
issuance of appropriate writ or writs, in the nature
of the writ of (i) Certiorari quashing the order
dated 06.07.2013 passed by the Collector-cum-
District Registrar, Begusarai, Respondent No. 2,
on Miscellaneous Case No. 42/1987, whereby and
whereunder the learned Registrar while setting
aside the order dated 03.08.1987, passed by the
Assistant Registrar, Begusarai, respondent no. 4,*



directed the Respondent No. 3 to the Register Sale deed dated 02.04.1987, infavour of Smt. Mira Devi, Respondent No. 5 (ii) Mandamus forbearing/ restraining the respondents from making registration of the deed dated 02.04.1987 (Annexure-1) infavour of Respondent No. 5 with respect to the lands situated in Mauza Mohan Eghu appertaining to Tauzi No. 755, Thana No. 503, Khata No. 353 & 367, Khesra No. 319 & 318 area 15 decimal and restraining the respondents from dispossessing the petitioner from the said land and stay of the operation of the order contained in Annexure-5 passed by the respondent no. 2 pending disposal of the writ application.”

3. The short controversy involved is as to whether, when the petitioner, who is admittedly the executant of a deed of sale, neither presented the same before the District Sub Registrar, Begusarai for registration of the document nor appeared before the authority to admit such execution within four months and thereafter the Collector in a motion moved by respondent no. 5 has directed for such registration of the document.

4. The admitted factual position is that a deed of absolute sale was prepared and executed on 02.04.1987 by the petitioner being the vendor and the respondent no. 5 being the vendee. The said deed was presented before the respondent no. 3 on 02.04.1987 by the respondent no. 5 before the respondent no. 3. However, as the documents could not be executed for four months, in terms of Rule 21 of the Bihar Registration Rules, 2008 (hereinafter referred to as



the 'Rules') upon expiry of the said period, the respondent no. 3 passed an order refusing such registration on 03.08.1987. Such refusal was assailed before the respondent no. 2 by the respondent no. 5 under Section 73 of the Registration Act, 1908 (hereinafter referred to as the 'Act'). The same has been disposed off in favour of the respondent no. 5, by a direction to register the document, by the order impugned dated 06.07.2013, which is the subject matter of the present writ application.

5. Learned counsel for the petitioner submitted that the executant i.e., the petitioner not having appeared before the Registering Authority, rightly the order was passed on 03.08.1987 i.e., after four months, refusing such registration. It was further submitted that the respondent no. 2 has wrongly directed for registration as no reason was mentioned in the order of refusal and thus, it was obvious that it was on the basis of expiry of time limit for the executant to present himself before the Registering Authority for getting registration of the document done. It was submitted that the respondent no. 2 has acted like a Civil Court by taking evidence and going into the issue as to whether the petitioner being the vendor had been paid the entire consideration money. It was submitted that the power to go into such issue is available only to the Civil Court of competent jurisdiction and moreover, the petitioner, even though



after executing the deed of sale, as he had not received the entire consideration money, the respondent no. 5 had fraudulently and without the consent of the petitioner presented the document for registration. Learned counsel further took a legal objection by submitting that the refusal by the Registrar to register the document not being on account of denial of execution, the respondent no. 5 was required to move the respondent no. 2 under Section 72 of the Act. Thus, it was contended that the invocation of Section 73 of the Act by the respondent no. 5 for moving before the respondent no. 2, was misconceived and erroneous, as the respondent no. 2 did not have jurisdiction in the matter under Section 73 of the Act which deals only with a condition where the Sub-Registrar refuses to register a document on the ground of denial of execution.

6. Learned counsel for the respondent no. 5 submitted that the petitioner, due to *mala fide* intention, had refused to appear before the Registering Authority and only upon refusal to register, he had to move before the respondent no. 2, who is the appellate authority against such rejection. It was submitted that though technically, the respondent no. 2 should have been moved under Section 72, but moving under Section 73 was only a technical error, and that too, due to the counsel for the respondent no. 5, and would not be fatal to the proceeding. Learned counsel submitted that the



provisions of Section 35 clearly stipulate the ground on which the registration can be refused in which the ground of non payment of consideration money is not provided. He further submitted that the respondent no. 2 has power under Section 75 of the Act to hold an enquiry and also summon and enforce the attendance of witnesses and compel them to give evidence, as if he were a civil Court. He submitted that for the same relief, the petitioner has also filed Title Suit before the Munsif, Begusarai.

7. Learned counsel for the State, supported the impugned order.

8. Having considered the matter, the Court finds that the issue has been unnecessarily made intricate and complex despite the matter being simple. Section 34 of the Act, which is the beginning point, contemplates that all the persons executing any document, or their representatives, assigns or agents authorized have to appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26 of the Act.

9. In the present case, the petitioner, who was the vendor and may have executed the document, having not presented himself, the document could not have been registered under the Act. The same was also subject to the provisions of Section 36 of the Act where the registering authority can call for the appearance of either



executant or witnesses. However, such requires a motion by the person aggrieved before the registering authority who can then call upon the person so required to appear. In the present case, admittedly, no such application was filed by the respondent no. 5, as required under Section 36 and thus, she also did not take any steps within the required four months time leading to the registering authority i.e., respondent no. 3 passing an order refusing to register the document. Such refusal, in law, cannot be faulted. Further, when the refusal was not on the ground of the petitioner having denied execution, an appeal was required to be preferred by the respondent no. 5 under Section 72 of the Act. This fact has been admitted by learned counsel appearing for the respondent no. 5, but the explanation that it was due to the fault of the counsel and not respondent no. 5, even if the Court, in principle, agrees that the application filed by the respondent no. 5 should be treated as an appeal under Section 72, it was required of the respondent no. 5 to again present the document for registration within 30 days of the order passed by the appellate authority i.e., respondent no. 2. It is again an admitted position that the same has not been done. Thus, on this ground also, the order impugned has become infructuous and cannot be enforced. Learned counsel for the respondent no. 5 is correct in his contention that refusal to register a document can be on



a ground specified under Section 35(3) of the Act but he has lost sight of the very opening provision of Section 35 i.e., 35(1) which pre-supposes that all the persons executing the document have personally appeared before the registering authority and in that context, sub section 3 of Section 35 enumerates the ground on which refusal to register the document can be made. In the considered opinion of the Court, the provisions of Section 35 are inapplicable in the facts and circumstances of the present case, since, as required under Section 35(1) all the persons executing the document have to appear before the registering authority and does not contemplate a situation where any of the executants do not appear. This is further clear from the title of Section 35 which reads as:-“Procedure on admission and denial of execution respectively.” This clearly indicates that the procedure is only of admission and denial of execution. Once the admission is not there, there cannot be any denial and thus, Section 35 would not be a relevant provision for the case at hand.

10. Having considered the matter in its entirety, though the Court would not comment on the exercise undertaken by the respondent no. 2 by holding an enquiry and taking evidence, however, the direction to register the document cannot be held to be proper as the refusal was not because of the petitioner denying the



execution, and even otherwise, the respondent no. 2 could have remanded the matter back to the respondent no. 3 for reconsideration and condoning the delay. It does not require to be overemphasized that the requirement of law that the executant has either to be present before the registering authority or a Commission can be sent for recording his statement, but for compelling his appearance, no such power exists to the authority under the Act, where under Section 36 of the Act, it is an officer or Court as the State Government directs in this behalf. Further, such is the domain of the Civil Court of competent jurisdiction.

11. In the present case, there was a mode available to the respondent no. 5, i.e., of filing an application before the registering authority under Section 36 of the Act, but that admittedly has not been done. Thus, the remedy available to the respondent no. 5 was to move before the Civil Court of competent jurisdiction for specific performance and direction to the petitioner to appear before the registering authority for getting the document registered. In any view of the matter, the Court finds that the order impugned cannot be sustained.

12. Accordingly, in view of the discussions made hereinabove, the order impugned dated 06.07.2013 passed by the respondent no. 2 is set aside. The parties are at liberty to take



recourse to the forum available to them under law for the redressal of their grievance.

13. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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