

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11513 of 2013

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1. Smt. Vijaylaxmi W/O Shashi Bhushan Prasad Sinha Resident of Village & P.O. Nayagaon, P.S. Parbatta, District - Khagaria At Present M.P. Sinha Road, H/O J.K. Sinha, P.O. & P.S. Kadamkua, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through Secretary Department of Revenue Govt. of Bihar, Patna
2. Collector - Cum - District Registrar, Patna Collectorate, Patna
3. Sub - Registrar, Sadar, Patna Collectorate, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyendra Narayan Singh, Adv.

For the Respondent/s : Mr. Prakritita Sharma, A.C. to S.C.25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-01-2017

The petitioner is aggrieved by the order dated 29.08.2012 passed by the Collector-cum-District Magistrate, Patna whereby the appeal preferred by the petitioner bearing Registration Appeal No. 11 of 1989-90, has been dismissed and the order of Refusal bearing No. 13 of 1989 passed by the Sub Registrar, Patna Sadar on 19.10.1989, has been confirmed.

With the consent of the parties, the writ petition has been heard with a view to final disposal at the stage of admission itself.

The matter relates to registration of a gift deed dated 22.2.1989 claimed by the petitioner to have been executed in her favour by her father late Deonandan Mauar and is in respect of 580 sq.ft. equivalent



to 8 dhooors of land situated in Mohalla Kadam Kuan, Park Road, P.S. Kadam Kuan, District- Patna, the details of which is mentioned in the deed itself, a copy of which is present at Annexure-1. The registration of the gift deed was refused by the District Sub Registrar vide order passed on 9.10.1989 on the failure of the donor to respond to the summons and which was treated as a denial of execution. A copy of the order of refusal is impugned at Annexure-2. The petitioner filed a statutory appeal before the District Registrar giving rise to Appeal No. 11 of 1989 and which has been dismissed by the Collector-cum-District Registrar, Patna vide order dated 29.8.2012 impugned at Annexure-6. Feeling aggrieved the petitioner is before this Court.

Mr. Satyendra Kumar Singh learned counsel has appeared on behalf of the petitioner, while the State is represented by Ms. Prakritita Sharma, A.C. to S.C.27.

Mr. Singh learned counsel for the petitioner placing reliance on the Division Bench judgment of this Court reported in 1981(4) BLJ 432: **1981 BBCJ 511 (Jiwan Ram Bageria alias Agrawalla vs. Smt. Kasturi Devi Katesaria)** submits that if the donor is present at the time of presentation of the deed then his non-appearance at the time of execution cannot be construed as a denial of execution. According Mr. Singh in the circumstances where Annexure-2 which is the refusal order, itself would reflect that the donor was present on the date of



presentation i.e. 30.3.1989, the registration of the deed could not have been refused on the failure of the donor to respond to the summons by treating it a denial of execution of the deed.

The arguments of learned counsel for the petitioner has been contested by Ms. Sharma learned A.C. to SC 25. With reference to Section 77 of the Registration Act, 1908 (hereinafter referred to as 'the Act') she submits that the writ petition is not maintainable and that the appropriate remedy for the petitioner for resolving the issue in question would be by way of a suit. According to learned State counsel be it a case of denial of execution under Section 73 against which an appeal lies before the Registrar to be disposed of in the manner prescribed under Section 76 or a case other than denial appellable under Section 72, in either of the circumstances, a suit would lie under Section 77 of 'the Act'. Learned counsel also questions the maintainability by placing reliance on Rule 19(xiv) of the Bihar Registration Rules, 2008 framed under 'the Act' to submit that even a dispute amongst the representatives of the deceased to the execution can be a reason for refusal under Section 73 of 'the Act'. It is also the contention of learned State counsel that a suit is also pending in between the parties bearing Title Suit No. 486 of 2006.

I have heard learned counsel for the parties and I have perused the records.



The objection raised by Ms. Sharma learned State counsel finds support from a bench decision of this Court reported in **1998 (3) PLJR 552 (Rajdeep Singh Vs. State of Bihar & Ors.)**. This Court considering the similar dispute where the executant of the sale deed did not appear to admit the execution of the document, a bench of this Court on examination of the statutory provisions underlying ‘the Act’ and the rules framed thereunder, has held that in such disputed circumstances, the appropriate remedy is suit.

Section 35 of ‘the Act’ relates to procedure on admission and denial of execution, Section 71 mandates that the reasons for refusal to be recorded, Section 72 provides for appeal to Registrar from an order of Sub Registrar refusing registration on grounds other than denial of execution, Section 73 deals with cases in which refusal is on grounds of denial of execution, Section 74 deals with the procedure to be followed by the Registrar on an application so filed and Sections 75 and 76 which deal with the orders to be passed on application filed against a refusal by the Sub Registrar on grounds of denial of execution. Section 77 inter alia provides for a remedy by way of a suit against an order passed by the Registrar.

The Court in consideration of the issue in contest has held where an executant has failed to appear to either admit or deny execution, the remedy would lie under Section 73 treating the case to



be one of denial of execution. The Court then in paragraph 12 has proceeded to hold that in either of the two situations where the Registration is refused on grounds other than denial of execution giving rise to appeal under Section 72 or on grounds of denial of execution giving rise to application for a compulsory registration, the petitioners have got adequate remedy under ‘the Act’ and which is by way of a suit.

In view of the legal position so settled by this Court in the judgment of **Rajdeep Singh** (supra), I am persuaded to uphold the preliminary objection raised by Ms. Sharma as to the maintainability of the writ petition and which is accordingly disposed of leaving it open for the petitioner to espouse her grievance by way of a suit if so advised.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

Bibhash/-

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CAV DATE	
Uploading Date	25.01.2017
Transmission Date	

