

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

CWP No.16798 of 2016
Date of decision : 31.01.2017

Sukhdeep Kaur

...Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Aakash Singla, Advocate for the petitioner.

Mr. S.S. Chadha, Advocate and
Mr. S.S. Sidhu, Advocate for respondent No.4.

Mr. Yatinder Sharma, Addl. A.G. Punjab.

AMIT RAWAL, J. (Oral)

CM No.15783-CWP of 2016

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Annexures A-1 and A-2 are taken on record, subject to all just exceptions.

Main Case

This Court has heard the arguments of the parties vis-a-vis the registration of the sale deed dated 19.08.2016 which is under challenge on the premise that the order of Registrar (Annexure P-2) has been assailed by the vandeas whereby the said Registrar had refused to register the sale deed

in the absence of the consent of the petitioner/vendor but yet the Sub Registrar has registered the sale deed in the absence of the petitioner, though the order reflected that they have to be in accordance with law i.e. provisions of Registration Act were required to be adhered to.

Mr. Pritam Singh, Junior Assistant, Office of Sub Registrar, Jagraon is present in Court and he has informed that Mr. Joginder Singh, Sub Registrar is still posted at Jagraon. He is directed to be appeared before this Court post lunch session.

POST LUNCH SESSION – (2.30 PM)

Mr. Joginder Singh, Sub-Registrar, Jagraon, is present in Court today. This Court called upon him to apprise as to whether the interim order dated 19.08.2016 was served upon him or not, as the sale deed had been registered at 02:07 PM. He feigned ignorance about the interim order and submits that interim order was not communicated.

Mr. Yatinder Sharma, Addl. A.G. Punjab, has drawn the attention of this Court to the provision of Sub Section 2 of Section 72 of the Registration Act, to contend that as and when any order of the Registrar is passed, Sub Registrar is enjoined upon obligation to register the document subject to the provisions of law prescribed therein.

Document of registration was executed on 15.05.2014 and was presented before the then Sub-Registrar.

However, on application dated 04.07.2014 moved by respondent No.4 for registration of sale deed, the then Sub-Registrar Jagraon refused to register the same. The said order was assailed before

the Registrar who vide order dated 10.06.2016 directed the respondent No.3 to be present in Court to register the documents. In this process, there was a gap of almost more than 2 years and 3 months. All the provisions of Registration Act cannot be read into isolation but have to be read in conjunction. Section 34 of the aforementioned Act, prescribes a procedure of enquiry to be conducted by the Officer concerned before registration. Same read thus:-

“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 person executing such document, or their representatives, assigns or agents authorised 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 person 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, assignee 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.”*

It was incumbent upon the Sub-Registrar to inquire whether executant of document namely Vandee was alive or dead. Even on the endorsement at the back of the sale deed, the presence of the vendor is conspicuously absent and the contents to be filled has been scored off.

Mr. Joginder Singh, Sub-Registrar, Jagraon has shown remorse and tenders unconditional apology to this Court that he will be careful in future and shall have full regard and respect to the orders passed by this Court, much less, also adhere to the provisions of law. Thus, this Court does not deem it appropriate to proceed further against him, accordingly, he is discharged.

The case set out by the petitioner in the present case is that petitioner and respondent No.4 had agreed to sell the land in dispute for total sale consideration of ₹24 lacs to be paid before the Sub-Registrar at the time of registration. An earnest money of ₹3 lac was paid. However, when the parties had reached before the office of Sub-Registrar on 15.05.2014, the petitioner had appended her signatures, much less, thumb impression on the documents for presenting the same for the purpose of execution and registration but since respondent No.4 refused to pay the amount, petitioner

did not appear before the Registrar for the purpose of photograph and registration. As noticed above, the respondent No.4 is stated to have moved an application but the same was dismissed and assailed before Registrar but while accepting the appeal, passed the following order:-

“Keeping in view the facts as Sukhdeep Kaur respondent has failed to get only photographed with marginal witnesses along with the Sub-Registrar where as all other formalities relating to the documents in the form of sale deed were complete in all respect that present appeal is accepted order of the Sub-Registrar Jagraon dated 4.7.2014 set aside with direction to Sub-Registrar, Jagraon to register the sale deed within 30 days as prescribed in the Registration Act from receipt of this order. The copy of this order be sent to Sub-Registrar Jagraon for compliance. File of the present be consigned to record room.”

It is on the basis of the aforementioned direction, Sub-Registrar-respondent No.3 registered the sale deed on 19.08.2016. It is conceded position on record that original sale deed is still with the custody of the Sub-Registrar and only certified copy has been issued to the parties to the lis. The Court had an occasion to look at the certified copy. No doubt the copy of the sale deed bears the thumb impression and as well as signatures of the Vendor but on the back of the first page i.e. on the space meant for endorsement before the Sub-Registrar, same has been scord off. The Legislature in the wisdom already envisaged various situations including the present one, in Sections 34, 35, 49, 52 and as well as 58, 59, 60, much less, Section 72 relied upon by the State.

On co-joint reading of the aforementioned provisions of law

particularly Section 34 of the Act. in my view, Sub-Registrar was duty bound to make an enquiry as to whether the sale consideration had actually been passed on by the vendee or not and even on fateful day, such type of document would be presented and on refusal of the Sub-Registrar, parties would approach the Registrar and may succeed in the manner as indicated above but Sub-Registrar is not prevented from holding an enquiry, in essence, should not blind folded in complying with, the provision of Sub-Section 2 of Section 72, which reads thus:-

“72. Appeal to Registrar from orders of Sub-Registrar refusing registration on grounds other than denial of execution

(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.”

but not in isolation but in conjunction i.e. subject to the compliance of the provision of Sections 58, 59 and 60 and particular Section 58. For the sake of brevity, Section 58 of the Act reads as under:-

“58. Particulars to be endorsed on documents admitted to registration

(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely,-

(a) the signature and addition of every person admitting

the execution of the document, and, if such execution has been admitted by the representative, assignee or agent of any person, the signature and addition of such representative, assignee or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal"

There is no note on the sale deed that the Vendor had refused to endorse the same. This leads to serious doubt with regard to the procedure being followed by the respondent No.3, in essence, he should have refused to execute the same. Since, he has already tendered apology, I need not delve upon this aspect any further.

It was incumbent upon the respondent No.4-vendee to approach the Court seeking specific performance of the agreement to sell, even if it was oral one and could have proved by leading direct and cogent evidence and sought registration of the sale deed but not in the manner and mode indicated above. It is also matter of record that petitioner has already filed the suit claiming declaration of having become owner.

Without commenting upon merits and demerits of the suit and stand taken in the written statement, as respondent had already put in

appearance, I am of the view that once procedure as indicated above have not been followed by respondent No.3, sale deed could not have been registered.

Resultantly, sale deed containing the aforementioned Clause is hereby set aside. Liberty is granted to respondent No.4 to seek the remedy in accordance with law. Period spent herein shall deemed to have been condoned by taking the aid of provision of Section 14 of Limitation Act, in case, they chose to seek vindication of the grievance as indicated above.

Accordingly, present writ petition stands allowed.

Mr. S.S. Chadha, Advocate has refuted the alleged averments qua the price of the property i.e. ₹24 lacs. He submits that property was agreed to be sold for a sum of ₹11 lacs which has already been paid, the said question is also left open.

31.01.2017

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No