

\*THE HON' BLE SRI JUSTICE S.V.BHATT

+CRP No.3271 OF 2010

%Dated 14-08-2018

CRP.No.3271 of 2010

# The Sub-Registrar,  
Mydukur, Kadapa District

.....

PETITIONER

**VERSUS**

\$ 1. K.Raja Sekhara Chari,  
S/o. K.Lakshminarayana Chari,  
D/ No.15/ 239, Mydukur Road, Prodhutur,  
Kadapa District and another ....

RESPONDENTS

! Counsel for Petitioner : Smt G.Gayathri

^ Counsel for Respondents : Sri K.S.R.Murthy

< GIST :

> HEAD NOTE :

? Cases referred :



**THE HON'BLE SRI JUSTICE S.V.BHATT****C.R.P.No.3271 of 2010****ORDER:**

Heard Ms.G.Gayathri, the learned Assistant Government Pleader for revision petitioner and Mr.K.Sai Ram Murthy for 1<sup>st</sup> respondent. The Civil Revision Petition is dismissed for default against the 2<sup>nd</sup> respondent vide order dated 19.12.2011.

The circumstances relevant for disposal of the civil revision petition stated thus:-

The Sub-Registrar, Mydkur, Kadapa District is the revision petitioner. The 1<sup>st</sup> respondent herein filed O.S.No.115 of 2006 against the 2<sup>nd</sup> respondent for specific performance of the agreement of sale dated 07.02.2005. On 10.07.2006, the suit was decreed ex-parte. The 1<sup>st</sup> respondent filed E.P.No.123 of 2008 under Order 21 Rule 34 of Civil Procedure Code for execution of regular sale deed in terms of ex-parte decree dated 10.07.2006. The sale deed executed by the court on behalf of J.Dr/respondent No.2 after complying with routine formalities was forwarded to revision petitioner for registration.

The Sub-Registrar having been confronted with the information on the plaint schedule property as belonging to Government or that the plaint schedule attracts the prohibition envisaged under Section 22-A of the Registration Act, 1908 kept the document sent for registration in W.P.No.123 of 2008 as P.No.3 of 2010.

From the order dated 11.11.2009 impugned in the C.R.P., it is evident that the non registration of documents presented by the Executing Court under Rule 34 was on account of the two circumstances already stated above. The Executing Court without a decision being communicated on P.No.3 of 2010 by revision petitioner, considers the complaint of respondent No.1 against non-registration and on such information, the executing court assumes that the document presented by the Court ought not to be firstly kept as pending document and secondly on facts, in the case on hand, in view of the earlier presentation and the registration of document for the same Survey number held that the registration should be completed. The Sub-Registrar hence has filed CRP with the leave of the Court and challenges each one of the reasons given by the executing Court as exceeding the procedure provided under Rule 34 of Order 21. For convenience also,

to appreciate the contentions of both the parties on the findings recorded by the order impugned, this Court finds it convenient to excerpt the operative portion of the order under challenge which reads thus:

“In this case the respondents remained *exparte* and the Hon’ble Court has already drafted a registered sale deed and send the same to the Sub-Registrar, Mydukur for registration by following due process of law. But the Sub-Registrar, Mydukur did not register the same stating that the property is a Government property and that he has specific Instruction from the Government not to register the properties pertaining to Government and file the records showing that the property is an assigned land and as such it cannot be registered and after the said submission of records by the Sub-Registrar Mydukur the matter was posted for hearing of the counsel for the petitioner and the counsel for the petitioner submitted that the registration authority has been registering the said land since last 50 years and to prove the same he has filed a encumbrance certificate issued by the Sub-Registrar, Mydukur pertaining to the petition schedule property for 50 years and it shows that the said land was sold in the year 1973 on 27.06.1973 to the A.Subbamma and again on 18.2.1983 there was another transactions and the said A.Subbamma sold the same to B.Salamma who is the J.Dr. in this petition. So the E.P. filed by the petitioner clearly reveals that the property under dispute is being registered by the registering authority since in the year, 1973 and to prove his contention the petitioner relied on a decision of the A.P. Hon’ble High Court in P.Suresh and another Vs. the A.P.State represented by District Collector, Kadapa and others reported in 2009 (1) Law Summary page 421, wherein it was held that several transactions have taken

place since 1932 and it is in possession of private individuals and the registering authority have registered the same for the transactions since 1932 and it is in the hands of private individual and that the action of the registering authority in not accepting documents presented by the petitioner could be arbitrary and the 3<sup>rd</sup> respondents i.e., the Sub-Registrar is directed to entertain the sale presented by petitioners. So the above facts of the case are squarely applicable to the present case as the Encumbrance certificate filed by the petitioner clearly reveals that the land under dispute is being registered by the registering authority since 1973 in the name of private individuals and so at this stage the Sub-Registrar, Mydukur cannot reject the registration of sale deeds sent by this Court and in view of the above legal position the Sub-Registrar is directed to entertain the sale deed presented by this court for registration and accordingly the petition is allowed and the office is directed to send a copy to this citation along with the order and the sale deed to the Sub-Registrar, Mydukur for registering the same.”

Hence, the Civil Revision Petition.

The Assistant Government Pleader contends that the document is presented by the executing Court as the defendant in a suit filed for specific performance inspite of decree did not comply with the direction issued by the Court for executing regular sale deed. For all the purposes, the executing Court presents the document for and on behalf of the judgment debtor and the mere presentation by the executing court cannot be understood as complete

obligation on the part of revision petitioner to admit the document for registration. According to her, the revision petitioner is bound by the duties and functions under Registration Act and Rule 34 of CPC in no way grants privilege presented by the executing court for registration.

She refers to Rule 34 which reads thus:

“34. Decree for execution of document, or endorsement of negotiable instrument:-(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment –debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering draft, as it thinks fit.

(4) the decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:-

“C.D., Judge of the Court of

(or as the case may be), for A.B., in a suit by E.F. against A.B”,

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

[(6)(a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorized in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.]

She further contends that after the decree holder completes procedure under Order 21 and Rule 34, the document is placed before the Sub-Registrar and the document is independently considered by the registering authorities under the Stamp Act, 1899 and the Registration Act, 1908. The schedule of property in the document presented under Rule 34 if attracts one or other circumstances referred under Section 22-A of the Registration Act, the Assistant Government Pleader contends that merely because the document is presented by the Court, the Sub-Registrar is not under obligation to mechanically accept such document for registration. She finally contends that the authority

and jurisdiction of Registering Authority under the Stamp Act and the Registration Act continue to remain with those authorities and the executing Court ought not to compel registering authorities to register the document presented by the Court in execution of a decree for specific performance. The Assistant Government Pleader fairly contends that assuming without admitting that the refusal endorsement or reasons for refusal are factually untenable, the remedy of a party in such a situation is to challenge the order of refusal but not in the pending execution petition and get adjudication on the applicability of prohibition under Section 22-A of the Act to the subject document.

Mr.Sai Ram Murthy on the other hand contends that in the case on hand, inspite of 1<sup>st</sup> respondent complying with the requirements of stamp duty and registration, the document is kept as pending document and such step is impermissible. When the non registration of the document is brought to the notice of executing Court, the executing Court has merely clarified the position facilitating process of P.No.3 of 2010 and hence no exception to the direction issued by the executing Court can be taken by the registration department. He alternatively contends that, without proper material, the schedule of property covered

by P.No.3 of 2010 is treated as Government land and if an order is passed and communicated to 1<sup>st</sup> respondent, 1<sup>st</sup> respondent will work out appropriate legal remedies against such refusal by revision petitioner. This Court is of the view that the positive direction issued by the executing Court, if does not fit within the jurisdiction of executing court under Order 21 Rule 34, at best, it will have to be stated that the Sub-Registrar/revision petitioner takes into consideration the fact situation, requirement of law, passes an order leaving it open to 1<sup>st</sup> respondent to challenge the order if circumstances warrant in accordance with law before competent forum.

I have carefully considered the respective submissions and perused the record. Now the point for consideration is whether the direction issued by the executing Court for executing P.No.3/2010 is valid and tenable?

Whether the revision petition has made out a case for interference under Section 115 of Civil Procedure Code. Both the points are answered in favour of the petitioner for the following points:

The executing court in the instant E.P. is merely concerned with executing sale deed in terms of the decree and the judgment in O.S.No.115 of 2011. Either in the

judgment in O.s.No.115/2011 or in the E.P., the title and right to the property is an issue. The presentation of document by the court below for registration before the revision petitioner does not take with its fold any privilege for registration. The document so presented for registration is subject to the legal and procedural requirements under the Registration and Stamp Act. Therefore, once the document is presented for registration, the executing court ought to allow the authority under Registration and Stamp Acts to discharge their duty and function. The directions of the executing court already excerpted are beyond the power and jurisdiction of executing court vis-à-vis P.No.3 of 2010. Therefore, these findings in the order under revision are liable to set aside and accordingly set aside.

Civil Revision Petition is allowed and the order impugned in the revision is set aside. The order of this Court ought not to be understood as this Court is expressing a final view on either the consideration of pending document or the remedy available to the 1<sup>st</sup> respondent in the event of refusing to register the document by revision petitioner. The 1<sup>st</sup> respondent examines the record and communicates his decision on

P.No.3 of 2010 within four (04) weeks from the date of receipt of this order. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

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**S. V. BHATT, J**

Dt: 14.08.2018

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**Note:**

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