

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.363 of 2016

Daduram Sidar S/o Late Shri S.P. Sidar, aged about 60 years, posted at Tahsildar-Saja, Distt. Bemetara, Present Address – Near Gondwana Bhavan, Ashok Nagar, Sarkanda, Bilaspur, Distt. Bilaspur (CG)

--- Petitioner

Versus

1. State of Chhattisgarh through Station House Officer, Dharamjaigarh, Distt. Raigarh (CG)
2. Ramkunwar W/o Late Lalsai Rathia, aged about 65 years, R/o Bakalo, P.S. - Kapu, Distt. Raigarh (CG)
3. Birsingh S/o Late Lalsai Rathia, aged about 36 years, R/o Bakalo, P.S. - Kapu, Distt. Raigarh (CG)
4. Brindavati Rathia W/o Phool Singh, aged about 30 years, R/o Ghonchal, P.S.-Kapu, Distt. Raigarh (CG)
5. Sanjay Kumar S/o Sahdev Khess, aged about 25 years, R/o Kamosindand, P.S.-Kapu, Distt. Raigarh (CG)
6. Vijay Kumar S/o Sahdev Khess, aged about 28 years, R/o Kamosindand, P.S.-Kapu, Distt. Raigarh (CG)
7. State of Chhattisgarh through Additional Secretary Law and Legislation Works Department, Raipur, Distt. Raipur (CG)
8. Ramisha Bai D/o Anand Ram, aged about 40 years, R/o Village – Geeta Kalo, P.S. & Tahsil – Dharajaigarh, Distt. Raigarh (CG)

--- Respondents

For Petitioner	: Mr.Soumitra Kesharwani, Advocate
For Respondents No.1 & 7:	Mr.S.K.Agrawal, Government Advocate
For Respondents No.2 to 6:	Mr.Govind Dewangan, Advocate
For Respondent No.8	: None present though served

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

20/06/2019

1. The petitioner is duly appointed as Sub-Registrar under Section 6 of the Registration Act, 1908 (hereinafter called as “the Act of 1908”). On 30.4.2008 while discharging his duty as Sub-Registrar he allowed “sale deed” to be registered under the Act of 1908 executed by Ramkunwar, Birsingh and Brindawati in favour of Sanjay Khess and Vijay Kumar Khess transferring 1.273 hectares

of land out of total land 9.366 hectares, which they had at that time. At that point of time, the subject land which was transferred was held by four persons including one Anand Ram. On 24.5.2014 respondent No.8-Ramisha Bai, daughter of Anand Ram, one of co-owners, lodged a complaint to Station House Officer, Police Station Dharamjaigarh after lapse of six years stating that her father Anand Ram was also co-owner of subject suit land, which has not been partitioned. Ramkunwar, Birsingh and Brindawati had sold the suit land to Sanjay Khess and Vijay Kumar Khess fraudulently as share has not been given to her, therefore, FIR be registered and necessary action be taken. On her report, FIR being Crime No.271/2014 was registered by the Station House Officer, Police Station Dharamjaigarh on 7.8.2014 and ultimately, petitioner-Sub-Registrar, sellers and purchasers therein all were charge-sheeted before the jurisdictional criminal Court on 22.6.2016 for offence punishable under Sections 420, 120B and 424/34 of the IPC and the petitioner and other co-accused persons are standing trial. The petitioner has filed this writ petition questioning the registration of FIR and consequent charge-sheet filed against him for the above-stated offences.

2. Mr.Soumitra Kesharwani, learned counsel for the petitioner, would submit that the petitioner herein/Sub-Registrar, who registered sale deed in favour of two accused persons, has filed this writ petition under Article 226 of the Constitution of India seeking quashment of entire charge-sheet principally on the ground that he has purely acted in the capacity of Sub-Registrar under the Act of 1908 and he has duly registered sale deed in accordance with the provisions

contained in the Act of 1908 and upon making an enquiry under Section 34 of the Act of 1908 which does not contemplate by making any enquiry *qua* title of the person who has executed sale deed in favour of purchaser under Section 34 (3) of the Act of 1908, as such, charge-sheet filed on the basis of complaint of respondent No.8, who is daughter of Anand Ram, one of the co-owners, deserves to be quashed as allegation made in the FIR/complaint, even if, they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the petitioner, therefore, entire prosecution case deserves to be quashed.

3. On the other hand, Mr.S.K.Agrawal, learned Government Advocate for respondents No.1 and 7/State would support the prosecution and would rely upon the provisions contained in Section 38 of the Act of 1908. He would submit that though the subject suit land, which was transferred by respondents No.2 to 4 in favour of respondents No.5 and 6, was also recorded in the name of Anand Ram, father of respondent No.8, but the petitioner did not make any enquiry *qua* absolute title of vendors and deliberately allowed sale deed to be executed in favour of respondents No.5 & 6 and thereby committed the aforesaid offences, which has rightly been taken cognizance of and the petitioner is being prosecuted along with other co-accused persons i.e. respondents No.2 to 6, which cannot be taken exception by filing the writ petition, which is strictly in accordance with law.
4. Mr.Govind Dewangan, learned counsel for respondents No.2 to 6 would support the petitioner and submit that the subject land has

rightly been transferred by respondents No.2 to 4 in favour of respondents No.5 and 6.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. The dispute mainly relates to the suit land, which was sold by Ramkunwar, Birsingh and Brindawati. Ramkunwar is widow of Lal Sai, Birsingh is son of Lal Sai and Brindawati is daughter of Lal Sai. Lal Sai had one more son i.e. Anand Ram, the complainant/respondent is his daughter and the suit property was also recorded in the name of Anand Ram along with above three persons, but the suit property was sold by only three persons excluding Anand Ram on 30.4.2008, who is said to be missing for last several years and after six years, complaint was filed by his daughter i.e. respondent No.8 and upon which, charge-sheet has been filed and cognizance of above-stated offences have been taken on that charge-sheet.
7. The question for consideration would be whether the petitioner/Sub-Registrar while registering sale deed was required to make roving enquiry upon the absolute title of the vendors *qua* subject land before making registration of said sale deed dated 30.4.2008 in favour of respondents No.5 and 6 ?
8. At this stage, it would be appropriate to notice Section 34 (3) of the Act of 1908 which states as under:-

“34. Enquiry before registration by registering officer.-

- | | | | |
|-----|-----|-----|-----|
| (1) | xxx | xxx | xxx |
| (2) | xxx | xxx | xxx |

(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."

A careful perusal of the aforesaid provision would show that enquiry to be made by the registering officer is confined to (i) on the factum of execution of the document, (ii) the identity of the person who claims to have executed the document and (iii) the right of the person who appears as a representative, assignee or agent of the executant

9. If the registering officer is satisfied about the factum of execution and the identity of the person executing the document, he becomes obliged to register the document by virtue of the provisions of Section 35(1) of the Act of 1908 which states as under:-

"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 person 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."

10. The obligation of the registering officer to register a document presented to him for the purpose, after reaching a subjective

satisfaction about the identity of the person and the factum of execution, is made explicitly clear in the last portion of Section 35(1), by the use of the words “the Registering Officer shall register the document” as directed to Section 58 to 61 of the Act.

11. A conjoint reading of Sections 34 and 35 of the Act of 1908 shows that the scope of enquiry to be made by the registering officer is limited by the Act, restricted to the factum of execution and the identity of person executing document, other than the levy of stamp duty, collection of registration charges and the completion of procedural formalities such as attestation etc. There is nothing in this provision requiring the registering officer to make roving enquiry about the title of the person with regard to the property which is being sold by sale deed. In my considered opinion, provisions contained in Section 34 (1) of the Act of 1908 do not cast any duty on the registering officer to make an enquiry qua title of the person transferring the subject land to the transferee/purchaser.

12. The High Court of Madhya Pradesh in the matter of **Ramprasad Yadav v. State of M.P.**¹ while dealing with identical fact situation whether the Sub-Registrar who registered sale deed without making enquiry as to the title of the person who sold the land against whom offence under Sections 420, 467, 471 and 109 IPC was registered has clearly held that the registering authority is not required to make an enquiry qua title, which is subject matter of the sale land. It was held as under:-

“The provisions of sections 34 and 35 of the Act deal with the duty of the registering officer. There is nothing therein to establish that it was the duty of the petitioner to make an enquiry whether or not the property being sold by the sale

1 2002 MPWN (II) 147

deed actually belonged to the seller. The provisions of clause (b) of sub-section 3 of section 34 of the Act provide that the registering officer shall satisfy himself as to the identity of the person appearing before him and alleging that he has executed the documents. There is nothing in this clause requiring the registering officer to make an enquiry about the title of the person with regard to the property being sold by the sale-deed.

A perusal of the record reveals that the petitioner has been prosecuted on the basis of the opinion given by the District Public Prosecutor who opined that before registering the sale-deed, it was the duty of the petitioner to inspect the revenue record regarding the property which was being sold by the document presented before him for registration. The learned counsel for the respondent-State did not show any provision in the Act except to provision of clause (b) of sub-section 3 of section 34 of the Act casting a duty on the registering officer to make an enquiry or to inspect the revenue records to ascertain the title of the seller before registering the document. As discussed above, the provisions of clause (b) of sub-section 3 of section 34 of the Act do not cast such duty on the registering officer.”

13. Similarly, in the matter of **Bihar Deed Writers Association and others v. State of Bihar and others**² the Division Bench of Patna High Court has clearly held that if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is bound to register it. It is not for the registering authority to enquire and ascertain the title to its own satisfaction. Under the provisions of the T.P. Act, 1882, if the transferor does not have any title or has an imperfect title to the property, the transferee on transfer will either get no title or he will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority.

14. In the matter of **Mary Joyce Foonacha (MRS) v. K.T. Plantations Pvt. Ltd. and others**³ Their Lordships of the Supreme

² AIR 1989 PATNA 144

³ 1995 Supp (2) SCC 459

Court have clearly held that under Section 34(3) of the Registration Act the Sub-Registrar was required to satisfy himself with the due execution of the document/deed said to have been executed by the person who was not the person at the time of registering the document.

15. Thus, the mandate flowing from Section 34 (3) of the Act of 1908 and conspectus of the above-stated authorities would clearly show that the aforesaid provisions do not empower the registering authority to make an enquiry on the question of title of the vendor, before registration of document/sale deed. The registering authority has only to see whether the document is complying with the statutory requirements and formalities is presented for registration.
16. The submission of learned Government Advocate for the State/respondents No.1 to 7 is that since the property was jointly owned by Anand Ram also whose daughter i.e. respondent No.8 has made complaint, therefore, the property could not have been allowed to be transferred by the petitioner and registration of sale deed could have been refused deserves to be noticed herein.
17. In order to answer such plea, it would be appropriate to notice Section 44 of the Transfer of Property Act, 1882 (hereinafter called as "TP Act") which states as under:-

"44. Transfer by one co-owner.—Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.”

Section 44 of the Act of 1882 provides that one of two or more co-owners of immoveable property is legally competent to alienate his share of such property or any interest therein.

18. This Court in the matter of **Mst.Nirashi Bai v. Ramlal Ganda and others**⁴ while considering the provisions contained in Section 44 of the Act of 1882 has held that transfer of undivided share cannot be declared void for want of partition. It was observed as under:-

“16. From the aforesaid provision, it is apparent that undivided shares can validly be transferred and transferee acquires right of share or interest of the transferor. The sale in favour of defendant No.1/appellant by deceased Sadvo for consideration and that too by a registered instrument, cannot be declared void for want of partition or for reasons stated in the impugned judgment. Accordingly, question No.2 is answered.”

19. It is well settled law that undivided share of a coparcener can be a subject-matter of sale/transfer, but possession cannot be handed over to the vender unless the property is partitioned by metes and bounds, either by the decree of a court in a partition suit, or by settlement among the co-shares. (See **Hardeo Rai v. Sakuntala Devi and others**⁵, **Gajara Vishnu Gosavi v. Prakash Nanasaheb Kamble and others**⁶, **Jai Singh and others v. Gurmej Singh**⁷ and **Lachhman Singh v. Pritam Chand**⁸).

4 (2006) AIR (Chhattisgarh) 73

5 (2008) 7 SCC 46

6 (2009) 7 SCC 444

7 (2009) 15 SCC 747

8 AIR 1970 P&H 304

20. In view of the above-stated analysis and legal position, I do not have slightest hesitation to hold that the petitioner/Sub-Registrar while registering sale deed is not required to make an enquiry under Section 34(3) of the Act of 1908 *qua* title of vendor of subject land, which is subject-matter of sale deed before registration of sale deed and one of two or more co-owners of immoveable property is legally competent to alienate his share of such property or any interest therein by the provisions contained in Section 44 of the TP Act. In view of the matter, registration of sale deed allowed by the petitioner/Sub-Registrar while acting in the capacity of Sub-Registrar was in accordance with law and therefore, if allegations made in the complaint are taken at their face value and accepted in their entirety, prima-facie do not make out a case much less the offence under Sections 420, 120B and 424/34 of the IPC *qua* the petitioner.

21. As a fallout and consequence of the above-stated discussion, initiation and continuance of criminal case being Criminal Case No.329/2016 (State of Chhattisgarh v. Ramkunwar and others) *qua* the petitioner only namely Daduram Sidar is hereby quashed. It is made clear that this Court has not stated anything about criminal case registered and pending against other co-accused persons.

22. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (Cr.) No.363 of 2016

Petitioner

Daduram Sidar

Versus

Respondents

State of Chhattisgarh and others

(English)

Sub-Registrar appointed under Section 6 of the Registration Act, 1908 is not empowered to make roving enquiry *qua* title of the vendor under Section 34(3) of the Act of 1908.

(हिन्दी)

पंजीकरण अधिनियम, 1908 की धारा 6 के अंतर्गत नियुक्त उप पंजीयक अधिनियम, 1908 की धारा 34(3) के अंतर्गत विक्रेता के हक की अतिगामी जाँच करने के लिये सशक्त नहीं है।