

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

WP.No.14078 of 2019
and
WMP Nos. 14131 & 14132 of 2019

1.P.Selvam
2.P.Sekar ... Petitioners
Versus

1.The District Registrar, (Admin)
Ariyalur District,
Ariyalur.

2.The Sub-Registrar,
Irumpulikkurichi & Post,
Ariyalur.

3.Thiru. C.Periyasamy ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the orders passed by the first respondent in Appeal No.1 of 2018, dated 02.04.2019.

For Petitioners : Mr.S.Kamadevan

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader.

ORDER

This Writ petition has been filed challenging the impugned order passed by the first respondent, directing the compulsory registration of the sale deed that was presented by the third respondent.

2.The case of the petitioners is that they are the owners of the property and they entered into an agreement of sale with the third respondent. The third respondent is a close relative of the petitioners. As per the agreement, a total consideration of a sum of Rs.5,77,500/- was fixed and a sum of Rs.70,000/- was received as advance from the third respondent. Further, the case of the petitioners is that the third respondent prepared a sale deed and got the signature of the petitioners with a promise to settle the

entire balance sale consideration. Since the third respondent did not come forward to settle the balance sale consideration, the petitioners refused to go over to the Sub-Registrar Office for registering the sale deed.

3.The third respondent presented the sale deed for registration on 13.09.2017 and it was kept as pending Document No.12 of 2017. Thereafter, the third respondent submitted an application to conduct an enquiry under Section 35 of the Registration Act, 1908. The enquiry was conducted by the Sub-Registrar and he submitted a report to the first respondent. Pursuant to the same, the first respondent has passed the impugned order dated 02.04.2019 directing compulsory registration of the document. Aggrieved by the same, the present Writ petition has been filed before this Court.

4.This Court ordered notice and private notice to the third respondent. The Court notice has been returned as 'door locked' and the private notice has been returned as 'refused'. The third respondent did not appear either in person or through counsel. Therefore, this Court proceeded to hear the case on merits, after hearing the learned Special Government Pleader appearing on behalf of the official respondents.

5.Mr. S. Kamadevan, learned counsel on behalf of the petitioners submitted that the petitioners believed the third respondent that he will pay the entire balance sale consideration and therefore signed in the sale deed. The learned counsel submitted that the third respondent wants to misuse the belief reposed on him and he presented the sale deed for registration even without paying the balance sale consideration. The learned counsel submitted that the first respondent has given a literal meaning to the words "admit the execution of the document " as found under Section 35(1)(a) of the Act, and he has interpreted the words as if a mere signature is enough in the document to fulfill the execution. The learned counsel further submitted that such a literal understanding of the provision will defeat the very purpose of the execution of a document. The learned counsel, in order to substantiate his submissions, relied on the Judgement of this Court in the case of S.Ramamurthy Vs. Jayalakshmi Ammal reported in (1991) 1 LW 391. By relying upon the judgment, the learned counsel submitted that the execution of document is not merely signing in the document and for this solemn act, the executant must own up the recitals that are found in the instrument. The learned counsel for the petitioners submitted that the most important recital in the sale deed was with regard to the receipt of the sale consideration. If the same is not fulfilled by the third respondent, then there is no execution that had taken place in the eyes of

6. Per contra, the learned Special Government Pleader appearing on behalf of the first respondent, apart from reiterating the contentions made in the counter affidavit filed by the first respondent, submitted that the petitioners have not denied the execution of sale deed in question and they have admitted their signatures. That apart, there was one witness to the execution, who at the time of enquiry, had stated that the petitioners have received the consideration. Therefore, the first respondent was perfectly right in coming to the conclusion that the petitioners have duly executed the document in favour of the third respondent.

7. This Court has carefully considered the submissions made on either side and perused the materials available on record.

8. There is no serious dispute on the facts of the present case and therefore, this Court will directly go into the main issue that has been raised in this Writ petition. Before proceeding further, the relevant provision is extracted hereunder:-

"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 persons 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 officers and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution,

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the persons so denying, appearing or dead:

Provided that, where such officer is a Register, he shall follow the procedure prescribed in Part XII :

(The second provisio was added by Act 13 of 1926) Provided further that the State Government may by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Register for the purposes of this sub-section and of Part XII."

9. Section 35 of the Registration Act, 1908 deals with the procedure that has to be followed when persons executing the documents appear before the authority and they either admit or deny the execution of the document. A reading of the provisions shows that the concerned authority is not conferred with the quasi-judicial power and it is purely administrative in nature. The authority is not expected to evaluate the title or see if there is any irregularity in the document as such. The Registering Authority is expected to re-assure that the document to be registered is prefect in all other aspects and as to whether it has been duly executed by the concerned parties.

10. The next question that arises for consideration is the meaning to be assigned to the words "Execution of the document". This issue has been dealt with by this Court in the Judgment that was cited by the learned counsel and which has been referred supra. The relevant portions in the judgment is extracted hereunder:-

" 9. The main question that has to be decided in both these second appeals is, whether the appellant proved the due execution of the sale deed dated 2.11.1977 and whether it should be ordered to be registered under the provisions of the Registration Act.

10. Mr. R. Shanmugham, learned Counsel for the appellant would contend that in a suit filed under Section 77 of the Registration Act, praying for a decree directing the registration of document, the enquiry in Court is to be

directed only to the following two points:

(a) Whether the document had been executed; and

(b) Whether certain requirements of law as to the presentation for registration in due time to the proper officer and in the manner prescribed by the Registration Act was complied with by the person presenting the document for registration;

In a suit filed under Section 77 of the Registration Act, the Court is concerned not with the validity but with the genuineness of the document sought to be registered, i.e., whether the document has been executed by the person by whom it is alleged to have been executed and the question of validity of the document must be determined in a suit properly framed for that purpose. Learned Counsel for the appellant further contended that the civil court in a suit filed under Section 77 of the Registration Act cannot also go into the question whether the document presented for registration is vitiated by fraud or coercion or whether the document is void for want of consideration, if the executant of the document admits execution of the document as contemplated under Section 35 of the Registration Act, the registering authority is bound to register the document

11. Let us first examine the meaning of "admission of the execution of a document" for the purpose of Section 35 of the Registration Act. The execution of a document is not mere signing of it. It is a solemn act and the executant who must own up the recitals in the instrument and there must be clear evidence that he put his signature in a document, after knowing fully its contents. The executant of a document must, after fully understanding the contents and the tenor of the document, put his signature or affix his thumb-impression. In other words, the execution of a document does not mean merely signing but signing by way of assent to the terms of the contract of alienation embodied in the document.

12. In dealing with the meaning of "admission of execution of document" for the purpose of Section 35 of the Registration Act" a Division Bench of this Court in *Sayyapparaju Surayya v. Koduri Kondamma*, MANU/TN/0140/1949 :

(1949) 2 MLJ 684 has held as follows:-

"The admission required under Section 35 of the Registration Act is admission of execution of the document. It may be a sale deed, it may be a mortgage deed. It is not enough for the person, who is the ostensible executant, to admit his signature on a paper on which, it may be, the document is ultimately engrossed. The identity of the paper on which the signature occurs is not sufficient. If a man says that he signed a blank paper on the representation that it was required for presenting a petition, or if he signed a completed document on the representation that his signature or thumb impression is required as an attesting witness, that admission of the signature or thumb impression in those circumstances cannot be construed to be an admission of the execution of the document. Far from its being an admission, it is a clear and unambiguous denial of the execution of the document. He must admit in order to attract the provisions of Section 35(1) of The Registration Act that he signed the document, viz., a sale deed or a mortgage deed or a lease deed as the case may be."

11. It is clear from the above judgment that execution of document is not mere signing of it and it is a solemn act of the executant who must own up to the recitals in the instrument and there must be a clear evidence that he has put his signature in the document after fully knowing its contents. In other words, the signature must be by way of assent to the terms of the contract that are embodied in the document.

12. In the present case, the categorical stand that has been taken by the petitioners is that the third respondent has not paid the balance sale consideration and therefore, the petitioners refused to go to the Registration Office to register the document. When such a categorical stand is taken by the petitioners, then it is a matter of evidence as to whether the third respondent had actually paid the balance sale consideration to the petitioners. This exercise cannot be conducted by the first respondent, since he is not exercising a judicial or quasi-judicial power. This exercise has to be necessarily done only before the Competent Civil Court.

13. In the present case, the first respondent has given a very literal meaning to the words "execution of the document" and has come to the conclusion that the petitioners have executed the document merely because they have admitted the signature found in the document. This

conclusion arrived at by the first respondent is not correct and the same requires the interference by this Court.

14. In view of the above discussion, the impugned order passed by the first respondent in Appeal No.1 of 2018 dated 02.04.2019 is hereby quashed. It is left open to the third respondent to enforce his right against the petitioners before the Competent Civil Court in accordance with law. The Registration of the document will be considered only after the decision of the Competent Civil Court.

15. In the result, the Writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

klr

To

1. The District Registrar, (Admin)
Ariyalur District,
Ariyalur.

2. The Sub-Registrar,
Irumpulikkurichi & Post,
Ariyalur.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.22027

+1cc to the Government Pleader, S.R.No.22714

WP.No.14078 of 2019

and

Wmp.Nos.14131 & 14132 of 2019

Maya (27/05/2020)