

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.13748 OF 2022

Shantilata Panda

Petitioner

Mr. Partha Sarathi Nayak, Advocate

-versus-

***The District Registrar, Jajpur and
others***

.... Opp. Parties

Mr. Suvashis Pattnaik,
Additional Government Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER

22.06.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 6th May, 2022 passed by the District Registrar, Jajpur in an appeal under Section 72 of the Registration Act, 1908 (for short 'the Act').
3. Mr. Nayak, learned counsel submits that the Petitioner presented a sale deed before the Sub-Registrar, Mansada on 19th January, 2021 for registration vide Document Application ID No. 832200042. The sale deed was in respect of her share in the property pertaining to L.R. Hal Plot No. 1919 under Khata No. 670 to an extent of Ac.0.075 decimals situated in mouza Bachhola under Binjharpur Tahasil in the district of Jajpur. Considering the objection filed by one of the co-sharers, namely, Nursingha Panda, the Sub-Registrar, Mansada refused to register the sale deed vide his order dated 30th March, 2022 under Annexure-3 holding that on verification, it was ascertained that the Petitioner intended to alienate property more than her share. Assailing the same, the Petitioner preferred an appeal under Section 72 of the

Act. The District Registrar, Jajpur holding that the Petitioner is only entitled to sell of her share to the extent of 25%, i.e. Ac.0.03 decimals 750 Sq. link out of Ac.0.15 decimals from the aforesaid plot refused to register the said sale deed. The Petitioner being aggrieved by the said order has filed this writ petition.

3.1 Mr. Nayak, learned counsel for the Petitioner further submits that the Sub-Registrar, Mansada is under legal obligation to make an enquiry as contemplated under Section 35 of the Act and he cannot go into the issue of title vis-à-vis the share of the executant in the property. In support of his contention, he relied upon the decision in the case of **Satya Pal Anand v. State of M.P.**, reported in AIR 2016 SC 4995, wherein the Hon'ble Supreme Court at paragraph-26 held as follows:

"26. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In the case of Park View Enterprises (AIR 1990 Mad 251)(supra) it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition."

He, therefore, submits that both the Sub-Registrar, Mansada and the District Registrar, Jajpur have committed error of law and exceeded their jurisdiction in delving into the issue of title and share over the property in question. It is his submission that if the Petitioner has satisfied the requirement of Section 35 of the Act, the Sub-Registrar, Mansada should register the sale deed executed

by the Petitioner. In the case at hand, the Petitioner satisfies all the requirements of Section 35 of the Act. Hence, the authorities under the Act have committed error of law in refusing registration.

He also submits that the writ petition assailing the order of District Registrar is maintainable. In support of his case, he relied upon the observation made by the Hon'ble Supreme Court at paragraph-14 of the case of *Satya Pal* (supra), relevant portion of which reads as under:

“Regarding Issue No. (a) to (c):

14. It is a well-established position that the remedy of writ under Article 226 of the Constitution of India is extra-ordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with Justice Dipak Misra. We respectfully agree with that view.” (emphasis supplied by Court)

4. He, therefore, prays for setting aside the impugned order and to direct the Sub-Registrar, Mansada to register the sale deed in question.

5. Mr. Pattnaik, learned Additional Government Advocate submits that in view of the provisions of Section 77 of the Act, a writ petition is maintainable. Persons aggrieved by the order

passed by the District Register either under Section 72 or Section 76 of the Act has a remedy to file a suit before any competent Civil Court assailing the same. When an efficacious statutory remedy is available to the Petitioner to assail the order of Sub-Registrar, this writ petition is not maintainable and is liable to be dismissed, more particularly in view of the observation of Hon'ble Apex Court in ***Satya Pal*** (supra).

6. Section 77 of the Act reads as under:

“77. Suit in case of order of refusal by Registrar-

(1) Where the Registrar refuses to order the document to be registered, under Section 72 or Section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in Sub-sections (2) and (3) of Section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.”

It clearly stipulates that where registration of a document is refused under Section 72 or Section 76 of the Act, any person claiming under such document, or his representative, assignee or agent, may, within thirty days after making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction situates, the office in which the document is sought to be registered.

7. In the instant case, although the Petitioner moved the District Registrar, Jajpur under Section 72 of the Act, but

Annexure-4 reveals that it was an application under Section 73 of the Act. On perusal of Annexure-4, it clearly discloses that the same was an appeal under Section 72 of the Act assailing the order under Annexure-3 passed by the Sub-Registrar, Mansada. Thus, it is clear that the order under Annexure-5 has been passed under Section 72 of the Act. The Hon'ble Supreme Court in the case of *Satya Pal* (supra) has observed that when a party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief.

8. In the case at hand, an efficacious statutory remedy is available to the Petitioner to challenge the refusal of registration before the competent Civil Court under Section 77 of the Act.

9. Learned counsel for the Petitioner, however, submits that since question of law is only to be decided in the case at hand and it will take a lot of time for disposal of a suit, if filed under Section 77 of the Act, the Petitioner will thereby be highly prejudiced. Hence, this Court should entertain the writ petition in spite of availability of the statutory remedy. Law is well-settled that only because the parties will face difficulty in agitating their grievances before the competent court of law by adhering to the statutory provision, they cannot take resort to the equitable relief under Article 226 of the Constitution. It further appears that the claim of the Petitioner requires factual adjudication.

10. In view of the above, this Court is not inclined to entertain the writ petition. Accordingly, this writ petition is disposed of with an observation that the Petitioner, if so advised, may file a

properly constituted suit before the competent Civil Court against the order impugned herein.

11. Since the period of limitation to file a suit under Section 77 of the Act has already expired in the meantime, learned counsel for the Petitioner submits that the period of limitation in filing the suit may be condoned.

12. In view of the provisions of the Limitation Act, it is open to the Petitioner to pray for condonation of delay in filing the suit.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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