

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.638 of 2022

In

Civil Writ Jurisdiction Case No.16299 of 2021

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Dera Sahi Samadan Patiala a Dera of Udasin Sect of Baba Sri Chandra Jee through Mahanth Deepinder Das, Gender-Male, aged about 38 Years, Chela Mahanth Jagat Ram at New Dal Dalian Patiala, Punjab Being the Superior of Dera of Udasin Sangat, Mohalla- Madhubani, Police Station-K. Hat in the District of Purnea.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
2. The Inspector General of Registration, Vikas Bhawan, Bailey Road, Patna.
3. The District Magistrate-Cum-Collector, Katihar.
4. The Sub-Registrar, Katihar in the District of Katihar.
5. Madan Kumar Das Son of Late Mahanth Pancham Das Mahanth of Ati Prachin Udasin Bari Sangat, Resident of Mohalla-Madhubani, P.S.-K. Hat in the District of Purnea (Bihar).

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. J. S. Arora, Sr. Adv. Mr. Sunil Kumar, Adv.
For the Respondent/s	:	Mr. Anisul Haque, AC to AAG-5
For the Respondent No.5	:	Mr. Raju Giri, Adv. Mr. Santosh Kumar Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-02-2023

Re.: I.A. No. 1 of 2022

The present interlocutory application has been filed for condoning the delay of 76 days in preferring the present appeal.

For the reasons stated in this application, the prayer for condoning the delay is allowed.



The I.A. No. 1 of 2022 stands disposed of.

L.P.A. No. 638 of 2022

Heard Mr. J.S. Arora, the learned Senior Advocate for the appellant and Mr. Raju Giri for Respondent No.5.

The challenge in this appeal is to the judgment dated 28.07.2022 passed by a learned Single Judge of this Court in CWJC No. 16299 of 2021 whereby the Registering Authority has been directed to register the sale deed offered by the Respondent No. 5 for registration which was hitherto being denied without any reason.

The learned Single Judge, after having referred to the provisions contained in the Registration Act, 1908 as also the judgment of a Division Bench of this Court in ***Bihar Deed Writers Association & Ors. Vs. State of Bihar & Ors.*** reported in ***AIR 1989 Patna 144***, found that the Registering Authority was not required to question the title of the vendor while registering the sale



deed. This proposition is based on the theory of caveat-emptor and the principles of the Transfer of Property Act, 1908 which requires a purchaser/vendee to know what he is purchasing. If the vendor does not have a right title, he does not pass off any right title to the vendee. The Registering Authority does not have any wherewithals and the mechanism to test, verify and certify the title of the vendor.

Based on this ground, the learned Single Judge has directed the Registering Authority to register the document.

In the present case, the respondent has executed a sale deed in favor of a third party/vendee who is not before us. The recital in the sale-deed makes it obvious that the sale was being effected under the certification of the main body of the Sangat viz. Dera Sahi Samadan Patiala (appellant).

Mr. Arora, while challenging the aforementioned Single Judge's order, has drawn the attention of this



Court to the provisions contained in Sections 32 and 33 of the Registration Act, 1908, which is being extracted below for the sake of completeness:

"32. Persons to present documents for registration.—*Except in the cases mentioned in [sections 31, 88 and 89], every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—*

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

[32A. Compulsory affixing of photograph, etc.—*Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document:*

Provided that where such document relates to the transfer of ownership of



immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.]

33. Power-of-attorney recognisable for purposes of section 32.—(1) *For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:—*

(a) if the principal at the time of executing the power-of-attorney resides in any part of [India] in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid [resides in any part of India in which this Act is not in force], a power-of-attorney executed before and authenticated by any Magistrate;

*(c) if the principal at the time aforesaid does not reside in [India], a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, [Indian] Consul or Vice-Consul, or representative [***] of the Central Government:*



Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:—

- (i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;*
- (ii) persons who are in jail under civil or criminal process; and*
- (iii) persons exempt by law from personal appearance in court.*

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the



face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.”

Based on this requirement under the law, Mr. Arora submits that when the recital of the sale deed itself discloses that the sale is being made at the instance of the main body/principal body viz. Dera Sahi Samadan Patiala, there is a compulsory requirement of presenting before the Registering Authority, the power of attorney or assignment or certification that such permission for sale has been given by the principal body, to execute the sale deed.

In the present case, Mr. Arora submits that the learned Single Judge did not consider this aspect of the matter that at the time when the sale deed was presented before the Registering Authority, no such certification as required under Sections 32 and 33 of the Act was brought forward. Thus the order passed by the learned Single Judge suffers from the vice of non-application of a material fact before issuing mandamus



to the Registering Authority to register the document offered by the Respondent No.5.

The appellant claims to be the representative of the main body viz. Dera Sahi Samadan Patiala.

The aforementioned contention of Mr. Arora is attempted to be expostulated by Respondent No.5, who was the writ petitioner and who claims to be the Authority to deal with all matters relating to the Mahanthi (महंथी) under the tutelage of Dera Sahi Samadan Patiala. In support of his contention, it has been urged that a Title Suit was filed by the Respondent No.5 and others, claiming himself to be the Mahanth of Sri Sri 108 Ati Prachin Udasin Sangat. In the Title Suit, the second plaintiff was the Ati Prachin Udasin Sangat whose affairs were being managed by the respondent/Mahanth Madan Kumar Das. The suit was actually filed for declaration that the Mahanth has the right, title and interest over the suit property and that private defendants had no manner of right, title or



interest in the said suit property. There was a further prayer in the Title Suit for a declaration that the land never vested in the State of Bihar.

The consequent relief prayed for in the suit thus was for a declaration of the entry in the Municipal Survey Record of Rights in the name of State of Bihar to be illegal and not tenable. Lastly, it was prayed in the suit that the defendant/second party be evicted from the suit land as they are complete trespassers.

The Respondent No.5, as the plaintiff, lost before the first Court, against which a First Appeal was filed before the High Court vide First Appeal No. 270 of 1996. Several issues were argued especially with respect to the claim of the Respondent No.5 to be the Mahanth of the Sangat in the State of Bihar which had only a commensal relationship with Dera Sahi Samadan Patiala.

After going through the records, the deposition of the witnesses and other documents, the First Appellate Court allowed the prayer made by the



Respondent No.5 herein and the judgment and decree passed by the Trial Court was set aside. The suit was decreed "in toto" with a cost of Rs. 10,000/- to be paid by the original defendants, jointly or severally, to the plaintiff appellants/respondents herein.

At this point, Mr. Arora has drawn the attention of this Court to an order passed in Review (Civil Review No. 29 of 2015, arising out of First Appeal No. 270 of 1996) referred to above, wherein the Review Court, which was the First Appellate Court, found that there was an error apparent on face of the record to the extent that the plaintiff no.1 (Respondent No.5 herein) claimed himself to be the Mahanth of plaintiff no. 2/the principal body and the real owner of the suit property is plaintiff no. 2 but, while allowing the First Appeal, after reversing the judgment of the Trial Court, the Appellate Court had decreed the suit "in toto" without specifying as to which plaintiff I or 2 had the title and therefore the requirement to review the judgment in the First Appeal.



The Review Court was called upon to examine paragraphs 1 and 6 of the plaint as also paragraphs 3, 23 and 35 of the judgment under review to declare categorically that plaintiff no. 2 is the owner and plaintiff no. 1/Respondent No.5 is the Mahanth only. The Review Court found that in the plaint itself, plaintiff no. 2 was described as Sri Sri 108 Ati Prachin Udasin Sangat and at paragraph no.2 of the plaint, it was specifically mentioned that Dera Sahi Samadan Patiala (appellant) is the superior Akhara and Math belongs to the said sect. The Review petition, let it be noted, was filed by this superior Akhara. The Review Court, finding that the revisionist was the superior Akhara who was impleaded as plaintiff no. 2, which fact was admitted by plaintiff no. 1/Respondent No.5 herein, the first appellate order was required to and was modified as hereunder:

"38. In the result, this First Appeal is allowed. The impugned judgment and decree passed by the trial court are hereby set aside. The plaintiffs-appellants'



suit is decreed with cost of Rs.10,000/- (rupees ten thousand) to be paid by the defendants-respondents jointly or severally to the plaintiffs appellants. The title of the plaintiff no.2 over the suit property is declared and it is held that the plaintiff no.1 is the Mahanth of plaintiff no.2. The cost must be paid within two months from today failing which the appellants are at liberty to realize the same from the defendants jointly or severally through the process of the Court."

Based on this, Mr. Arora submits that there can be no manner of doubt, in view of the clarification/modification of the first appellate order in Review that the appellant herein represents the main Akhara and, therefore, without authenticated/certified power of attorney from the main Akhara, the Respondent No.5 would not be entitled to get the sale-deed registered.



Mr. Raju Giri, learned Advocate, however contends that this is a specious argument which cannot withstand the scrutiny of law. Neither in the plaint nor in the First Appeal was Deepinder Das, the appellant, who claims himself to be the Mahanth of the principal body, was a party to the proceeding. He further submits that it could be argued that the plaint was filed by him and the first appeal also by him as the Title Suit failed. Nonetheless, if review petition was filed by Deepinder Das/the appellant, he was required to demonstrate before the Review Court that he represented the principal body at Patiala. This has not been clarified in the review order. It has further been submitted that though it was orally pointed out by him at the time when the order in review was being passed but, the same does not find mention in the order. However, Mr. Giri props up his supposition on a further ground that against the order passed in review, which otherwise would have inured completely in favour of the appellant/Deepinder



Das, he, inscrutably, chose to challenge the aforementioned order before the Supreme Court in SLP which ultimately was withdrawn and not prosecuted.

Mr. Arora, however, submits that there were other issues which needed to be clarified in the SLP. But, merely because the Special Leave Petition was not pursued and was ultimately withdrawn, it would not take away the right of the appellant herein to claim himself the agent/Mahanth of the principal body.

After having heard the learned counsel for the parties and having forayed into the thickets of facts, we have found that none of the parties before this Court i.e. neither the appellant nor the defendant have been able to conclusively prove as to the existence of a main body at Patiala or whether the Bihar chapter is so inextricably linked with the main Akhara that any certification for disposal of property is required for getting the sale-deed registered. In all the litigation that has been referred to before us, the dispute was between the trespassers or



private persons, who were in occupation of the property or were making attempts to appropriate such property and thereby expropriate the Mahanth (Respondent No.5).

The issue with respect to the Mahanthi at Bihar being the independent body but, only commensally connected with the principal body at Patiala, was never decided.

Thus the basic proposition of law as postulated by the learned Single Judge that a Registering Authority is not required to get into the question of title of the vendor, cannot be interfered with.

However the order of the learned Single Judge is required to be modified to the extent that in case the sale of the property, in question, is being effected under the permission and authentication of a Body which is different from the vendor, such document reflecting such certification like power of attorney etc. is also required to be brought along with the sale deed/the document of



conveyance, for the purposes of registration so that the provisions contained in Sections 32 and 33 of the Registration Act is not rendered meaningless or otiose in case the sale is only under the permission of the principal owner.

We are afraid, this might entail a discussion with respect to the principal Mahanthi, before the Registering Authority, which he would be absolutely incompetent to decide, which ultimately would have to be decided by a competent Civil Court.

Thus, we find that the issue with respect to the identification of the principal Mahanthi and its relationship of the Bihar chapter has to be decided in a separate proceeding, which is a collateral issue, and therefore it cannot be the subject matter of this appeal.

Thus, without going into the aforementioned questions, we modify the order of the learned Single Judge to the extent that we have indicated above, viz that if the sale-deed or any document sought to be



registered reflects that the sale is with the permission of some authority, the provisions contained in Sections 32 and 33 of the Registration Act, 1908, would be required to be followed.

We clarify that we have not passed any order which would take away the concluded right of the parties which was decided in the First Appeal or before the Supreme Court.

The appeal stands disposed of accordingly.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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