IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 140 of 2019

Bharat Chandra Dey

Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Manas Kumar Das, Mr. Aritra Kumar Thakdar.
For the Opposite Party nos.2, 3 & 4	:	Mr. Pratip Kumar Chatterjee.
For the State	:	Mr. Pravash Bhattacharya, Ms. Rita Datta.
Heard on	:	17.07.2023
Judgment on	:	08.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the Judgment and Order dated 04.10.2018 passed by the learned Additional District & Sessions Judge, Kandi, Murshidabad in Criminal Appeal CIS Registration No.07 of 2018 whereby the Judgment and Order dated 22.11.2017 passed by the learned Judicial Magistrate, 1st Class, Kandi was affirmed.

2. The petitioner/complainant's case is that the petitioner being the complainant lodged a written complaint before the Inspector-in-Charge, Kandi P.S. on 23.05.2004 alleging inter alia that his grandmother namely Sushama Dey wife of late Bholanath Dey died on 23.08.2000. Sushama Dey

during her lifetime owned and possessed 95 decimal of land. The accused Sagar Dey and Manmatha Dey grabbed the said property by impersonating Jogmaya Dasi as Sushama Dey and by obtaining the L.T.I of Jogmaya Dasi, procured a false deed. Ashoke Kumar Singha and Raikishor Sur were the witnesses to the said false deed. They all along stated that their signature was obtained on the promise that they would be given money in return. The defacto complainant could not enjoy his property due to such unlawful possession taken by the accuseds.

3. On the basis of the aforesaid complaint Kandi Police Station Case No.92 of 2004 dated 23.05.2004 under Sections 420/468/471 of the Indian Penal Code was registered against the accused persons including Manmotha Dey and Aloke Kumar Singha, for investigation. On completion of investigation charge sheet has been submitted in this case against the accused persons under Sections 420/468/471 of the Indian Penal Code.

4. Cognizance was taken and charge framed for trial.

5. The learned Judicial Magistrate, at Kandi after going through the evidence on record, the arguments advanced by the learned advocates of the respective parties, was pleased to pass an order on 22.11.2017 acquitting the opposite parties from the said charges.

6. Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 22.11.2017, the petitioner preferred an appeal in the court of learned Additional Session Judge, Kandi which was registered as Criminal Appeal CIS Registration No.7 of 2018.

7. After hearing the learned advocates of the respective parties the learned Judge on 04.10.2018 was pleased to affirm the judgment and order

dated 22.11.2017 passed by the learned Magistrate and dismissed the appeal.

8. **Mr. Manas Kumar Das, learned counsel for the petitioner/complainant** has submitted that the learned Judge did not apply his judicial mind while passing the impugned judgment and failed to appreciate the evidences adduced by the complainant and other witnesses. From their deposition allegation under Sections 420/468/471 of the Indian Penal Code was well established against the opposite parties.

9. That the donor Sushama Dey died on 23.08.2000 and the alleged deed was registered on 05.03.2001 before the ADSR, Kandi.

10. That otherwise the impugned judgment and order is bad, illegal and required to be set aside.

11. **Mr. Pravash Bhattacharya learned counsel for the State** has placed the case diary.

12. **From the materials on record and the case diary the following facts are before this court:-**

i. The parties to this case are related.

ii. Their grandmother Sushama Dey died on 23.08.2000.

iii. The accused persons allegedly grabbed 95 decimals of land which she owned and possessed by allegedly impersonating one Jogamaya Dasi as Sushama Dey by obtaining LTI of Jogamaya Dasi, procured a false deed. Hence, the criminal case.

iv. Both the trial and appellate court have dismissed the petitioner's case.

v. One of the grounds in appeal is that the donor Sushama Dey died on 23.08.2000 and the alleged deed was registered on 05.03.2001 before the ADSR, Kandi.

vi. It is the contention of the petitioner that in spite of that the accused persons were acquitted of all charges, which is erroneous and thus not in accordance with law.

vii. The petitioner's contention is that the said deed is forged as it has been registered after the death of Sushama Dey.

13. **<u>Section 311 of The Code of Criminal Procedure, 1973:-</u>**

> *"311. Power to summon material witness, or examine person present. Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."*

14. The main contention of the petitioner is that the deed was registered after the death of Sushama Dey and because of this fact alone, there was enough evidence against the accused persons and the trial court has erroneously acquitted the accused persons.

15. **Though it is alleged that the LTI is that of Jogamaya Dasi and not of Sushama Dey, no person by the name of Jogamaya Dasi was examined nor was her presence ensured by taking help of the provision under Section 311 of Cr.P.C.**

16. **<u>Section 32 of The Registration Act, 1908 lays down</u>**

> *"The question as to who would be the representative of the executant of a document who, before registration of the document, died leaving several heirs was considered in a*

number of cases and it was decided that any one of such heirs would be the representative of the deceased executant and may produce the document for registration-(Refatunisha v. Hussainee Begam ILR 47 All 294: AIR 1925 All 215: Madhu v. Babonsa AIR 1928 Cal 565 : ILR 55 Cal 1008; Gayesh Ali Sarkar v. Chintaharan Chandra AIR 1932 Cal 110: ILR 58 Cal 876 : Abdul Gaffar v. Badial Haque AIR 1932 Cal 588 : 55 CLJ 107)."

17. The Supreme court in ***Amar Nath vs. Gian Chand and Anr., Civil Appeal No. 5797 of 2009, on 28.01.2022,*** held:-

> *"**17.** The argument of the plaintiff would appear to be that it is imperative, having regard to Sections 32 and 33 of the Act, that the original power of attorney should be produced. In view of this, we consider it necessary to advert to Sections 32 and 33 of the Act, which read as follows:*
> *"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 assignee 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."***
> ***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 recognised, 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 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.

Explanation: In this sub-section "India" means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897.]

Section 33 (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.

Section 33 (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.

Section 33 (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."

***18.** We also consider it necessary to refer to Section 34 of the Act. It reads as follows:*

"34. Enquiry before registration by registering officer.—(l) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26: Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct

that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(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.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

19. *The argument of the plaintiff that for a proper and legal presentation of a document, the first defendant was obliged to produce the original power of attorney, does not appear to be sound. In fact, the matter itself is not res integra. This Court in* ***Rajni Tandon v. Dulal Ranjan Ghosh Dastidar and another*** *(supra), held, inter alia, as follows:*

"19. In view of the aforesaid situation, the issue that falls for our consideration is whether a person who executes a document under the terms of the power of attorney, is, insofar as the registration office is concerned, the actual executant of the document and is entitled under Section 32(a) to present it for registration and get it registered.

21. Section 32 deals with persons who are eligible to present documents for registration before the proper registration office. Section 32 specifies three categories of persons who can present documents for registration. The use of the word "or" between the clauses of Section 32 demonstrates that the legislature intended the said clauses to be read disjunctively and not conjunctively. It is settled law that the use of the word "or" is used to signify the disjunctive nature of a provision. In this regard reference may be made to the decision of this Court in State of Orissa v. State of A.P. [(2006) 9 SCC 591]

22. Clause (a) of Section 32 specifies that a document can be presented for registration by:
(i) by the person executing the document;
(ii) any person claiming under the document presented for registration; and
(iii) in the case the said document is a copy of a decree or order, any person claiming under the decree or order.

Clauses (b) and (c) deal with cases where the document is presented not by any person mentioned in (i), (ii) and (iii) above but by their agent, representative or assign. This is so because the use of the words "such person" in clauses (b) and (c) can be understood to mean only persons as referred to in (i), (ii) and (iii) above.

23. It may also be mentioned herein that the scope of clauses (b) and (c) in Section 32 may to an extent overlap one another. However, we do not propose to deal with the same as it is not relevant for determination of the issue before us. It is suffice to say that insofar as clause (c) of Section 32 is concerned the agents, representatives or assigns of the persons referred to in (i), (ii) and (iii) above can present the said document for registration only if they are duly authorised by the power of attorney executed and authenticated in the manner hereinafter mentioned.

24. The words "executed and authenticated in manner hereinafter mentioned" in Section 32(c) would mean the procedure specified in Section 33. This is clear from the opening words of Section 33 which reads "for the purposes of Section 32, the following power of attorney shall alone be recognised". Section 32 refers to documents presented for registration by a holder of "power of attorney" in clause (c) and it therefore follows that the procedure specified under Section 33 would be attracted where a document is presented by a person holding "powers of attorney" of the persons mentioned in clause (a) of Section 32.

25. The aforesaid position makes it explicitly clear that Section 32 of the Act requires the documents sought to be registered, to be presented, inter alia by the person executing it. In other words, the said expression requires presence of the actual person executing the document. The basic principle underlying this provision of the Act is to get before the Sub-Registrar the actual executant who, in fact, executes the document in question. In fact, the ratio of the decision in Ram Gopal [AIR 1960 Punj 226] has laid down a similar proposition on the conjoint reading of Section 32 and

Section 33 of the Act and after referring to all the judgments noted hereinbefore. Same view has been expressed earlier by the Bombay High Court in Ratilal Nathubhai v. Rasiklal Maganlal [AIR 1950 Bom 326].

26. It is important to bear in mind that one of the categories of persons who are eligible to present documents before the registration office in terms of Section 32 of the Act is the "person executing" the document. The expression "person executing" used in Section 32 of the Act, can only refer to the person who actually signs or marks the document in token of execution, whether for himself or on behalf of some other person. Thus, "person executing" as used in Section 32(a) of the Act signifies the person actually executing the document and includes a principal who executes by means of an agent. Where a person holds a power of attorney which authorises him to execute a document as agent for someone else, and he executes a document under the terms of the power of attorney, he is, so far as the registration office is concerned, the actual executant of the document and is entitled under Section 32(a) to present it for registration and get it registered.

29. The object of registration is designed to guard against fraud by obtaining a contemporaneous publication and an unimpeachable record of each document. The instant case is one where no allegation of 29 fraud has been raised. ***In view thereof the duty cast on the registering officer under Section 32 of the Act was only to satisfy himself that the document was executed by the person by whom it purports to have been signed. The Registrar upon being so satisfied and upon being presented with a document to be registered had to proceed with the registration of the same."***

21. *It is no doubt true that presentation is not a matter of form. Without a valid presentation of the document, the registration would be illegal. In this regard, the observations of the Privy Council in judgment reported in* ***Jambu Prasad v. Muhammad Aftab Ali Khan and others8*** *may be noticed.*

"Para 8. It was decided, and as their Lordships considered correctly, by Sir John Stanley, C.J. and Sir George Knox, J. in 1966 in Ishri Prasad v. Baijnath 28A. 707 : 3 A.L.J. 743 : A.W.N. (1906) 195 that the terms of Sections 32 and 33 of Act III of 1877 are imperative, and that a presentation of a document for registration by an agent, in that case the agent of a vendee of Immovable property, who has not been duly

authorised in accordance with those sections, does not give to the Registering Officer the indispensable foundation of his authority to register the document. As those learned Judges said:

His (the Sub-Registrar's) jurisdiction only comes into force if and when a document is presented to him in accordance with law.

Para 11. One object of Sections 32, 33, 34 and 35 of Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act."

However, in the facts, the IInd defendant having presented the sale deed as executant, the presentation and registration cannot be questioned.

***22. Section 34 provides for the inquiry to be done by the Registering Office before he orders registration. It declares that no document shall be registered under the Act unless the persons executing such document or their representatives, assigns or agents authorised as aforesaid, appear before the Registering Authority before the time, allowed for presentation under Sections 23, 24, 25 and 26.** This is, however, subject to Sections 41, 43, 45, 69, 75, 77, 83 and 89. Appearances under Section 34(1) may be simultaneous or at different times. Section 34(3)(a) enjoins upon the Registering Officer to enquire whether or not such document was executed by the persons by whom it purports to have been executed. Section 34(3)(b) further makes it his duty to satisfy himself as to the identity of a person's appearing before him and alleging that they have executed the document. It must be understood and read along with Section 32(a). Section 32(a) mandates presentation of the document for registration by some person executing or claiming under the same, inter alia. In respect of a person who presents the document, who claims to have executed the document, not only is he entitled to present the document for registration, in the inquiry under Section 34(3)(a) and 3(b), the duty of the Registering Officer extends only to enquire and find that such person is the person who has executed the document he has presented and further be satisfied about the identity of the person. **When it comes to Section 34(3)(c), the Registering Officer is duty-bound in respect of any person appearing as a representative, assign or agent to satisfy himself <u>of a right of such a person to so appear</u>.** Section 34(3)(c) is relatable to persons covered by Section 32(b) and 32(c) of the Act. We have already found that the word 'agent' is to be* *understood as a person who is authorised to present the document for registration. Such an agent would fall under Section 32(c). Thus, in regard to persons falling in Section 34(3)(c), it would, indeed, be incumbent on the agent, inter alia, to produce the power of attorney as such.*

26. *Section 35 of the Registration Act provides for the procedure on admission or denial of execution. The person, who has executed the document is to be asked whether he accepts the execution of the document. Section 35(2) reads as follows:*

"35(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, <u>or for any other purpose contemplated by this Act,</u> examine any one present in his office."

27. *This provision gives authority to the Registering Authority to satisfy himself that the persons appearing before him are the persons they represent to be or for any other purpose contemplated under the Act. Towards this end, Registering Officer can examine anyone present in his Office. Section 35(3) reads as follows:*

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

(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, <u>the registering officer shall refuse to register the document</u> as to the person so denying, appearing or dead: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII: 50 [Provided further that the 51 [State Government] may, by notification in the 52 [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 Registrar for the purposes of this sub-section and of Part XII.]"

28. *Thus, the aforesaid provision deals with situations in which the Registering Authority refuses the registration. If the registering Authority is satisfied about the identity of the person and that he admits the execution of the document, it may not be a part of the Registrar's duty to enquire further. The registration by itself will not bring the curtains down on questions relating to title to the property. The very purport of the Law of Registration is to usher in and maintain a transparent system of maintaining documents relating* *to property rights. It puts the world on notice about certain transactions which are compulsorily registrable Section 17 interalia. The law also makes available facility of registering documents at the option of the person (Section 18).*

30. *Section 58 of the Act deals with the procedure on admitting a document to registration.*

"58. Particulars to be endorsed on documents admitted to registration. —(l) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely: — (a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal. State Amendments Tamil Nadu: In section 58, —

(i) in sub-section (1), after item (a), the following item shall be inserted, namely:— "(aa) in the case of a document for sale of property, the signature and addition of every person admitting the claim under such document, and, if such claim has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;";

(ii) in sub-section (2), after the expression "execution of a document", the expression "and in the case of a document for sale of property, any person admitting the execution of such document, or any person admitting the claim under that document" shall be inserted. [Vide Tamil Nadu Act 28 of 2000]."

18. Thus, in the present case the registration is in accordance with law **as the execution was duly proved before the Registrar**.

19. The judgment and order of the trial court and the appellate court are in accordance with law and need no interference by this court.

20. **The revisional application being CRR 140 of 2019 is dismissed.**

21. The Judgment and Order dated 04.10.2018 passed by the learned Additional District & Sessions Judge, Kandi, Murshidabad in Criminal Appeal CIS Registration No.07 of 2018 whereby the Judgment and Order dated 22.11.2017 passed by the learned Judicial Magistrate, 1st Class, Kandi, **is affirmed.**

22. All connected applications stand disposed of.

23. Interim order, if any, stands vacated.

24. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

25. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)