

AD-03
Ct No.09
10.01.2023
TN

WPA No. 3471 of 2022

Shipra Dutta
Vs.
The State of West Bengal and others

Mr. Sankar Paul,
Ms. Tapati Sarkar

.... for the petitioner

Mr. Atis Kumar Biswas,
Mr. Amit Singh,
Ms. Jyoti Agarwal

.... for the respondent nos.5 & 6

Learned counsel for the petitioner contends that the petitioner's father, while ailing in a hospital from cerebral stroke, was taken from the hospital by the private respondents and was made to execute a purported deed of gift on misrepresentation and by force, at a juncture when the executor was not sufficiently capable mentally to sign the document of his own volition.

Subsequently, the deed was presented to the Sub-Registrar concerned, who registered the document knowing full well that the executant was not in a position to execute such a deed of his own volition.

Accordingly, a representation has been given to the District Registrar, Nadia, Krishnanagar by the

petitioner which has not yet been decided on by the District Registrar.

Learned counsel places reliance on Annexure-P10 at page-69 of the writ petition to indicate that the said Advocate's letter was written on behalf of the father of the petitioner, since deceased, complaining of the said incident. Thereafter, it is contended, a representation was given on February 04, 2022 by the petitioner in the same tune, but to no effect. It is, thus, contended that the District Registrar should be directed to undertake proceedings immediately within the contemplation of Sections 81 and 83, read with Section 35, of the Registration Act, 1908.

Learned counsel appearing for the private respondents submits that the document-in-question was duly signed by the donor of his own volition. Not only that, the allegations made in the present writ petition are figments of imagination.

The petitioner also preferred a complaint before the police authorities and, not stopping there, filed a civil suit challenging the gift deed executed in favour of the private respondents. However, thereafter the present representations were manufactured to suit the purpose of the petitioner in the civil suit, particularly in order to create evidence for the said suit.

Upon hearing learned counsel for the parties, it is evident that the representations-in-question were issued by a learned Advocate and, as such, there is no conclusive proof as to whether the deceased donor was actually in a position to give instructions to issue the said letter.

Again, the suit and the police complaint-in-question were instituted prior to the representations being given to the District Registrar and, as such, are patently a construct of an afterthought.

Moreover, Section 81, read with Section 83, of the Registration Act does not mandate the District Registrar, in a case of a complaint by any and every stray person, to start a prosecution under the said provision.

Section 81 clearly provides that every registering officer appointed under the Registration Act and every person employed in his office for the purposes of the Act, who, being charged with the endorsing, copying, etc. of any document presented or deposited under its provisions, does the same in a manner “*which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code*”, will be punishable with imprisonment as stipulated therein.

Section 83, on the other hand, contemplates that a prosecution for any such offence under the Act “coming to the knowledge” of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar or the Sub-Registrar.

The section clearly contemplates that only upon a registering officer having committed the offence as stipulated in the said provision, the District Registrar’s jurisdiction can be invoked for the purpose of initiating a prosecution under the same.

However, in the present case, there is nothing on record to indicate that the Sub-Registrar, knowing or believing to be incorrect the contents of the documents-in-question, intending thereby to cause or knowing it to be likely that he may thereby cause injury as defined in the Indian Penal Code, registered the said document.

Moreover, a proceeding under Section 83 can be commenced only upon the prosecution of any offence under the Act having come to the knowledge of a registering officer in his official capacity. There is nothing on record to indicate that there was any such occasion in the present case apart from the *post facto* complaint of the petitioner. That apart, the very fact of the representation having chronologically succeeded

the suit indicates that the same was only a figment of an afterthought as indicated above.

The question of the registering officer deeming the donor in the present case to be a minor, idiot or a lunatic does not arise *ipso facto* by the filing of the suit, particularly since the allegation was made long after the alleged incident and even after the institution of the civil suit and the criminal complaint before the police authorities.

As such, there is no scope of invoking the provisions of Section 35, 81 or 83 of the Registration Act, 1908 in the present case.

Insofar as the alleged non-compliance of Rule 21 of the West Bengal Rules is concerned, the same does not call for any proceeding as contemplated in the abovementioned sections.

In any event, it will be open to the petitioner to ventilate all grievances regarding the documents-in-question before the civil court and, if any criminal proceeding is initiated on the basis of the criminal complaint lodged by the petitioner, in such proceeding. Nothing in this order shall preclude the petitioner from urging such points before such forums.

However, WPA No. 3471 of 2022 is dismissed on contest without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)