

W.P.A. No. 16596 of 2022

Abdul Rahaman Khan @ Sukra Khan
Vs.
The State of West Bengal & Ors.

Mr. Amit Baran Dash,
Ms. Ankana Sarkar
... for the petitioner

Mr. Soumitra Mukherjee,
Mr. Domingo Gomes
...for the State

Mr. Goutam Kumar Thakur,
Ms. Anandamayi Ghosh,
Mr. Debasis Ghosh
...for the respondent no. 5

Learned counsel appearing for the petitioner contends that the concerned District Registrar erroneously allowed an appeal preferred by the private respondent within the contemplation of Section 72 of the Indian Registration Act, 1908 (for short “the 1908 Act”) and directed registration of a document purportedly signed by the petitioner.

Learned counsel for the petitioner submits that although the document-in-question was signed by the petitioner, no consideration passed at any point of time between the parties and, as such, the sale was never concluded.

Hence, it is argued, within the purview of Section 58 of the 1908 Act, the same could not have been

registered. Learned counsel appearing for the petitioner places reliance on Section 58(1)(c) of the 1908 Act in such context.

It is argued that since a suit under the 1908 Act can only be filed under Section 77 of the 1908 Act and the present case does not fall within such category; hence the present challenge has been preferred by the petitioner.

It is argued that the District Registrar, in his capacity as an appellate authority, assumed jurisdiction not vested in him by law by directing registration of the document, which is palpably disputed by the petitioner.

Heard learned counsel for the parties.

Section 58(1) of the 1908 Act provides the particulars to be endorsed on documents admitted to registration. Clause (c) of sub section (1) thereof provides that it will be endorsed from time to time regarding 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.

The said clause is not applicable here since the private respondent points out that the deed-in-question

itself carries a clause regarding passage of consideration amount.

The provisions of Section 58(1)(c) can only be invoked when the payment of money or admission of receipt of consideration happens in the presence of the registering officer, which is not the allegation of any of the parties in the present matter.

Rather, sub section (2) of Section 58 of the 1908 Act provides that if any person admitting the execution of a document refused to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note for such refusal.

In the present case, such refusal was not noted by the concerned registering officer. However, it is nobody's case that the petitioner was present and denied having executed a document before the Registrar. As such, Section 58(2) of the 1908 Act can also not be invoked in the present case. The petitioner clearly admits that he had signed the document but challenges the deed on the premise that no consideration was paid to the petitioner and, as such the sale was never concluded within the contemplation of the Transfer of Property Act.

However, Section 72 of the 1908 Act stipulates that "except where the refusal is made on the ground of denial of execution," an appeal shall lie against an

order of a sub-Registrar refusing to admit a document for registration.

In the present case, the District Registrar, as the appellate authority, assumed jurisdiction under Section 72 of the 1908 Act and rightly so, since the refusal-in-question has been challenged by the petitioner not on the ground of denial of execution but on the ground of no consideration having been paid.

Insofar as Section 73 is concerned, the same envisages an application to the Registrar where the sub-Registrar refuses to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution. Any person claiming under such document, or his representative, etc., may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

In the present case, the execution itself has not been denied by the petitioner. Hence, in the event the petitioner seeks to make out a case as regards no consideration having passed between the parties, which might vitiate the sale, it is open to the petitioner to approach the competent civil court by instituting a regular suit on such allegations and/or to seek cancellation of the deed-in-question.

However, it is beyond the scope of the registering authority to decide such issue and, as such, no illegality or irregularity was committed in the present case by the District Registrar.

Accordingly, W.P.A. No. 16596 of 2022 is dismissed on contest without, however, any order as to costs.

It is reiterated that it will be open to the petitioner to challenge the deed-in-question, if the petitioner so deems fit, before a competent civil court on the grounds as canvassed by the petitioner.

This court has not entered into the merits of the allegations made by the petitioners in the present writ petition, which are denied by the respondents.

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

(Sabyasachi Bhattacharyya, J.)