

19.05.2023
SL No.20
Court No.8
(gc)

SAT 502 of 2016
CAN 1 of 2016 (Old No: CAN 10896 of 2016)

Mamota Begum
Vs.
Sukhomoy Goyenka

Mr. Pratip Kumar Chatterjee,
...for the Appellant.

The confirmatory judgment and order passed by the Appellate Court in a suit under Section 77 of the Indian Registration Act is a subject matter of challenge in this second appeal.

Since the defendant/respondent did not contest the suit or the appeal, we propose to dispose of the appeal in absence of the respondent. In order to appreciate the nature and scope of the suit, it is relevant to refer to Sections 77 and 72 of the Indian Registration Act. The said provisions are:-

***“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 a decree 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 documents shall be receivable in evidence in such suit.

72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.- *(1) 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 to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.*

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.”

The transactions between the parties are not in dispute. However, it appears that the Registrar refused registration on the ground that the deed was not presented by the executants but by the alleged purchaser.

The learned Trial Judge has noted that on the backside of page 2 of the deed, A.D.S.R., Salar put an endorsement to the effect “refused under Section 34(1) of IR Act, 1908 and under Section 62(1) of IR Rule, 1962”. Under Section 34(1) of the I.R. Act, no document shall be registered unless the persons executing such document or their representatives, assigns or agents authorized appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26. Section 23 of the Act stipulates that other than a Will, no document shall be accepted for registration unless presented for registration within four months from the date of its execution. It appears from the evidence that Sukhomoy Goenka did not present it before the Sub-Registrar, Salar for its registration from the date of execution, that is, 27th February, 2009 and probably it could be the reason for refusal of the registration of the deed by the Sub-Registrar, Salar.

The learned Trial Judge was of the view that the plaintiff has resorted to some unethical practice to manipulate the dates of its presentation, assessment, refusal, etc. and it clearly shows a collusion and conspiracy between the plaintiff and some Government officials. The learned Trial Judge has relied upon the certified copy of the order passed by the District Registrar, Murshidabad in Appeal Case No.13/2009 wherefrom it transpires that the respondent did not appear before him

in spite of service of notice. On such consideration, the suit was dismissed.

The First Appellate Court although had arrived at a finding that the execution of the deed is not in dispute but did not interfere with the order of the registration authority since the document was not presented by the executants. Strictly going by the provisions of the Registration Act, we do not find any infirmity in the order passed by the registration authority in refusing to register the document as the executants did not come forward to execute the document.

We have read the original plaint. Although, specifically the appellant has not asked for a direction upon the respondent to present the document before the A.D.S.R. for registration but in effect, the plaintiff has asked for the said relief. In the facts and circumstances of the case, it was open for the Court to mould the relief and pass appropriate order having regard to the fact that the execution of the document by the respondent is not in dispute.

The original certified copy of the plaint is kept with the record.

Under such circumstances, we allow this second appeal.

We direct the respondent to be present before the A.D.S.R., Salar within six weeks from date. The

Registering Authority shall execute the said document without insisting further executants to be present.

The department is directed to draw up the decree as expeditiously as possible.

The Registering Authority and the respondent shall, however, act on the operative portion of the judgment.

Accordingly, the second appeal and the connected application stand disposed of.

This order shall be immediately communicated to the respondent by Speed Post with A.D.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)