

OD-3

ORDER SHEET

WPO/637/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

UMA MITRA

-VS-

THE DIRECTORATE OF REGISTRATION AND STAMP REVENUE AND ORS.

BEFORE :

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

Date : June 19, 2023.

Appearance:

Mr. Arnab Saha, Adv.
Mr. Abhimanyu Banerjee, Adv.
...for the petitioner

Mr. Ayan Banerjee, Adv.
...for the State/respondent

Mr. Samrat Choudhury, Adv.
Mr. Soumya Kanti Nag, Adv.
Mr. Debnandan Bhattacharya, Adv.
...for the private respondent

The Court : Affidavit-of-service filed in Court is taken on record.

The petitioner challenges the registration of a document, which is purportedly a sale deed, on several grounds. It is first argued that the petitioner was made to understand by the private respondent that the same was merely a Power of Attorney, thereby perpetrating an act of misrepresentation on the petitioner. That apart, it is argued that no consideration passed between the parties for such purported sale.

Learned counsel for the petitioner submits that in the absence of passage of consideration, the sale itself is vitiated and the Registrar could not register the said document.

It is contended that the amount shown as consideration in the deed itself is of such a magnitude that under the Finance Act, the same could not be paid by way of a cash transaction. As such, in the absence of any document or other records to indicate the passage of consideration, the Registrar could not have registered the sale deed in question.

Learned counsel also places reliance on Section 35(3)(a) of the Registration Act, 1908 as well as Rules 124 and 128 of the West Bengal Registration Rules, 1962. It is submitted that the said Rules and Section have been contravened by the Registrar when carrying out the registration impugned before this Court.

It is further argued that the memo of consideration attached to the purported sale deed has a specific column regarding the mode of payment. However, there is no mention therein as to how and by what instalments, if any, the payment was made. As such, non-passage of consideration also vitiates the registration process itself.

Learned counsel places reliance on a judgment reported at (2022) 8 SCC 210 [*Asset Reconstruction Company (India) Limited -vs- S.P. Velayutham and Ors.*] in support of the proposition that it is not an absolute bar for the Writ Court to interfere with the process of registration and/or a statutory act to be performed by the statutory authority. The Supreme Court held in the said case that if a party questions the very execution of a document or the right and title of a person to execute a document and present it for registration, his remedy will only be to go to the Civil Court. But where a party questions only the failure of the registering authority to perform his statutory duties in the course

of the third procedural step as mentioned therein, it cannot be said that the jurisdiction of the High Court in article 226 stands completely ousted.

It is argued that in the present case, the registration itself was vitiated and should be set aside. Even before inviting a detailed argument by the respondents, it is seen that the argument of the petitioner does not merit entertaining the writ petition.

The contention that the provisions of the Registration Act were violated does not hold water.

Section 35(3)(a) stipulates that if any person by whom the document purports to be executed denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead.

However, obviously, the said provision implies that the person by whom the document purports to be executed has to assert such denial in a positive manner before the registering officer. A post facto denial of the execution of the document may at best afford a cause of action for a civil suit or a criminal action on the ground of fraud for the person who makes such accusations; however, the same does not vitiate the registration *per se*.

Insofar as the provisions of the 1962 West Bengal Rules are concerned, the same also do not come to the aid of the petitioner's arguments.

Rule 124 deals with presentation of documents and is mostly on the legibility and other technical formalities of the documents.

However, none of the said paraphernalia as stipulated therein include any provision as to the Registrar ascertaining as to whether any consideration amount actually passed between the parties to the deed-in-question.

Insofar as rule 128 is concerned, the registering officer shall, after satisfying himself as to the compliance of the provisions of the Act, Rules made thereunder and the standing order applicable thereon, verify the original document that the registration has been made in accordance with the procedures laid down in rules 122 to 127 and that the document has been duly stamped and proper registration fees have been paid.

However, the contraventions alleged by the petitioner, as to non-passage of consideration and the document being executed by misrepresentation and fraud, do not fall within the purview of Rules 122 to 128 of the 1962 Rules at all. The scope of enquiry of the Registrar is limited to the compliance of the actual formalities under the Registration Act and concerned Rules. Since the petitioner's allegations seek to traverse the jurisdiction of the Registrar and go far beyond, the same cannot vitiate the registration even on a prima facie footing.

As such, there is no scope of interference in the present writ petition.

It is noteworthy to mention that learned counsel for the petitioner, at the conclusion of his arguments, had sought some more time to ascertain whether there was any standing order within the contemplation of rule 128 of the West Bengal Rules, to vindicate the case of the petitioner. However, such adjournment is not being given to the petitioner, since the arguments were substantially concluded and the Court had already expressed its mind before such adjournment was sought. Secondly, nothing in any standing order issued by the relevant authority can contravene or go beyond the scope of the Act and the Rules framed therein. Hence, such adjournment, even if granted, would be on a redundant count.

Accordingly, WPO/637/2023 is dismissed on contest without any order as to costs.

Nothing in this order, however, shall prejudice the rights and contentions of any of the parties in any proceeding, be it criminal or civil, if taken out by the parties pertaining to the purported execution of the deed in question.

(SABYASACHI BHATTACHARYYA, J.)