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W.P.No.12012 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12012 of 2023
and
W.M.P.No.11862 of 2023

Thiyagarajan

... Petitioner

Vs.

1. The District Registrar,
Office of the District Registrar,
Trippur District.

2. The Sub-Registrar,
Office of Sub Registrar,
Udumalaipettai,
Trippur District.

3. Govindaraj

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent vide No. 7708/A1/2018 dated 31.3.2023 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner	: Mr.M.Venkatesh
For Respondents	:
(for R1 to R2)	: Mr.C.Jaya Prakash, Govt. Advocate
(for R3)	: Mrs.M.Leena



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72(1) of the Registration Act and the District Registrar, without even issuing any summons or notice to the writ petitioner/ vendor, allowed the appeal by issuing a direction to the Sub Registrar to register the documents. Thus, the petitioner is constrained to move the present writ petition.

3.The learned counsel for the petitioner mainly contended that under Section 35 of the Registration Act, it is mandatory on the part of the Registering Authority to verify the genuineness of the document presented and to identify the vendor for registration.

4.In the present case, the Registering Authority/ Sub Registrar rightly refused registration on the ground that the vendor / writ petitioner was not present. The first respondent District Registrar, without even ascertaining these facts and without issuing any notice to the petitioner / vendor, unilaterally allowed the appeal and directed the Sub Registrar to register the document. Thus, the order passed by the first respondent is in violation of Section 35(a) of the Registration Act and further in violation of the Principles of Natural Justice. The unilateral decision in the appeal is *per se* illegal and therefore, the order impugned is liable to be set aside.



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5.The learned Government Advocate, appearing on behalf of the respondents one and two is unable to establish that the first respondent has given an opportunity to the writ petitioner to present his case. The learned counsel for the third respondent made a submission that the document was presented in accordance with the procedures contemplated. However, the third respondent could not deny that the vendor was present at the time of presentation and registration.

6.The Hon'ble three Judges Bench of the Hon'ble Supreme Court of India, in the case of *Veena singh vs. District registrar/ additional collector reported in 2022 7 SCC 1*, elaborately considered the meaning of “execution” with reference to section 35(1)(a) of the Registration Act. The relevant portion of the findings are extracted hereunder :

C.3. Meaning of “execution”

50. Section 35(1)(a) of the Registration Act uses the expression “admit the execution of the document”, while Section 35(3)(a) uses the expression “denies its execution”. Similarly, Section 72(1) has adopted the expression “denial of execution”, while Section 73(1) uses the expression “denies its execution”. However, the word “execution” itself is not defined by the Registration Act.



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51. Before us, two possible interpretations have been urged by the parties:

(i) First, that “execution” is tantamount to “signing” a document. Hence, once a person admits to their signature on a document, they admit to having executed it; and

(ii) Second, that “execution” cannot be equated with merely signing a document. Hence, even if a person's signature on the document admitted, they can still deny its execution if they did not agree to or understand the contents of the document while signing it.

We must now decide which of these two interpretations should be adopted by this Court.

52. The first interpretation of “execution” is supported by the definition provided in the Stamp Act, 1899 (“the Stamp Act”). Section 2(12) defines “executed” and “execution” in the following terms:

“2. (12) Executed and execution.—“Executed” and “execution”, used with reference to instruments, mean “signed” and “signature” and includes attribution of electronic record within the meaning of Section 11 of the Information Technology Act, 2000 (21 of 2000);”



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However, since the Registration Act has been enacted for a purpose different from the Stamp Act, the definition under the Stamp Act is not conclusive.

53. *Black's Law Dictionary defines the expression “execute” and “executed” thus”*

“execute, vb. (14c) 1. To perform or complete (a contract or duty) <once the contract was fully executed, the parties owed no further contractual duties to each other> ... 3. To make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form <each party executed the contract without a signature witness>...

executed, adj. (16c) 1. (Of a document) that has been signed <an executed will>...

“[T]he term “executed” is a slippery word. Its use is to be avoided except when accompanied by explanation ... A contract is frequently said to be executed when the document has been signed, or has been signed, sealed, and delivered. Further, by executed contract is frequently meant one that has been fully performed by both parties.”
*William R. Anson, Principles of the Law of Contract 26 n. * [Arthur I. Corbin (Ed.), 3d Am. ed. 1919].”*

54. *The expression “execute” has been further defined in Words and Phrases in the following terms [Words and Phrases (Permanent Edn.) (Thomson Reuters, 2020).] :*



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“To complete as a legal instrument; to perform what is required to give validity to.”

55. The definitions in both these dictionaries seem to once again suggest that the signing of a document can be equivalent to its execution. However, these definitions are by no means definitive and cannot be taken out of context, since they also do seem to suggest that executing an agreement is making it fully valid and legally enforceable.

56. Mulla's The Registration Act [Justice K. Kannan, Mulla's The Registration Act (LexisNexis, 2012) p. 416.] notes the following in relation to the meaning of “execution” [Justice K. Kannan, Mulla's The Registration Act (LexisNexis, 2012), pp. 254-56.] :

“Admission of Execution

...It is submitted that the mere proof or admission that a person's signature appears on a document cannot by itself amount to execution of the document...

Where a person had signed a document after being aware of the nature of the document, he has executed the document, and, it is submitted, the Registrar cannot go into the question whether the document has been obtained by coercion; but when a signature has been obtained by false representations and the ostensible executant did not sign with the intention of being bound



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by the terms of the document, such a person cannot be said to have executed the document.”

57. Similarly, S.P. Sengupta's Commentaries sets out the following position [S.P. Sengupta, Commentaries on the Registration Act, 1908 (Kamal Law House, 2017), pp. 389-390 & 617-618.] :

“A document is liable to be set aside or declared inoperative by a civil court when it was not voluntarily executed. But that is an altogether different consideration not coming within the jurisdiction of the Registering Officer. The correct legal position seems to be that though the Registering Officer cannot take any decision as to the legality and validity of an instrument which has been presented for registration, there cannot be any admission of execution when the plea taken by the executant before the Registering Officer, if found true, would invalidate the deed. An execution does not mean merely signing but signing by way of assent to the terms embodied in the document. When the executant admits his signature on the document but takes a further plea that his signature was taken by force after detaining him in a room or fraud was practised upon him in obtaining his signatures on the deed or he was duped to sign on blank papers, etc. and there is no material before the Registering Officer to rebut the plea of the executant, then there cannot be any “admission”



within the meaning of Section 35(1)(a) of the Act because the mind of the signer did not accompany the signature...”

(emphasis supplied)

While the above extract deals with the power of the registering officer under Section 35(1)(a), it does suggest that “execution” happens when a person's signature on the document is accompanied by their full consent to the contents of the document, which they have understood before signing it.

58. *This understanding of the phrase “execution” is also adopted by textbooks in relation to the law of evidence. Section 68 [“68. Proof of execution of document required by law to be attested. —If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”] of the Evidence Act, 1872 (“the Evidence Act”) prescribes the requirement for proving that a document has been executed. The proviso to Section 68 stipulates that it shall not be necessary to call an attesting witness to prove the execution of a document if it has been registered under the Registration*



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Act, provided that its execution is not specifically denied by the person who is purported to have executed it. In relation to this provision, Sarkar's Law of Evidence notes [Sudipto Sarkar and Dr H.R. Jhingta, Sarkar : Law of Evidence-In India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia & Singapore : Vol. 1 (LexisNexis, 2016).] :

“The term “execution” is not defined in any statute. It means completion i.e. the last act or acts which complete a document and in English law this is known as “signing, sealing and delivering”. The ordinary meaning of executing a document is signing it as a consenting party thereto.

[s 67.4] Meaning and Proof of “Execution”

Execution consists in signing a document written out and read over and understood and does not consist of merely signing a name upon a blank sheet of paper ...”

59. Similarly, Ratanlal and Dhirajlal's treatise on the law of evidence states as follows [N. Vijayraghavan and Sharath Chandran, Ratanlal & Dhirajlal : The Law of Evidence (LexisNexis, 2021).] :

“[s 67.3] Execution of Document — Meaning

Execution of a document is something different from mere signing of the document. The term execution is not defined ...The ordinary meaning of executing a



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document is signing it as a consenting party thereto ... Execution of the document means that the executant must have signed or put his thumb mark/impression, only after the contents of the document have been fully stated and read by the executant before he put his signature thereon. Mere admission of the initial by the executant would not be tantamount to an admission of execution of the document.”

60. *If we are to now look at the relevant precedent on the subject, in Rajendra Pratap Singh v. Rameshwar Prasad [Rajendra Pratap Singh v. Rameshwar Prasad, (1998) 7 SCC 602] , the validity of a decree of the eviction under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 was in question before a two-Judge Bench of this Court. This Court, while considering the provisions of the third paragraph to Section 107 of the Transfer of Property Act, 1882, noted that it required that a registered instrument for the lease of an immovable property had to be executed both by the lessor and lessee. While elaborating on the meaning of “executing”, this Court held : (SCC p. 607, para 11)*

“11. ... An instrument is usually executed through multifarious steps of different sequences. At the first instance, the parties might deliberate upon the terms and reach an agreement. Next, the terms so agreed upon would be reduced to writing. Sometimes one party alone would affix the signature on it and deliver it to the other



party. Sometimes both parties would affix their signature on the instrument. If the document is required by law to be registered, both parties can be involved in the process without perhaps obtaining the signatures of one of them. In all such instances, the instrument can be said to have been executed by both parties thereto. If the instrument is signed by both parties, it is presumptive of the fact that both of them have executed it, of course it is only rebuttable presumption. Similarly, if an instrument is signed by only one party, it does not mean that both parties have not executed it together. Whether both parties have executed the instrument will be a question of fact to be determined on evidence if such a determination is warranted from the pleadings of the particular suit. Merely because the document shows only the signature of one of the parties, it is not enough to conclude that the non-signing party has not joined in the execution of the instrument.”

(emphasis supplied)

In view of the above enunciation, the Court held when the defendant in that case had not disputed in his written statement that the lease had been validly made, it was not be open to him to raise a contention subsequently that the instrument was void since it had not been executed both by the lessor and the lessee. The decree for eviction was thus upheld. However, as a general principle, the above extract from the decision of this Court, though in a different statutory context, emphasises that



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while the signing of an instrument by both the parties is presumptive of the fact that both of them have executed it, yet this is rebuttable presumption.

61. *In N.M. Ramachandraiah v. State of Karnataka [N.M. Ramachandraiah v. State of Karnataka, 2007 SCC OnLine Kar 192] (“N.M. Ramachandraiah”), a Single Judge of the Karnataka High Court, while construing power of the Registrar under Section 74 of the Registration Act, observed : (SCC OnLine Kar para 8)*

“8. The answer to these questions revolve round the scope of enquiry as contemplated under Section 74 of the Act. In an enquiry under Section 74 of the Act, the Registrar should enquire whether the document had been executed, and whether the requirements of the law has been complied with, so as to entitle the document to registration. The Registrar should not only be satisfied that the party in question has signed the document, but he should also come to the conclusion that the signature has been affixed by the party after understanding the contents and the terms of the document. The Registrar should summon witnesses required by the petitioner to prove execution. The enquiry under the section should be made by the Registrar himself and once after such enquiry, he is satisfied that the document not only bears the signatures of the executant, but it is also duly executed by the executant, after understanding the



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contents and terms of the document, he may order the document to be registered. In the said enquiry he has no power to enter into probabilities and surrounding circumstances. He is merely to find out whether the document tendered actually is in the state in which it was executed by the parties to it. The scope of enquiry contemplated under Section 74 have been explained in various judgments, in particular, the meaning of the word “executed”.

(emphasis supplied)

In adopting this view, the Single Judge adverted to various judgments of the Karnataka High Court, as well as other High Courts, which we shall now note.

62. *A Division Bench of the Mysore High Court in Banasettappa Laljichikkanna v. District Registrar [Banasettappa Laljichikkanna v. District Registrar, 1965 SCC OnLine Kar 132] held : (SCC OnLine Kar para 5)*

“5. ... Section 74 enjoins upon the District Registrar to hold an enquiry and come to the conclusion as to “whether a document has been executed”. In the present case all that the District Registrar has stated is that he was satisfied that the petitioner had signed the sale deed. He should have come to the conclusion that the signature had been affixed by the petitioner after understanding the contents and the tenor of the document. Execution does not mean merely signing, but



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signing by way of assent to the terms of the contract of alienation embodied in the document.”

63. *In Sayyapparaju Surayya v. Koduri Kondamma [Sayyapparaju Surayya v. Koduri Kondamma, 1949 SCC OnLine Mad 227] , a Division Bench of the Madras High Court, while construing the provisions of Sections 35(1)(a) and (b) of the Registration Act, observed : (SCC OnLine Mad)*

“The admission required therefore is admission of the execution of the document. ... It is not enough for the person, who is the ostensible executant, to admit his signature on a paper on which, it may be, the document is ultimately engrossed. The identity of the papers on which the signature occurs is not sufficient. If a man says that he signed a blank paper on the representation that it was required for presenting a petition, as in the present case or if a man signs a completed document on the representation that his signature or thumb impression is required as an attesting witness, that admission of the signature or thumb impression in those circumstances cannot be construed to be an admission of the execution of the document. Far from its being an admission, it is a clear and unambiguous denial of the execution of the document. He must admit, in order to attract the provisions of Section 35(1) that he signed the document ... The admission of execution therefore must amount to an admission that the person admitting



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entered into an obligation under the instrument; in other words, that he had executed the document, signed it as a sale deed, mortgage deed, or a lease deed, as the case may be.”

64. *In Jogesh Prasad Singh v. Ramchandar Prasad Singh [Jogesh Prasad Singh v. Ramchandar Prasad Singh, 1950 SCC OnLine Pat 31] (“Jogesh Prasad Singh”), a Division Bench of the Patna High Court noted that the meaning of the phrase “execution” of a document had been well settled by another Division Bench of the High Court in Ebadut Ali v. Mohd. Fareed [Ebadut Ali v. Mohd. Fareed, 1916 SCC OnLine Pat 99 : AIR 1916 Pat 206 : 35 IC 56] (“Ebadut Ali”). The decision of the Division Bench in Ebadut Ali [Ebadut Ali v. Mohd. Fareed, 1916 SCC OnLine Pat 99 : AIR 1916 Pat 206 : 35 IC 56] , which was cited with approval in Jogesh Prasad Singh [Jogesh Prasad Singh v. Ramchandar Prasad Singh, 1950 SCC OnLine Pat 31] , held : (Ebadut Ali case [Ebadut Ali v. Mohd. Fareed, 1916 SCC OnLine Pat 99 : AIR 1916 Pat 206 : 35 IC 56] , SCC OnLine Pat para 11)*

“11. ... In our view, execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. To be executed a document must be in existence; where there is no document in existence, there cannot be execution. ... Where an executant clearly says that he signed on blank paper



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and that the document which he had authorised is not the document which he contemplated, the statement is a denial not an admission, of execution.”

65. Adverting to the above decisions and to the views of the Calcutta [Mohima Chunder Dhur v. Jugul Kishore Bhattacharji 1881 SCC OnLine Cal 1 : ILR (1881) 7 Cal 736] , Orissa [Uma Devi v. Narayan Nayak, 1984 SCC OnLine Ori 94] and Assam High Court [Bhutkan Nath v. Kamaleswari Nath, 1971 SCC OnLine Gau 53 : AIR 1972 Assam & Nagaland 15] , the Single Judge of the Karnataka High Court in N.M. Ramachandraiah [N.M. Ramachandraiah v. State of Karnataka, 2007 SCC OnLine Kar 192] emphasised that the execution of the document does not mean merely signing it, but signing it after having understood its contents in their entirety : (N.M. Ramachandraiah case [N.M. Ramachandraiah v. State of Karnataka, 2007 SCC OnLine Kar 192] , SCC OnLine Kar para 15)

“15. Therefore, the law is well settled. Execution of a document does not mean merely signing, but signing by way of assent to the terms of the contract embodied in the document. Execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put the signature after knowing the



contents of document fully. To be executed, a document must be in existence; where there is no document in existence there cannot be execution. Mere proof or admission that a person's signature appears on a document cannot by itself amount to execution of a document. Registration does not dispense with the necessity of proof of execution when the same is denied. Thus, execution of document is not mere signing of it."

66. *The understanding of the Karnataka High Court in N.M. Ramachandraiah [N.M. Ramachandraiah v. State of Karnataka, 2007 SCC OnLine Kar 192] is consistent with precedents emanating from the Privy Council and various High Courts in India. In Privy Council's decision in Puran Chand Nahatta v. Monmotho Nath Mukherjee [Puran Chand Nahatta v. Monmotho Nath Mukherjee, 1927 SCC OnLine PC 100] , Viscount Sumner, while construing the provisions of Section 35 of the Registration Act, observed : (Puran Chand Nahatta case [Puran Chand Nahatta v. Monmotho Nath Mukherjee, 1927 SCC OnLine PC 100] , SCC OnLine PC)*

"By Section 35 of the Registration Act, registration is directed when certain persons have appeared, have been duly identified, and have admitted the execution of the document propounded, and the necessary persons are "the persons executing the document". The appellant contends that in these words executing means and means



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only “actually signing”. Their Lordships cannot accept this. A document is executed, when those who take benefits and obligations under it have put or have caused to be put their names to it. Personal signature is not required, and another person, duly authorised, may, by writing the name of the party executing, bring about his valid execution, and put him under the obligations involved. Hence the words “person executing” in the Act cannot be read merely as “person signing”. They mean something more, namely, the person, who by a valid execution enters into obligation under the instrument. When the appearance referred to is for the purpose of admitting the execution already accomplished, there is nothing to prevent the executing person appearing either in person or by any authorised and competent attorney in order to make a valid admission. Their Lordships have failed to find in the scheme of the Act anything repugnant to this construction. Any other would involve risk of confusion and might even defeat the statutory procedure by multiplying the persons who have to be traced and induced to attend, either by themselves or by some representative.”

67. *In Ghasita Ram Bajaj v. Raj Kamal Radio Electronic [Ghasita Ram Bajaj v. Raj Kamal Radio Electronic, 1973 SCC OnLine Del 109] , a Single Judge of the Delhi High Court, while differentiating between signatures on ordinary documents and documents stamped in accordance with the law*



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relating to negotiation of instruments, observed that in the case of ordinary documents : (SCC OnLine Del para 8)

“8. ... The meaning of execution of a document ordinarily implies that a person making his signature by way of execution knew or should have known the nature of the document which he was signing.”

68. *In Kamlabai v. Shantirai [Kamlabai v. Shantirai, 1980 SCC OnLine Bom 152] , a Division Bench of the Bombay High Court, in the context of Section 68 of the Evidence Act, held : (SCC OnLine Bom paras 30-31)*

“30. ... In Sarkar's Evidence Act, p. 639, the meaning and the proof of the word “execution” has been set out. It says “executed” means completed. “Execution” is the last act or series of acts which completes it. Execution consists in signing a document written out and read over and understood and does not consist of merely signing a name upon a blank sheet of paper. To be executed, a document must be in existence; where there is no document in existence, there can be no execution.”

31. It seems to us plain that a person cannot be said to execute a document where he does not do so with the intention of making it. This may appear to be simple, but it is clearly, in our opinion, full of meaning and import. The word “execution” in a sense means the making of a document, and a person can be said to have made or authorised a document where with the intention and



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knowledge of bringing into existence a particular kind of document he prepares or gets prepared, such a document and signs it in token of his having accepted that document, with a desire to bring it into existence. Mere signing of a document without the intention of bringing that document into existence, meaning thereby giving effect to it would not properly speaking attract the expression “execution”.

69. *In S. Ramamurthy v. Jayalakshmi Ammal [S. Ramamurthy v. Jayalakshmi Ammal, 1990 SCC OnLine Mad 501] , a Single Judge of the Madras High Court, while interpreting Section 35 of the Registration Act, observed : (SCC OnLine Mad para 11)*

“11. Let us first examine the meaning of “admission of the execution of a document for the purpose of Section 35 of the Registration Act,” The execution of a document is not mere signing of it. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put his signature in a document after knowing fully its contents. The executant of a document must, after fully understanding the contents and the tenor of the document, put his signature or affix his thumb impression. In other words, the execution of a document does not mean merely signing but signing by way of assent to the terms of the contract of alienation embodied in the document.”



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70. In Union Bank of India v. Dhian Pati [Union Bank of India v. Dhian Pati, 1996 SCC OnLine HP 90] , a Single Judge of the Himachal Pradesh High Court had to determine whether a deed of mortgage had been validly executed. Since the Contract Act, 1872 and the Registration Act did not define “execution”, the Single Judge deduced the meaning of the phrase in dictionaries, legal lexicons and precedent. Thereafter, the Single Judge concluded : (SCC OnLine HP para 21)

“21. Thus, on the basis of the aforesaid meaning of the words “execution of document” it only signifies that the person executing such a document should sign such a document with free consent. The execution of a document would be complete in case the executant had signed the document voluntarily, without any duress, knowing the contents of the document.”

71. While interpreting the provisions of the Evidence Act, Kuttadan Velayudhan, In re [Kuttadan Velayudhan, In re, 2001 SCC OnLine Ker 14] , a Division Bench of the Kerala High Court determined whether the admission of signature on a document was tantamount to admission of its execution. After perusing the decisions of the Kerala High Court and other High Court across India, the Division Bench held :



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(Kuttadan Velayudhan, In re case [Kuttadan Velayudhan, In re, 2001 SCC OnLine Ker 14] , SCC OnLine Ker para 9)

“9. To sign means to affix the signature. But when it comes to the signing of a written instrument, it implies more than the act of affixing a signature. It implies more than the clerical act of writing the name. The intention of the person signing is important. The person should have affixed the signature to the instrument in token of an intention to be bound by its conditions. It has been said that for a signing consists of both the act of writing a person's name and the intention in doing this to execute, authenticate or to sign as a witness. The execution of a deed or other instrument includes the performance of all acts which may be necessary to render it complete as a deed or an instrument importing the intended obligation of every act required to give the instrument validity, or to carry it into effect or to give it the forms required to render it valid. Thus, the signature is an acknowledgment that the person signing has agreed to the terms of the document. This can be achieved only if a person signs after the documents is prepared and the terms are known to the person signing. In that view of the matter, mere putting of signature cannot be said to be execution of the document.”

72. In Bank of Baroda v. Shree Moti Industries [Bank of Baroda v. Shree Moti Industries, 2008 SCC OnLine Bom 486],



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a Single Judge of the Bombay High Court, in the context of proving a document under the Evidence Act, noted : (SCC OnLine Bom para 21)

“21. ... The term “execution” is not defined in any statute. It means completion i.e. the last act or acts which complete a document and in English Law this is known as “signing, sealing and delivering”. The ordinary meaning of executing a document is signing it as a consenting party thereto.”

73. The “execution” of a document does not stand admitted merely because a person admits to having signed the document. Such an interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted.

74. In giving meaning to the expression “execute” in the provisions of the Registration Act, it is necessary to adopt a purposive construction to protect, facilitate and achieve the object of registration. In Suraj Lamp & Industries (P) Ltd. v. State of Haryana [Suraj Lamp & Industries (P) Ltd. v. State of



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Haryana, (2009) 7 SCC 363 : (2009) 3 SCC (Civ) 126] , R.V. Raveendran, J., speaking for a two-Judge Bench of this Court, highlighted the purpose of registration : (SCC pp. 367-68, para 18)

“18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”



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75. *In Bharat Indu v. Hakim Mohammad Hamid Ali Khan* [Bharat Indu v. Hakim Mohammad Hamid Ali Khan, 1920 SCC OnLine PC 37] , Lord Philimore, speaking for the Privy Council, emphasised the purpose of the provisions of the Registration Act in the following terms : (SCC OnLine PC)

“The provisions of the Registration Act are very carefully designed to prevent forgeries and the procurement of conveyances or mortgages by fraud or undue influence, and though it may seem somewhat technical to insist upon exact compliance with the provisions of the Act, it is necessary so to do. Their Lordships have already given their sanction to the necessity of strict compliance with these forms in the case which was referred to at the Bar, *Jambu Parshad v. Mohd. Aftab Ali Khan* [*Jambu Parshad v. Mohd. Aftab Ali Khan*, 1914 SCC OnLine PC 77 : (1914-15) 42 IA 22 : (1914-15) 19 CWN 282 : ILR (1915) 37 All 49] .”

76. *The Registration Act exists so that information about documents can be put into the public domain, where it can be accessed by anyone in order to prevent forgeries and fraud, and so that individuals can be aware of the status of properties. If the interpretation conflating signing with execution is adopted, it would ensure that the Sub-Registrars/Registrars will continuously end up registering*



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documents whose validity will inevitably be then disputed in a civil suit or a writ petition. While the suit or writ proceedings continue, the document would remain on the public records as a registered instrument, which has the potential to cause more disruption. Hence, such an interpretation should not be adopted by this Court.

..

82. The process which is conducted by the Registrar for the purpose of an enquiry under Section 74 cannot be equated to the powers of the civil court, though certain powers which are entrusted to a civil court are vested with the Registrar by the provisions of Section 75(4). A quasi-judicial function is entrusted to the Registrar for the purpose of conducting an enquiry under Section 74. Where the Registrar refuses to register a document under Sections 72 or 76, no appeal lies against such an order. Section 77, however, provides that when the Registrar refuses to order the document to be registered, any person claiming under such document or its representative, assign or agents may institute a suit before the civil court within the stipulated time for a decree directing that the document shall be registered. It is thus clear that the Registrar, when he conducts an enquiry under Section 74, does not stand constituted as a civil court. The enquiry before the Registrar is summary in nature. The decision of the Registrar in ordering document to be registered, or for that matter in



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refusing to register a document, is not conclusive and is amenable to judicial review.”

7.In view of the fact that the petitioner/ vendor was not present before the registering authority and expressed his unwillingness to proceed with the registration to execute the document, there is no reason for the first respondent to allow the appeal preferred by the third respondent. The document was presented unilaterally by the third respondent and therefore, the registration cannot be proceeded with and the Sub Registrar has rightly taken a decision and refused to register the same.

8.However, the District Registrar, who in turn has not even considered the fundamental principles of registration and allowed the appeal filed by the third respondent, under section 72 of the Act. The manner in which the impugned order has been passed by the authority in the cadre of District Registrar cannot be appreciated.

9.The Inspector General of Registration shall look into the issue and verify the transactions and the conduct of the Officer who passed the order, and if any discrepancies are found, initiate appropriate actions in the manner known to law.



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10. With these observations, the order impugned passed by the first respondent in proceeding No.7708/A1/2018 is quashed and the writ petition is **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

(sha)

05.07.2023

Index : Yes

Speaking Order

Neutral Citation : Yes

NOTE: The registry of the High Court is directed to communicate the copy of this order to the Inspector General of Registration, 100, Santhome High Road, Chennai-28.

To

1. The District Registrar,
Office of the District Registrar,
Trippur District.
2. The Sub-Registrar,
Office of Sub Registrar,
Udumalaipettai,
Trippur District.
3. The Inspector General of Registration,
100, Santhome High Road, Chennai-28.



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S.M.SUBRAMANIAM. J.,

(sha)

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05.07.2023