

Eshaque Vs. Sub Registrar

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Court : Kerala

Decided On : Oct-15-2001

Reported in : AIR2002Ker128

Judge : G. Sivarajan, J.

Acts : [Registration Act, 1908](#) - Sections 17 to 35, 41, 43, 45, 51 to 77, 88 and 89;
Transfer of Property Act, 1888

Appeal No. : O.P. No. 24944 of 2001

Appellant : Eshaque

Respondent : Sub Registrar

Advocate for Def. : P.C. Iype, Adv.

Advocate for Pet/Ap. : K.P. Balasubramanyan and; Nirmal Sacheendran, Adv.

Disposition : Petition allowed

Judgement :

G. Sivarajan, J.

1. The 2nd respondent herein had executed a sale deed (Ext. P7) in favour of the petitioner on 1.4.2001 conveying superstructure with lease hold rights in respect of an extent of 13.33 cents in old survey No. 76/4A (resurvey No.

19.20.584, 585) and another extent of 29 cents in survey No. 58/5 (resurvey No. 19.20.585, 586 and 587) both of Kasaba Village, Kozhikode Taluk in Kozhikode District. The said document was produced before the 1st respondent for registration. The grievance of the petitioner is that the 1st respondent has issued an objection slip dt. 15.6.2001 (Ext. P8) stating that on inspection of the document (Ext. P7) it is revealed that the property described in the document 18 cents comprised in resurvey 19.20.585 is Kallaipuzha and 2 cents in survey No. 586 is road and 79 cents in survey No. 587 is river puramboke as recorded in the registers maintained by the 1st respondent. The petitioner was directed to produce evidence regarding the possession of the said properties by the 2nd respondent obtained from the revenue authorities. It is also stated that the power of attorney executed by the 2nd respondent for execution of Ext. P1 sale deed must satisfy the requirement of Section 33 of the Registration Act.

2. According to the petitioner, the 1st respondent was not justified in requiring the petitioner to produce possession certificate in respect of the property which is sought to be conveyed. It is also stated that the 1st respondent has no authority under the Registration Act to enquire into the title or possession over the property sought to be conveyed as per the document and that under Section 35 of the said Act the 1st respondent is bound to register the document if the conditions stipulated in the said sections are complied with. According to the petitioner, Ext. P7 document satisfies all the requirements of the Registration Act and therefore the 1st respondent cannot refuse the registration of the said document for reasons other than what is provided under Sections 21, 23, 28, 32, 35 and 74 of the said Act.

3. A statement is filed on behalf of the 1st respondent. The statement relies on a circular dt. 12.2.2001 issued by the Inspector General of Registration, Thiruvananthapuram. It is stated therein that difficulties and loss of money had been experienced by the public on account of registration of documents without verifying actual title of the executants of the documents and also without verifying the encumbrances, if any, in respect of the properties sought to be transferred. In the above circumstances directions are issued to the registering authorities to verify the prior documents to satisfy the right of the executants of the

document over the property sought to be transferred at the time of registration. It was also provided that if the document is executed through a power of attorney of a title holder, the said power of attorney must also be verified to satisfy as to whether the power of attorney duly authorises the transfer of the property in question. It also provides that if any doubt arises regarding any of the matters mentioned above, the same must be intimated to the petitioner in writing and that the document shall be executed only after clearing such doubts. In the light of the said circular the stand of the 1st respondent is that since there is a doubt with regard to the title and possession of the property which is sought to be transferred as per Ext. P7 document, the petitioner was intimated the said doubt as per Ext. P8 communication and he was asked to produce the possession certificate obtained from the competent authorities.

4. I have heard Sir. K.P. Balasubramanyan, learned counsel appearing for the petitioner and the learned Government Pleader, appearing for the 1st respondent. The 2nd respondent, being the executor of Ext. P7 document, is only a formal party and hence notice is not issued to the said respondent. The counsel for the petitioner submits that Ext. P7 document executed by the 2nd respondent and presented before the 1st respondent for registration satisfied all the requirements of the Registration Act and therefore, the 1st respondent was bound to register the said document without any verification either with regard to title or with regard to possession of the property sought to be conveyed by the said document. He further submitted that under the provisions of the [Registration Act, 1908](#), the 1st respondent can verify only the matters specified in Sections. 21, 23, 28, 32, 35 and 74 of the said Act and that once the said requirements are satisfied the 1st respondent is bound under Section 35 of the Act to register the document. The counsel also submitted that the petitioner will produce the original of the power of attorney executed by the 2nd respondent and registered before registration authorities of the State of Tamil Nadu before the 1st respondent which will satisfy the requirement of Section 33 of the Act mentioned above. The counsel took me to the provisions of the Registration Act mentioned above and also to the decisions in *Nalla Goundar v. Krishnaswami Naicker* (AIR 1945 Madras 465); *Krishna v. State of Punjab* (AIR 1986 Punjab & Haryana 328) and also *Ram Lakhan v. Pandit Raghunandan* (AIR 1989 Patna 144). The counsel submitted that the 1st

respondent was not justified in directing the petitioner to produce the possession certificate in respect of the property conveyed and that he was bound to register Ext. P7 document without any further delay. The learned Government Pleader appearing for the respondent submitted that the Inspector General of Registration, Thiruvananthapuram had issued the circular mentioned above only in view of the difficulties and loss of money experienced by the general public on account of the registration of documents by the registering authorities without any proper verification regarding the title, possession and also the encumbrances, if any, in respect of the property sought to be conveyed by the document presented for registration and that the said circular specifically directs the registering authorities to verify the prior documents in respect of the property and to satisfy that the executant has got title to the said property. The Govt. Pleader also submits that if the document is to be registered by the power of attorney, the said power of attorney must satisfy the requirements of Section 33 of the Registration Act.

5. In order to appreciate the rival contentions it is necessary to refer to the relevant provisions of the [Registration Act, 1908](#). Part III of the Act, Sections 17 to 22 deals with the registerable documents, Part IV of Sections 23 to 27 deals with the time of presentation. Part V, Sections 28 to 31 deals with the place of registration. Part VI, Sections 32 to 35 deals with the presentation of documents for registration. Part XI Sections 51 to 70 of the Act deals with duties and powers of registering officers and Part XII Sections 71 to 77 deals with the refusal to register. Other parts are not referred to for the reason that the said parts have no relevance for the purpose of this case.

6. Section 17 deals with the documents of which registration is compulsory. There is no dispute that Ext. P7 documents is compulsorily registerable. Section 21 of the Act provides that non-testamentary documents relating to immovable property shall not be accepted for registration unless it contains a description of such property sufficient to identify the same. Section 23 of the Act provides the subject to the provisions contained in Sections 24, 25 & 26 no document other than a will shall be accepted for registration unless presented for the purpose to the proper officer within four months from the date of its execution. Section 28 provides that every document mentioned in Section 17, Sub-section (1), Clauses (a), (b), (c), (d) and

(e), thereof shall be presented for registration in the office of a Sub Registrar within whose sub district the whole or some portion of the property to which such documents relates is situated. Section 32 provides that, except in the case mentioned in Sections 31, 88 and 89 every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office:-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Section 33 provides that, for the purposes of Section 32, the power-of-attorney mentioned in Clauses (a) to (c) alone shall be recognised. Clause (a) provides that, if the principal at the time of executing the power-of-attorney resides in any part of India in which this Act, is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides. Clauses (b) and (c) are not relevant for this purpose. Section 34 deals with enquiry before registration by registering officer. It provides that subject to the provisions contained in Part VI and Sections 41, 43, 45, 69, 75, 77, 88 and 89, no documents shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26. There are exceptions also. Section 35 deals with the procedure on admission and denial of execution. Sub-section 1(a) provides that, if all the persons executing the document appear personally before the registering officer and are personally known to him or if he be otherwise satisfied that they are the persons they present themselves to be, and if they all admit the execution of the document, or (b) if in the case of any person appearing by a representative, assign or agent, such representative assign or agent admits the execution, etc. the registering officer shall register the document as directed in Sections 58 to 61, inclusive. Sub-section (2) provides that

the Registering Officer may, in order to satisfy himself that the persons appearing before him are the persons they themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office. Sub-section (3) provides that if any person by whom the document purports to be executed denies its execution, or if any person appears to the registering officer to be a minor, an idiot or a lunatic, or if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the Registering Officer shall refuse to register the documents as to the persons so denying, appearing or dead. Section 51 of the Act deals with the Register books to be kept in the several offices. In all registration offices the following books shall be maintained:

Book 1. Register of non testamentary documents relating to immovable property.

Book 2. Record of reasons of refusal to register.

Book 3. Register of wills and authorities to adopt; and

Book 4. Miscellaneous Register.

Sections 52 to 67 deals with the duties and procedure of the registering officers, which has no bearing on the issue involved in this case. Section 68 provides that, every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the officer of such Sub-Registrar is situate and every Registrar shall have authority to issue any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered. Similarly, Section 69 gives the general power of superintendence and to make rules to the Inspector General of Registration with regard to the matters specified therein. Section 71 provides that, every Sub-Registrar refusing to register a document, except on the ground that property, to which it relates is not situate within his sub district, shall make an order of refusal and record his reasons for such order in his Book No. 2 endorse the words 'registration refused' on the document, and on application made by any person executing or claiming under the document shall without payment and unnecessary delay, give him a copy of

reasons so recorded and no registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained the document is directed to be registered. Section 72 provides for an appeal against an order passed under Section 71. Against an order of refusal passed by the Registrar under Section 72, a suit is also provided.

7. As already noted the objection slip issued by the 1st respondent only shows that the 1st respondent has got some doubt with regard to the ownership and possession of the executant of Ext. P7 document over the property. I have already referred to the relevant provisions of the Registration Act regarding registration of documents presented before the 1st respondent. There is nothing in the aforesaid provisions empowering the 1st respondent to satisfy the title, possession or encumbrances in respect of the property with respect to which registration is sought for. The 1st respondent can raise a doubt with regard to the title and possession of the property only if the statute under which he is functioning authorises to do so. In the absence of any such authorisation, the 1st respondent was not justified in directing the parties to obtain a possession certificate from the competent authority to clear the doubt regarding the title and possession of the property and to register the document. Of course, if the registering authority refuses to register the document, the petitioner has got a remedy by way of appeal before the Registrar as provided under Section 72 and a right of suit against the order of the Registrar under Section 77 of the Act. Since the question raised in this case relates to the interpretation of the provisions of the Registration Act as to the requirement of compliance of the objection slip (Ext. P8) and further in view of the circular No. R.R. 3.4058, dt. 12.2.2001 issued by the Inspector General of Registration, Thiruvananthapuram requiring such documents, no useful purpose will be served by directing the petitioner to file any appeal before the Registrar under Section 72 of the Act.

8. I may also refer to the decisions relied on by the counsel for the petitioner. A Division Bench of the Madras High Court in *Nalla Goundar v. Krishnaswami Naicker* (AIR (32) 1945 Madras 465) considered the provisions of Clause (b) of Section 74 of the Registration Act and held that the requirements of the law for the time being mentioned in Clause 3 of Section 74 of the Registration Act must be the

Law relating to the registration which entitle the Registrar to refuse registration if not complied with and further it does not entitle the Registrar to refuse registration on any other grounds. A learned Single Judge of the Punjab & Haryana High Court in *Krishna v. State of Punjab* (AIR 1986 Punjab & Haryana 328) considered the power of the Registrar to refuse registration in the context of the provisions of Sections 69, 74, 21, 23, 25, 28, 32 & 35 of the Registration Act. It was held that the provisions of the Registration Act is a complete code by itself and the power of the Registrars and Sub Registrars are clearly defined and demarcated. It was also held that the Inspector General of Registration under Section 69 can only exercise general superintendence over all the Registrars under the Act and make rules consistent with the provisions of the Act, providing for the matters mentioned therein. It is also stated that Sections 21, 23, 28, 32, 35 and 74 authorise the Sub Registrar to refuse registration if the documents are not properly executed or presented or the subject matter of the document lay beyond his territorial jurisdiction and that nothing in the Act authorised either the State Government or the Registrar to instruct the Sub Registrars not to register a document, where the State Government and the Registrar in turn, instructed the Sub Registrar not to register sale deeds or lease deeds in respect of properties belonging to religious/charitable institutions. The decision further held that the above instructions are ultra vires their powers and the Sub Registrar was directed to register the lease deed in that case. A Division Bench of the Patna High Court in *Bihar Deed Writers Association and Ors. v. State of Bihar and Ors.* (AIR 1989 Patna 144) considered the provisions of Sections 52 and 68 of Registration Act, where it is held as follows:-

'In our view, if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is bound to register it. It is not for the registering authority to enquire and ascertain the title to its own satisfaction. Under the provisions of the T.P. Act, 1888, if the transferor does not have any title or has an imperfect title to the property, the transferee on transfer will either get no title or he will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority.'

9. The legal position with regard to the title to the property that is being conveyed by the document under registration is clearly stated by the Division

Bench of the Patna High Court in the passage extracted above. It is in those circumstances, the Registration Act did not make any provision authorising the registering authority to satisfy about the title of the executants of the document before registration. The registering authority is bound to register a document presented for registration on being satisfied of the compliance of the provisions of the Registration Act already referred to in this judgment. Regarding the circular issued by the Inspector General of Registration to the registering authorities, Section 69(i) clearly provides that the Inspector General shall exercise a general superintendence over all the registration offices in the territories under the State Government, and shall have the power from time to time to make rules consistent with this Act. The decision of the Punjab and Haryana High Court mentioned above has also clearly held that the Government or the Inspector General of Registration has no power or authority to issue any direction to the subordinates functioning under the Act restraining or restricting them from registering documents pertaining to the transfer of immovable properties inconsistent with the provisions of the Act. As already noted, there is no provision in the Registration Act enabling the Sub Registrar to satisfy himself as to the title of the executant of the document presented for registration as a condition for grant of registration. The circular which confers such a power on the Sub Registrar is inconsistent with the provisions of the Act which has got the effect of interfering with the power vested in the Sub Registrars to register documents which satisfies the requirements of the Act is issued without jurisdiction and is not binding on the Sub Registrar. In the above circumstances, I am of the opinion that the 1st respondent was not justified in requiring the petitioner to produce a possession certificate obtained from the competent authority with regard to the possession of the property by the executor i.e., the 2nd respondent.

10. Coming to the next requirement in the objection slip (Ext. P8) regarding the power of attorney, Section 33 of the Act dealing with the power of attorney recognisable for the purpose of Section 32 states that if the principal at the time of executing the power of attorney resides in any part of India in which this Act, is for the time being in force, a power of attorney executed before and authenticated by the Registrar or Sub Registrar within whose district or sub district the principal resides will be recognised for the purpose of Section 32 with regard to the

presentation of documents for registration by power of attorney. As already stated, the counsel for the petitioner submits that the 2nd respondent is a resident of Tamil Nadu State and that it had executed a power of attorney for presentation of Ext. P7 document before the 1st respondent for registration and the same was registered in the registering office having jurisdiction over the place where the executant is residing and that the petitioner will produce the original of the said document before the 1st respondent. If the petitioner produces the original of power of attorney executed by the 2nd respondent and registered in the Sub-Registry Office having jurisdiction over the place where the 2nd respondent is residing in Tamil Nadu, the same will be recognised and accepted as contemplated under Section 33 of the Act. In the above circumstances, I hold that it is not necessary for the petitioner to produce any possession certificate as sought for by the 1st respondent in Ext. P8 objection slip. However, the petitioner has to produce the original of the power of attorney executed by the 2nd respondent and registered in the Sub-Registry Office having jurisdiction over the place where the executant resides authorising the presentation of Ext. P7 document for registration before the 1st respondent. If the petitioner complies with the above and if the other requirements of the Registration Act are satisfied, the 1st respondent will register Ext. P1 document immediately thereafter.

11. This Original Petition is allowed as above.

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