

Smt. Kishni Devi Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Sep-11-1990

Reported in : AIR1992Raj24; 1990(2)WLN102; 1990WLN(UC)351

Judge : Milap Chandra, J.

Acts : [Registration Act, 1908](#) - Sections 32 and 35; Urban Land (Ceiling and Registration) Act, 1976 - Sections 26; Rajasthan Registration Rules, 1955 - Rules 39 and 42; [Contract Act, 1872](#) - Sections 204

Appeal No. : Civil Writ Petition No. 93 of 1989

Appellant : Smt. Kishni Devi

Respondent : The State of Rajasthan and ors.

Advocate for Pet/Ap. : H.R. Panwar, Addl. Govt. Adv.; A.L. Chopra,; H.S. Sadhu

Disposition : Petition allowed

Judgement :

ORDER

Milap Chandra, J.

1. This writ petition has been filed for directing the Sub-Registrar, Jodhpur (respondent No. 2) to register the sale-deed dated May 15, 1987 (Annexure-2).

The facts of the case giving rise to this writ petition may be summarised thus.

2. The vendors Parasmal and Sardarmal' Kankaria, Queens Park, Calcutta agreed to : sell their small piece of land measuring 57 sq. meters situated near Isolation Hospital, Jodhpur for Rs. 500/- to the petitioner. On May 15, 1987 the holder of their general Power of Attorney, Rajesh Lodha, executed the sale-deed Annexure-2 on requisite stamps in favour of the petitioner. On July 14, 1987, he presented it before the Sub-Registrar, Jodhpur for its registration and deposited the requisite registration charges through the receipt Annexure-1. The Sub-Registrar summoned the executant (Rajesh Lodha) for September 15, 1987, he appeared before him and admitted the execution of the sale-deed Annexure 2. The Sub-Registrar completed all the formalities required under Sections 34, 35, 58 and 59 of the Registration Act (hereinafter to be called 'the Act'). On March 31, 1987 the executant had given a notice under Section 26 of the Urban Land (Ceiling and Regulation) Act, 1976 to the Competent Authority intimating about the said proposed sale. It did not exercise option to purchase the said land as provided under Section 26(2) of the aforesaid Act. The Sub-Registrar did not register the sale-deed and kept it pending. Writ Petition No. 1381/88 was filed. On August 22, 1988, the Court directed the Sub-Registrar to decide the question of registration of the said sale-deed within a period of 10 days. In compliance thereof, the Sub-Registrar passed order Annexure 4 on August 30, 1988 refusing the registration of the document for want of clarification from the Urban Improvement Trust, Jodhpur. An appeal was filed against his order before the District Registrar, Jodhpur (respondent No. 3). He rejected it by his order dated December 5, 1988 (Annexure 5) on the grounds that it is the duty of registering authority to see that the orders of the Government issued from time to time are complied with, the provisions of the Act are not infringed, the Power of Attorney executed by the Venders in favour of Rajesh Lodha has been cancelled by May 16, 1987 and he had no authority to present the sale deed for its registration or admitting its execution.

3. Despite seeking several adjournments for filing reply, it has not been filed by any. respondent. On January 9, 1989, Smt. Sudesh Kakkar moved an application for being impleaded as a party on the ground that she is in actual and physical possession of the land which has been sold through the sale deed Annexure 2.

The same day the application was dismissed by this Court. On August 22, 1990, she moved another application for being impleaded as an intervenor.

4. It is contended by the learned counsel for the petitioner that the Sub-Registrar could not refuse the registration of the sale deed Annexure 2 after completing all necessary formalities required under Sections 34, 35, 58 and 59 of the Act. He also contended that the appeal has also been dismissed by the Registrar on untenable grounds, not permissible under the Act. He also contended that the Registering authority is not concerned whether the vendor had a valid title to transfer it or the holder of power of attorney continues to hold such a power. He relied upon the provisions of Sections 52, 58 and 71 of the Act, Rules 39 and 105, Rajasthan Registration Rules, 1955 (hereinafter to be called 'the Rules') and J.D. Pathak v. B.B. Barot, AIR 1982 Guj 317.

5. In reply, the learned Government Advocate and the learned counsel for the applicant Smt. Sudesh Kakkar tried their best to support the orders of the Sub-Registrar, Jodhpur and also of the Registrar, Jodhpur. They relied upon Smt. Gomati v. Rameshwar Das, 1971 RLW 1 : (AIR 1971 Raj 211) (FB).

6. Admittedly, sale deed whose copy is Annexure 2 was executed on May 15, 1987 by Rajesh Lodha, holder of general power of attorney, for and on behalf of the vendors Parasmal and Sardarmal in favour of the petitioner Smt. Kishni Devi it was presented before the Sub-Registrar, Jodhpur for registration on July 14, 1987 by the Petitioner, the execution Rajesh Lodha was summoned by the Sub-Registrar, Jodhpur for September 14, 1987, he duly appeared before him and he admitted its execution. It is further clear from a perusal of the photostat copy of Annexure 2 and also the original sale deed shown during the arguments by the learned counsel for the petitioner that all necessary formalities required under Sections 52, 58 and 59 of the Act were complied with. Despite them, the Sub-Registrar, Jodhpur refused its registration by its order dated August 30, 1988 on the ground that the Competent Officer under the Urban Land (Ceiling and Regulation) Act, 1975 has written to him that the sale deeds be registered only after making an enquiry from the Secretary, Urban Improvement Trust, Jodhpur and no report of inquiry has so far been received from the latter. The petitioner

filed an appeal under Section 72 of the Act before the Registrar (Additional Collector), Jodhpur. After hearing the parties, the appeal was dismissed by him by his order dated December 5, 1988 (Annexure 5). The relevant portions of his order run as under:--

^i{kdkjsa }kjk izLrqrdZ cgl ,oafu;eksa ls ;g Li'V gS fd dksbZ Hkh nLrkost lkekU;r;k izLrqrdkZ ,oa lEeifrds VkbZVy dks ns[kdj gh iaft;u gsrq Lohdkj fd;s tkrs gS A iath;u djkus gsrqEcFfU/kr O;fDr o mlds vf/kdkjh dks ns[kuk Hkh mi iath;u dk dr ZO; gS rFkk lkFk ghjkt dh; vkns'k rFkk iaft;u fu;eksa ds lkFk gh vU; izpfyr dkuwu vcZu ys.M flfyaxvkfn ds rgr Hkh nLrkost dk ijh{k.k fd;k tkuk pkfhg, mi iaft;d }kjk rnuqlkj ghnLrkost iaft;u ls vLohdkj fd;k gS ftls vuqfpr ugh dgk tk ldrk gS A bl ekeys esai{kdkj jsLiks- ua- 2 dh vkifk Hkh mfpr izrhr gksrh gS A Jh jkts'k yks dkvke="dkvke" eq="eq" ikjley="ikjley" dkadfj="dkadfj" jftlvh="jftLVh" is="is">Reference of Goswami Malti Vahuji Maharaj v. Purushottamlal, AIR 1984 Cal 297, may be made here. Admittedly, the sale deed was executed by Rajesh Lodha on May 15, 1987 and the general power-of-attorney executed in his favour by Parasmal and Sardarmal is said to have been withdrawn by getting their notice of revocation published in 'Rajasthan Patrika' of May 16, 1987. Thus the sale-deed was executed by Rajesh Lodha prior to the revocation of his authority to execute it. Section 204, Contract Act runs as under:

'204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.'

When Rajesh Lodha had executed the sale-deed, he was fully competent to appear before the Sub-Registrar as its executant and also as an authorised agent of the said vendors. It is clear from the provisions of Sec. 47 of the Act that a registered document operates from the date of its execution and not from the date of its registration.

Reference of Nand Ballabh Gurnami v. Smt. Maqbool Begum, 1981 Allahabad Rent Cases 516 (SC) may be made here. To say the least, it appears that the Registrar and the Sub-Registrar were ignorant of the aforesaid provisions of the Registration Act and the above quoted Rules, otherwise they would not have

refused the registration of the said sale-deed. The registration of the sale-deed could not be refused on the ground mentioned in their orders. Reference of J.D. Pathak v. V.B. Barat, AIR 1982 Gujrat 317, Kailash and Ors v. Sub-Registrar of Assurances Indore and another, AIR 1985 MP 12 and Krishna Gopal Kataria and another v. State of Punjab and others, AIR 1986 P & H 328 may be made here. As such the writ petition deserves to be accepted.

11. Consequently, the writ petition is allowed with costs which are assessed at Rs. 1,000/-. The orders of the Sub-Registrar, Jodhpur (Annx. 4) and of the Registrar, Jodhpur (Ann. 5) are set aside.

12. The Sub-Registrar, Jodhpur is directed to give necessary certificate of registration on the sale-deed together with number and pages of book in which it is copied out and return it to the petitioner as required under Sections 60 and 61 of the Registration Act, within three months of its representation before him.

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