

Nalla Goundar Vs. Krishnaswami Naicker

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Court : Chennai

Decided On : Apr-04-1945

Reported in : AIR1945Mad465; (1945)2MLJ133

Appellant : Nalla Goundar

Respondent : Krishnaswami Naicker

Judgement :

Alfred Henry Lionel Leach, C.J.

1. In this appeal the Court is called upon to construe Clause (b) of Section 74 of the Indian Registration Act.
2. The appellant presented to the Sub-Registrar a conveyance of immoveable property for registration. The vendor (the respondent in this appeal) did not attend at the office of the Sub-Registrar when he was required to do so for the purpose of the registration; and the Sub-Registrar regarded his absence as a denial of execution. Consequently he refused to register the document. Thereupon the appellant appealed to the Registrar under Section 73 of the Act. Without inquiring whether the vendor had executed the deed the Registrar refused to register it because the respondent had not complied with the requirements of Section 145(2) of the Madras Estates Land Act. He considered that compliance with the provision of law contained therein was necessary before the vendee was entitled to have the document registered.

3. This resulted in a suit being filed by the appellant under Section 77 in the Court of the District Munsiff of Dindigul. The District Munsiff agreed with the Registrar and dismissed the suit. The appellant appealed to the Court of the Subordinate Judge of Dindigul. The Subordinate Judge held that the Registrar should have registered the document. The respondent then appealed to this Court. His appeal was heard by Horwill, J., who allowed it, as he agreed with the opinion of the District Munsiff. The present appeal is from the judgment of the learned Judge under Clause 15 of the Letters Patent.

4. Section 73 of the Registration Act provides for an application to the Registrar, if the Sub-Registrar refuses to register a document. Section 74 says :

In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire--(a) whether the document has been executed; (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

5. Section 75 relates to the order of the Registrar and the procedure to be followed thereon.

6. Sub-section (2) of Section 145 of the Madras Estates Land Act says :

Where a holding or any portion thereof is transferred by the act of a ryot, the landholder on receiving notice thereof in writing from the transferor and the transferee shall recognise the transfer.

Any person presenting for registration any document transferring a holding or any portion thereof shall present therewith a notice in writing signed by the transferor and transferee, and addressed to the landholder asking for recognition of the transfer and shall also pay to the registering officer such fee as the Provincial Government may prescribe for the transmission of such notice to the landholder. The landholder shall recognise the transfer on receipt of the said notice.

Mr. Justice Horwill held that the words ' whether the requirements of the law for the time being in force have been complied with ' in Clause (b) of Section 74 of the Registration Act meant the requirements of any law which had reference to registration. He read the second clause of Sub-section (2) of Section 145 of the Madras Estates Land Act as being a law which the Registrar was bound to have regard to when a document was presented to him for registration by a vendee of land held by a ryot. The vendee in this case was a ryot and the land conveyed was ryoti land within the meaning of the Madras Estates Land Act.

7. For the appellant it is said that Clause (b) of Section 74 of the Registration Act has reference only to the requirements of the Registration Act or of any statutory provision which the Legislature has said shall be regarded as being supplemental to the Registration Act. An example of this is to be found in Section 4 of the Transfer of Property Act. The second paragraph of that section says that Section 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Registration Act.

8. In our judgment the appellant's contention is well founded. The requirements of the law for the time being in force must be the requirements of the law relating to registration which entitle the Registrar to refuse registration if not complied with. The Act contains provisions with regard to the time of presentation for registration, the proper office to which a document must be submitted for registration and the persons who are entitled to present it for registration.

9. The question now before us was considered by the Calcutta High Court in *W.W. Broucke v. Rajah Saheb Mohan Bikram Shah* 14 C.W.N. 12 and the opinion there expressed was that the requirements of the law meant the requirements of the Registration Act.

10. Now, what is the meaning to be attached to the provision in Sub-section (2) of Section 145 of the Madras Estates Land Act which requires the transferee of a ryoti land to produce before the Registrar a notice in writing signed by the transferor and the transferee In answering the question it must be borne in mind that this provision was inserted in order to help the transferee to get ready recognition of the transfer by the landholder.

11. Sub-section (6) (a) of Section 145 states that where the transferor or the transferee fails to join the other in applying to the landholder for recognition of the transfer, the transferee or the transferor, or where a dispute arises as to the person or persons on whom the holding or portion thereof has devolved, a person claiming by devolution the holding or portion, may apply to the Collector for an order certifying the transfer or the devolution as the case may be. Clause (b) states that the Collector, after giving notice to the transferor or transferee or other persons interested and after making such inquiry as he thinks fit as to the fact and validity of the transfer or as to the person or persons on whom the holding or portion has devolved, may pass an order certifying the transfer or devolution as the case may be. On the production of a certified copy of such an order the landholder shall be bound to recognise the transfer or the devolution.

12. The deciding of an application filed under Sub-section (6) would take time and it might very well happen that the decision would be given after the four months allowed for registration had expired. The transferee cannot compel the transferor to sign the notice contemplated by the second paragraph of Section 145. When the transferor refuses, the only course open to the transferee is action under subsection (6).

13. In our opinion the provision of law in that paragraph does not entitle the Registrar to refuse registration. If the Legislature had intended that to be its effect, it would have made the provision a supplemental provision of the Registration Act, as it did in the case of the Transfer of Property Act. We hold that the Subordinate Judge rightly decided the case. Consequently the appeal is allowed.

14. This means that the Registrar must register the document if it has been executed by the respondent. It has been admitted before us that he did in fact execute it. Therefore there will be a direction to the Registrar to register it on re-presentation. The conveyance is in Court and it will be returned to the appellant.

15. The appellant is entitled to his costs throughout.

(This appeal coming on to be mentioned, the Court made the following order):

16. When this appeal was being heard learned Counsel were not aware that the conveyance had been registered between the date of the judgment of the Subordinate Judge and the presentation of the appeal to this Court. They have since ascertained that the document was duly registered.' In these circumstances there will be no need for its re-presentation to the Registrar.

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