

(2019) 05 MAN CK 0017

Manipur High Court

Case No: Writ Appeal (WA) No. 10 Of 2019

Keihiyang Rongmei
And Others

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision: May 21, 2019

Acts Referred:

Constitution Of India, 1950 " Article 226#Registration Act, 1908 " Section 3, 5, 6, 17, 18, 20, 21, 22, 35, 127(1)(b)#Madhya Pradesh Co-Operative Societies Act, 1960 " Section 64&

Citation: (2019) 05 MAN CK 0017

Hon'ble Judges: Ramalingam Sudhakar, CJ; Lanusungkum Jamir, J

Bench: Division Bench

Advocate: P.Tomcha, S.Shyam Sharma

Final Decision: Dismissed

Judgement

R.S., CJ

[1] This appeal is filed against the order of the learned Single Judge dated 22.01.2019.

The appellants, two in number, are aggrieved by the order of

the learned Single Judge dismissing the writ petition primarily holding that the cause of action for filing the writ petition is based on disputed questions

of fact and the issue has to be decided only before the Civil Court and not by way of a writ petition.

[2] The brief facts of the case as stated by the learned Single Judge is the claim between the three petitioners to a particular property of Kahulong

village as against the claim of the third respondent in the writ petition, the third respondent in the appeal, who states that he is the half owner of the

property in question based on an Exchange Deed, Exhibit-R/2 in the reply affidavit filed before the writ Court.

[3] The cause for dispute arose after initiation of land acquisition process for widening the Tamenglong-Khongsang Road and in that, the parties were

at loggerheads as to the compensation to be received by the real owner. In the circumstances, learned Single Judge recorded the facts of the case as

follows:-

“[2] By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writ to set-aside the registration

of the “cancellation of gift deed” registered vide registration No. 242 of 2001 dated 17-2-2001 of the Sub-Registrar (H.Q.), Imphal, Manipur.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioner No.1 was the owner and possessor of the land known as

“Joulang” or “Doudong” of Ramphanbutlong Hill situated within the village boundary of Kahulong Village. In the year 1987, the petitioner No.1

executed a registered gift deed being registration No. 5836 dated 17.10.1987 of the Sub-Registrar (HQ), Imphal in favour of the petitioner Nos. 2 and

3 gifting a portion of the said land, described in the schedule of the gift deed, measuring 2.5 kilometer (East to West) and 2 kilometer (North to South).

After the said gift deed being executed, the petitioner Nos. 2 and 3 have been residing inside the said portion of the land.

[3.2] In the year 2013 when the land was being acquired for widening the Tamenglong-Khongsang Road, it was discovered that a so-called deed

under the name and style “Cancellation of Gift Deed” was found to have been registered vide registration No. 242 of 2001 dated 16.2.2001 in the

office of the Sub-Registrar (HQ), Imphal cancelling the earlier gift deed which was purportedly executed by the petitioner No.1. The said cancellation

gift deed was not executed by them and the same is forged and fabricated document.

[3.3] By the notification dated 13.09.1962 issued by the Chief Secretary, Manipur Administration, the Sub-Registrar, Imphal was amalgamated with

the Office of the Registrar for the entire territory of Manipur and it was allowed to exercise and perform the duties of the registrar. In exercise of the power conferred upon it, the documents including gift deed for landed properties located inside Tamenglong District, were allowed to be executed and registered in the office of the Sub-Registrar, respondent No. 2 herein and therefore, the gift deed was lawfully executed and registered in the office of the Sub-Registrar, respondent No. 2.

[3.4] In the year 1988, the Commissioner (Revenue), Government of Manipur, in exercise of his powers conferred by Section 3, 5 and 6 of the Registration Act, 1908 and in supersession of all previous orders, issued an order dated 18.02.1988 which was to take effect from 1.3.1988, by which the office of respondent No. 2 has no power and jurisdiction to register any document in respect of landed properties located inside Tamenglong District including the deed of cancellation. Therefore, the registration of cancellation gift deed as has been done in the year 2001 in the office of the respondent No. 2, is without jurisdiction and is accordingly null and void.

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[4] No counter affidavit has been filed on behalf of the State Government. However, an affidavit-in-opposition has been filed by the private

respondent wherein an objection as regards the maintainability of the writ petition has been raised and in addition thereto, it has been stated that the

petitioners approached this court by suppressing material facts. According to the private respondent, the land in question belongs to him and Shri

Hujandiyang of Kahulong Village as per deed of exchange dated 28-01-2001 by which the land of the private respondent located at Ramgaijang village

and the share of the land belonging to the petitioner No.1 were exchanged and they are enjoining their respective lands. The Village Pei and elders of

Kahulong Villade are witness to the said deed of exchange. In this regard, the claim of the petitioners was rejected vide communication dated 25-08-

2014 of the Sub Divisional Officer addressed to the Deputy Commissioner, Tamenglong which remains unchallenged. After the claim of the

petitioners being rejected towards payment of compensation, the portion of the land was acquired for widening of Tamenglong- Khangsang Road. The

stand of the petitioners that the respondent has no jurisdiction to register land or other documents of Tamenglong District after 01-03-1998 is incorrect

for the reason that the petitioners got a gift deed executed on 16-03-2013 and registered in book No.1, Vol. No.3 of page 2013 at page No.562 to 564

being 909 for the year 2013 dated 20-03-2013 before the respondent No.2.

[4] The learned Single Judge, taking note of the facts, was of the view that the two issues, namely, whether the writ petitioners have executed the

cancellation gift deed and secondly, whether the respondent No.2 has the jurisdiction to register the cancellation deed are interlinked and the second

issue can be decided only after the first issue of cancellation of the gift deed is resolved by a competent Civil Court. On this regard, the learned Single

Judge relied on a decision of the Hon'ble Supreme Court in the case of Satya Pal Anand vs. State of Madhya Pradesh & ors. (2016) 10 SCC 76 7to

come to the conclusion that the writ court should not interfere in matters where factual issues are in dispute and rightly so. The learned Single Judge

has clearly held that the disputed questions of facts has to be resolved before the Civil Court and only thereafter, the issue of statutory authorities

dealing with the registration would apply. Para No. 5 of the order of the learned Single Judge records the reasons as follows:-

“[5] On perusal of the pleadings of the parties, it is seen that there is no much dispute as regards the execution of gift deed. The case of the

petitioners is that they have not executed the cancellation gift deed and they were not aware of it and came to know about it only in the year, 2013 and

that the respondent No.2 has no jurisdiction to register it. On the other hand, the case of the private respondent is that the gift deed had been cancelled

and in the same year, 2001, there was an exchange of land between the petitioners and the private respondent. In support of their contentions,

incidentally, the counsels appearing for the parties have relied the same decision rendered by the Honâ€™ble Supreme Court in Satya Pal Anand Vs.

State of Madhya Pradesh & ors., 2016) 10 SCC 767. Before adverting the rival contentions and in order to appreciate them, this court deems it

appropriate to peruse the decision, the facts thereof, in brief, are that a plot was allotted to the appellant's mother by a Housing Society vide

registered deed dated 22-03-1962. Since the appellant's mother having expired on 12-06-1988, the Society executed unilaterally a deed of

extinguishment on 09-08-2001 cancelling the allotment and the Society executed and got a registered deed dated 21-04-2004 in favour of respondent

No.5. The appellant objected to the transaction but on a compromise deed executed between the Society and respondent No.5 on the one hand and

the appellant on the other hand, the appellant received the consideration. Notwithstanding the compromise deed, the appellant filed a dispute under

Section 64 of the Madhya Pradesh Cooperative Societies Act, 1960 before the Deputy Registrar challenging the Society's action by registering

extinguishment and allotment deed. Since the appellant resorted to multiple proceedings, the respondents demanded refund of the consideration

amount. Without paying any heed to the demand, the appellant filed an application, praying for cancellation of the extinguishment deed and subsequent

deeds, which was rejected by the Sub-Registrar and the appeal preferred before the Inspector General also failed. The appellant approached the High

Court by way of a writ petition questioning the orders passed by the Sub-Registrar and the Inspector General. The writ petition was dismissed by the

High Court on the ground that since the appellant had already resorted to a remedy before the appropriate forum, it was not feasible to invoke the writ

jurisdiction. The appeal before the Honâ€™ble Supreme Court came up before a Division Bench of two Judges and because of the differences of opinion

between them, the appeal was referred to a Division Bench of three. Six issues were framed by the Honâ€™ble Supreme Court for consideration and the

Honâ€™ble Supreme Court, while dismissing the appeal, held:

25. It is a well-established position that the remedy of writ under Article 226 of the Constitution of India is extraordinary and discretionary. In

exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking the remedy. The fact that the party may have

several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of

discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the

instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise

its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an

alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with Dipak Misra, J.

We respectfully agree with that view.

27. As the writ petition is liable to be dismissed with liberty to the appellant to pursue other statutory remedy already invoked by him, examining any

other contention at his instance would be awarding premium to a litigant who does not deserve such indulgence. The fact whether the compromise

deed entered into by the appellant was voluntary and at his own volition or under duress, is essentially a question of fact. That cannot be adjudicated in

writ jurisdiction. Depending on the answer thereto, the other issues may become relevant and would arise for consideration. The only relief that can be

granted and which has already been clarified by the High Court in the impugned judgment, is to keep all questions open to enable the appellant to

pursue the statutory remedy already invoked by him. It is open to the appellant to contend in those proceedings that the extinguishment deed could not

have been unilaterally executed by the Society. That plea can be examined by the statutory forum provided for that purpose.

34 .The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan).

Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in

Section 127(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents

containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with

the description of houses and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the

Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after

its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume

that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector

General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the

registration of any document which has already been registered.

41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the

document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such.

The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In *Park View Enterprises* it has

been observed that the function of the Registering Officer is purely administrative and not quasi judicial. He cannot decide as to whether a document

presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition. ¶

[5] The facts of the said case are not identical with that of the present case but the observation made therein that the question of fact as to whether

the compromise deed entered into by the appellant was voluntary and at his own volition or under duress, cannot be adjudicated in writ jurisdiction, is

relevant and applicable. In the present case, there are mainly two issues involved herein-one, whether the petitioners have executed the cancellation

gift deed and two, whether the respondent No.2 has any jurisdiction to register the said cancellation gift deed. These two issues are inter-linked and

the decision on the second issue will depend upon the decision to be given by this court on the first issue. As regards the first issue, it has been

submitted by Shri Julius Riamei, the learned counsel appearing for the private respondent that it cannot be decided by this court in exercise of its

power under Article 226 of the Constitution for the reason that there is a disputed question of fact and it is for the civil court to decide it. The

contention of Shri Julius Riamei appears to have some force and the first issue can be decided only on the basis of the evidence adduced by the

parties. In the event of the cancellation of gift deed being found to have not been executed by the petitioners, it will be void ab-initio and therefore, the

question as regards the validity of registration whether at Tamenglong or at Imphal, will not arise at all. So far as the second issue is concerned, it has

been submitted by Shri P. Tomcha, the learned counsel appearing for the petitioner that after the order dated 18-02-1988 being issued by the State

Government, no document in respect of land situated at Tamenglong District can be registered by the respondent No.2 at Imphal. His contention

appears to be correct to that extent but it is nowhere stated in the order dated 18-02-1988 that after the same being issued by the State Government,

the registration of documents of lands situated at Tamenglong by the respondent No.2 is impermissible and that if it is done so, it will be rendered

illegal. Moreover, it has been submitted by the learned counsel appearing for the private respondent that since the petitioners have got a gift deed

executed on 16-03-2013 by respondent No.2 in book No.1, Vol. No.3 of page 2013 at page No.562 to 564 being 909 for the year 2013 dated 20-03-

2013, they cannot be permitted to contend that the respondent No.2 has no [11] W.P. (C) No. 521 of 2015 jurisdiction to register documents relating to

lands situated at Tamenglong. If that be so, the petitioners cannot take contradictory stances. Moreover, without the first issue as to whether the

petitioners have executed the cancellation gift deed being decided, there is no point of deciding the second issue. Therefore, this court is of the view

that the writ petition is not maintainable and is accordingly liable to be dismissed on that count.

[5] We have heard Mr.P.Tomcha, learned counsel for the appellants and Mr.Sh.Shyam Sharma, learned Government Advocate for the State

respondents as well as Mr.Julius Riamei, learned counsel for the private respondent.

[6] In this case, admittedly, there is gift deed from the 1st appellant to the appellant Nos.2 and 3 dated 27.10.1987, Annexure-A/1 in the writ petition

and thereafter, there is another document which is alleged to be the cancellation of the gift deed by the 1st petitioner dated 16.02.2001, Annexure-A/2

to the writ petition. This is relied upon by the private respondent but disputed and challenged by the 1st petitioner in the writ petition as well as the

petitioner Nos. 2 and 3 who are presently the appellants.

[7] The private respondent in the appeal as well as writ petition relies upon the Annexure-R/2 (collectively) to the reply affidavit stating that the

exchange deed was signed between the parties, namely, the 1st petitioner in the writ petition and his son with the third respondent in the writ petition

and 3rd respondent in the present appeal on 28.01.2001. In that exchange deed, half portion of the land which is the subject matter of the gift deed

dated 27.10.1987 has been exchanged between the 3rd respondent herein and the 1st petitioner in the writ petition along with his son. This narration of

facts makes it clear that factually there is a dispute as to whether the gift deed dated 27.10.1987 was cancelled at the first instance and if it was

cancelled, whether it is valid in law. If the cancellation is valid, then to what extent the parties are real owners. The rival claims of ownership is a

disputed question of fact. This is apparent from rival pleadings. Hence, the learned Single Judge's finding that issue involves disputed questions of

facts is well founded and correct. Secondly, whether the exchange deed, Annexure-R/2 dated 28.01.2001 has the effect of nullifying a portion of the

gift deed dated 27.10.1987 or not is an issue on fact which cannot be adjudicated before the writ Court. For all the above reasons, the learned Single

Judge was justified and correct in holding that the issues in this case in the realm of dispute on facts should be adjudicated before the Civil Court and

not by way of a writ petition under Article 226 of the Constitution of India.

[8] The contention that it is an invalid registration can be considered only after the primary issue on facts is resolved before the competent Court.

Appellants is at liberty to proceed in accordance with law at the appropriate forum at the appropriate stage.

[9] We find the said reasoning of the learned Single Judge is absolutely correct. We find no error in the order of the learned Single Judge and

accordingly, the appeal stands dismissed.